

**Submission to the Public consultation on "Development of the HKSAR's Political System" for the Panel of Constitutional Affairs, Legislative Council, Hong Kong Special Administrative Region**

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**The Challenging facing an "executive-led" government**

Hong Kong's political system is a very special one. Under the one country; two systems arrangements we have to maintain the existing political system, and at the same time find a way forward within the framework of the Basic Law. As a local government with a high degree of political and administrative autonomy, the powers of the Hong Kong SAR government are considerable. The colonial political system in Hong Kong has been described as an administrative state, an executive-led government. The power of the executive branch has been strengthened by the Basic Law. The transition to SAR status, however, has naturally led to greater expectation for political participation from the Hong Kong public. With the introduction of more and more elected seats in the Legislative Council the relationship between our Executive and Legislature can hardly be expected to remain unchanged. As an elected body, the SAR Legco has proved that it could be assertive and be highly critical of the administration. Since the Legco has no direct powers to govern, its role has sometimes been relegated to that of a permanent opposition. Attempts to build bridges between the administration and legislature by cross memberships in both the Executive and Legislative Councils proved to be futile. The SAR government has so far responded to the challenge by asserting an executive-led style of governance, executive-legislative relationship has therefore remained difficult since the handover. Since more directly elected seats are to be introduced to the Legislative Council, relationship between two branches of government is set to become even more problematic. Many observers have suggested that we need a ministerial system to ensure more effective governance or to make the administrative more accountable.

**Introducing a "ministerial system"?**

The term ministerial system is not common found in the political science literature. Contemporary governments exist in many different forms and modern political systems come in a number of varieties. Political scientists use terms such as aristocracy, democracy, dictatorship, monarchy, monocracy, ochlocracy, oligarchy, and theocracy to describe different forms of government and use concepts like constitutionalism, despotism, military government, colonialism and imperialism to examine different types of political control and also terms federalism, republic, and unitary system to describe political systems. The notion "ministerial system" is rather unusual because governments are always run by ministers.

Ministers are simply officers of a state who are entrusted with the management and administration of a division of governmental activities. In most political systems these officers are responsible for formulating public policies in their respected areas. If that is the case Hong Kong, like other political systems, always have ministers. In fact the Hong Kong SAR government's principal officers i.e. Secretaries of government bureaux are our ministers. They are the officers in charge of divisions of government activities and directly involved in formulating public policies. Their positions are often recognized as such by foreign governments when they travel abroad for official business. The major difference between them and ministers of democratic systems is that most of Hong Kong's "ministers" are also career civil servants who are promoted to their current positions through an administrative process within the bureaucracy rather than through an open political process. At the heart of the public debate about whether Hong Kong should introduce a ministerial system is the relationship between the legislature and the executive.

The two most common political structures governing executive-legislative relationship in democratic systems are the parliamentary and presidential models. In the parliamentary model, exemplified by the British system where the leadership of the ruling party forms the government. The chief executive or the prime minister is therefore leader of the party who won the parliamentary elections. The prime minister and the Cabinet in a parliamentary system are therefore fully in charge and can easily ensure support from the Legislature. In a presidential system such as the United States, the president is elected directly and serves both as the head of state as well as the chief executive. The president is not a member of the Congress and the Cabinet members who cannot be Congressional members are chosen by the President and are politically responsible directly to the president. The institutional separation of the executive and the legislature is sometimes a source of conflict which can result in a political deadlock.

Since the Chief Executive and the Legislative Council in Hong Kong are selected by two different and separate processes, we are not a parliamentary system. But features of our system also resemble a parliamentary system as our legislative procedures and processes are borrowed from the British. Moreover, the Basic law also stipulates that the HKSAR government should be accountable to the Legislative Council. In fact political arrangements combining features of both the presidential and parliamentary systems are rather common. The German and French systems, for example are both hybrid systems.

### **Between the parliamentary and presidential systems**

#### Chancellor Democracy in Germany

The German political system is sometimes referred to as a chancellor democracy. The chancellor is the majority leader in the Bundestag (Lower House), but Cabinet appointments are not subject to parliamentary approval. In fact the Chancellor can even set the number of cabinet ministers and determine their duties. In turn the chancellor have

to be responsible for all government policies. The Bundestag, however, cannot remove the Chancellor by a vote of no confidence. According to the German constitution the Bundestag can only remove the chancellor if it simultaneously agrees on a new successor - "constructive vote of no-confidence".

### Share responsibilities in France

The French political system is a hybrid between a presidential system and a parliamentary system. The President is elected directly for 7 years and can be re-elected an indefinite number of times. The President also appoints the Prime Minister and other members of the cabinet with the approval of the prime minister who is answerable to the French parliament which is elected every 5 years. The lower house of the Parliament - the National Assembly has the power to force the government to resign by passing a motion of censure.

### Executive-legislative relationship in Switzerland

The Swiss executive's relationship with the legislature is probably the most special in modern liberal democracies. The government is run by the Federal Council, consists of seven members, which is the supreme authority of the country. They are elected for four-year terms by the parliament (the Federal Assembly). The President of the Federal Council changes every year. If there are disagreements between the Council and the Assembly, members of the Council are not forced to resign and the Assembly will not be dissolved. The ministers will simply confirm to the wishes of the majority of the Assembly.

### **Political Development in Hong Kong**

Hong Kong can perhaps be described as a quasi-democracy with a system which seeks to preserve colonial political institutions and the introduction of limited democracy at the same time. The contradictions in the HKSAR's political arrangements have already led to difficulties between the administration and the legislature. Unless political reforms are to take place a pattern of confrontation between the HKSAR government and the legislature is likely to emerge. Hong Kong's reputation as a place which is liberal and administered judiciously by an efficient and well-managed government would be damaged and public confidence would be further eroded.

The difficulties in the SAR government's relationship with the legislature should not be exaggerated. The two institutions have managed their differences by engaging in the usual political give-and-take. The situation is also perhaps not unlike other political systems where the executive and the legislature do not necessarily always act in harmony. The government has made concessions to Legco demands and so far succeeded in conducting government business without always bowing too much to political pressure.

But the administration, whose performance is under close scrutiny by an increasingly politically aware public, will find it increasingly difficult to maintain an executive-led style of governance without risking its political credibility if it does not have institutionalised political support and a higher degree of legitimacy. Its political position is becoming even more vulnerable with further democratisation when more and more Legco seats are opened for direct elections from geographical constituencies.

In the long run the best solution is that the people of Hong Kong should be able to elect both all their Legislators and their Chief Executive directly through universal suffrage. With a popularly elected leader, the administration would be able to exercise its power with legitimacy. Executive-legislature relationship would then become more balanced, if it would still be confrontational at times. But without a democratic form of governance, tensions between the executive and the legislative branches of government will only deteriorate further and the HKSAR would find it increasingly difficult to address political frustration of the people in Hong Kong.

Direct elections are not going to solve all our political problems. Democracy, as Amartya Sen pointed out, has complex demands. Political systems in many liberal democracies are very different in nature when they have to take into account their own historical conditions, and also finding ways of balancing efficiency, effectiveness, political stability accountability, and representativeness. Sen also reminded us three important functions of democracy. First, political and social participation is an intrinsic value for human life and well being. Second, democracy enhance the hearing that people get in expressing and supporting their claims to political attention (include economic needs). Third, the practice of democracy gives citizens to lean from one another, and helps society to form its own values and priorities.

There are indeed important issues about that we have to discuss. In fact not all democracies are the same and their electoral systems can also be very different. In Mr. Tung Chee Hwa's first policy speech he stated that "democracy is the hallmark of a new era in Hong Kong" also committed to "provide opportunities for every stratum of society and legitimate political organizations, and people with different shades of opinion, to participate in the political process." While the political experiences all over the world are diverse, their experiences have demonstrated that, direct elections are a necessary step in realizing the vision presented by the Chief Executive.

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Constitutional conventions are extremely important in the British political system, where there is a democratic tradition. In the HKSAR where there was a lack of democratic tradition, constitutional conventions remain important but neglected. In Hong Kong under British rule, the most crucial convention was that the British Government seldom intervened in the affairs of Hong Kong. In the HKSAR's political development, at least two conventions are critical: (1) whether the central government maintains a relatively non-interventionist policy toward the HKSAR's political issues, and (2) whether the Chief Executive refrains from exercising his veto power over bills passed by LegCo (Article 49) and private members' bills initiated by LegCo members (Article 74). Other constitutional conventions include, for example, ExCo members should abide by the principle of collective responsibility. In fact, whether this principle should be relaxed and is a constitutional convention in Hong Kong remains debatable. Arguably, some ExCo members in the HKSAR have relaxed this principle as they occasionally voice different views on the same issue. Moreover, if the HKSAR ExCo is not like the British Cabinet which is composed of elected politicians and the political party in power, collective responsibility may be relaxed in order to allow more people with different political views to join the ExCo.

LegCo's composition will have a number of reform models. First, a fully directly-elected LegCo. Second, half directly elected and half composed of functional constituencies. Third, two-thirds directly elected and one-third functional constituencies. Fourth, a wholly directly elected LegCo but adding an upper house composed of appointed members and members of the Hong Kong representatives to the National People's Congress and the Chinese People's Political Consultative Conference. But this model with a lower house and an upper house may be over-complicated and it needs revision of the Basic Law. Also, the coordination and relationship between the upper house and lower house could have a deadlock. My view is that, for referendum purpose, the independent committee in 2006 should ask citizens whether (1) the LegCo should have half of its members directly elected, half elected by functional constituencies; or (2) the LegCo should have two-thirds of its members directly elected, and one-third from functional constituencies; or (3) the entire LegCo should have directly elected members.

I also favour the option of giving more powers and responsibilities to members of the District Councils. Allowing District Councillors to be the "ministers" in 18 districts will train their political leadership from now to 2006. The old and perhaps outdated argument about the lack of political leadership in the HKSAR will probably disappear if the elected politicians at the district level are really given the opportunities to practise self-government. After all, this will fully conform to the principle of having "Hong Kong people ruling Hong Kong."

4. In conclusion, the preconditions of public discussion on political reform will have to be met by educating the public urgently on the current political structure and the content of the Basic Law from now to 2006. The procedures of conducting an impartial and independent assessment of public views should be followed by adopting a three-pronged strategy: setting up an independent committee that will invite public submissions of their views and that will probably conduct a referendum on the two key issues: the selection of Chief Executive by universal suffrage and the scope of democratic reforms in LegCo. Finally, the LegCo should hold and sponsor a series of constitutional conventions from now to 2006 in order to generate elite views and hopefully consensus on the direction of the HKSAR's political development beyond 2007.