立法會政制事務委員會

政制發展專責小組

工作進展

引言

政制發展專責小組（專責小組）於今年一月二十八日向本委員會通報小組約見團體及公眾人士的進展（立法會CB(2)1107/03-04(01)號文件）。本文旨在向本委員會通報專責小組自一月二十八日之後至今的工作進展。

訪京之行

2. 經國務院港澳事務辦公室的安排，專責小組於本年二月八日至十日前往北京，與該辦及全國人大常委法制工作委員會會面，就政制發展事宜進行交流，並與一批內地法律專家舉行座談。政務司司長已於本年二月十一日在立法會向議員講述小組第一次訪京之行的工作，政務司司長發言全文見附件一。

約見團體及公眾人士

3. 至本年二月十三日為止，專責小組已約見了 19 組團體和人士（詳見附件二）。當中，有 15 組團體或個別人士在會面期間或會面後交來意見書，其中有 3 份意見書已夾附於立法會 CB(2)1107/03-04(01) 號文件供議員參考，其餘 12 份意見書現夾附在附件三供參考。

政制發展專責小組秘書處
政制事務局
二零零四年二月十三日

附件一

政制發展專責小組訪京之行
政務司司長在立法會發表的聲明
(2004年2月11日)

引言

政制發展專責小組前天和昨天在北京與國務院港澳辦及人大法工委，就香港特區的政制發展進行了商討。小組並在港澳辦的安排下，會見了內地法律專家。

訪京期間，於每次開會後，我們均盡快向傳媒簡要地介紹了會面情況。我亦很希望能盡早通知各位議員有關詳細情況。我曾承諾保持整個工作的透明度，並使溝通雙向進行，一方面了解中央的觀點，一方面向中央反映香港市民的意見。

小組昨天晚上從北京回來，多謝主席女士容許我的請求，藉本會例會向各位議員講述小組第一次訪京之行的工作。

反映港人意見

在與港澳辦會面時，我向他們介紹，小組已經把《基本法》中涉及的政制發展原則和法律程序的問題，羅列在發放給立法會的討論文件中，小組也開始聽取各界團體和人士的意見。我並向港澳辦表示，香港有不同機構就特區未來的政制發展問題進行了民意調查，香港傳媒廣泛報道了有關調查結果。港澳辦表示對此也有充分掌握。

就接見團體及人士的工作，我已向港澳辦表示小組已接見了十四組團體和人士，並把其中十組人士呈交的意見書完整地轉交港澳辦。他們及社會普遍是接受一些原則，包括：

* 中央有權責審視特區的政制發展；

* 任何“產生辦法”的修改必須符合《基本法》和“一國兩制”；以及

* 政制發展要根據香港的“實際情況”和“循序漸進”的原則實行。

我也向中央部門提出，香港社會上對政制發展存在相當廣泛的訴求，希望現時制度有所改進，特區需要抓緊時間處理政制發展事宜。市民亦普遍期望整個與中央討論過程具透明度，市民對中央是信任的，也期望中央會小心聆聽他們的訴求。

我向中央表示，為了在與中央會面前善用時間，專責小組在今年一月十四日向本會提交了討論文件，亦隨即展開與團體和人士會面，討論特區政府掌握到在《基本法》中關於政制發展的原則和法律程序問題。在原則方面可歸納為三大範疇，就是：

（一） 有關中央和特區關係的原則性問題；

（二） 政制發展應循序漸進和按實際情況的原則；

（三） 有關姬鵬飛主任在一九九零年所講的均衡參與和必須有利於香港資本主義制度的經濟發展；

而程序方面有五項。中央有關部門同意這些都是需要處理的。就原則方面，更應優先處理，因為這可以提供一個共同基礎，對我們日後的工作很有用。

中央的關注

在會面期間我向中央有關部門問及中央的關注具體是甚麼，他們表示，中央對香港政制發展高度關注，因為這事情關係到「一國兩制」方針和《基本法》的貫徹實施、關係到中央和特區的關係、以及關係到社會各階層的利益和香港的長期繁榮穩定。

貫徹落實「一國兩制」和《基本法》

中央有關部門強調，「一國兩制」必須以「一國」為「兩制」前提，一國兩制的概念是不可分割的。按照《基本法》，香港特區是中國不可分離的部份、是中央人民政府直轄的地方行政區域，香港特別行政區實行「港人治港」、「高度自治」。

他們表示，香港的政制發展必須符合「一國兩制」方針、國家利益和香港的法律地位，特區需要尊重國家的主權。

中央有關部門亦重申在八十年代國家為香港定下的長期政策方針，就是管理香港事務的人應是愛祖國、愛香港的香港人。

中央與特區的關係

中央有關部門表示，中央與香港特區的關係是《基本法》主要內容之一。香港是享有高度自治權的特別行政區。香港特區行使的行政、立法和司法權力來源是經中央授權，沒有「剩餘權力」給予特區。香港的政治體制是按照憲法由全國人大通過《基本法》予以確定的，在研究行政長官和立法會兩個產生辦法的問題時，必須聽取中央的意見。香港的政制發展涉及中央與特區關係，因為關乎到用什麼制度去貫徹「一國兩制」和《基本法》的實施，不純粹是特區的事情，必須與中央充分商討和得到中央的同意。

社會各階層的利益

中央有關部門指出，香港基本法起草委員會主任姬鵬飛先生在一九九零年三月二十八日把《基本法》草案及有關文件提交第七屆人大會議時，就作出聲明:「香港特別行政區的政治體制要符合『一國兩制』的原則，要從香港的法律地位和實際情況出發，以保障香港的穩定繁榮為目的。為此，必須兼顧社會各階層的利益，有利於資本主義經濟的發展;

既保持原政治體制中行之有效的部分，又要循序漸進地逐步發展適合香港情況的民主制度。...」

中央有關部門向小組表示，儘管上述說明未有寫入《基本法》條文，但也是重要原則之一。在研究香港政制發展時不能忽略此原則。他們表示，香港現時政治體制中包括有功能團體的原意，就是兼顧社會各階層各界別的利益，保障社會各界均衡參與，有利於資本主義經濟的發展。他們指出，未來政制發展必須兼顧這些原則。

香港的繁榮穩定

中央有關部門向專責小組強調，香港的政制發展必須保障香港的長期繁榮穩定，必須符合《基本法》第 45 條及 68 條中關於行政長官和立法會的產生辦法的規定，要符合特區的「實際情況」和「循

序漸進」的原則。他們向我們表示，香港回歸只有六年多，由於「一國兩制」是新事物，在實踐的過程中難免會出現一些困難，需要大家共同面對。鑑此，香港的政制發展必須配合香港的實際情況和經驗。

中央有關部門強調，《基本法》設計的一個重要原則是行政主導，這是維繫香港的有效管治。按《基本法》規定，行政長官要對中央人民政府負責，也要對香港特區負責，要同時做到這樣，必須依從行政主導的原則。未來行政長官和立法會的具體產生辦法，必須符合《基本法》的有關規定，有利於鞏固和完善行政主導體制。

中央有關部門向專責小組表示，希望香港社會各界對這些原則作深入和理性的討論，尋求共識。他們並強調，在思考有關問題時，要從大局出發，整體考慮國家利益、香港的長遠利益、香港的法律地位、香港的經濟發展、《基本法》的貫徹落實和實際運作情況，及香港的社會民生和各階層的利益。

與內地法律專家座談

此外，專責小組在北京與內地一批法律專家在 2 月 9 日舉行座談，出席包括北京大學法學院蕭蔚雲教授、外交部法律顧問邵天任先生、中國人民大學法學院許崇德教授、中國社會科學院港澳台法律研究中心秘書長、研究員陳新欣先生、清華大學法學院副院長王振民教授等等。席間，內地法律專家著重介紹了《基本法》有關規定的起草背景，也就《基本法》的原則和程序問題，表達了他們個人的看法，作為專責小組參考之用。他們認為原則和程序問題在考慮政制發展時是相連的，互相牽帶的。他們認為程序問題是比較容易解決，至於原則問題則較為複雜，而且是重要的，必須弄清楚，因為這是重要的基礎。

下一步工作

關於程序問題，人大法工委向我們表示，他們需要進一步研究，因為內地的法律專家也有不同看法，他們會在日後再與我們商討。

為了讓香港社會對政制發展的原則和程序問題有更深入的討論，專責小組會把有關問題以提問的方式表達，透過專責小組在下星期設立的網頁，讓市民和團體更聚焦和廣泛討論。專責小組會繼續

約見不同團體和社會人士，聽取他們對有關問題，尤其是原則問題的看法。我們也會在適當的時候與中央聯繫，講述工作進度，反映港人看法。

總結

作為今次通報的小小總結，我希望與各位議員分享一些個人感受。首先，我覺得今次專責小組是切實地扮演了橋樑的角色，我們一方面如實地向中央表達了香港人對政制發展的看法，另一方面也向香港人如實地反映中央的關注。我們認為這個雙向溝通非常重要。

第二，我和小組成員在北京期間，分別會見了國務院港澳辦和人大法工委的官員，以及一批內地法律專家，他們有些當年參與《基本法》的起草工作，對香港有深厚感情。我感受到他們與我們其實是抱著共同目標，就是要維護香港的繁榮穩定，並確保「一國兩制」能繼續成功落實。

在過去兩天三場的工作會面和座談會，我們與中央方面以及專家們進行了友好，坦誠和有建設性的交流，大家都認同原則和程序問題需要進一步討論，我和小組成員會都相信這種交流有利於雙方對問題有進一步了解，有助大家在共同基礎上去處理政制發展這課題。

各位議員，中央部門這次確定，專責小組一月十四日向立法會發出文件中羅列的《基本法》關於政制發展的原則，是香港未來政治體制發展的基礎，必須優先處理。中央也進一步闡釋了他們的關注。

我認為，這對特區政制發展是重要的一步。有了這個清晰的平台，各位議員與社會各界，便能集中討論如何在未來的兩項「產生辦法」中具體體現有關原則。香港社會必須與中央就這個基礎上有了共同的理解，才可以有建設性地討論具體的方案。

中央對香港是關懷和愛護的，希望香港能夠保持繁榮與穩定。中央部門這次與我們的交流，是坦誠的。

同樣地，香港市民對中央有深厚的感情，感謝中央在香港困難時期給予的支持，也明白中央自回歸以來一直緊守「一國兩制」

的原則。香港市民也了解繁榮穩定是很重要的。

在中央與香港的共同利益下，我很希望香港各界能就關乎香港未來前途的政治體制發展原則，作深入的思考和理性的討論。我們知道社會中必有不同意見，但重要的是，大家能在思考和討論的過程中互相諒解，減少不必要的指責和猜度，在謀求國家與香港的整體最大利益中，尋求對香港政制發展的共識。

多謝主席。

附件二

政制發展專責小組會見團體/人士
（截至 2004 年 2 月 12 日）

	團體/人士	會面日期	意見書
1.	民主黨	16.1.2004	已於 2004 年 1 月 28 日提交的文件中提供
2.	民主建港聯盟	17.1.2004	見附件三
3.	香港大學陳弘毅教授	17.1.2004	已於 2004 年 1 月 28 日提交的文件中提供
4.	基本法 45 條關注組	19.1.2004	已於 2004 年 1 月 28 日提交的文件中提供
5.	香港總商會	20.1.2004	見附件三
6.	區議會主席和副主席	20.1.2004	
7.	香港協進聯盟	21.1.2004	
8.	一國兩制研究中心	27.1.2004	
9.	前綫	29.1.2004	見附件三
10.	香港民主發展網絡	29.1.2004	見附件三
11.	李國寶議員 吳靄儀議員 陳偉業議員 馮檢基議員	31.1.2004	

	團體/人士	會面日期	意見書
	余若薇議員		
12.	香港政策研究所	31.1.2004	見附件三
13.	宋小莊博士	31.1.2004	見附件三
	周八駿博士		
	梁美芬博士		
	顧敏康先生		見附件三
14.	新世紀論壇	3.2.2004	見附件三
15.	自由黨	11.2.2004	
16.	基本法委員會委員	12.2.2004	
	吳康民先生		
	黃保欣先生		
	鄔維庸醫生		
	譚惠珠女士		見附件三
17.	香港大學社會科學院院長鄧特抗博士	12.2.2004	
	中文大學亞太研究所研究統籌員王家英博士		
	香港浸會大學政治及國際關係學系助理教授陳家洛博士		
	中文大學政治及行政學系高級導師蔡子強先生		

	團體/人士	會面日期	意見書
18.	香港中華總商會	13.2.2004	
19.	思匯	13.2.2004	
	民主動力		見附件三
	新力量網絡		見附件三
	香港民主促進會		見附件三

立法會
CB(2)1347/03-04(01)號
文件-附件三

民主建港聯盟 DEMOCRATIC ALLIANCE FOR BETTERMENT OF HONG KONG

對【基本法】政制發展的立法程序及相關法律問題的意見

2004/2/6

1) 對【基本法】附件一及附件二中行政長官及立法會的產生辦法修改，當用甚麼方式處理？

【基本法】附件一及附件二規定，如需修改行政長官及立法會的產生辦法，須經立法會全體議員三分之二通過，行政長官同意，並報全國人民代表大會常務委員會批准或備案。

民建聯認爲，如要修改行政長官及立法會的產生辦法，應按照附件規定的程序來修改附件一及附件二內容，然後特別行政區據此進行立法。

民建聯期望政制發展最終達成的方案能符合社會整體的最大利益，而前提是必須符合【基本法】規定的原則和程序。爲此，在討論立法程序及相關法律問題的時候，中央政府、特區政府及香港市民都應積極參與討論、發表及交流意見。

2) 如採用附件一及附件二所規定的修改程序，是否毋須援引【基本法】第一百五十九條規定？

如上所述，如何修改附件一及附件二中行政長官及立法會的產生辦法，在附件中已有明確的程序，不涉及【基本法】第一百五十九條規定。

3) 有關修改行政長官及立法會產生辦法的啓動？

民建聯認爲，特區政府及立法會均可啓動修改行政長官及立法會的產生辦法的機制。

4) 附件二所規定的第三屆立法會產生辦法，是否適用於第四屆及其後各屆的立法會？

民建聯認爲，即使二零零七年以後的立法會產生辦法不能達成共識，也不會出現法律真空。因爲不能達成共識，自然是沿用第三屆辦法，不作修改，無所謂法律真空問題。

5) 「二零零七年以後」應如何理解？

如有需要，二零零七年第三屆行政長官的產生辦法是可以考慮修改的。

真誠為香港

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民主建港聯盟 DEMOCRATIC ALLIANCE FOR BETTERMENT OF HONG KONG

對政制發展專責小組提出的政制發展原則問題的意見

1，政制發展是否需要充分體現「一國」的大原則

民建聯認爲，＜基本法＞序言指出，成立香港特別行政區，首先是「爲了國家的統一和領土完整」，這是＜基本法＞最重要的原則。這個原則已體現在＜基本法＞的相關條文裏，如＜基本法＞第十二條規定香港特別行政區「直轄於中央人民政府」；第四十五條規定特區行政長官由「中央人民政府任命」；第四十八條規定主要官員要報請中央人民政府批准，以及附件一和附件二內容的選舉辦法「如需修改」，也要經中央「批准」或「備案」等。

因此，毫無疑問，香港的政制發展，必須體現「一國」的大原則；由於這些原則已體現在＜基本法＞有關條文中，故政制發展按有關條文辦事，就是體現「一國」原則。

2，政制發展是否需要充分體現＜基本法＞第十二條「香港特區直轄中央人民政府」的原則

民建聯認爲：＜基本法＞第十二條已確定香港特別行政區的地位，香港特區是中國一個享有高度自治權的地方行政區，但不是完全自治，香港的自治權要受＜基本法＞限制，「香港特區直轄中央人民政府」的規定，就體現了這一原則，表現在政制發展問題上，不能沒有中央參與；政制的任何改變，包括＜基本法＞附件一和附件二內容的選舉辦法「如需修改」，也要與中央溝通，獲得中央的支持，因爲中央有權不批准或發回。

3，政制發展是否需要充分體現＜基本法＞第四十三及四十五條「行政長官由中央人民政府任命，既對中央人民政府負責，又對香港特區負責」的原則

民建聯認爲，香港特別行政區行政長官由中央人民政府任命，權力來自中央，對中央人民政府負責。中央的職權，除了外交、防務以外，還有行政長官、主要官員的任命權；對法律及財政的監督權，如法律及財政預算案要備案；＜基本法＞的解釋權、修改權等。這一原則體現在政制發展上，就是強調一定要有中央人民政府的角色，中央人民政府有實質的權責。民建聯認爲，行政長官產生辦法的任何改變，都要同時體現向中央與特區負責。

4，<基本法>第四十五及六十八條，說明要「根據特區的實際情況和循序漸進的原則、、、」中的「實際情況」應如何理解

民建聯認爲，對於香港的「實際情況」，應該考慮四個因素。一是社會各階層對政制發展的共識；二是政黨及參政組織的發展水平；三是政制發展能否達致社會均衡參與；四是要符合國家和香港的長遠利益。

5，<基本法>第四十五及六十八條，說明要「根據特區的實際情況和循序漸進的原則、、、」中的「循序漸進」應如何理解

民建聯認爲，這個原則要與實際情況結合考慮。要根據實際情況，訂出發展步伐，最終達至行政長官及全部立法會議員由普選產生。

6，姬鵬飛主任於１９９０年發言中提及香港的政治體制必須「兼顧社會各階層利益」應如何理解

民建聯認爲，兼顧各階層利益，才能保證社會的穩定和諧；要兼顧各階層利益，最重要的是均衡參與，要保障無論上層、中層及基層都能參與。

7，姬鵬飛１９９０年發言中提及香港的政治體制必須「有利於資本主義經濟的發展」應如何理解

民建聯認爲，對香港實行一國兩制，保持資本主義制度和生活方式，五十年不變，是由<基本法>總則規定的。要落實好一國兩制，保持資本主義制度和生活方式，發展資本主義經濟是重要基礎。要符合「有利於資本主義經濟的發展」原則，體現在政制發展上，就是政制的任何變化，必須能確保香港的社會穩定，有利經濟的持續發展。

HONG KONG GENERAL CHAMBER OF COMMERCE

Views on the Constitutional Development Process

February 2004

The Hong Kong General Chamber of Commerce welcomes this opportunity to share our views on the constitutional development process in the SAR. As requested, this submission is restricted to the process, not on the end result of constitutional development. We believe that getting the process right will deliver the desired results which will maintain community unity, stability, and prosperity. But at this point, the Chamber has not yet developed a consensus as to what changes would be best for Hong Kong. When the time comes to weigh various options, we will certainly provide our views on them.

This submission takes as its starting point the January 14, 2004, Legislative Council Panel on Constitutional Affairs "Task Force on Constitutional Development" paper, and its appended "Issues on Legislative Process and related Legal Issues concerning Constitutional Development in the Basic Law".

1. Overview

To the Chamber, "getting the process right" means taking care of the following concerns:

- That both the process and whatever outcome arises from it maintain the prosperity and stability of Hong Kong;
- That political differences of opinion during the process not distract us from the urgent need to rebalance our public finances;
- That the process of consultation be given adequate time, be open to different ideas and be handled with great care;
- That Hong Kong people be knowledgeable of Beijing's own sensitivities and the legal boundaries of the Basic Law and whether amendments are necessary;
- That as broad as possible a consensus be built before formal options are presented in a government consultation paper; and
- That the entire process be conducted with dignity and transparency and puts Beijing, the SAR government, and the community in a good light.

The consultation will be difficult, at best. After the confrontations arising out of the Blue Bill on national security legislation, it is vital that we make every effort to educate the community, consult broadly, and respect the views of all sides of the political spectrum. In short, we need to be inclusive, something that was missing during the Article 23 consultations. We need to do all we can to avoid polarizing the community on this issue, even though we admit that "managing the process" is nearly impossible and that a diversity of opinion reflects Hong Kong's strength rather than its weakness.

Successful constitutional development can be a win-win situation, for all concerned: the executive and legislative branches, political parties, the business community, national interests and society as a whole. It is not an exaggeration to say that constitutional development, handled well, can ensure Hong Kong's future prosperity and stability. Showing doubters that we can find common ground, particularly after the July 1st (and subsequent) demonstrations, will go a long way toward setting at ease foreign investors and our own entrepreneurs. Therefore, we believe the Task Force on Constitutional Development is a welcome first step, and one that sets the consultation process off on the right foot.

Equally, it is very important for all sides to realize the dangerous consequences of getting it wrong. Constitutional development should not be a political football manipulated for the advantage of one side "against" another. It is far too important to be used to win political points. And, all sides must avoid extreme, infeasible positions, and come to a compromise for the good of Hong Kong. If not handled properly, our evolution risks being used as a pawn in a larger geo-political game by other world powers vis-à-vis China, causing confrontation and a hardening of positions.

2. The Process

The HKGCC understands and supports the Task Force's efforts to come to an agreement with the Central People's Government on the exact meaning of specific language in the Basic Law and its Annexes. At the same time, we are fully supportive of an early beginning to broader consultation within the community. Throughout the process, the Government needs to be seen to be listening to the concerns and aspirations of the people.

The preamble to the Basic Law states the Central People's Government's commitment to "maintaining the prosperity and stability of Hong Kong". We believe this is best achieved via specific, visible and concrete steps toward constitutional development. Moreover, while we should not rush changes for the sake of change in accordance to an artificial timetable, we also believe that a prolonged lack of progress would directly threaten stability in Hong Kong.

While the consultation process needs to be thorough, it would be counter-productive for it to drag on for several years. We do not think it is useful to set a cut-off date for consultations at this time, although there should be clear signs of substantial progress before speculation on the 2007 nominations for Chief Executive begin in earnest.

Moreover, we would view with concern a process that has to be repeated every few years. Hong Kong needs a gradual and steady process that lays out the roadmap for constitutional development well beyond the next two elections.

The first step, collecting views in Beijing and Hong Kong prior to issuing a consultation paper, is entirely necessary, and we would encourage similar steps in other major policy initiatives. By involving interested parties in the earliest stages, the process of consensus building begins with a firm foundation. Moreover, the open-minded approach evident in the Task Force's first few meetings gives us the very positive impression that no "solution" has been predetermined.

3. Legal Issues

The Chamber's understanding of the Basic Law and its Annexes leads us to conclude that any change to the method of electing officials in Hong Kong must involve consultation with the Central People's Government. While there are likely some changes that might be considered which would not necessarily require amending the Basic Law or its Annexes, any significant modification of the means by which leaders are chosen has to be enacted with Beijing's blessing.

Among the areas needing greater analysis and, particularly, a meeting of the minds with the Central People's Government, are the definition of terms such as "gradual and orderly" and the "actual situation". Our Legal Committee is currently working on these and other technical issues, and may submit an opinion in future.

4. The Need for Change

Many of our members hold the view that the current political system is dysfunctional and has contributed to the problems we have seen in the past few years. Therefore, a determination to examine the political system and consider changes is necessary. This perspective is reflected in the over 75 percent response among our members, who in our recent Business Prospects Survey expressed support for early consultation.

Further, we believe that a majority of the people of Hong Kong expect progress on constitutional development to begin soon, and that delays will polarize society and undermine our cherished stability and prosperity. This growing expectation within our community that change will occur sooner, not later, does not yet have what one would call a consensus on a specific change. The Chamber is, however, troubled that the discussion thus far has been focused far too much on dates rather than actual conditions of political development in Hong Kong. Nevertheless, we do believe that some progress must be seen to be made this year. In this we find no contradiction to the need to maintain Hong Kong's political system "in line with its legal status and actual situation".

However, what ultimately matters is the quality and effectiveness of government. In the past year, we've witnessed heightened confrontation between the government and those dissatisfied with its performance. In judging the need for change, and exactly what that change should be, we should think about how to change the political system to improve it.

5. Considerations of Stability

We believe Hong Kong is stable and sophisticated, and, given sufficient sensitivity to the constitutional development issue, will remain so into the foreseeable future. We recognize that popular satisfaction with the government is very low but caution against this being misinterpreted as a sign of instability. To avoid further dissatisfaction, which might lead to instability, should be one of the primary objectives of the constitutional development consultation exercise.

Maintaining stability will require steady, timely and visible progress toward implementation of constitutional development. To further postpone visible progress beyond the 2007 and 2008 election would not be in keeping with the need for "gradual and orderly" progress, and would entail unnecessary risks.

At this time, we make no judgment as to what, if any, change should be implemented for the 2007 and 2008 elections, but wish to stress the need for progress to be *seen* to be made before then. As demonstrated in the past year, highly sensitive issues will bring people out onto the streets of the SAR. While we are heartened by the peaceful and orderly manner in which such protests have been organized, we believe it prudent not to test public tolerance unnecessarily and repeatedly.

Hence, in the process of constitutional development here in Hong Kong, we see two risks to stability. The first is if the community believes constitutional development will be postponed too far into the future. The second is if we force changes despite the lack of institutional developments – further discussed below. The latter case has been amply illustrated in formerly communist countries, and counter-indicated in places like Korea, where political parties and similar institutions were already well developed prior to improved representation.

6. Ensuring Prosperity

Business is watching carefully how government handles community demands for greater representation. Managing the consultation process well will go a long way towards reassuring investors and employers that Hong Kong remains one of the best business and financial centers in the world. If it is not managed well, and the confrontation not only paralyzes our governance but spills over to larger geo-political disputes between China and others, then investor sentiment in this region and in Hong Kong will be affected.

Some have said that greater representation in government will lead to spendthrift budgeting, higher tax rates or so-called populist policies. Yet, the current political structure has played a major role in creating Hong Kong's dangerously imbalanced public finances. Perhaps there may be a temporary surge in demand for government largess as popularly elected officials become the majority in the legislature, but others might argue that this tendency should wane as voters become taxpayers. In the end, it is impossible to determine if a modified means of selecting leaders will necessarily further irresponsible fiscal policies.

We do note that, with very few exceptions, societies around the world that have our level of incomes also have much more representative governments. Yet, in these mature democracies both government outlays and tax rates have declined in the past decade. Further, there is no sign that investors have fled these countries because of their high levels of public participation in selecting leaders. It is therefore difficult to assume that greater representation, in and of itself, threatens prosperity.

There is, however, evidence that democracy and prosperity go hand in hand. Analyses such as the UN Human Development Index, the Heritage Foundation's Economic Freedom Index or the Fraser Institute's Human Progress Index group prosperous economies at the top and poorer one

at the bottom. Deeper examination of the underlying data shows that economies which improve their levels of political representation also tend to move up the scale, while those who suffer setbacks in governance inevitably fall in prosperity as well. Moreover, among countries with less-than-full democracy, many of those experiencing a decline in prosperity are ones that failed to improved their democratic credentials over the past 15 years.

Another major discrepancy between Hong Kong and other wealthy societies is in the scope of taxation. In comparing the tax paid at an income level equal to GDP per capita, we note that the SAR taxpayer pays less than 15 percent as much tax as the average paid in the OECD. One reason is that we have no broad-based consumption tax; another is that Hong Kong's ratio of personal allowance, in comparison to incomes, is nearly double what it is in those other economies.

The lack of personal involvement in paying for government services only supports those segments of the political spectrum seeking greater social benefits than our tax base can support. This is an important reason why cutting costs, which should be the first step to any balancing of the budget, has been so difficult for the government now. If we are to maintain a low tax environment and rebalance our government finances, the community must financially experience the link between revenues and expenditure.

In order to evolve toward a more representative government, we need a direct link between policies and personal pocket books. People who pay taxes have a vested interest in who represents them, how government performs, and most particularly in how it spends money. When our community better understands that each dollar spent represents a dollar collected from society, revenue and expenditure priorities will return to balance. Thus, we find a strong link between our deep concern over the extraordinarily narrow tax base and popular expectations of a greater say in future policy. The reverse is also true, as evidenced by the link, over the past decade, between declining voter turnout rates – an expression of personal interest in public affairs – and the shrinking tax base.

By broadening the tax base we will take a major step toward ensuring that future leaders act responsibly in determining spending priorities. As we have seen elsewhere, taxpayers demand that elected representatives make the best possible use of public funds, and call to account those who do not. We now have the prospect of developing more politically – and fiscally – responsible citizens. Although we wish to make it clear that we would welcome a more equitable sharing of the burden, with or without constitutional development, from a philosophical and tactical perspective, the two issues go hand in hand. Just as selecting leaders is a community responsibility, so too is paying for public services.

Hong Kong's prosperity has been battered in recent years by numerous events outside of our control. As the most international city in the world, we can only moderate the effects of external conditions, not avoid them. The process of rebuilding good relations between the government and the governed, of which constitutional development is an important part, can be a tool with which to show potential investors that they need not fear the rise of a fiscally irresponsible leadership. A broader, more equitable tax base will reassure investors that they need not expect steadily rising tax rates to pay for widely consumed public services. Further burden on the

present narrow tax base risks investor flight. That is why it is so important that we have the fiscal resources and governmental structures that will enable us to respond in a flexible and timely manner, to counter uncertainties and capitalize on opportunities.

7. Establishing Strong Political Institutions

On July 1st and again at the beginning of this year, we saw ample evidence that the people of Hong Kong are quite capable of organizing and expressing opinions within the rules of society. Such peaceful demonstrations denote a high degree of political maturity, a maturity that is very rare in Asia. While a more representative leadership might have been able to defuse the situation earlier, one cannot say that Hong Kong people are politically immature.

We are, however, *institutionally* immature. Hong Kong lags far behind other economies with similar standards of living in the development of political parties and supporting institutions. More mature democracies tend to have well-developed non-governmental or university based public policy research institutes that are able to provide the intellectual background to complex issues. While some may be affiliated with specific political parties (e.g., the Heritage Foundation or Brookings Institute in the US), others are neutral or issue-specific. In the end, politicians – both in and out of office – may draw on a range of serious thought that is both broad and deep. Developing such think tanks in Hong Kong should be a priority as we move toward more participatory governance.

We also believe the process of constitutional development will require a strong element of support for party politics, and in this area the SAR is not well developed. In the past few years political parties have received greater recognition from government, as in the case of appointments to the Executive and District Councils. Voters, too, are beginning to recognize the differences among parties, rather than just identifying with individual politicians. This is an evolution we support, and one we suggest should be broadened and facilitated.

Political parties allow leaders to present themselves to voters as representing a specific set of policy choices. They also create a base of support for policy positions, thus contributing to working relations between the legislative and executive branches. Over time, we need to develop a system that will allow the rise of a party, or coalition of parties, that could successfully take up the reins of power. The lack of such cohesion today curtails our ability to grow politically, and it is a shortcoming that we need to address if we are to move toward greater direct election of our leaders. The ultimate result might be the development of a loyal opposition or shadow cabinet.

As the Task Force arrives at a clearer understanding of the parameters of constitutional development, and prepares a consultation paper, we would strongly encourage a parallel effort toward institution building. The fixation on 2007 or any other date is meaningless if the entire system is not ready. Dragging our feet in getting the system ready would be irresponsible. Institution building must start at the same time as the broader debate.

8. Concluding Thoughts

Last year's confrontation over national security legislation offers a reminder of just how important it is to get it right the first time. Getting it wrong—by dividing the community, by underestimating China's critical role and thinking or the limitations of the Basic Law, or otherwise failing to build a consensus—is the single greatest danger we face in this endeavor. Certainly, the CE's deliberate plan to work through the basics before preparing policy choices for broader consultation may frustrate those who believe they already know what is best for Hong Kong. But, constitutional reform is a very delicate matter and we need to ensure that considerable time is given to getting it right and that the community has ample opportunity to understand the issues, consider alternatives and build a consensus.

As opposed to some in the community, we are optimistic in the eventual outcome being good for Hong Kong and for the Central Government, but getting from here to there takes us along a road filled with significant bumps and twists and turns. Only the best cooperative efforts of the SAR Government, the Central Government, and the community, including the business sector, can assure us we do not run off this road.

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Legislative Process and related Legal Issues concerning Constitutional Development in the Basic Law

Opinions of the Legal Committee of the Hong Kong General Chamber of Commerce on the specific issues raised in the Appendix to the Task Force Paper and other related issues

Summary of Opinions

A. Legislative Process

(1) ***What legislative process should be used for amending the methods for selecting the Chief Executive and for forming the Legislative Council as set out in Annex I and Annex II to the Basic Law.***

Annex I and Annex II of the Basic Law are able to be amended by the processes provided in the last paragraph of the respective Annexes. That opinion is further discussed in paragraphs 2 and 3 of our following opinions.

However:-

i) certain changes could be made in the implementation of the Annexes without amending the Annexes themselves: see (6) below; and

ii) there are important qualifications to our opinion on this point: see (2) and (3) below.

(2) ***Whether there is no need to invoke Article 159 of the Basic Law if the amendment procedures as prescribed in Annex I and Annex II are used.***

In principle, there is no such need.

However, any amendment of either Annex must comply with Articles 45 and 68, in accordance with and subject to our discussion and opinions in paragraphs 5 to 7 of our following opinions, which include detailed analysis of those Articles.

(3) ***Initiation of amendments relating to the methods for selecting the Chief Executive and for forming the Legislative Council.***

The primary responsibility for initiation of amendments rests with the HKSAR Government, in accordance with and subject to our discussion and opinions in paragraphs 8 to 10 of our following opinions.

In particular, any material amendment to Annex II is effectively as much subject to Standing Committee approval as amendment of Annex I, so that in either case prior consultation and consensus with the CPG is appropriate.

B. Related Legal Issues

(4) ***Whether the method for forming the third term Legislative Council as prescribed in Annex II may apply to the fourth term and subsequent terms of the Legislative Council.***

Yes, as discussed in, and subject to, our further comments in paragraphs 11 to 15 of our following opinions.

(5) ***How the phrase "subsequent to the year 2007 " should be understood?***

We agree with the Task Force conclusion, subject as discussed in our comments in paragraph 16 of our following opinions.

C. Additional Related Legal Issues

(6) ***What changes might be made in the methods for selecting the Chief Executive and for forming the Legislative Council which would not involve amendment of the methods as set out in Annex I and Annex II to the Basic Law.***

We consider that certain changes are possible which would not involve amendment of the Annexes: see discussion and opinions on the supportable scope for that in paragraphs 17 to 19 of our following opinions. In particular:-

i) we suggest an example of a limited broadening of the franchise for seats on the Election Committee, which might overcome the apparent difficulty of finding

"gradual" steps between the Election Committee as established under the present Annex I and the ultimate aim of Article 45;

ii) that difficulty needs in any case to be discussed with the CPG;

iii) some possible changes would not be directly related to the terms of the Annexes at all.

(7) ***What is the meaning of the "one country, two systems" principle and how far is it material to constitutional reform in Hong Kong.***

As discussed in paragraphs 20 to 28 of our following opinions, we consider that Hong Kong must fully accept, and develop within, the "one country" principle, not just the "two systems" principle.

Principal Qualifications to Summary

i) The above summary is no more than that and should be read in conjunction with our full opinions.

ii) In particular a summary cannot adequately establish the essential two part context, which is clear from our full opinion, that:-

- there are some, but only limited, constitutional changes which could be made in the HKSAR other than with the approval of the CPG; and
- if the HKSAR presents to the CPG reasonable and reasoned proposals for changes, it would be consistent with the Basic Law and the actual situation to expect them to be constructively considered by the CPG.

iii) We do not consider that the phrase "gradual and orderly" can be interpreted as allowing achievement of the "ultimate aim" in Articles 45 and 68 in 2007.

iv) We consider that the phrase "broadly representative" in connection with the ultimate aim in Article 45 of a Nomination Committee must be interpreted as having a different meaning from "universal suffrage".

Legislative Process and related Legal Issues concerning Constitutional Development in the Basic Law

OPINIONS

Preliminary Comments

i. Subject of Opinions:

These opinions relate to the issues raised in the Appendix to the paper headed "Legislative Council Panel on Constitutional Affairs - Task Force on Constitutional Development", issued by the Constitutional Affairs Bureau on 14th January 2004 (the "Task Force Paper "), and are given in response to the invitation extended in the final two paragraphs of the Task Force Paper. The HKGCC is among the specific bodies to which that invitation has been extended. Our opinions are set out under the same subject headings as those in the Appendix to the Task Force Paper, together with some further opinions under the heading of "Additional Related Legal Issues."

ii. Approach to Opinions:

We have endeavoured to formulate and express our opinions so far as possible on an objective and impartial basis. We believe that to be more constructive, at least at this stage of the work of the Task Force, than to take and attempt to support a particular objective of interpretation, whether that might have been chosen on political or other grounds.

iii. Overriding Considerations:

The opinions we express are our opinions as Hong Kong lawyers, generally with additional English legal system qualifications. However:-

a) the Basic Law is law of the PRC as a whole as well as of the HKSAR as the relevant part of the PRC;

b) the final power of interpretation therefore lies with the PRC, acting through the Standing Committee of the National People's Congress ("Standing Committee") (Article 158);

c) although the courts of the HKSAR may generally interpret the provisions of the Basic Law, no final judgment may be made by the court (of Final Appeal) in the HKSAR in any case concerning affairs which are the responsibility of the Central People's Government ("CPG") or concerning the relationship between the CPG and the HKSAR, before seeking an interpretation of the relevant issues from the Standing Committee;

d) we consider on balance, though there are available arguments to the contrary, that the method of selection of the Chief Executive is a matter which concerns the relationship between the CPG and the HKSAR; in any case, the point made in sub-paragraph (b) above and that made in the first two lines of sub-paragraph (f) below create the same effective situation that interpretation, and directly or through interpretation the approval of material changes, lies with the CPG;

e) because the phrases "actual situation in the HKSAR" and "the principle of gradual and orderly progress" are used both in Article 45 (on the election of the Chief Executive) and in Article 68 (on the selection of the Legislative Council) we consider that interpretation of those phrases, even if limited to their use and meaning in Article 68, should be treated as affecting by precedent the interpretation of the same phrases in Article 45; therefore the same conclusion as reached in sub-paragraph (d) above applies ;

f) for the above reasons, as well as because any amendment of paragraphs 1 to 5 of Annex I must be approved by the Standing Committee (paragraph 6 being spent and paragraph 7 having to be regarded as not open to amendment within its own terms),

prior consultation and consensus with the CPG must be seen as the appropriate approach to constitutional reform relating to the provisions of Annex I or, effectively, those of Annex II;

g) in view of the above, our opinions go to considerable length in discussion and formulation of views on the distinction of what would require amendment of Articles 45 or 68 from what would only require amendment of Annex I or Annex II, or would not require even that level of amendment; the three categories are however so interrelated, because of issues of interpretation, as to lead back to the view that little change can be made without the consensus of the CPG;

h) also for the above reasons, while our following opinions or any other opinions received or formed in Hong Kong may be found useful in taking issues of constitutional review forward, and in discussing them with the CPG, we consider that the government and the people of Hong Kong must bear in mind the HKSAR's actual situation under the one country, two systems principle, and that, in the words of Article 1 of the Basic Law, the HKSAR is an inalienable part of the PRC ;

i) in the context of the situation in Hong Kong and our opinions as to the legal need for consensus with the CPG on any substantive developments, we suggest that it is within the responsibility of the Government of the HKSAR to consider not only what changes would be appropriate with effect in 2007, but whether at least an outline should be established as to "gradual and orderly progress" in respect of further terms of the Chief Executive and Legislative Council. In that context we observe that the Basic Law dates from 1990, and provided for the applicable methods for terms starting up to 13 years ahead.

j) in the circumstances of the above comments, and also in view of time pressures, these opinions are given on the basis of more or less self-contained analysis of the

Basic Law and Annexes; we have not referred to or made comparison with text books or precedents of English constitutional law. In any case we believe the "one country, two systems" principle to be unique, and that text books and precedents would probably be of limited use.

A. Legislative Process

(1.) ***What legislative process should be used for amending the methods for selecting the Chief Executive and for forming the Legislative Council as set out in Annex I and Annex II to the Basic Law.***

1. First we signal a point which we believe is not fully discussed in the Task Force paper of 14th January 2004 or its Appendix. That is that certain changes could be made which we consider would not or might not constitute amendments as referred to in the final paragraph of each Annex. We expand on that point in paragraphs 17 to 19 below.

2. The statement of Mr Ji Pengfei at the National People's Congress ("NPC") in 1990 as to the purpose of enacting Annex I and Annex II being to make them more amenable to amendment when necessary is constructive as it records the interpretation given at the highest level in Beijing when the Basic Law was being enacted. The statement makes a comparison, and the only possible interpretation of that comparison is that it was to the Basic Law.

3. We believe that a Hong Kong legal interpretation would reach the same conclusion from the wording of the Basic Law and the Annexes, without having to rely on Mr Ji

Pengfei's statement. Paragraph 7 of Annex I and Part III of Annex II clearly and expressly lay down provisions and processes for future amendments, and it would be inconsistent with the wording to suggest that changes made according to the terms stated would need also to be processed under Article 159 as changes of the Basic Law. Thus the Annexes have, and are intended to have, a different constitutional status from the Basic Law. However, there are certain important qualifications to our above opinion, and we raise those below.

(2) ***Whether there is no need to invoke Article 159 of the Basic Law if the amendment procedures as prescribed in Annex I and Annex II are used.***

4. Our opinion of principle is stated in paragraphs 2 and 3 above. The first qualification to that opinion, as signalled at the end of paragraph 3, is that the provisions of the final paragraphs of Annex I and Annex II only permit amendments which do not conflict with the provisions of the Basic Law itself. The Annexes are only Annexes and the provisions in them for their amendment cannot be read as allowing actual or effective amendments of the body of the Basic Law. It is therefore relevant to identify those provisions of the Basic Law which have a bearing on the subject, and to consider their interpretation. Paragraphs 5 to 7 below relate to that.

5. Article 45 deals with the selection or election of the Chief Executive. In the first two paragraphs, before the reference in the third paragraph to Annex I, there are several key words and phrases. Annex I, and the provisions of paragraph 7 of it for amendment, must be read subject to those first two paragraphs. Many of the key

words and phrases are not capable of strict legal definition, but consideration of the different words and phrases collectively as well as separately results in some reasonably firm conclusions as to their meaning. Comments of Mr Ji Pengfei to the NPC in 1990 are again constructive. We make our analysis as follows:-

i. For ease of following reference we first set out the full text of the first two paragraphs of Article 45:

"**The Chief Executive** of the Hong Kong Special Administration 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 Administration 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.**"

ii. Selection may be by **election or through consultations**. Probably the only relevance of the reference to the alternative of consultations is that if, as may be supposed to have been the case on the re-election of the present Chief Executive, there was private local consultation resulting in a majority of the Election Committee nominating a single candidate, such process could not be attacked as being unconstitutional.

iii. The selection process is to be **held locally**. Thus the right of the people of Hong Kong (in whatever form may be applicable) is protected.

iv. The Chief Executive so selected **is appointed by the CPG**. That is of course a key factor. Under Article 43, the Chief Executive is the head of the HKSAR

and represents it, and is accountable to the CPG as well as to the HKSAR. On that basis we consider that the office of Chief Executive must be treated as part of the relationship between the Central Authorities and the HKSAR, so that Article 17 is relevant. That is the Article under which certain laws enacted in the HKSAR may be "returned" by the Standing Committee and are thereupon invalidated.

v. **The method of selection is to be specified in the light of the actual situation in the HKSAR.** The phrase "actual situation" is rather obscure in a legal context, if taken on its own, but we think that the explanation of Mr Ji Pengfei quoted at paragraph 12(a) of the Task Force paper is helpful: he referred to the political structure of the HKSAR as having to accord to the principle of one country, two systems and to aim to maintain stability and prosperity in HK "in line with its legal status and actual situation". In the following sentences he referred to the development of the capitalist economy and to the gradual introduction of a democratic system that "suits HKs reality". That last word seems effectively to be a repeat of the earlier phrase of "actual situation" which also appears in Article 45.

vi. Taking the statement of Mr Ji Pengfei as a whole, we consider that the phrases "actual situation" and "reality" can reasonably firmly be concluded to have to be read as referring (not necessarily exclusively) to the one country, two systems principle, and as meaning that within that principle the HKSAR political structure could be amended to support the development of a capitalist economy, but only to the extent compatible with the "one country" part of the principle. (The quoted words may have additional meaning, including reference to the economic, social and/or political maturity of Hong Kong, but

for the point being made in this paragraph we focus only on the import of Mr Ji Pengfei's statement as to the meaning.) On that basis the Basic Law does not envisage or allow for development of a completely open democracy in which any citizen can stand for election, and be elected by universal suffrage, as Chief Executive. We believe that that view is consistent with available interpretations of the last sentence of the second paragraph of Article 45, and we find it hard to see what different view could reasonably be sustained, or should be expected to be available.

vii. **The method of selection is to be specified in accordance with the principle of gradual and orderly progress**. We consider that the phrase "gradual and orderly progress" should be looked at together with the fact that the method for selecting the Chief Executive may only be amended, and then only if needed, with effect subsequent to 2007 (as to which see paragraph 16 below), and the reference in the following sentence of Article 45 to the "ultimate aim". We do not consider that the collective provisions and words can be interpreted as envisaging or allowing an immediate and total change in 2007 to the situation referred to as the ultimate aim. (The reference to 2007 would be to 2011/12 if the alternative interpretion referred to in paragraph 16 is followed.) We believe that further support for that opinion can be found in the terms of Annex II ; we discuss that further in paragraph 13 below. Consequently we consider that any proposal to achieve the "ultimate aim" at the first opportunity would require amendment of the Basic Law under Article 159. It is difficult to express legal views on exactly what extent or rate of gradual amendment of Annex 1 would not require amendment of Article 45, although we do make some further related comments in the following sub-paragraphs and in later paragraphs of

this opinion. However, in view of our opinion as to the overriding power of interpretation of the CPG we consider that the scope for local determination of what amendments can be made to Annex I, as well as to what changes in the present structure may be able to be made without amendment of Annex I, is in any case limited.

viii. However, we believe that the second word in the phrase "gradual and orderly" calls for separate consideration as part of the phrase. It may refer to orderly progress in much the same sense as gradual progress, i.e. that it should not be headlong. At the same time we consider that it can reasonably be interpreted as also referring to orderliness in relation to the prosperity and stability of Hong Kong. We consider at all events that a duly responsible government of the HKSAR should always (or at least with effect subsequent to 2007) be prepared to review whether progress is needed so as to avoid the risk of disorder in HK, or disadvantage in the development of the capitalist economy of the SAR. It is up to the government of the SAR to conduct such reviews and to initiate changes as relevant.

ix. In development of the view we express in sub-paragraph (viii) above, further consideration of the terms of Mr Ji Pengfei's statement to the NPC in 1990, as referred to in sub-paragraph (v) above, is in our opinion constructive. An aim "to maintain stability and prosperity in the HKSAR", and the "development of the capitalist economy" seem not only to allow but to require interpretation that the CPG recognized that the HKSAR political structure had to be regarded as flexible. A consequent recognition can be construed that political factors as relevant to the stability, prosperity and capitalist economy of HK were and would be relevant to the determination of the "actual situation" and what

constitutional changes should be treated as appropriate to the "gradual and orderly" development of the political system. We therefore consider that:-

a) the HKSAR Government has both the authority and the responsibility under the Basic Law actively to consider the interests of different sectors of society and the development of the capitalist economy in the HKSAR;

b) that consideration should be in the context of maintaining stability and prosperity in Hong Kong;

c) if the existing political structure is reasonably considered not to be effective in the achievement of (a) and (b) above, changes in the democratic system designed to assist in that achievement should be formulated and, on a gradual basis, recommended to the CPG as being needed (thus being consistent with the wording of the Annexes relating to their amendment);

d) combination of (a), (b) and (c) above is expected to result in progressive development and change towards the ultimate aim.

x. The last sentence of the second paragraph of Article 45 starts with the reference to the ultimate aim, the meaning of which we have already discussed. However, we add to our earlier comments the opinion that the view which has been expressed in Hong Kong recently that "ultimate" means, and means only, some time in the final part of the 50 year minimum period of the Basic Law is not in line with other wording of Article 45: Article 45 as a whole provides for "gradual and orderly progress", and we consider that that phrase provides, and must have been meant to provide, wide flexibility. The phrase "universal suffrage" can be taken to have its normal meaning.

xi. The final phrase "**upon nomination by a broadly representative nominating committee in accordance with democratic procedures**" – needs more attention. First, we do not consider that the phrase can be taken to mean that the nominating committee is to be appointed by universal suffrage, as its being "broadly representative" is not the same as its being elected by universal suffrage. Support for that view can be drawn from each of the comparatively different wording of Article 68, the initial method of selection and election set out in Annex I and the explanation of Ji Pengfei already referred to. The wider interpretation would also be inconsistent with our conclusion as to the meaning of the phrase "actual situation" in sub-paragraph (v) above. We therefore consider that the phrase "broadly representative" has to be considered in the context of all of the one country, two systems principle, the consequent legal status and actual situation of HK, stability and prosperity, a capitalist system and the "broadly representative" framework initially laid down in Annex I.

xii. The opinion which we have expressed in the previous sub-paragraph leaves open the questions of exactly how broad the representative nominating committee could ultimately be, and how it would be created. We give such views as are possible on that as follows:-

a) It is reasonable and consistent to believe that the phrase "broadly representative", like other phrases in Article 45 which are not given precise definitions, is deliberately intended to allow flexibility for both the CPG and the HKSAR Government in formulating and agreeing progressive constitutional reform in the HKSAR within the one country, two systems principle.

b) Subject to that, a good lead on what the CPG contemplated and would find acceptable may be found in the ease with which Annex I could be amended to meet the "ultimate aim". Paragraph 1 already uses the phrase "broadly representative", and if the words "elected" and "Election" were changed to "nominated" and "Nomination", and the phrase " and elected by universal suffrage" were added after "Nomination Committee", the principle would be established. Consequent amendments would be necessary in paragraphs 2 and 3, and paragraph 5 would need to be replaced by reference to election by universal suffrage, presumably with wording to refer to the necessary electoral laws of the HKSAR.

c) The make up of the Nomination Committee in paragraph 2 might be amended, although the paragraph already provides a degree of flexibility. Clarification would be appropriate, with consequent procedural arrangements as appropriate for pre-election approval of candidates, as to whether the CPG wished its function of appointing the Chief Executive to be a real one, as is its right, or whether it considered the political maturity of the HKSAR and the one country, two systems relationship to be such that it treats the function of appointment as little more than a technical recognition of its sovereignty.

d) We take the previous point further by the general observation that the appropriate method of selection should never in fact be regarded as having reached an ultimate status, so that the mechanics of Annex I (and to a lesser extent Annex II) to provide a "more amenable" basis

for amendment than the Basic Law itself should be retained indefinitely. Taking the comment in the second sentence of sub-paragraph (c) above as an example, the relevant view of the CPG may properly change over a period of time.

e) Paragraphs 17 and 18 below include further discussion relevant to this topic.

6. We do not propose to analyse Article 68, which deals with the election of the Legislative Council and introduces Annex II, in the detail in which we have dealt with Article 45. Article 68 is simpler than Article 45, and the phrases "actual situation: and "gradual and orderly progress", as used in the second paragraph, have already been analysed as they occur within Article 45. There are however distinctions between the amendment provisions of Annex I and those of Annex II, and in one potentially important respect in the relevant processes: those will be dealt with in paragraphs 8 to 10 below. We add the observation that we consider that assessment of the "need" to amend the terms of Annex II could, and therefore should, be considered by the HKSAR Government not just in the context of Article 68 itself but separately in the context of Article 45, in implementing its responsibilities in relation to that Article as discussed particularly in paragraphs 5 (viii) and (ix) above.

7. As a final observation under heading (2) we note that while some amendment of Article 45 might conceptually be contemplated as achievable before 2047, in the context of the position reached by then by the PRC itself in its capital market development, it is evident that in 1990 the CPG had very carefully considered how far

it was prepared to go in respect of the HKSAR's autonomy. We therefore express the subjective opinion that any proposal put forward by the HKSAR in the next few years which involved amendment or waiver of any provisions of Article 45 (as distinct from discussion of amendment of Annex I involving interpretation of Article 45) would have virtually no chance of success. We believe that it would be advisable to limit any relevant proposals to those which could be substantively and reasonably put forward as representing no more than gradual and orderly progress, within the limits allowed by Annex I. Our comments in paragraph 9 are also material to that observation. On the other hand it would be consistent with the Basic Law and the responsibility of the CPG under it to expect the CPG to give constructive consideration to reasonable and reasoned proposals put to it for amendments of either or both Annexes or for agreed interpretation of Articles 45 and 68 in relation to changes in the Chief Executive Election Ordinance and the Legislative Council Ordinance not amounting to amendment of the Annexes.

(3) ***Initiation of amendments relating to the methods for selecting the Chief Executive and for forming the Legislative Council.***

8. The Basic Law is law of the PRC and is also the basic constitutional law of the HKSAR (or at least it sets out the relationship and responsibilities of the HKSAR and the CPG). Therefore in so far as Annex I and Annex II confer a right on Hong Kong to make amendments in the provisions of the Annexes, the initiation of that right must be dealt with in accordance with Chapter IV of the Basic Law. Under Article 62 the Government of the SAR has the power and function to formulate and implement

policies and to draft and introduce bills. Under Article 74 the power of private members of the Legislative Council to introduce bills on the subject matter of this opinion is limited, and in any case it is the Government, not the Legislative Council or its members, who should be formulating policies. However, in line with our observation in paragraph 5(viii) that "orderly progress" could and should be interpreted as including the avoidance of disorder or damage to the capitalist system, and our further observations on that in paragraph 5(ix), we suggest that the Government should, in the formulation of its policies, give due consideration to relevant views expressed in the Legislative Council and among the wider public. (For completeness we note that the Standing Committee and the State Council as well as the HKSAR, may initiate amendments to the Basic Law, but we consider that it would be contrary to the evident intentions of the Basic Law as to the degree of autonomy granted to the HKSAR to envisage that the Standing Committee or the State Council would expect in any normal circumstances unilaterally to initiate amendments on constitutional reform within Annex I or Annex II.)

9. An important qualification to the straight forward initiation of an amendment process by Government arises in respect of Annex I in its last word. There is a less direct, but still relevant, qualification applicable to amendments in respect of either Annexes I or II. We state those qualifications as follows:-

i. Amendments of Annex I must be reported to Standing Committee **for approval.** That is consistent with Article 17 and our relevant interpretation in paragraph 5 (iv) above. In practice it would presumably be considered inappropriate to introduce any proposal to the Legislative Council unless it had received sufficient prior assurances of approval by the Standing

Committee. We use those words on the basis that we accept that formal approval might be expected only to be available in respect of an amendment which had passed all the procedural requirements in Hong Kong: as the CPG has already made clear that it would expect such matters to be handled by consultation with it before formal initiation of any legislative procedure, we imagine that the CPG would be a willing party to the establishment of practicable vetting arrangements on specific proposals if such arrangements do not already exist.

ii. Amendments of Annex II have only to be reported to the Standing Committee **for the record**. We consider the election of the Legislative Council to be an internal matter for the HKSAR, so that Article 17 is inapplicable. The different wording between Annex I and Annex II is therefore consistent. However, the following point qualifies the HKSAR's freedom of action in respect of Annex II.

iii. Amendments of the two Annexes may be initiated if there is a "need". We consider that "need" must be treated as referring back to the provisions of Articles 45 and 68. We have referred extensively in earlier paragraphs to the difficulty of fully detailed interpretation of the phrases "actual situation" and "gradual and orderly progress" as used in both Article 45 and Article 68. Consequently we consider that it would not reflect our interpretation of the relevant provisions if the HKSAR Government were to initiate amendments of either Annex I or Annex II without first seeking comfort from the CPG that the proposals would not be regarded as breaching the relevant provisions of the Basic Law. An obvious qualification to that in respect of Annex II is that it was within the responsibility, and not just the authority, of the HKSAR

Government to implement such changes of the Legislative Council Ordinance and its subordinate legislation as necessary to give effect to the changes in Part I of Annex II between the Second Term and Third Term make up of the Legislative Council.

10. On two specific points of detail:-

i. The final paragraphs of both Annex I and Annex II provide in similar terms for amendments to be endorsed by a two thirds majority of all the members of the Legislative Council (as well as having the consent of the Chief Executive). Thus with a 60 member Legislative Council 40 affirmative votes would be needed.

ii. We consider that amendments to Annex I or Annex II should be made by separate legislation from any local legislation under para 3 of Annex I or para 2 of Part I of Annex II, or in each case their replacements in amended versions. Also, each Annex should be amended by separate legislation. Amendments to the Annexes are constitutional amendments, with different conditions to be satisfied than local legislation, and additionally the Standing Committee should not be directly concerned with the detail of local legislation. Further the procedural difference between amendments of Annex I and Annex II should be respected by the use of separate legislation.

(B) Related Legal Issues

(4) ***Whether the method for forming the third term Legislative Council as prescribed in Annex II may apply to the fourth term and subsequent terms of the Legislative Council.***

11. Our concise opinion on this point is that it would continue to apply until amended. Likewise, any amended version would apply until further amended.

12. It is in practice virtually impossible to contemplate that those drafting the Basic Law would have intended to put a gun to the heads of both the HKSAR Government and the CPG by the creation of a built in void as from the end of the Third Term, in the absence of a positive approved decision to change. We consider that Annex II is adequately capable of interpretation on the basis that Part I constitutes agreed amendments in the method of forming the Legislative Council for the second and third terms, "in accordance with the principle of gradual and orderly progress" towards the ultimate aim, as set out in Article 68, that any further amendment is a subject to be handled under Part III, reflecting the provisions of Article 68, and that the third term arrangements will thus continue to apply unless and until further amendments are made.

13. Three views might reasonably be drawn in the context of that interpretation:-

i. That the progressive amendments provided for the second and third terms suggest that further amendments might be considered, on a similar term by term basis, as being in accordance with the principle set out in Article 68.

ii. That the progressive amendments provided for the second and third terms constitute a benchmark of the sort of progress that might be considered as gradual and orderly.

iii. That Part I of Annex II constitutes a broad indication of a rate of progress that might be contemplated as gradual and orderly for the purposes of Article 45 and Annex I, though with the qualification that Annex I provides for no changes prior to 2007, while Annex II provides for two progressive changes by then; that might suggest that a slower rate of change was contemplated as being appropriate for the selection of the Chief Executive than for the election of the Legislative Council.

14. However, we emphasise that those are only views, and that in connection with the Legislative Council election the points made could not be taken as establishing a set timetable such that 6 seats, no more and as fewer, should be transferred from functional constituencies to geographical constituencies every four years. Consideration of the need for amendment in accordance with the principles of Article 68 might lead to the recommendation that more than 6, 6, fewer than 6 or no seats should be reallocated in 2007 or on any other occasion. At least in theory assessment of the actual situation might result in a reverse re-allocation being recommended in a time of instability.

15. We conclude our comments on this issue with the observation that if the view that a legal vacuum is created in the absence of consensus on reform were correct, we believe that that vacuum could only be filled by amendment of the Basic Law. Such a situation in itself seems most unlikely to have been intended or even contemplated.

We therefore consider that this point supports the principle that one should look for a consistent and constructive interpretation, and that paragraph 12 above provides that.

(5) ***How the phrase "subsequent to the year 2007 " should be understood?***

16. We consider that the conclusion expressed in paragraph 10 of the Appendix to the Task Force paper is supportable. The fuller phrase in paragraph 7 of Annex I is "**for the terms** subsequent to the year 2007". In the English language the word subsequent can have the meaning of "following or from", so that the full phrase can mean "for the terms following or from 2007". That would normally be taken, in the context of five year terms, as meaning for terms starting from that beginning in 2007, not for the terms after that beginning in 2007. Even taking the more common meaning of subsequent as just "following", we consider that as nine tenths of the term starting in 2007 is after it, the same interpretation is available as that applicable to the less common usage. There is also an available interpretation that amendment of Annex I, and likewise Annex II , within their provisions, is only permissible in respect of terms commencing after 2007. On balance we favour the first above interpretation. We believe that the Chinese version of paragraph 7 can also be interpreted either way. However, as the Standing Committee could evidently interpret the phrase either way, or could decide that there is no "need" to amend Annex I at this time, the point is only relevant to the extent of a reasoned and reasonable position that could be taken by the HKSAR Government in discussions with the CPG; if it agrees to relevant changes applicable to the 2007 elections, it would be implicit that the first interpretation is accepted.

(C) Additional Related Legal Issues

(6) *What changes might be made in the methods for selecting the Chief Executive and for forming the Legislative Council which would not involve amendment of the methods as set out in Annex I and Annex II to the Basic Law.*

17. In principle, the HKSAR has the authority to amend the Chief Executive Election Ordinance and the Legislative Council Ordinance, within the scope of paragraph 3 of Annex I and paragraph 2 of Part I of Annex II respectively, under which of course the existing Ordinances were enacted. Indeed the Legislative Council Ordinance has already been amended to implement the progressive stages in para 1 of Part I of Annex II. It must have been intended that changes should be able to be made under those paragraphs without having to meet the requirements of paragraph 7 of Annex I and Part II of Annex II, if the changes do not amount to changes of the relevant Annex. However, it is possible to conceptualise changes which would be technically within that scope but which would or might at the same time be considered to represent constitutional development within the ambit of Articles 45 or 68. The terms of those Articles must be treated as prevailing over the autonomous authority of the HKSAR under the relevant paragraphs of the Annexes. It is therefore necessary to try to establish the dividing line.

18. We discuss that, partly by examples, as follows:-

i. Neither paragraph 2 nor paragraph 3 of Annex I appears to rule out the extension of the delimitation of the various sectors being stretched to include employees. In the professional sector the qualified professional is entitled to become a functional constituency elector regardless of whether he is a partner,

a sole proprietor or an employee, and although fair reason can be seen for that in the context of a professional functional constituency the rationale of the delimitation, or perhaps more precisely the allocation of seats, becomes harder to support in relation for instance to trade chamber or association constituencies, in which a company member with say 10,000 employees only has the same one vote as a company member with say 10 employees.

ii. In theory that rationale could be used to support the reallocation of the seats of most of each functional constituency in the first two groups, to a franchise to include all adult employees of organizations who are members of these constituencies, and the use of the general reference to "other sectors" in the third group to re-allocate most of the seats in that group to election by all registered adults who do not register as functional constituency employees in the first two groups.

iii. In practice such changes could be seen to go to the heart of the provisions of Article 45. Such legislative changes could not therefore be regarded as within the authority of the HKSAR under paragraph 3 of Annex I. Similarly they could be seen to go to the heart of the balance between functional constituencies and geographical constituencies in Annex II, so that again they could not be regarded as within the local authority of the HKSAR in that Annex.

iv. However, if changes were made within the principle put forward in sub-paragraph (ii) above, but were limited to numbers of seats in each group which provided responsible participation in the Electoral Committee to the general electorate, but nowhere near control, that might be considered not to be offensive in relation to Article 45 or Article 68.

v. While the above is put forward mainly as an example, we do add the observation that there is an apparent problem in achieving the "ultimate aim of universal suffrage" in the selection of the Chief Executive by "gradual and orderly progress". Partial suffrage is hard to envisage. Theoretically there could be a stage or stages of a Nomination Committee providing the candidates, and of a new Election Committee, constituted on the lines of the Legislative Council with a set mix of functional constituency members and geographical constituency members, but at least at first sight that seems a somewhat cumbersome mid way approach to the ultimate aim as stated.

vi. Regardless of whether or not changes such as put forward in sub-paragraph (iv) above were regarded as requiring Standing Committee approval, the example does represent a means of providing the general electorate with some participation in the selection of the Chief Executive before the move to the ultimate aim, if that objective was decided to be appropriate in the context of the responsibility of the HKSAR Government. Detail and practicability would however need to be further considered.

vii. However, for the reasons already discussed, it would have to be understood by all interested parties that allocating some seats on the Election Committee to a wider electorate was only in connection with that Committee being a broadly representative body, and was not a first step to election of the Election Committee or the Nomination Committee by universal suffrage. In the context of that and our comment at sub-paragraph (iv) above, it might be considered appropriate for any such change to be dealt with by amendment of Annex I, so that the concept could not be taken further without the approval of the Standing Committee.

viii. At all events the examples and discussion in the previous sub-paragraphs suggest to us that it might be appropriate for the HKSAR government to discuss with the CPG mutual ideas relating to the route to the ultimate aim. Initiation of the formulation of proposals for separate steps in the "gradual and orderly progress" could be rejected at the final stage in relation to Annex I, or interpreted as being contrary to Article 68 in relation to Annex II, in the absence of mutual consensus on the route to be taken.

ix. Reference to another point may make the subject of this and the previous paragraph further relevant. That is that in the event that, after consultation with the CPG as relevant, it is decided that some seats in the Legislative Council will be transferred from functional constituencies to geographical constituencies, there would be a choice between the abolition of a number of functional constituencies or their merger into others. That would presumably give rise, as a matter of consistency, to consideration of the delimitation of sectors, and allocation of members between them, under paragraph 3 of Annex I, and consequently under the Chief Executive Election Ordinance. (It could also, again as a matter of consistency, give rise to reconsideration of the global allocation of seats between the first three groups in paragraph 2 of Annex I.)

19. Separately from the scope of possible amendments raised in paragraph 17 and expanded upon in paragraph 18 above, there is a distinct range of changes which could be considered and made without any direct relevance or reference to Articles 45 and 68 and the two Annexes. Chapter IV of the Basic Law, which deals with the political structure of the HKSAR, treats the detailed operational structure and functioning of government in the HKSAR, within the parameters of function and responsibility set out in the Basic Law, as

being domestic matters for the HKSAR. It would be outside the scope of an objective opinion to suggest specific changes that might be considered, but we do observe that it might well be considered appropriate that such domestic arrangements, as much as the provisions of the two Annexes, should be kept under review in the context of the "gradual and orderly" progress of development towards the ultimate objectives dealt with in Articles 45 and 68 and the two Annexes. We therefore consider that there is an indirect relationship of the internal structure and operation of the government of the HKSAR to those constitutional provisions.

(7) ***What is the meaning of the "one country, two systems" principle and how far is it material to constitutional reform in Hong Kong.***

20. At its simplest the term refers to the concept that while being part of the PRC, Hong Kong would have a separate system. The concept reflects the principle, incorporated in the Sino-British Joint Declaration, that the existing law and other systems of Hong Kong would be maintained. The concept was implemented by the Basic Law.

21 At a deeper level we consider that the "one country" part of the phrase has an importance which should not be underrated, but which often is. We consider that it must be treated even at the conceptual level as the dominant part, as it represents the whole entity, out of which the separate system was established (for a very small part of that whole). The conclusions which we have reached in this opinion are entirely consistent with the facts, or, in the words of the Basic Law itself, the actual situation. It is relevant to note that the statutory publication of "Laws of Hong Kong" is correctly presented with the Constitution of the PRC at the beginning, ahead of the Basic Law.

22. On that basis we suggest that the Government and people of Hong Kong should try to put their views on constitutional reform in the HKSAR into the context of the one country, of which the HKSAR is part, not just into the context of the HKSAR and its separate system. First, it would not be unreasonable to believe that the CPG may currently be concerned that the people of the HKSAR are not adequately accepting the "one country", part of the principle. Secondly we suggest that in any negotiations it is constructive to understand the other party's point of view. We acknowledge on reflection that our opinions in previous paragraphs of this paper are expressed from the point of view of the HKSAR, though we still consider them to be objective in their conclusions.

23 In connection with understanding the other party's point of view, we find that reading or re-reading the pre-amble and more specifically the first few Articles of the Constitution of the PRC is illuminating. They include the following statements:-

- the PRC is a socialist state under the people's democratic dictatorship;
- the socialist system is the basic system of the PRC;
- all power in the PRC belongs to the people;
- the NPC and the local people's congresses at various levels are the organs through which the people exercise state power;
- the people administer state affairs through various channels and in various ways;
- the state organs of the PRC apply the principle of democratic centralism;
- the NPC and the local people's congresses at various levels are constituted through democratic elections.

24. For the purposes of this opinion and the views expressed in the previous two paragraphs we suggest that two points in the above extracts might be seen as particularly relevant to an understanding of the "one country" and its attitude:-

i. the multiple use of the words "people" and "democratic"; and

ii. the manner in which the democratic power of the people is related into "system", "organs", "channels" and "centralism", the latter three terms all being able at the same time to be regarded as systems.

At least from a PRC point of view, a parallel could reasonably be seen between the "two systems" that they are based on common concepts of power of the people and democratic rights, but are achieved through different systems, which in the relevant case of the HKSAR is a system expected to develop over a period, but not to undermine the "one country" part of the principle.

25. Taking that point further, we put forward the possibility that the PRC may relate the acceptable pace of development of the HKSAR system directly to an acceptable growth of understanding and acceptance by the HKSAR of the PRC system, and that pressure for material development of the HKSAR system without satisfactory evidence of such understanding and acceptance, and without satisfactory evidence of the HKSAR acting as part of the "one country", may be ruled as not reflecting the provisions of the Basic Law.

26 Our views under this heading should not be taken as a suggestion that the HKSAR Government should be completely passive, and should simply ask the CPG what changes it would agree to and when. Indeed we suggest almost the opposite, as is clear from the opinions we have expressed earlier. We believe in summary that the emphasis of the HKSAR Government should be to seek constitutional reforms of such nature, and according

to such timetable, as can be shown to be best suited and appropriate to the HKSAR environment and which are within the parameters of the Basic Law. Any change to the Basic Law is obviously more sensitive and controversial and requires a political interpretation by Beijing above and beyond any legal interpretations. We further believe that the CPG should (and very possibly will) regard it as a responsible action on the part of the HKSAR Government, within its functions under the Basic Law, to formulate and conduct with it a reasoned discussion on the subject of constitutional reform: that would be entirely within the concept and terms of the Basic Law. We only repeat our overriding view that in planning the approach to such discussions the status of the HKSAR as part of the "one country" and the relationship between the "two systems" should not be overlooked. We suggest also that consideration might be given to any steps that might be appropriate and practicable to increase understanding and acceptance of the "one country" principle within the HKSAR, in view of the opinions which we have expressed above.

27. As a footnote to that, we suggest that it could only be constructive if the HKSAR Government could open up opportunities to contribute, from its experience in "gradual and orderly" democratic development in the HKSAR within the Basic Law, to consideration by the CPG similar developments in the rest of the PRC within its Constitution. (We understand that such developments are taking place, on a carefully controlled basis.) The ultimate challenges for the two systems are not dissimilar, of accommodating popular pressures for greater participation in the people's own government, and allowing that at least potentially an increasingly positive contribution to efficient government and to stability and prosperity in the whole of the PRC could result from that, within the concept of a socialist state and "democratic centralism" as applicable to the one country as a whole.

28. Finally, it might be constructive to contemplate that the CPG may fairly and realistically have objective views, and potentially more objective views than at least some of those held or formed within the HKSAR, of what pace of constitutional development is best for the HKSAR itself. To acknowledge that as a possibility could be taken in itself as a step towards the maturity of the HKSAR under the "one country, two systems" principle.

5 February 2004

敬啟者：

對於未來政制的發展，社會雖然並未有共識，但按照基本法規定，有需要在０七年作出檢討，以便為０七年行政長官的選舉及０八年立法會選舉提出方法，故今次政府決定由三人組成專責小組，提早進行有關問題的探討，作為第一步的安排，本人十分支持，同意解決了一些原則問題是有助未來以上兩項政制檢討的研究．

本人認為未來這兩項政制的檢討，要考慮以下幾個原則，包括：

１．要按照基本法的規定循序漸進，一步一步漸進式向前發展本港的政制，漸變比急變好；

２．政制檢討要按本港多元化發展有利社會進步的現實考慮，任何政制的變動，都必須符合基本法，長遠要有利於本港社會穩定，有利於代表不同階層及不同界別的聲音及權益；

３．檢討過程要加強中央與港人就基本法有關政制檢討意見的交流，廣泛諮詢民意，收集市民提出的不同方案，儘快公佈政制檢討的時間表，最終依照基本法的規定作出立法；

本人希望今次政制檢討，是一個好的開始，有一個好的諮詢過程，及達成一個好的共識，實現政制發展能以促進社區穩定、和諧與發展．

此致

政務司司長

曾蔭權先生台鑒

屯門區議會副主席：梁健文

（已簽署）

二零零四年一月三十一日

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敬啓者：

本人對政制專責小組就《基本法》中有關政制發展的原則和程序及有關法律問題提出如下意見：

本人支持行政長官就政制發展成立專責小組，按《基本法》中有關政治體制發展的原則和程序的問題與中央作充分的溝通及商討，然後向全港各界人士再作充分的諮詢。最終達至讓香港特別行政區的政治體制，符合“一國兩制“的原則，並保証香港的政治體制既符合《基本法》的法律地位，又適合香港社會的實際，促進香港的穩定繁榮爲目的。

一、 有關香港政治體制的發展，是憲制性問題，必須與中央溝通。因爲香港特別行政區的設立，是根據中華人民共和國憲法第三十一條的規定。而全國人民代表大會根據憲法，制定《基本法》，規定香港特別行政區實行的制度，以保障國家對香港實施「一國兩制」的基本方針政策。因此，香港特別行政區的權力來源於中央，全國人民代表大會對《基本法》有解釋權，政制發展不諮詢中央，於理不合，於法不通。

二、 對政制發展的諮詢工作必須各方兼聽，高透明度，關於《基本法》第四十五條和六十八條及兩個附件，就行政長官和立法會的產生辦法，應由專責組與中央作充分溝通後，列出條文內容及草委會主任姬鵬飛在一九九零年向第七屆全國人大會議提交的《基本法》草案及在有關文件的詳細說明，向市民作廣泛的普及教育，使全港市民充分認識有關條文的內容，才作深入廣泛的諮詢，專責組再匯集上報中央和全國人大常委會。

本人希望專責組創造條件，廣開言路，讓全港市民有充分表達意見的機會，最終達至香港的政制發展能體現香港特別行政區在「一國兩制」下的「港人治港、高度自治」。

離島區議會副主席
周轉香
二零零四年二月二日

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梁志祥議員
Mr.Leung Che-cheung

陳惠清議員
Ms. Chan Wai-ching

元朗區議會
YUEN LONG DISTRICT COUNCIL

對政制發展的初步意見

敬啓者：政府成立政制發展專責小組聽取市民對政制發展的意見，本人深表支持。

基本法明文規定政制發展要符合特區的實際情況和循序漸進的原則，專責小組必須按照這原則收集市民意見之意見。

目前有部份市民對現行政制度有不滿意見，本人覺得是好事，社會上不同聲音是民主社會民主的表現。政府應以包容的態度廣收民意。不過本人希望政府更 收集部份沉默市民的意見，以便更能體現整體市民利益的反映。

本人認爲 07 年普選特首，08 年普選立法會可能會與基本法的相關條文有抵觸，又或要修改基本法。這方面必須小心處理及向市民詳盡解釋， 要透過法律途徑解決這個疑問。有見及此，本人認爲 "專責小組"不應急於求成，作出結論。

總括而言，本人支持政府採取開放態度與市民接觸收集意見。同時本人並會在社區內廣徵街坊市民的意見，轉達與專責小組。日後會有更多意見向貴小組反映。

此致

政制發展專責小組召集人
曾蔭權 司長

THE OFFICE OF YUEN LONG DISTRICT BOARD
梁志祥議員辦事處
LEUNG CHI CHEUNG

元朗區議會副主席
（已簽署）

梁志祥 謹啓

二〇〇四年二月六日

天水圍天瑞邨瑞隆樓地下 A 室

北區區議會議員聯合辦事處
李國鳳主席(電話：2676 7646; 傳真 2676 7764)

敬啓者：

根據　　貴局1月15日政制發展專責小組文件，本人謹發表意見如下：

「兩制」必須在「一國」的大前提下權宜。中央對香港任何憲制層面的問題擁有由始至終的主動權和決定權。。正如香港政策研究所主席葉國華早前指出，「香港不是政治實體，祇是地方政府」。

第3屆或往後的行政長官選舉辦法和第4屆或往後的立法會產生辦法，雖然《基本法》附件一和附件二未有說明修改兩者產生辦法的**立法方式**，但本人認同附件是《基本法》的一部分，無論修改或名曰「補充」附件，無論是否需要啓動《基本法》第159條修改程序，都涉及《基本法》內容，必須得到人大常委會通過。附件三的補充已是先例。爲此，本人贊同有關附件的修改，應在憲制層面立法，並以本地立法配合。

「普選」、「還政於民」的步伐必須符合《基本法》中**循序漸進**的原則。香港回歸不足十年，泡沫經濟、架構重疊的後遺症尚未消除，有關政制改革又是否有利於香港的經濟繁榮和社會穩定，是否有利於與內地和周邊國際的政治、經濟聯繫等，對這些因素尚未作充分研究和評估，便在時間表上大做文章，加速普選，是不符循序漸進原則的。回顧殖民地百年統治，香港祇有自由，沒有民主，這是不爭的事實。直至中英談判展開，港英政府於1984年發表《代議政制綠皮書》才引入代議制構想，往後十幾年的過渡期政制發展也並不穩健。至1995年，一場「彭改」，超額完成了「還政於民」的承諾，完成了殖民政府臨撤的非殖民化政策，亦爲香港埋下了不穩定因子。顯然是英政府的權宜手段。現時回歸僅六年餘，便迫不急待將「政改」議題炒熱，是否真正有利於香港民主的穩健發展？是否能從根本意義上做到「還政於民」？

有鑒於此，本人認爲政制發展三人專責小組應首先與人大常委會就「循序漸進」的釋義達成一致目標，社會各界才以此爲指導原則進行更有建設性的討論。

此致　　政制發展專責小組

北區區議會主席

（已簽署）

李國鳳　　謹啓

2004年2月8日

前綫 THE FRONTIER

就政制發展事宜發表的立場書

(29-1-2004)

(一)前言

(一・一) 行政長官董建華在剛發表的《施政報告》中，提及政制檢討問題。他開宗名義指出，去年十二月到北京述職時，胡錦濤主席向他表明中央政府對香港政治體制發展的高度關注和原則立場。他亦聲稱考慮到內地法律專家和香港一些人士對有關問題所發表的看法，故認爲政府確實需要對這些重大問題理解清楚，才可以對政制檢討作出妥善安排。因此他成立一個專責小組，認真研究這些問題，特別是那些涉及對《基本法》有關規定的理解問題，並徵詢中央政府有關部門的意見。

(一・二) 香港政制發展的討論由來已久，自八十年代中英前途談判開始，便一直在社會大眾討論的議事日程上，至今已逾廿載。總括而言，坊間提出幾項重大原則，包括：符合民主發展要求、恪守《基本法》規定，按香港的實際情況及循序漸進原則進行、以至需得到中央政府的首肯。

(一・三) 前綫作爲一個爭取民主的政治組織，對政制發展課題非常關心。我們藉此機會表達既有的原則及立場，並促請專責小組在研究政制發展時，加以詳細考慮。

(二)符合民主發展要求

(二・一) 自上世紀開始，民主政治已經成爲國際普遍價值及共識。作爲一種目標而言，「民主」是達致「人人平等」的原則，而作爲一種手段，「民主」則可加強政府的認受性，令政府有效運作。世界上任何一個地區的政治制度發展，都朝着民主方向邁進，否則便不能稱之爲現代化的國家或地區。

(二・二)若依照民主(rule by the people)的定義，政治體制必須符合七大元素：

1. 所有人均應參與治理國家，即應參與制訂和執行國家法律及政策。

2. 所有人均應參與重要的決策，即一般法律及政策的決定。

3. 執政者應向市民問責，即他們有責任向市民解釋他們的行爲，和他們可以被撤換。

4. 執政者應向市民的代表問責。

5. 執政者應由市民挑選出來。

6. 執政者應由市民的代表挑選出來。

7. 執政者的施政及行爲應付合市民的利益。(Live, 1975, 30)

(二・三) 現時香港的政治制度顯然並不乎合上述七大民主元素，因爲管治者未能向市民問責，無法向市民證明其施政的正當性；市民不能透過現行制度撤換管治者；而管治者並不是由市民所選擇；管治者亦不以市民最大的利益爲依歸，只顧鞏固自己的權力及維護主宮的利益。因此香港政制發展最主要及最優先處理原則，是糾正政治制度未能貫徹民主元素的問題，並回應市民對全面落實政制民主化的訴求。

(三) 恪守《基本法》

(三・一) 作爲中華人民共和國對處理香港事務基本的方針政策，《基本法》對有關政治體制未來的發展，已經有具體及詳細的闡釋:

第四十五條第二款規定：「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，最終達至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產生的目標。」

第六十八條第二款規定：「立法會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，最終達至全部議員由普選產生的目標。」

(三・二) 由此可見，民主政制在廿多年前的《基本法》內已有規定，並以「普選」爲最終發展目標。發展民主政制，是完全恪守《基本法》的承諾及規定。餘下的問題是，如何理解「實際情況」及「循序漸進」，以及於何時、如何推行政制改革。

(四) 香港的實際情況

(四・一) 就香港的實際情況，可以兩個主要角度研判，即「落實民主條件」及回歸後的「施政需要」。

(四・二) 民主條件作爲發展民主的基礎，是確保達致穩定民主(Stable Democracy)的目標，當中包括經濟發展、教育程度、法治制度、社會和諧、資訊流通及政治文化等等。

(四・三) 香港人均收入達到已發展國家的水平，本地經濟發展於戰後急促增長，社會上有龐大的中產階層；教育的普及化，令本港的識字率高達九成以上；法治制度經港英政府百年的殖民地統治已根深蒂固；社會沒有因種族、性別及階級的嚴重分化，社會矛盾及衝突相對較其他國家及地區少；香港的傳媒非常發達，確保言論及思想自由不受干擾，市民的意見可透過不同的傳播媒介發表；政治文化已由「狹隘性政治文化」(parochial political culture)、「從屬性政治文化」 (subject political culture)，過渡至「參與性政治文化」(participant political culture)。(Almond & Verba, 1963)

(四・四) 而回歸六年多以來，特區政府施政失誤頻頻，由金融風暴處理失當、八萬五房屋政策混亂、不起訴胡仙有違法治、鍾庭耀事件干預學術自由、數碼港批地不公、處理「非典型肺炎」失策、高官問責制只是權力集中化的代名詞，以至廿三條立法大失民心等等，顯示施政失誤與現存的政治制度有密不可分的「因果關係」。現時的建制除了未能反映民意，不能向市民問責，更令政府推行政策時障礙重重。究其原因，是政治制度缺乏民意基礎，欠缺認受性及公信力有關。

(四・五) 二零零三年七月一日超過五十萬名市民參與大遊行，是政府管治危機

及市民對政府施政不滿的總爆發。惟有盡快推行政治制度的改革，才可清除現時建制的缺點，減低社會矛盾，令政策有效推行。

(五) 循序漸進原則

(五・一) 由八十年代前途談判至今，不斷有聲音謂政制發展要按「循序漸進」原則進行，即香港的政治制度要穩步發展，斷不能一蹴即就。沒錯，從廿多年前的角度而言，循序漸進還有一定的道理，香港當年尚在民主發展的初階，但經歷逾廿載發展，今日已經是適當時間發展全面民主。

(五・二) 若不計算八十年代前的市政局選舉，香港自八二年首次區議會開始，已先後有七次區議會選舉、五次市政局／區域市政局選舉及四次立法會選舉。可以肯定，政府在選舉的操作，及市民在選舉的參與均日趨成熟，選民登記率及投票率不斷上升更支持此事實。

(五・三) 相比其他由威權統治的政體(authoritarian regime)，過渡到民主政體的經驗，香港的政治發展已落後很多，諸如四小龍之二－台灣及南韓的民主過渡便早在十多年前發生。香港已經歷廿載「循序漸進」時期，現在是落實政制改革的時機。

(六) 如何推行政制改革？

(六・一) 在立法會 CB(2)1003/03-04(01)號文件的附錄中（後稱“文件”），政制發展專責小組對《基本法》中有關政制發展的部份，提出了兩大類問題：（一）立法程序；及（二）相關的法律問題。

立法程序：無須修改附件一及附件二的原則性規定再作本地選舉法例的修改

(六・二) 立法程序方面，《基本法》附件一及附件二就行政長官及立法會產生辦法的修改當用甚麼立法方式處理，文件提出了兩個立法的可能性：（1）修改附件一及附件二對行政長官及立會之產生辦法的原則性的規定，然後以香港特區本地立法配合落實新規定；（2）修改香港特區本地的選舉法例修改。

(六・三) 按照附件一及附件二的規定：

附件一第七節規定：「二零零七年以後各任行政長官的產生辦法如需修改，須經立法會全體議員三分之二多數通過，行政長官同意，並報全國人民代表大會常務委員會批准。」

附件二第三節規定：「二零零七年以後香港特別行政區立法會的產生辦法和法案、議案的表決程序，如需對本附件的規定進行修改，須經立法會全體議員三分之二多數通過，行政長官同意，並報全國人民代表大會常務委員會備案。」

(六・四) 文件中提及有意見認爲二零零七年以後行政長官及立法會產生辦法的修改，屬於憲法層面，所以須先修改附件一及附件二的原則性規定，再修改本地選舉法例。這說法其實是缺乏理據支持，原因有有下列各點：

1. 《基本法》第四十五條及第六十八條已明確寫明，行政長官及立法會的產生辦法的原則，乃「根據香港特別行政區的實際情況」和「循序漸進」，「最終達至由普選產生的目標」。只要經修改的辦法是符合上述原則，便在憲法層面上乎合《基本法》的要求，根本沒有須要修改附件一及附件二的原則性規定。誠然，附件一及附件二中，確是對二零零七年前行政長官及立法會的產生辦法作了規定，但這絕對不影響，也沒有理由影響前述的論點。

2. 在附件一及附件二中，其實已有列明二零零七年以後行政長官及立法會的產生辦法的修改程序（即附件一第七節及附件二第三節）。若啓動政制改革，須先作原則性規定之說，無疑是忽視了已然存在的修改程序。若然如此，現時附件一第七節及附件二第三節所載的修改程序，會變得毫無意義及多餘，這實有違「法律解釋不應產生無意義效果」的原則。

3. 就二零零七年以後行政長官及立法會的產生，而修改附件一及附件二作進一步的原則性規定，雖不違憲，實屬多餘及不當。

(六·五) 簡言之，只要經修改後的二零零七年以後行政長官及立法會產生辦法，是附合《基本法》第四十五條及第六十八條所載原則，便在憲法層面上乎合《基本法》要求，故此根本沒有須要修改附件一及附件二的原則性規定，或對附件一及附件二作任何修改。

(六·六) 因此，修改香港特區本地的法例即可，即引用附件一第七節及附件二第三節的程序，配合香港本地法例的修改，如《行政長官選舉條例》等即可達致修改的目的，惟其必須符合《基本法》第 45 條及第 68 條中的「實際情況」、「循序漸進」及「最終達至由普選產生的目標」等原則。

相關法律問題：無須援引《基本法》第一百五十九條的程序以修改附件一和附件二

(六·七) 前綫認爲，無須援引《基本法》第一百五十九條的程序以修改附件一和附件二，原因有二：

1. 姬鵬飛主任在一九九零年三月二十八日舉行的第七屆全國人民代表大會第三次會議上，指出行政長官的具體產生辦法由附件規定，是要讓修改可以「比較靈活，方便在必要時作出修改。」而立法會的產生辦法由附件規定，「也是考慮到這樣比較靈活，方便必要時作出修改。」可見立法原意，是透過附件一和附件二，靈活修改行政長官及立法會議員的產生辦法。

2. 附件一第七節及附件二第三節已清楚提供了獨立於第一百五十九條的修改程序，這和前述有關姬鵬飛主任的講話一致。立法意圖清晰，如作他說，則令附件一第七節及附件二第三節的修改程序變得沒有意義，也令它們和第一百五十九條之間出現矛盾。

第四屆及其後各屆立法會的產生辦法

(六·八) 前綫認爲第三屆立法會產生辦法，不適用於第四屆及其後各屆立法會。若第四屆立法會的產生沿用第三屆的產生辦法和組成，則有違第六十八條中有關「循序漸進」的原則。

(七)總結

(七・一) 已故中共元老鄧小平構思「一國兩制」時，是希望借香港的經驗實踐，作爲統一台灣的示範。要成功實踐「一國兩制」，「一國」、「兩制」同樣重要，單單強調「一國」或「兩制」，對實踐「一國兩制」只會有害無益。可惜回歸後香港的政治及經濟環境每況愈下，未能起示範作用。若市民對等待廿多年的民主政制也胎死腹中的話，對統一大業只會有害，有違鄧小平的意願。

(七・二) 根據中華人民共和國憲法第三十一條設立的香港特別行政區，除把國家對香港的方針、政策用法律規定，亦同時對中央及特區政府予以規範。香港政制民主化已在《基本法》內已經清清楚楚地列明。現在重提對《基本法》有關「法律問題」的理解，難免令人覺得特區政府自尋煩惱，刻意將政治問題扭曲成爲法律爭議，轉移視線。

(七・三) 前綫希望中央及特區政府重回正軌，不要企圖透過法律問題，凌駕市民對民主政治發展的訴求。我們促請當局盡快以真誠的態度展開政制檢討的諮詢工作，不再借故磋跎歲月，令政制改革不必要地拖延。

香港民主發展網絡

有關政制發展與《基本法》法律問題意見書

二零零四年一月二十九日

目錄

從實際情況走向民主政治

朱耀明牧師

民主發展網絡主席

基本法 45 條規定特區須按「實際情況」和「循序漸進」的原則來發展普選制度。要符合這種憲制上的規定，我們須掌握社會對上述兩個問題的普遍看法，然後制訂一個合適的政制方案。

民主發展網絡是由多名宗教、學術、政治、社會運動和其他專業界別人仕組成的民間組織，我們認爲香港政治的「實際情況」是特首所領導的政府缺乏公信力，這可以民意調查中特首和主要官員極低的公眾支持率爲証。

由於政府缺乏公信力，在推動政策時難以獲得議會、政黨、民間組織以至大眾的支持和配合。無論是革新發展或是在逆境中勵行緊縮政策，政府處處蹤壁而陷入管治困境。

政改方案必須以提高特區政府的公信力爲指導思想，而建立政治制度的「認受性」(legitimacy)應是最徹底的解決方法。所謂認受性是指人民覺得無論現時的政治制度有多少缺失，相對於其他制度來說仍是最值得支持的一個。現時以 800 人選舉委員產生特首的制度顯然缺乏認受性。去年七一和今年的元旦遊行已清楚傳達了人民爭取民主的訊息，多項民意調查亦顯示超過七成市民支持 07 年普選特首。因此零七年政制檢討，必須爲特區政府引入普選成份，才能提高政府的認受性。

我們支持零七普選行政長官和零八全面普選立法會，但我們亦明白工商界、中央政府或其他人士可能有疑慮或有其他方案。我們認爲未來政制方案應該由各界以求同存異精神謀求共識，但我們希望就零七年的特首選舉方法檢討，最少要符合以

下三項要求：

(一)不要小修小補: 如果只將現時選舉委員會擴大而沒有根本性改變選舉方法，將無助提高政府的認受性。

(二)不要無限期過渡: 香港自上世紀八十年初已開始地方行政選舉、1991 年已實行立法局部份議席直選，政制已經「循序漸進」多年，社會亦有充份條件實行普選。這次政制檢討最終應就全面普選特首確立清楚時間表，而非一個遙遙無期的「最終」目標。

(三) 不要排斥異己: 選舉要有公信力必須公平、公開、公正。無論以何種時間表推進，最終特首選舉程序不應設立任何機制排斥任何香港合法政黨代表參與選舉。

我們希望各界了解香港管治的問題乃源於制度性因素，如果錯失這次政改機遇，令第三屆特首選舉的方法無實質改進，則現時的困局將會延續至 2012 年或更長的時間。我們曾經提出過一個政制檢討及改革時間表，並指出如要 07 年實行普選，剩下來可用作公眾諮詢、通過憲法層面要求的修改程序、制定相關的本地主體及附屬法律和籌備選舉的時間，可謂捉襟見肘。而林瑞麟局長當時亦表示我們的時間表公道合理。

如今我們卻要就一些抽象原則和程序問題重新討論，而當中有些問題可謂浪費時間。例如曾司長日前提出「如採用附件一和二所規定的修改程序，是否無須援引基本法第 159 條的規定」的問題，假如這種修改程序亦等同修改基本法，當初就不會以附件這種較靈活的形式作出規定。如果在這些技術性問題糾纏下去，大眾不禁懷疑這是一種拖延策略，目的是令 07 年普選胎死腹中。假如香港的管治問題因此而無法疏解，今天每一位有份拖延政改的人士將要負上歷史責任!

附件: 建議政制檢討及改革時間表

階段工作目標	日期
1. 政制事務局展開全面的社會諮詢，爲期三至四個月。	2004 年 2 月
2. 公佈諮詢結果，倘若大多數民意支持普選第三任行政長官與及全面普選第三屆立法會，便應交予立法會表決，三分之二多數通過；行政長官同意；報全國人民代表大會常務委員會批准。	2004 年 6 月
3. 普選行政長官與立法會的主體法案提上立法會	2004 年 12 月
4. 主體法案三讀通過	2005 年 12 月
5. 連同附屬立法，兩條法例完成全部立法程序	2006 年 12 月
6. 選舉第三任行政長官	2007 年 3 月
7. 選舉立法會	2008 年 11 月

香港政制發展的法律問題

Legal Questions concerning the constitutional development of Hong Kong

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摘要:

香港特區政制發展專責小組提出了《基本法》中有關政制發展的一些法律問題。在香港討論香港特區政制發展時，也有人提出其他的法律問題。這些法律問題涉及政制發展的立法程序、諮詢程序、政制發展的原則和其他相關的法律問題。本文擬詳細探討這些法律問題，並根據法律解釋的原則詮釋有關《基本法》的條文。雖然任何法律的理解必然涉及政治的取態，但法律問題之爲法律問題而非政治問題是在於法律理解仍需依據一定的法律原則。一方面法律條文爲法律解釋定下一個範圍，任何解釋都不能超越法律文字所可以承載的。另一方面，法律的解釋原則是建於理性的基礎，需符合一定的合理性和邏輯性。

Abstract:

The Task Force on constitutional development of the HKSAR Government put forward a series of legal questions concerning the constitutional development of Hong Kong. Some other people have also raised other legal questions. All these legal questions concern the legislative process and consultation process of constitutional development, principles of constitutional development and other related legal questions. The article aims to analyze these questions in details and provides interpretations to relevant provisions of the Basic Law according to principles of legal interpretation. Even though legal interpretation inevitably involves political choices, legal questions are still only legal questions but not political questions for their resolution are still based on legal principles. On the one hand, the legal text sets a limit to possible interpretations so that any interpretation cannot give a meaning, which the text cannot bear. On the other hand, principles of legal interpretation must be built on a rational basis and they must be reasonable and logical.

前言

香港特區政制發展專責小組提出了《基本法》中有關政制發展的一些法律問題。在香港討論香港特區政制發展時，也有人提出其他的法律問題。

涉及香港特區政制發展的條文包括《基本法》第 45 條、第 68 條、附件一和附件二。《基本法》第 45 條第二款規定：「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，最終達至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產生的目標。」

第 68 條第二款規定：「立法會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，最終達至全部議員由普選產生的目標。」

附件一第七節規定：「二零零七年以後各任行政長官的產生辦法如需修改，須經立法會全體議員三分之二多數通過，行政長官同意，並報全國人民代表大會常務委員會批準。」

附件二第三節規定：「二零零七年以後香港特別行政區立法會的產生辦法和法案、議案的表決程序，如需對本附件的規定進行修改，須經立法會全體議員三分之二多數通過，行政長官同意，並報全國人民代表大會常務委員會備案。」

這些法律問題涉及政制發展的立法程序、諮詢程序、政制發展的原則和其他相關的法律問題。本文擬詳細探討這些法律問題，並根據法律解釋的原則詮釋有關條文。

法律解釋

有關香港特區政制發展的爭議，很多人認爲實在是政治的問題而非法律的問題。故此解決也是在於政治的妥協而非法律的仲裁。的確，法律的方法不可以解決政治上的爭議，但若我們是相信法治的話，法治會爲法律解釋定下了基本的規則，法律至少爲政治的爭議定下了界線和最起碼的標準。

因此在解釋《基本法》相關的條文時，我們不能以政治的考慮點來任意扭曲條文的意思以達到其政治目的。當然我們不得不承認法律也只能定下一個規範，而在這規範內仍是可以容下超過一個法律的解釋。要選取那一個解釋，還是離不了政治。

香港特區終審法院首先在「吳嘉玲案」[1]，然後再在「莊豐源案」[2]確認了普通法對《基本法》條文的解釋原則：「法院根據普通法解釋《基本法》時的任務是詮釋法律文本所用的字句，以確定這些字句所表達的立法原意。法院的工作並非僅是確定立法者的原意。法院的職責是要確定所用字句的含義，並使這些字句所表達的立法原意得以落實...法院不會把有關條款的字句獨立考慮，而會參照條款的背景及目的。法律釋義這項工作需要法院找出有關條款所用字句的含義，而在這過程中需要考慮該條款的背景及目的。這是一種客觀的探究過程。法院必須避免只從字面上的意義，或從技術層面，或狹義的角度，或以生搬硬套的處理方法詮釋文字的含義，也不能賦予其所不能包含的意思。」

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[1] *Ng Ka Ling v Director of Immigration* [1999] 1 HKLRD 315.

[2] *The Director of Immigration v. Master Chong Fung Yuen* (FACV No. 26 of 2000)

有人認爲《基本法》是中國法律，所以不應以普通法的原則來解釋。但我們若看中國法律解釋法律的原則，會發現其實相差不大。中國法律還未有對法律解釋原則有權威性表述如上述香港特區終審法院所定的原則。[3]但在參考幾位中國法律專家的著作後[4]，中國法律的解釋原則可以總結爲以下幾點：

(1) 任何法律條文之解釋必須從文義解釋入手。

(2) 若採用文義解釋方法後，如沒有出現多於一個的法律解釋的可能性，那就只可以文義來解釋。

(3) 若採用文義解釋方法後，出現多於一個的法律解釋的可能性，就要參照條文在整份法律中的地位，即依其編、章、條款、項之前後關聯位置，或相關文的意思，闡明其規範意旨來選取適當的解釋。

(4) 也可以用立法解釋方法，探求立法者於制定法律時所作的價值判斷及其所欲實施的目的，以推知立法者的意思來選取適當的解釋。

(5) 若還不能確認法律的解釋，可以採用目的解釋方法，找出法律規範的目的，並以此爲依據來闡釋法律有疑問的地方。

(6) 但無論如何，任何解釋不得超過法律條文文義可能的範圍。

因此，無論是普通法或是中國法律的解釋原則，我們也可以得出近似的解釋原則，那就是以法律條文的文義來定出一個最起碼的框框。在這框框內，政治的觀點可能會影響在解釋時應採用那一種解釋方法；或是給與甚麼比重予不同的解釋方法；或是在引用不同的解釋方法時有不同的結論。不過，任何的解釋都不可以超越法律條文的文義來定出的那一個框框。[5]

循序漸進

第 45 條和 68 條爲行政長官和立法會的產生辦法定下兩個原則：循序漸進和香港特別行政區的實際情況。涉及政制發展原則的其中一個法律問題是循序漸進包含甚麼要點。

第一、「循序」假設了一個「序」，這「序」也可以說是發展的次序或時間表。附件一和附件二正爲特區首十年定下了發展的時間表。不過這時間表所規定的時期到 07/08 年就完結。正如當一個學期結束，學校就得制定新的時間表而不能用上一學期的時間表上課，所以我們必須爲 07/08 年後的產生辦法再定一個新的時間表。

第二、「漸進」的「漸」是相對性的，可以快一點可以慢一點。但「進」卻是有絕對性的意思，進必是向前而不能後退和停頓。這「進」也必然是朝向普選發展的。

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[3] 2000 年 3 月 15 日第九屆全國人民代表大會第三次會議通過的《中華人民共和國立法法》只是規定在下列情況：(1)法律的規定需要進一步明確具體含義的；和(2)法律制定後出現新的情況，需要明確適用法律依據的；全國人大會常委會可解釋法律(見第 42 條)。但立法法卻沒有規定法律解釋的原則。

[4] 梁慧星著：《民法解釋學》，中國政法大學出版社 1995 年版，第 213-247 頁；蕭金明著：「立法解釋基本問題」，在周旺夫編：《立法研究》第一卷，法律出版社 2000 年版；李閩著：「立法解釋若干問題研究」，在周旺夫編：《立法研究》第一卷，法律出版社 2000 年版。

[5] Walter Sinnott-Armstrong and Susan J. Brison, "A Philosophical Introduction to Constitutional Interpretation," in Walter Sinnott-Armstrong and Susan J. Brison (ed) *Contemporary Perspectives on Constitutional Interpretation* (1993).

第三、雖然「漸進」的「漸」是可以快一點也可以慢一點，但這個「漸」的發展速度也要符合《基本法》其他條文的理解。最直接的就是附件一和附件二本身。從附件二我們可以看到立法會中由普選產生的議員由 20 人(三份一)進到 24 人(五分二)再進到 30 人(二份一)。每一屆都是有進展的。依此理解「漸進」是每屆都要有進展的，而不會是進一屆停一屆的。同樣，從附件一我們看到由 400 人的推選委員會進到 800 人的選舉委員會，也是每屆皆有進展的。

因此行政長官 07 年和立法會 08 年的產生辦法必然要較之前的產生辦法更爲與普選貼近。簡單來說，循序漸進這原則告訴我們 07/08 年的產生辦法必然要與之前的產生辦法不同，而另一原則香港特區的實際情況則是涉及這漸進的發展速度而言。既然如此，政制諮詢是必要在 07 年前儘早進行，以使特區有充足的時間爲 07/08 年新的產生辦法立法和讓各方部署選舉。

第四、「漸進」的「漸」雖然是相對性的，可以快一點可以慢一點，但這個「漸」的發展速度也要符合《基本法》其他條文的理解。附件一和附件二提供了最直接的參照。

根據附件二立法會中由普選產生的議員由 20 人(三份一)進到 24 人(五分二)再進到 30 人(二份一)。不單每一屆都是有進展，而且每一次進展的幅度都是有所遞升的。第二屆進到第三屆的幅度是較第一屆進到第二屆的幅度爲大。因此第三屆進到第四屆的幅度又當比第二屆進到第三屆的幅度爲大。而進程的方向都是以朝向全面普選而發展的。以此推算，第四屆立法會至少要有 40 人(三份二)的議員是由普選產生。這是循序漸進的原則爲 08 年立法會選舉定下了最起碼的進程。在 08 年我們能否在這最起碼的進展再向前走至立法會全部議員由普選產生，就視乎另一個原則香港特別行政區的實際情況而定了。

同樣根據附件一，行政長官的產生辦法由 400 人的推選委員會進到 800 人的選舉委員會，也是每屆皆有進展的。我們也看到這進展是朝向行政長官最終由普選產生的。細看這進程，不單是人數有所遞升，而更是在產生辦法上是有質的轉變的。推選委員會的成員都是由全國人大設立的香港特區籌委會挑選的，香港市民並沒有直接的參與權。但選舉委員會有部份成員是由香港市民普選產生如由普選產生的立法會議員。部份香港市民也可直接選舉他們所屬界別的代表進入選舉委員會。要繼續產生辦法需質變和變化幅度較之前的轉變更大這進程，只是擴大選舉委員會的人數是必然不符合循序漸進的原則。即使是把選舉委員會四個界別的組成比例改變也不能符合這原則。要符合最起碼的進展的要求，選舉委員會的成員得全部是由香港市民普選產生。這由市民普選產生的選舉委員會應如何組成或可否更進一步讓行政長官由普選產生則視乎另一個原則香港特別行政區的實際情況而定了。

依此理解，政制諮詢當以三份二的立法會議員由普選產生和選舉委員會的成員全部是由香港市民普選產生爲起點，再根據香港的實際情況來決定可否在 07/08 年就實行立法會全部議員由普選產生和行政長官由普選產生。

香港特別行政區的實際情況

另一個政制發展的原則是第 45 條和 68 條所指香港特別行政區的實際情況的實

質意思是甚麼。

第一、產生辦法是要依據香港特別行政區的實際情況和循序漸進這兩個原則來規定的。這也是說有關規定是要同時符合兩個原則而不能只符合其中一個原則或是以一個原則來規限另一個原則。因此我們不能以香港特別行政區的實際情況來作爲不需循序漸進的理由。若循序漸進的理解是要 07/08 年的產生辦法必然與之前的產生辦法不同，並且也已定下了最起碼朝向普選的進展幅度，那香港特區的實際情況的理解就只能用於厘定在 07/08 年可否就實行立法會全部議員由普選產生和行政長官由普選產生。

第二、《基本法》規定實際情況是香港特別行政區的實際情況而非籠統地說實際情況。因此台灣總統大選的結果，台灣民眾對一國制的想法甚至北京政府領導人對香港民主發展的看法也不應考慮因它們都不是「香港特別行政區」的實際情況。有人說香港政制發展屬中央與香港特區關係的問題，這可能是對的但中央與香港特區關係卻不能是規定行政長官和立法會的產生辦法時要考慮的因素。香港政制發展屬中央與香港特區關係是體現在附件二的修改要向全國人大常委會備案和附件一的修改要得全國人大常委會批准。

第三、要理解和引用一些法律原則，決策者必需考慮所有有關的因素，也不能考慮任何無關的因素。甚麼是這法律原則有關的因素和無關的因素，就視乎法律原則的上文下理。[6]香港特別行政區的實際情況就是現在要引用的法律原則，而它的上文下理是關於：(1) 香港特區行政長官和立法會的產生辦法的規定；(2) 這些辦法都是朝向以最終由普選產生爲目標；及(3)這目標要循序漸進來　到。換句話說，有關的因素只能是那些涉及這三方面的因素，其他都一律是無關的因素。

以此推論，下列的因素在引用香港特別行政區的實際情況這法律原則時，當屬有關的因素：

(1) 香港特區的政治、社會及經濟情況是否可支持香港在 07/08 年就實行全面普選；
(2) 香港特區的選民素質(如教育水平)是否可支持在 07/08 年就實行全面普選；
(3) 香港特區市民是否有強列的訴求希望在 07/08 年就實行全面普選；和
(4) 香港特區現行的政治體制是否存在根本的問題(如政治認受性薄弱而影響到管治)而須透過全面普選來解決。

兩個政制發展原則，孰優孰次？

有人提出在兩個政制發展原則之間，香港特區的實際情況應優先於循序漸進。[7]這理解的後果是若某種發展是符合香港特區的實際情況的話，那循序漸進的原則可以有限度地不用跟從。提出者多是認爲 07/08 年行政長官和立法會就可全面由普選產生。但這說法的問題是它既可支持在 07/08 年就全面進行普選，但它也可反過來支持 07/08 年不用全面普選，一切就完全視乎如何理解香港特區的實際情況。這說法也假設了 07/08 年全面進行普選是不符循序漸進的原則，故以香港特區的實際情況優於循序漸進的原則來支持 07/08 年就可進行全面普選。

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[6] Wade and Forsyth, Administrative Law (Oxford University Press, 8th ed. 2000).p 377-385.

[7] 湯家驊：《實際情況才是主導原則：解讀蕭蔚雲旋風》，《明報》，論壇版，2004 年 1 月 21 日。

但從有關條文的結構看，這說法並不成立。雖然香港特區的實際情況是置於循序漸進之前，但那並不表示香港特區的實際情況必然是優先於循序漸進。兩個原則是以「和」這個連接詞連系在一起的。較合文義和簡單的理解是兩個原則都同等重要。行政長官和立法會的產法辦法的規定要同時符合兩個原則。

兩個原則之間也是存在一些分別的。香港特區的實際情況這原則本身是沒有可直接執行的部份，而需透過進一步的詮釋以掌握甚麼實質的考慮是香港特區的實際情況和如何把這些實質的考慮引用於規定行政長官和立法會的產法辦法。至於循序漸進這原則，其內容至少有一些部份是可以直接被引用的。如上所述，「進」是有一個絕對性的意思，是可以直接引用於規定行政長官和立法會的產法辦法。同樣，那個「序」若是存在的話，它也是可以被直接引用。「循」在意思上可能有多一點的詮釋空間，但大體上其意思是較明確的，故在引用時也應可以較直接。惟一需進一步詮釋的是「漸」的意思。這「漸」的速度有多快就需要依靠另一個原則或《基本法》的其他條文來確定。

若兩個原則是平排的、是同等重要的，而其中一個原則有一部份是可以直接被引用的，那任何的解釋都應先符合這些可直接被引用的部份。以原則中不可以直接被引用的部份來縮減已可直接引用部份是不合理的。在引用了可直接引用的部份後，那已可把可能的解釋減少，只要再繼續詮釋兩個原則中其他需要進一步解釋的部份，以兩個原則來互相引証，並以《基本法》的其他條文來協助選取適當的解釋，那就能把可能的解釋的範圍進一步縮小。

以此來理解兩個政制發展原則之間的關係和實質上去說，循序漸進可爲香港特區政制發展定下一個起碼的進程，確定 07/08 年行政長官和立法會的產法辦法起碼要發展到某一個階段。香港特區的實際情況的理解則用於確認行政長官和立法會能否在 07/08 年就全面以普選產生。

政制發展的立法程序

政制發展專責小組提出《基本法》附件一及附件二中行政長官及立法會產生辦法的修改當用甚麼立法方式處理。

小組提出了幾個立法的可能性：(1) 經《基本法》第 159 條的修改程序修改附件一及附件二；(2) 修改附件一及附件二原則性的規定，然後以香港特區本地立法配合落實新規定；(3) 修改香港特區本地的選舉法例。

就第一個選擇，原則上所有《基本法》的條文都得依據《基本法》第 159 條由全國人大才能修改。《基本法》的附件也應是《基本法》的條文，故此修改附件的程序原則上也應依據《基本法》第 159 條的規定，除非《基本法》的條文另有規定。《基本法》第 18 條就是另有規定的一個例子。第 18 條規定全國人大常委會可對列於附件三的法律作出增減。附件三的內容是可以由全國人大常委會修改而非由全國人大依據《基本法》第 159 條來修改。

現在的問題是附件一及附件二所述的修改程序是否屬另有規定。姬鵬飛主任在《關於中華人民共和國香港特別行政區基本法（草案）及其有關文件的說明》非常清楚指出行政長官的具體產生辦法由附件規定是要讓修改可以「比較靈活，方便在

必要時作出修改。」同樣立法會的具體產生辦法由附件規定，「也是考慮到這樣比較靈活，方便必要時作出修改。」依此理解，制定《基本法》時，立法的原意應是讓附件一和附件二可以用較靈活的方法來修改。因此附件一和附件二所列的修改程序應是另有的規定，要修改附件一和附件二的內容是不用先由全國人大依據《基本法》第 159 條來修改。

再且，附件二第三節是訂明：「如需對本附件的規定進行修改」，那就得根據附件二第三節所列的程序。這明顯是指附件二的修改程序是在《基本法》第 159 條以外的規定。雖然附件一第七節只是說：「二零零七年以後各任行政長官的產生辦法如需修改」，少了附件二的「對本附件的規定」，但在上面所引述姬鵬飛主任的說明，他並沒有區分附件一和附件二。所以若附件二可以不用依據《基本法》第 159 條來修改，附件一也應可以不用依據《基本法》第 159 條來修改。它們同樣地都可以依據其本身所列的程序來修改。

即使有人不同意這說法，認爲附件一有別於附件二是要由全國人大依據《基本法》第 159 條來修改，但要修改 07 年以後各任行政長官的產生辦法卻不一定涉及修改附件一。附件一第七節是說「二零零七年以後各任行政長官的產生辦法如需修改」，而不是說「附件一如需修改。」正因附件一沒有如附件二用上「對本附件的規定」的說法，因此要修改行政長官的產生辦法甚至不用修改附件一。

就第二個選擇，有人認爲附件一及附件二中行政長官及立法會產生辦法的修改屬憲法層面，故得先對附件一及附件二作原則性的規定，然後以香港特區本地立法配合落實新規定。不論《基本法》附件一及附件二中行政長官及立法會產生辦法的修改是否屬憲法層面，但在法律上要修改附件一及附件二卻不一定要先作原則性規定的安排。

《基本法》其實已有修改附件的安排，並且有修改附件的實例。《基本法》第 18 條規定全國人大常委會可對列於附件三的法律作出增減。全國人大常委會在 1997 年 7 月 1 日及 1998 年 11 月 4 日先後兩次通過關於對附件三所列全國性法律增減的決定。[8]全國人大常委會並沒有在作出這兩個決定前先對附件三作出原則性的規定，或是先制定修改附件三的程序細則。附件三如是，那麼沒有理由要對附件一和附二的修改有不同安排。

在處理《基本法》其他涉及程序安排的條文如《基本法》第 17 條香港特區立法機關制定的法律報全國人大會常委員備案；甚至一些沒有明文規定的程序安排如行政長官根據《基本法》第 43 條和第 48(2)條向國務院提交報告，再由國務院向全國人大會常委員提請解釋《基本法》，我們都見不到要先作原則性的規定才依《基本法》所訂的程序來執行或實施有關的安排。

再且，這些原則性規定應由國務院、全國人大常委會或是全國人大來作出，《基本法》竟然完全沒有提到。我們很難想像制定《基本法》時起草委員會和全國人大會如此大意沒有把這麼重要的程序安排作出明確規定。

因此在修改附件一及附件二中行政長官及立法會產生辦法前，對附件一及附件二作原則性的規定是並不需要的。其實最簡單直接的解釋就是只需根據附件一和附

[8] 1997 年 7 月 1 日第八屆全國人民代表大會常務委員會第二十六次會議通過及 1998 年 11 月 4 日第九屆全國人民代表大會常務委員會第五次會議通過。

件二各自所定的修改程序就應可以改變有關的產生辦法。在解釋法律時，若有簡單直接的解釋就能處理問題，我們就不用找上複雜甚至是會產生不明確理解的解釋。

雖然在憲制上可簡單直接引用附件一和附件二各自所定的修改程序，但在香港本土就不能只是修改香港特區本地的選舉法例。在此以外，香港特區立法會的議事規則也要作出相應修改。第一、有關議案的會議規則可能要修改加入通過涉及附件一和附件二的議案的程序。第二、議事規則關於立法會所通過法案交行政長官簽署和行政長官向立法會提出議案的規定也要修改以包括附件一和附件二的相關修改，這就能顧及修改建議是由行政長官向立法會提出或是立法會先通過修改議案再交行政長官同意這兩種情況。

如上所述，《基本法》現已有程序是關於立法會就所制定的法律向全國人大常委會備案[9]。把這擴大至向全國人大常委會報交附件二的修改議案作備案和附件一修改建議待全國人大常委會決定是否批准，應沒有什麼原則上的問題。同樣行政長官也可向全國人大常委會報交附件二的修改議案作備案和附件一修改建議待全國人大常委會決定是否批准。全國人大常委會可通過決定批准或拒絕批准由香港特區所交來的修改建議，這並不涉及香港特區的法律，全國人大或全國人大常委會也不用額外制定新的法規。在交全國人大常委會備案或交全國人大常委會批准並取得批准後，香港特區就可制定相關的選舉法律了。

二零零七年以後

另一個法律問題是《基本法》附件一中「二零零七年以後各任行政長官」是否包括 07 年那一任行政長官。若「二零零七年以後各任行政長官」不包括 07 年那一任行政長官，那麼香港特區就不需在 07 年前就對行政長官產生辦法進行諮詢。

這條文的句式是以一個時間單位來指定一個時間以後的安排。時間單位可以是年、月、日，時間單位不同不會改變解釋的原則。有關的法律解釋原則主要有三個。第一個原則是看文字表面的意思，要了解文字表面的意思，我們可以日常用法爲例：女兒說謊，但因她肯認錯故爸爸原諒她對她說：「爸爸原諒妳，但今日以後不要再說謊了。」假若女兒以「二零零七年以後」不包括 07 年來理解這話，她就只需由明天開始不說謊，在今日她仍可以繼續說謊。這種理解完全違反日常的用法，是文字表面意思不能接納的。

第二個原則是看文字的上文下理，《基本法》在其他條文也有相類似的句式。《基本法》第 24 條第 3（1）款規定香港特區永久性居民包括：「在香港特區成立以前或以後在香港出生的中國公民」。全國人大通過設立香港特別行政區的決定中規定自一九九七年七月一日起設立香港特區，那也是說香港特區成立是指一九九七年七月一日。若一九九七年七月一日以前或以後並不包括九七年七月一日，那麼那一日在香港出生的中國公民將不享有香港特區永久性居民的身份。這種解釋會製造一個法律上的真空。

與附件一更有關連的上文下理就是附件二關於立法會產生辦法的條文。附件二也有相類似規定：「二零零七年以後香港特別行政區立法會……」同樣的問題是 07

[9] 見《基本法》第 17 條。

年後立法會是否包括 07 年那一屆立法會。若非設立臨時立法會，第三屆立法會的任期會與第二任行政長官的任期同時在 07 年屆滿。若立法時希望「二零零七年以後」立法會不包括 07 年那一屆，附件二應包括第四屆立法會的產生和組成方法，但附件二卻只包括了第二及第三屆的產生和組成方法。附件一和附件二都是有關香港特區政制重要部份的產生辦法，理解上應一致。

第三個原則是看立法的目的，我們可從立法的背景文件看到立法的目的。《基本法》的立法背景文件必然包括基本法起草委員會主任委員姬鵬飛向由全國人大提交關於《基本法》的說明。在說明中，姬鵬飛主任說：「附件一對行政長官的產生辦法作了具體規定，在一九九七年至二零零七年的十年內由有廣泛代表性的選舉委員會選舉產生，此後如要改變選舉辦法，由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批准。」

姬鵬飛主任明確指出附件一只是對行政長官的產生辦法在 1997 至 2007 年的十年作了具體規定，關鍵的是他明顯有「十年」的概念，若「二零零七年以後」不包括 07 年，那他應說十五年。

從幾個法律解釋的原則來看，我們都可得出同樣的結論：「二零零七年以後各任行政長官」是包括 07 年那一任的行政長官，所以檢討行政長官產生辦法的諮詢應立即展開，不宜再拖。

啓動機制

有人提出解釋《基本法》附件一及附件二有關 07/08 年以後行政長官和立法會產生辦法，認爲條文中「如需修改」這條件是由中央來判斷。[10]這解釋能否成立是關於要啓動政制改革諮詢有甚麼法律條件。

第一、若解釋會帶來含糊不清的後果，這解釋不可能是立法原意。[11]上述的解釋所指的「中央」非常含糊。在《基本法》中曾提及的中央政府機構包括了全國人大、全國人大常委會和中央人民政府即國務院。在每一處涉及中央的條文都是清楚指明是由那一個中央政府機構來行使有關權力。若《基本法》的原意是由中央的政府機構來決定「如需修改」這條件是否成立，那必會指明是由那一個中央的政機構來行使這權力而不會那麼含糊地只是指由中央來決定。

第二、法律條文尤其是涉及程序或機制的條文，在解釋時必須避免使運作出現混亂。[12]「如需修改」這條件若是由中央的政府機構來決定，那中央的政府機構在決定有需要修改時，它也應同時提出實質的修改建議。若不是這樣，那就可能產生混亂，因在沒有明確規定下香港的政府機構如立法會或行政長官可能同時提出實質建議或是兩者都不提出。當然許的解釋可以訂明中央的政府機構在作出決定時須同時指明由香港的那一個政府機構去提出實質的建議。但若程序的安排是那麼的詳細，原先立法時沒理由會不把它明確寫出來。

假若中央的政府機構在決定有需要修改時也會提出實質的建議，上述的解釋又

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[10] 前草委許崇德接受香港電台的訪問提出的意見，見《明報》，2003 年 12 月 6 日。

[11] Bennion, *Statutory Interpretation*, (Butterworths, 4th ed, 2002), p 682.

[12] Bennion, *Statutory Interpretation*, (Butterworths, 4th ed, 2002), p 832.

會違反另一個法律解釋原則。法律解釋不應產生無意義、重覆或矛盾的後果。[13]若是由全國人大常委會來決定和建議，那就會是全國人大常委會先建議再向自己備案或得批准，解釋變得沒有意義或意思重覆。若是由全國人大來決定和建議，那就會產生矛盾的解釋，因沒有理由由一個上級的機構向下一級的構機備案或得批准。故此唯一可能的機構只是中央人民政府。但若只能是由中央人民政府決定和建議那麼具體，在原先立法時沒有理由會不把它明確寫出來。

第三、法律解釋必須符合上文下理而不能斷章取義。附件一和二中「如需修改」的「需」必須以整份《基本法》來詮釋。這明顯是指第 45 條和第 68 條所訂明「根據香港特別行政區的實際情況和循序漸進的原則」來決定是否需要。若只有中央的政府機構才可以啓動機制，這解釋並不符合「一國兩制」的原則。香港特區若連啓動機制的權力也沒有，我們很難向國際社會說香港在「一國兩制」下是享有高度自治。香港特區有權啓動機制就等同獨立這說法是完全忽略了中央根據《基本法》在整個修改程序的最終決定權。附件二關於立法會的產生辦法雖只需向全國人大常委會備案，但要實施有關辦法必須修改香港特區的法律。全國人大常委會根據《基本法》第 17 條若認爲有關法律違反《基本法》，是可把法律發回香港特區。附件一關於行政長官的產生辦法更要得全國人大常委會批准。

此外若條件是「根據香港特別行政區的實際情況」，如果香港本身的政府機構連啓動的權力也沒有是不合常理的。法律解釋不應產生不合常理的後果。[14]什麼政府機構能比香港特區自己的政府機構更了解香港的實際情況？

總的來說，一個更符合一般法律解釋原則的解釋是：香港特區立法會或行政長官都可以啓動附件一和二改變產生辦法的機制。在啓動時，它們必須向對方提出實質的建議。附件二的修改在得到雙方同意後就向全國人大委會備案，全國人大常委會若不同意，可把有關的法例發回。附件一的修改就必須得到全國人大常委會批准。中央仍保留兩種修改的最終決定權。

如需修改

有人又提出附件一及附件二中行政長官及立法會產生辦法是用了「如需修改」這說法，故有可能出現「毋需修改」的情況。[15]若是「毋需修改」，那就可以沿用 07/08 之前的產生辦法產生行政長官和立法會。他再進一步說若要改變行政長官及立法會產生辦法，就得修改附件一和附件二。這對「如需修改」的解釋是違反法律的解釋原則，故以此推斷的兩點結論都不能成立。

首先，解釋法律並不能單單依靠一個字或是一個詞語，而需以整份法律文件的上文下理來詮釋。若有關法律分爲本文和附件，在解釋上本文的規定和附件的規定是不應出現衝突的。但若真的出現衝突，本文的規定也應凌駕於附件的規定。當然最理想的是以解釋來達致本文和附件的規定相協調。

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[13] Bennion, *Statutory Interpretation*, (Butterworths, 4th ed, 2002), p 690.
[14] Bennion, *Statutory Interpretation*, (Butterworths, 4th ed, 2002), p 845.
[15] 「不能單靠本地立法」：訪邵善波-前基本法諮詢委員會副秘書長，《明報》，論壇版，2004 年 1 月 16 日。

以上述對「如需修改」的解釋，當中的「需」是實質的需要，故他有「毋需修改」的引伸。假設這「需」真是實質的需要，那就是說附件一及附件二中行政長官及立法會產生辦法只有在有實質需要的情況下才可以修改。但甚麼才是有實質的需要呢？

《基本法》本文對行政長官及立法會產生辦法是有明文規定的。第 45 條和第 68 條都定下了行政長官及立法會產生辦法都得「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」。要協調兩者的解釋，附件一和附件二的「需」當是指在第 45 條和第 68 條兩個原則下是有實質的需要來說的了。這也即是說這「需」必須同時符合這兩個原則。

就以循序漸進這原則來分析，如行政長官及立法會產生辦法在符合循序漸進這原則下有實質需要時，那就得修改。如上所述我們不用循抽象地解釋循序漸進，因《基本法》附件一關於第一屆和第二屆行政長官的產生辦法和附件二關於第一、第二及第三屆立法會的產生辦法已具體說明循序漸進的意思。

細看它們的產生辦法，這裏再重申上述我們得出的幾點結論：第一、之後一屆的產生辦法與之前一屆的產生辦法都是不同的。第二、之後一屆的產生辦法較之前一屆的產生辦法是更貼近全面普選這最終目標的。第三、屆別之間的進展幅度是逐步遞升的。以此我們可以看到要符合循序漸進的原則，07/08 年行政長官及立法會產生辦法必然要：(1) 與 07/08 年之前的產生辦法不同；(2)較 07/08 年之前的產生辦法更貼近全面普選這最終目標；(3) 與 07/08 年前的產生辦法之間的遞升幅度應較之前屆別之間的遞升幅度爲大。

但無論怎樣，要符合本文有關條文的規定， 07/08 年行政長官及立法會產生辦法就一定要修改。這樣，若「如需修改」的「需」是實質的需要，那「如需修改」就會失去意思了。要讓「如需修改」保留意思，那就只可把「如需修改」定爲規定行政長官及立法會產生辦法在本文兩個原則以外的一個獨立原則。「需」可獨立地理解而不用理會本文的兩個原則。更甚的是把「「如需修改」置於本文兩個原則之上，那麼若「毋需修改」，那連循序漸進的原則也不用跟從。但這種理解是明顯違反法律解釋原則的。

要使本文兩個原則和附件「如需修改」的規定相協調，「如需修改」的「需」不可以是實質的需要，而只能是程序上的需要。在根據本文兩個原則定了 07/08 年行政長官及立法會產生辦法的產生，那就在程序上「需」根據附件一和附件二的程序安排對產生辦法作出修改。

也有人提出若附件一行政長官在 07 年就一定要由普選產生，在起草《基本法》時就不會寫「如有需要」，當時就可以寫 07 年就要普選了。[16]但這說法不符合法律解釋原則和過去香港特區政府和全國人大常委會對《基本法》的理解。

在普通法原則下：(1)法律禁止的，所有人都不可以作；(2)法律沒有禁止的，人民就可以作；(3)法律沒有授權的，政府就不可以作；(4)法律明文保障的，政府就有責任去保護。[17]普選行政長官是香港市民的權利，也是《基本法》明文確認了的，

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[16] 前草委蕭蔚雲在一國兩制研究中心主辦的「政制發展與《基本法》」的研究會」的發言，見明報，2004 年 1 月 17 日。

[17] Geoffrey Walker, *The Rule of Law: Foundation of Constitutional Democracy* (Melbourne University Press, 1988), Chapter 1.

政府是有責任去保障，這也沒有法律禁止。蕭的說法是違反了普通法的原則，因沒有規定的並不代表不可以作。

再且，過去香港特區政府和全國人大常委會也曾在《基本法》沒有明文規定下作了某些行爲，明顯與蕭的說法不符。在 1999 年行政長官就曾根據《基本法》第 43 條和第 48(2)條向國務院提交報告，再由國務院向全國人大會常委會提請解釋《基本法》。第 43 條規定行政長官對中央人民政府和香港特區負責。第 48(2)條規定行政長官負責執行《基本法》和依照《基本法》適用於香港特區的其他法律。兩項條文皆沒有明文規定行政長官可向國務院提交報告，再由國務院向全國人大會常委會提請解釋《基本法》。若《基本法》沒有明文規定的就不可以作，那行政長官就是違反《基本法》了。

另一個例子就是全國人大常委會在收到提請後解釋了有關的《基本法》條文。《基本法》第 158(3) 條只是規定香港特區法院在某些情況下得提請全國人大常委會對涉案的《基本法》條款作出解釋。雖然《基本法》第 158(1) 條規定《基本法》的解釋權屬於全國人大常委會，但也沒有明文規定全國人大常委會可以直接或在沒有香港特區終審法院提請的情況下解釋《基本法》。若《基本法》沒有明文規定的就不可以作，那連全國人大常委會也是違反《基本法》了。反之，全國人大常委會的做法正正表示，《基本法》沒有明文規定 07 年普選行政長官並不是說 07 年不可以普選行政長官。

最終

《基本法》第 45 條是規定行政長官的產生辦法：「最終達至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產生的目標。」有人提出第 45 條用上「最終」，那就應理解爲行政長官的產生辦法要到了 2047 年或是 2037 年才可以由普選產生，但絕不可以是 2007 年。[18]他理解「最終」是時間性的，也可以說是「終結的時間」。本文擬指出這說法不符合法律解釋原則。

《基本法》第 45 條是規定了行政長官的產生辦法是根據「香港特區的實際情況」和「循序漸進」這兩個原則來規定的，也只有這兩個規範性的原則。在解釋上，規範性的原則條文是不可以用這條文以外的要求來限制的。兩個規範性原則中的「循序漸進」是一個有關時間性的原則，也是一個發展的原則。這發展的方向是以由普選產生爲目標。「最終」這說法是指一個發展的「終點」，而這個終點就是由普選產生。爲什麼說「最終」是「終點」而非「終結的時間」呢？首先、這說法無異是在兩個規範性原則中有關時間性的原則加上另一個時間性的「最終」原則。這不符合條文的結構。再且，「最終」是用於「達至...普選產生的目標」的一句中，在結構上「最終」是更貼近於「目標」，那是作爲「終點」而非「終結的時間」。

即使「最終」是指「終結的時間」，那終結的時間也不一要等到 2047 年或 2037 年。第 68 條有關立法會產生辦法也有相類似的規定。在 2004 年立法會已有一半議員是由普選產生，根據之前數屆普選的進程，到 2008 年的立法會至少要有三之二的議員是由普選產生。若要到了 2037 年才可以全部議員由普選產生，那麼在 2008 至

[18]前草委蕭蔚雲的專訪報導，明報，2004 年 1 月 18 日。

2037 年間的那麼多屆立法會產生辦法就很難符合循序漸進的原則了。

同樣的理解也應用於第 45 條。因此「最終」只是爲普選行政長官定下了一個底線，即在 2047 年前行政長官一定要是以普選產生。除了附件一定下了首十年行政長官的產生辦法外，即第一任和第二任行政長官不可以由普選產生，在第三任起，《基本法》就沒有禁止行政長官是由普選產生。《基本法》沒有禁止的，爲甚麼不能作呢？

第四屆立法會的法律真空

政制發展專責小組提出倘若對是否修改二零零七年以後的立法會產生辦法不能達成共識，以致未能啓動或完成附件二第三節所規定的修改程序，是否會出現法律真空，以致第四屆立法會無法組成，或是否可以理解爲第四屆立法會可繼續沿用第三屆立法會的產生辦法而組成。

香港一直尊崇法治，而《中華人民共和國憲法》第 5 條也規定「依法治國」。能否就政制發展達成共識是一個政治問題，但任何政治問題也不能超越法律所定下的界限。這是法治最起碼的要求。

附件二只規定了第一屆、第二屆和第三屆立法會的組成方法。第三節提到關於二零零七年以後的立法會的產生辦法，這也是說第四屆及以後的立法會。根據《基本法》第 68 條「循序漸進」的原則，第四屆立法會的產生辦法是不能沿用第三屆立法會的產生辦法而組成的，因那會造成政制發展的停頓，而沒有漸進。「循序漸進」的原則也不容許進一屆停一屆的。

同時，在解釋法律時，任何會產生法律真空的解釋是絕不會被採納，因那絕不會是立法的原意。[19]我們很難想像起草委員會或是全國人大在制定《基本法》時會容許這種立法真空出現。

故此若既要「循序漸進」又不會出現法律真空，在法律上第四屆立法會的產生辦法必然要變，且要更爲貼近全面普選這最終的目標。無論各方能否就第四屆立法會全部議員由普選產生或發展的進度達成共識，這政治的考慮也不可以違反法律所定下最低的要求。各方在尋求政治的共識時也必須知道這法律上的底線。在這底線之上，各方仍可堅持己見，但法律的底線不可以超越的。不然香港一直所尊崇的法治和國家正努力建立的以法治國原則，就會因此而付諸流水了。

備案

有人提出即使根據附件二第三節立法會全體議員三分之二多數通過及行政長官同意，修改了 07 年以後立法會的產生辦法，報全國人大常委會備案時，全國人大常委會也可以不接受備案。

備案在法律上的意思就是存一個記錄，備案並不影響有關法律或法案本身的合法性和法律效力。附件二第三節是規定立法會全體議員三分之二多數通過及行政長官同意，就可修改附件二的規定，但在程序上還得報全國人大常委會備案。備案的

[19] Bennion, *Statutory Interpretation*, (Butterworths, 4th ed, 2002), p 832.

程序安排也見於《基本法》第 17(2)條。第 17(2)條就規定香港特區的立法機關制定的法律須報全國人大常委會備案，但備案不影響該法律的生效。這我們可以看到備案不影響有關法律或法案本身的合法性和法律效力。

根據第 17(3)條，全國人大常委會如認爲香港特區立法機關制定的法律不符合《基本法》關於中央管理的事務及中央和香港特區的關係的條款，的確可將有關法律發回，經發回的法律也會失效。但這是指備案之後的程序安排，而非備案本身。而且第 17(3)條只適用於香港特區立法機關制定的法律，但根據附件二立法會全體議員三分之二多數通過及行政長官同意修改了的，是附件二的規定，而並不是香港特區立法機關制定的法律。

當然，在修改了附件二的規定後，香港特區立法機關還是要制定相關的選舉法律報全國人大常委會備案。全國人大常委會也是可根據第 17(3)條，如認爲有關選舉法律是不符合《基本法》關於中央管理的事務及中央和香港特區的關係的條款，把它發回。但修改附件二頂多就是全部立法會議員由普選產生，而這是《基本法》第 68 條已確認了的，我們很難想像執行附件二修改決議的選舉法律會與《基本法》關於中央管理的事務及中央和香港特區的關係的條款有衝突。除非有關選舉法律規定立法會議員不用效忠中華人民共和國香港特區或是容許超過百分之二十的立法會議員由非中國籍的香港特區永久性居出任等如此極端的情況，我們實很難想像全國人大常委會會根據第 17(3)條把有關的選舉法律發回。

因此，在《基本法》之下，只有發回法律，而不會有不接受備案的情況出現。

總結

雖然任何法律的理解必然涉及政治的取態，但法律問題之爲法律問題而非政治問題是在於法律理解仍需依據一定的法律原則，而不是單靠權力或人數。一方面法律條文爲法律解釋定下一個範圍，任何解釋都不能超越法律文字所可以承載的。另一方面，法律的解釋原則是建於理性的基礎，需符合一定的合理性和邏輯性。這也就是說要講道理。要講道理就不是單單把要求講出來，而更要清楚解釋這要求的理據所在，讓公眾去評論。

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《政制改革的基礎分析》

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引言

基本法說明，香港的民主應按「實際情況」，「循序漸進」地發展。因此，我希望先就香港目前的社會狀況，包括政治體制，作出提綱挈領式的「實況分析」，並嘗試列出一些政改時要考慮的大原則。

實況分析一：香港目前的政治體制有嚴重的缺陷，非改不可

首先，爲甚麼要談「政制改革」？市民對民主的訴求，當然是推動政制改革的重要原因之一。這個我會在下面再談。然而，最迫切的理由其實是，現在的政治制度出了大問題，非改不可。

關於這點，不少議政人仕已討論過了，所以在這裡我只會作出一些簡單綜合的論述。特區政治體制設計是行政主導，大權落於行政長官身上，但過去六年多，行政長官在施政上困難重重，未能有效管治。這些施政困難包括：

- 特首缺乏穩固、有力的行政團隊支持。
- 政府在立法會缺乏穩固、有力的支持。
- 特區政府未能整合凝聚各界的意見和利益，以推行具爭議性的改革。
- 特首缺乏強大的認受性以抗衡立法會民選議員的挑戰。

這些困難的成因，固然跟特首本人的問題有關，但還涉及特區政治體制的兩個問題：

政制問題 1.1：　行政長官選舉條例規定，特首不能爲任何政黨的成員，因此，他不能通過政黨組織執政團隊，以協助他在行政與立法機關中施政。

政制問題 1.2： 特首的選舉來自只有 800 人的選舉委員會，因此其產生過程不能促進整合、凝聚社會界別的意見/利益，其施政綱領亦因未有普選的「洗禮」而不能獲得廣大市民的認受性。

如何可以走出這個困境？從上面的分析，我們可以歸納出三個大原則。

原則 1.1 必須大大增加行政長官的認受性。

原則 1.2： 鼓勵政黨發展，容許行政長官有政黨背景，讓政黨有上台執政的機會。

既然政黨政治已是不可改變的事實，而政黨又是現代政治制度重要的一環，那麼我們要做的就是提供政黨發展所需的環境配套，以培養更多從政人才。

原則 1.3： 在推行政改的時候，必須確保行政和立法機關都有相約的認受性。

只有當立法機關和行政長官都同時受選票的「洗禮」，我們才可以減少今天特區政府左右受制，「議而不決、決而不行」的情況。

實況分析二：現有政治制度未能滿足市民對民主的期望

不少分析指出，基本法的設計，就是要延續原有的「行政主導」模式，並儘量減慢民主化的步伐。行政長官日前在施政報告中所說的「加強諮詢」，基本上也反映了「行政吸納政治」的傳統思維。問題是，最近十多年，香港的政治文化已經明顯改變，公民社會的力量及市民對民主的訴求亦有所提升，這種源於殖民地年代的管治模式已不合時宜。

當然，即使香港市民普遍要求政制民主化，但在一些重要問題上，民意還是不清晰的。上星期我委託港大民意調查計劃做了一個香港政改調查（n=1026，回應率＝６４．６%），結果發現，雖然多達６９．３%的被訪者贊成２００７年普選行政長官，但對於是否全面普選立法會，調查的結果顯示一個矛盾的現象：一方面７３．５%的被訪者支持全面普選立法會，但另一方面４５．７%的人認爲要維持甚至增加功能組別的比重。這現象可能反映出市民未能清楚了解功能組別選舉的性質及其跟普選的矛盾關

係。就此問題，政府有責任幫助一般市民——尤其那些沒有資格參加功能組別選舉的人——認識功能組別選舉的性質，以及在社會開展廣泛的討論。

事實 2.1： 目前的政治制度，未能滿足公民社會及市民對民主的訴求。

事實 2.2： 市民對普選特首有持續及強大的訴求，但對普選立法會/功能組別的去留有自相矛盾的意見。

實況分析三：政改涉及多界別利益，必須爭取全港社會共識

在探討過「爲甚麼改」這個問題後，我們便進入有關「怎樣去改」的實際問題。在此，我不想過早觸及細節性的問題，這應該是由市民大眾一起來商議的。我想先集中討論一下「如何尋求政改共識」的問題，因爲這是推行政改的大前提。

政制是一個社會的權力分配的基本遊戲規則，而政制改革就是要改變這些規則，因此必定會觸動不同界別、階層人仕的利益，帶來不明朗因素，令各方有所憂慮和爭拗。改革是否成功，就是要看經過爭辯後，最終所決定的新的遊戲規則，是否爲各方所尊重及遵守，各方是否相信新的規則是合理的，且比原有的更好，以及對香港長遠整體發展有利。

要改革成功，各方在改革過程中所持的態度和策略至爲關鍵。我嘗試提出一個原則，供大家討論：

原則 3.1： 政改不應成爲一場「勝者全取」(winners-take-all)的遊戲，各方亦不應視此過程純粹爲一種「力量」的比試，以一方之力壓倒另一方(domination)，而是儘量在各種利益衝突中某求最能滿足各方的「合理期望」的方案(reasonable compromise)。

所謂「勝者全取」，就是指社會上任何一方在政改中成爲唯一的得益者，並利用新的政治制度，來掠奪其他界別的利益。至於 **Domination** 模式中所指的「力量」，包括工商界的「資本力量」、中央政府的「政治力量」，以及市民的「示威的力量」。在一個 **Domination** 模式中：

- 工商界會說：「我的利益不能絲毫受損，否則我的資金會遷到別處
- 中央政府會說：「最終的決定權在我手，所要你要聽我的。」

- 民主派會說：「最好你給我們民主，否則我們會天天上街示威

但在一個 **Reasonable Compromise** 模式中，這些話是不會講出來的。作爲香港社群的一份子，在爭取自己的利益的同時，應考慮怎樣可以滿足別人的合理期望。

那麼，各方的合理期望是什麼？我個人認爲如下

普羅市民：
- 人人有權參與選舉和撤換政治領袖的決策機制。
- 在貧富懸殊日益嚴重的情況下，期望有一個能夠著重民生體察民情—尤其是弱勢社群—的政府。

工商界：
- 一個良好的投資營商環境

中央政府：
- 一個不會跟中央對著幹的特區政府、「井水不犯河水」。

我們的調查也發現，市民認爲，在推行政改時，勞工及基層人士、中產人士、工商界人士以至中央政府的利益都是重要的，需要照顧。實際統計數字如下：

界別利益	認爲重要的被訪者比例
勞工及基層人士利益	75.4%
中產人士利益	68.5%
工商界人士利益	54.9%
中央政府利益	43.6%

從上可見，市民的傾向絕不是一面倒的。也就是說，對於政改，他們並沒有「勝者全取」的心態。這是一個可喜的現象。當然，市民的考慮有輕重之分，其中基層和中產的利益似乎比工商界及中央政府的利益重要一些。我認爲這是頗合理的，因爲這反映了不同界別的利益（stake）有所差別。工商界可以調走資金，中產人士可以移民，但勞工及基層人士只能留在香港。因此，香港的政制要多點照顧這些弱勢社群的利益，這個想法也是合理的。另一方面，政制改革基本上只關係到香港的切身問題，所以市民在此認爲中央利益屬於「次一層」，也是可以理解的。

個由全面普選產生的民主政府，比目前的政治體制能夠滿足普羅市民的

合理期望，但會否違反工商界和中央政府的合理期望呢？首先要指出，我們從上可見，多數香港市民在考慮政改的時候，不會一面倒傾向任何一方，而是懂得要照顧社會上不同階層的利益。也就是說，我們應該有條件達致跨界別的 **Reasonable Compromise**。更重要的是，民主化和工商界以及中央政府的利益沒有任何嚴重衝突。以下兩部份，將就此問題稍作分析。

實況分析四：民主化和工商界利益並不矛盾

工商界最大的憂慮，就是民主化會帶來福利主義社會，破壞香港原有的資本主義體制和良好營商環境，直接影響他們的利益。但事實上，這種憂慮似乎是不必要的。我要指出，無論在社會結構、憲法安排還是制度內外，民主化後的香港依然可以照顧到工商界的利益，以下逐一說明。

事實 4.1　民主化和福利主義並沒有必然的關係。

很多學者都指出，民主化不一定會增加福利開支。事實上，正是不民主的政府，由於缺乏程序上的合法性，往往只能靠打「經濟牌」——包括增加市民福利——來維持其認受性。相反，民選政府也可以進行大刀闊斧的改革。八十年代英美的新右派政府就是最佳例子。即使英國現今的工黨政府也是向右傾的。

事實 4.2：在全球化下的所有資本主義社會，任何政府都不能不慎重考慮工商界的利益。

在資本主義社會裡，資本家相對其他階層有著結構性的優勢：他們的投資決定，都對勞工就業以至政府稅收有著非常深遠的影響。經濟全球化更強化這種優勢。（事實上，全球化令人憂慮的是資本力量過大，令到勞工及基層的利益得不到應有的保障。）因此，所有民選的政府，都不可能置工商界利益不顧。再「福利派」的政府，都不敢漠視商人的投資環境，最終令自己失去選票。

事實 4.3：在基本法的憲政框架下，工商界利益已有一定的保障。

首先，基本法已經開宗明義說明，香港實行資本主義制度，五十年不變。如上所述，工商界在資本主義社會是有其獨特的結構優勢的。此外，基本法的其他規定，如低稅率、量入爲出的政府理財政策等，都限制了福利主義可能性，也間接保障了工商界的利益。

事實 4.4： 香港政治制度的一些特點，亦能照顧工商界的利益。

首先，立法會直選中實行比例代表制，已經可以一定程度保障社會上少數派——包括工商界——的聲音。現時直選立法會議員缺乏工商界代表，只是因爲後者有更「穩陣」的功能組別支持。如何「處置」功能組織，本身就是政改的一大課題。但即使真的要取消功能組別，我們還可以透過加強體制外的各種諮詢和協調機制，來照顧工商界的利益和考慮（如經濟、福利政策的各界高峯會）。

以上要說明的是，工商界不必視民主爲「洪水猛獸」。我們不否認，民主化整體來說會增強基層市民相對於工商界在政治上的影響力。儘管如此，由於各種結構上、憲法上以至制度上的保障，工商界的利益仍然會受到照顧。進一步來說，民主化對香港的經濟應該是有利的，原因有二。

- 開放政治制度有助舒緩市民的怨氣，保持社會穩定，也就有利經濟長遠發展。

- 民主制度大大增強政府的認受性，有利政府推行重要的改革。看看政府在「減赤」時左右受制的局面，就可以明白民主對建立政府權威的重要性。

實況分析五：香港民主化對中央政府有利

最後，我們不能不談中央政府在政改中的角色。很多人認爲，中央政府不喜歡民主，因爲它擔心特區可能會變得不受控制，一是「港獨」，一是倒過來，「井水犯河水」。其實這些都是過慮。原因有二。

事實 5.1： 基本法的規定，香港特別行政區是中華人民共和國的一部分。

基本法如何再修改，也不可能修到這句。特區政府和立法會，即使是全面普選產生，也只能管理特區的內部事務。

事實 5.2： 香港人的政治取向，根本不會走向「港獨」，或「井水犯河水」。

回歸以來多項調查均顯示，香港市民對國家的歸屬感愈來愈強，對中央政府的認同也愈來愈高，甚至超越了特區政府本身。加上近年香港和內地的

經濟融合，「港獨」在香港根本沒有多大市場。同樣道理，「井水犯河水」的機會也很微。不要忘記，八九年的學運，始於北京，而非香港。

中央政府不但不應懼怕香港民主化，而且它還應注意到，香港的民主化可爲國家帶來兩個「額外」的好處：

- 支持香港民主化有利提升國家在國際社會的形象。
- 支持香港民主化有利兩岸統一。

一直以來，台灣領導人常常以香港的不民主體制，來抗拒「一國兩制」的建議。如果香港能夠做好民主化的工作，作爲向台灣「宣示」的榜樣，必定可以增加「一國兩制」對台灣民眾的吸引力。

結論

若上述的分析是正確的話，政制民主化

- 是解決目前政制的困難的可行方法；
- 能夠滿足大眾市民的基本合理期望；
- 不會違反工商界及中央政府的合理期望；以及
- 對於香港長遠的發展有利。

若工商界或中央反對民主化，需要提出清晰而有力的道理來。

（初稿 2004 年 1 月 13 日）

鄧偉棕 執業律師

香港政改 毋須修改基本法

政務司司長曾蔭權領導的政制發展小組，就《基本法》附件一及附件二中，特首及立法會選舉規定的理解，邀請大家發表意見。

◆不應由民意或長官解釋法律◆

向來，法律的解釋本來不是由民意去決定的，也不應由行政長官去決定的，而是由法院去決定的，所以無論是邀請市民發表了意見，或者上訪中央諮詢中央的意見，意見都不應用以決定法律如何解釋。但是，《基本法》的解釋，採用中國的制度，就是最終解釋權是人大常委，不是香港法院或中央人民法院，最後人大常委以何種方式解釋《基本法》，我們也是難以抗拒的。

即使如此，筆者作爲一名本港律師，又關注香港政制的發展，也希望在此一盡綿力，就本人對《基本法》有關部分的理解，提出自己的看法。以下是對政制發展專責小組所提的五個問題，逐一回答：

◆毋須在「憲制層面立法」◆

㈠對《基本法》附件一及附件二中行政長官及立法會產生辦法的修改，當用甚麼立法方式處理？

簡而言之，小組所提的問題，是修改行政長官及立法會的選舉辦法前，是否應先修改《基本法》。筆者認爲，《基本法》附件一及附件二的說明是清楚明顯的：就行政長官的產生辦法，在2007年以後如需修改，須經立法會三分二多數通過、行政長官同意，並報全國人大常委會批准；就立法會的產生辦法，經立法會三分二多數通過，行政長官同意，並報人大常委會備案。有關規定清楚明確，絕不含糊，因此到現在才突然有人提出，在有關規定之外再加其他條件，或要先在「憲制層面立法」，其實並不符合該兩附件之正常理解的。

在此，我們可以附件三（在香港實施的全國性法律）應如何修改來作比較：《基本法》第18條規定，「全國人民代表大會常務委員會在徵詢其所屬的香港特別行政區基本法委員會和香港特別行政區政府的意見後，可對列於本法附件二的法律作出增減。」以上規定，足可說明，如有特殊的修訂方法，《基本法》應有清楚說明。

㈡如採用附件一和附件二所規定的修改程序，是否毋須援引《基本法》第159條的規定？

筆者的看法，已如上陳述，認爲毋須視爲是修改《基本法》，因此亦毋須援引159條的程序。事實上，就算以立法意圖來說，政制發展專責小組亦引述了姬鵬飛的講話，認爲附件一及附件二預計政制在有需要時可靈活地作出修改。

◆選舉修例應由立會啓動◆

㈢有關修改行政長官及立法會產生辦法的啓動。

正如上述，筆者認爲，啓動機制應在立法會展開，由特區政府向立法會提出，這可以是特區政府應市民的要求提出，或是特區政府主動提出的。

㈣附件二所規定的第三屆立法會產生辦法是否適用於第四屆及其後各屆的立法會？

無疑，附件二只提到首三屆立法會的產生辦法，這可說是《基本法》草擬時的「技術漏洞」，但從現實角度來理解，如無第四屆立法會的產生辦法，顯然應是繼續以第三屆的方式進行，無理由理解爲出現法律真空的。

㈤「2007年以後」應如何理解？

由政務司司長曾蔭權（中）領導，律政司司長梁愛詩（左）及政制事務局局長林瑞麟爲成員的政制發展小組，曾提出修改行政長官及立法會的選舉辦法前，是否應先修改《基本法》。（資料圖片）

政制發展專責小組的結論是，如有需要2007年第三屆行政長官的產生辦法是可以考慮修改的。筆者亦十分同意，認爲這是按「平常心」理解附件一及附件二文本的合理結論。

總的而言，筆者十分希望，中央政府亦是按「平常心」根據當年的立法意圖及具體文字去解釋《基本法》。

HONG KONG POLICY RESEARCH INSTITUTE LTD
香 港 政 策 研 究 所

香港政策研究所對政制發展的意見

前言

十九世紀末期，晚清積弱多年，朝野對政制改革的要求日趨強烈。當時，由康有為、梁啟超為首的改革派，要求進行一系列的政治改革，希望最終達致君主立憲的民主制度。回顧歷史，當時改革工作進行得非常急促，三令五申，對很多既得利益者做成衝擊，結果引起反彈，「百日維新」最終成為「瀛台泣血」，在慈禧太后的干預下，維新失敗，促成日後辛亥革命的成功。

2. 辛亥革命成功後，孫中山先生退位臨時大總統，國民議會選出袁世凱為中華民國大總統。其後，宋教仁遇弒身亡，國人懷疑事件由袁世凱政府指使，國民議會傳召當時總理趙秉鈞，擬作調查。孫中山先生不等待議會調查工作完成，便發動第二次革命，國人再次用武力解

決紛爭。

3. 二十世紀四十年代，中國抗戰逐步走向勝利，美國政府鼓勵當時中國領導人在戰勝後推行兩黨制民主政制，蔣介石以不符合中國國情為理由予以拒絕。反而向共產黨施壓，進行清剿鬥爭，引起國共內戰，使中國再次陷入戰火之中，生靈塗炭。最後，國民黨戰敗，偏安台灣。共產黨軍隊席捲中國大陸，建立中華人民共和國。

4. 中華民族在近百多年內，曾有數次憲政改革機遇，皆一一錯過，最後用戰爭、武力去解決矛盾，使國家元氣大傷，人民飽受戰火摧殘，實在叫人婉惜。

5. 2003 年，胡錦濤主席在多次講話中，闡述「情為民繫、利為民謀、權為民掌」之新三民主義，指出中國需要按國情發展民本社會。胡錦濤主席最近在法國國會發表演說，指出在十八世紀時，法國啟蒙運動的思想家伏爾泰、孟德斯鳩、盧梭等人，在其劃時代的著述中，從倫理道德、科學技術和民風、民俗等方面，對中國進行了引人入勝的描述。其實，已經為中國政制發展創造有利條件。

政制發展的大方向

6. 就香港政制發展的大方向，香港政策研究所有下列三點看法：

(i) 本研究所全力支持香港民主制度發展。按基本法的規定，香港的實際情況，香港特別行政區應該循序漸進地發展民主政治制度，最終達致全民普選行政長官及立法議會。

(ii) 本研究所雖然原則上全力支持香港特別行政區全力加速民主政制發展，不過由於社會對問題剛開始討論，最重要的是能各方面達成共識。經深思熟慮後，在現階段，本研究所對 2007/08 年及以後之民主政制發展之速度，及各屆行政長官及立法議會之具體選舉安排，持開放態度，對各團體提出之具體方案，亦暫不表示任何具體態度。

(iii) 不過，回顧七一遊行之歷史意義，可見香港市民對民主政制的發展實在相當殷切，研究所明白香港市民的願望和訴求，全力支持特區政府向中央解釋加快香港民主政制發展步伐的重要性。

政制發展討論的目標

7. 香港政策研究所歡迎特區政府之專責小組能就政制發展之未來方向及步伐廣泛諮詢香港各界人士之意見。今次政制發展之討論，最重要是能全面收集香港各界人士之意見，準確向中央反映。另外，亦要顧全大局，兼顧整個大中華政治局勢之發展，從而增強中港溝通，增加雙方的共同點，最後達到一個香港各界人士以及中央皆可接受的共識。

政制發展討論的原則

8. 基本法第四十五及六十八條已經規定行政長官及立法會成員最終應由普選產生。在討論如何達到此最終目標時，應當注意下列原則：

(i) 嚴格遵循基本法有關民主政制發展之原則，要顧及香港的實際情況，循序漸進，目的是要特區達致長治久安。

(ii) 要理性地理解中央對落實「一國兩制、港人治港、高度自治」之基本方針政策，尋求就“循序漸進”、“最終”及“普選”之定義與中央達成大家都可以接受的理解，並全力爭取儘快在香港發展民主政制。

(iii) 如何在香港推動民主政制發展，是全港市民關心的重要事項，需要全港市民共同努力，坦誠討論，力求共識。在「一國兩制」的框架下，我們亦要儘力兼顧海峽兩岸及國內（特別是北京及鄰近各省市）政經形勢之發展，用「一家人」柔順的態度與中央討論，力求達成各方面皆可接受的進程和方案。

(iv) 是次討論應當充份利用未來三年（2004-2006）的時間，用兩年時間在香港作全面諮詢，使大眾對各界提出的方案都可以有透徹的討論。

(v) 我們應該藉未來兩、三年的討論，喚起廣大市民用客觀、冷靜的態度仔細思考，民主政制成功發展所需要的配套安排及先決因素。香港市民在追求民主政制發展時，亦應清楚明白民主選舉與經濟發展之互動形態，及大家所追求的最終目標為何？

(vi) 在考慮如何進一步發展香港民主政制時，應該參照世界各地成功與失敗的民主政制案例，使港人了解民主政制不單是一人一票之選舉。我們亦應參考 97 年前港英政府成功平衡社會多方面利益的管治經驗，一方面要確保社會各界、各階層的均衡參予，另一方面亦要平衡各界的利益。

(vii) 發展民主政制同時，政府要改善日常管治，經濟，民生等問題，儘量滿足市民在精神及物質上的需要。

對政府的建議

9. 在未來三年，專責小組任重道遠，我們向小組提出下列具體行動的建議：

(i) 專責小組應力爭主動，澄清中央對香港民主訴求可能的誤解，爭取中央理解香港民眾加速民主步伐的訴求。

(ii) 董先生應盡力促進各界與泛民主派的對話及和解，通過改善施政，改善社會過去數年的不和諧狀態和氣氛，以利達成政制發展的共識。

(iii) 政府在今年 9 月前，就政制發展的討論，提出階段性、框架性的時間表，使市民對諮詢工作的進程有清晰的掌握。

(iv) 政府在 07 年前，立足於香港內部共識的基礎上及與中央達成理解的情況下，提出有具體內容、及權威效力的民主政制發展時間表，說明達至普選行政長官及立法會的進程。

政府的公關策略

10. 特區政府應考慮成立一個專門負責公關策略之小組，用開明兼聽的態度，理順與中央及相關人士、國際社會、及香港市民三方面的關係。

(i) 儘力向中央解釋港人並沒有追求港獨的情緒或訴求。大多數的香港人是愛國的，另一方面，香港人亦明白從地緣政治角度來看，追求獨立是不切實際的。

(ii) 通過與各國駐港領事館及商會的適當接觸，闡明特區政府願意聽取及了解國際社會對香港作為一個國際大都會政制發展的關注。不過，亦儘量解釋外國政府公開參予是次討論的敏感性，希望他們能夠儘量避免作高姿態的表態，以減少中央不必要的顧慮。

(iii) 要給予傳媒公關策略充份重視，從開始就要制定策略，由專責小組處理。

(iv) 要管理多方面（包括香港民眾及中央）對政制討論各階段結果的期待，避免引起市民擁有脫離現實或不可行的預期，從而隱藏及激發起社會不安的情緒。

(v) 要動員民間、社會力量表達各方面的意見，以影響及塑造社會主流意見。

(vi) 對傳媒（包括經營者，高層行政人員，編輯以至記者）都要作有效的溝通。

(vii) 專責小組亦應考慮在適當時刻設立廣泛的、全港性的諮詢機制，以確保可廣納民意，增加市民對日後所達成共識之認同感。

宋小莊博士
之意見書

政制發展專責小組秘書

政改徵求意見概要

2004年1月31日下午政制發展專責小組曾蔭泉司長、梁愛詩司長、林瑞麟局長等七人約見宋小莊、梁美芬、顧敏康、周八駿等四位香港人士，徵求對政改的意見。茲將本人在會議中所提意見概括如下：

1. 政制一般包括政府制度、立法制度、司法制度、政黨制度和選舉制度五個方面。前四種制度帶有靜態性，是貫徹落實而不是修改的問題。後一種制度帶有動態性，可能涉及修改調整的問題。基本法有關選舉的條文有的放在基本法正文，以利穩定；有的放在附件，較為機動。

2. 民主發展和法治精神要互相兼顧，不可偏廢，不能脫離基本法的軌道。選舉制度檢討須符合基本法及其附件的規定。由於基本法是全國性法律，其附件又是基本法的組成部分，其修改又有批准或備案的要求，政制檢討難免涉及中央和香港特區關係。

3. 政制檢討大致可分為三個階段，第一階段是在廣泛諮詢、取得共識的基礎上，由具有法定解釋權的全國人大常委會決定是否需要修改。第二階段是提出符合基本法規定各項原則的方案，可被立法會、行政長官和全國人大常委會接受。第三階段是進行本地立法工作。在第一、二階段，中央應起主導作用，在第三階段，則由特區主導為宜。

4. 1989年基本法（草案）有時間表，規定在第三任行政長官任內檢討，第四任實施，又規定在第四屆立法會任內檢討，第五屆實施。即使按此安排，現在檢討為時太早。但值得注意的是，1990年通過的基本法附件，已取消了時間表，2007年以後「如需修改」包含了可修改、可不修改的意思。

5. 對是否修改，香港社會要取得共識，才能按法定程序提出解釋，全國人大常委會對釋法十分慎重，不輕易釋法。如全國人大常委會不釋法，則兩個附件不需修改，以後各屆行政長官和立法會仍按原產生辦法產生，不發生法律真空問題。

6. 如全國人大常委會釋法決定要修改，則兩個附件可按原附件規定的程序修改，不必按基本法第 159 條的規定修改。但任何修改仍須符合「實際情況」和「循序漸進」等原則。對實際情況，不同階層、界別、站在不同立場的人可能有不同的理解，未必能形成共識。但對循序漸進，似可有客觀標準。例如，今年九月第三屆立法會直選和功能團體選舉各佔一半，該立法會尚未產生，更未運作，為何要檢討，現在檢討恐不符合循序漸進的原則。又如行政長官第一、二屆分別由 400 名推委和 800 名選委間選產生，而最終達至由提名委員會提名後普選產生的目標，此稱直選，如由間選一步到位直選，恐亦不符合循序漸進的原則。

7. 民主黨對基本法選擇性遵守，片面性理解，不符合法治精神。法治要求政府、個人、法人、團體遵守法律，不能各取所需，不允許有特權，民主黨為甚麼可以這樣做呢？

8. 政制發展和檢討顧名思義不限於選舉制度。對選舉制度以外的政制，專責小組是否也打算檢討，值得研究。前不久蕭教授來港時提到不信任案和違憲審查，指出基本法實施可能存在的問題。此外終審法院不承認全國人大常委會的主動釋法權，被授權者不承認授權者的確認，也值得檢討。當然存在問題並不限於上述情況，對貫徹基本法政制部分進行檢討，有利於實行行政主導，正確處理行政、立法和司法的關係，與時併進，提高施政水平。

以上當否，請轉交　貴組研究，謝謝　貴組的邀見和關注。

敬祝

研安！

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2004 年 2 月 2 日

對政府三個問題的個人意見

顧敏康（城大法律學院）

政府就有關香港政制改革提出三個問題：第一，香港政制發展如何符合《基本法》的基本原則，尤其是“一國兩制”的原則；第二，如何理解《基本法》第 45 條和第 68 條中規定的“實際情況”；第三，如何理解姬鵬飛所說的，“必須兼顧社會各階層的利益，有利於資本主義的發展”。本人認爲，這三個問題實際上可以歸結爲兩個問題：第一個問題是香港政制發展如何符合《基本法》的基本原則；第二個問題是如何理解和處理香港的“實際情況”。

就第一個問題而言，本人的立場是這樣的：《基本法》是中國國家法律的一部分，也是香港的“憲法性法律文件”。香港的政制改革，尤其是“普選”的問題，必須符合《基本法》的原則和具體規定。香港要進行政制改革，所直接面臨的問題可能是修改《基本法》附件一和附件二中的行政長官和立法會的產生辦法。雖然，附件一和附件二都屬於《基本法》的組成部分，但是，附件一和附件二最後條款都明確將修改有關產生辦法“授權”給香港特區。當然，本人必須指出，這裡所說的“授權”是有條件限制的：一方面，附件一和附件二都明確規定了三個必須

同時具備的必要要件，即必須（1）經立法會全體議員三分之二多數通過；（2）行政長官同意；和（3）報全國人民代表大會常務委員會批准或備案。另一方面，產生辦法的修改還必須受制於《基本法》第 45 條和第 68 條條文的具體限制，即要考慮“實際情況和循序漸進的原則”。毫無疑問，香港政制發展必然涉及到中央和香港特區的關係，以及對《基本法》有關原則和規定的理解（而對有關法律條文的最終解釋權歸中央）。因此，香港的政制發展必然離不開中央的參與和最終把關，而任何將中央的參與視爲對“港人治港”和“高度自治”的沖擊、乃至“破壞”，都是站不住腳的。由於香港政制發展要受到前述諸條件的限制，香港與中央的溝通就顯得十分重要；相對而言，討論誰爲主導修改產生辦法的問題只是屬於技術層面的問題了。

就第二個問題而言，本人認爲香港政府應當就“普選”問題持開放的態度，廣泛聽取各界對“實際情況”的認識和理解，包括授權有關機構進行廣泛的問卷調查，以了解“普選”所必須具備的條件（包括財力、物力和市民對普選的認識接受程度等），以及“普選”對現有資本主義體制的具體影響。政府對“普選”持開放態度，就是不應該迴避對普選的話題，而且應當主導對“普選”可能性（或缺乏可能性）的具體和深入的探討。雖然，根據《基本法》的有關規定，可以推定出 2007

年後普選的可能性，但是，是否最終普選必然受制於“實際情況和循序漸進的原則”。這裡尤其要考慮什麼是香港目前的“實際情況”，包括是否要考慮香港過去漫長的被殖民歷史以及回歸中國後的短暫歷史和具體情況。如果不具備普選的實際可能性，就應當按照“循序漸進”的原則逐步進行。這確實需要社會各界的廣泛討論，以求達成共識。爲此，本人同意這樣一種立場：不應當爲何時進行普選設立時間表，而應當首先考慮討論普選的條件（也即普選的必要實際情況）是否已經成熟（或大體成熟）；相反，不顧實際情況而片面追求普選的時間表，就會產生“本末倒置”和“欲速則不達”的情況。

《基本法》制定於90年代初，當時的立法者顯然無法預見香港近期的變化情況。香港近期的某些變化，都豐富了“一國兩制”實踐的具體內容。香港近期對政制發展的討論，也一定會爲《基本法》的具體實踐揭開新的一頁。筆者相信，只要堅持《基本法》的基本原則和具體規定，以及對普選的理性探討，香港的政制發展就會對香港的進一步繁榮昌盛注入更大的活力。

新論壇
NEW FORUM

凝聚中層力量・維護整體利益

新世紀論壇
就政制發展意見摘要

二零零四年二月三日

正確認識基本法，有助加快民主進程

——新論壇就政制發展意見摘要

2004 年 2 月 3 日

引言：

回歸六年以來，特區政府一直未有展開政制發展的檢討，令市民的民主訴求未能得到回應。而香港社會過去就政制發展的討論，一直只停留在行政長官和立法會選舉方法的爭議，對於政制發展涉及的其他範疇，包括中央與地方關係等，都被忽略。新論壇過往的調查顯示，市民對政改步伐存在不同看法，並沒有主流意見，故新論壇過去一直促請政府盡快展開全面的政改諮詢，讓社會在 07 年第三屆行政長官選舉前，有更充分的時間進行全面而深入的討論，達成一套共識方案。

本年度施政報告提出成立高層專責小組，就政制發展諮詢中央政府有關部門和香港社會各界意見，總算對市民的訴求作出回應。但礙於過去香港一直未有全面而有系統地討論政制問題，加上基本法和一國兩制的概念未有得到充份宣傳和推廣，導致一般市民對政制發展欠缺全面理解。今年一月，兩位內地法律專家在港就政改問題發表一些意見後，引起一陣反響，正好反映普羅市民對基本法中有關「一國兩制」及中央與特區關係的認識不足。因此，新論壇提出下列五項建議：

1. 加強市民認識及討論基本法及一國兩制：

新論壇認為，特區政府有責任向中央反映港人意見，同時亦需要提醒市民，*政制發展不單是香港特區內部問題，而且會影響著全國人民、兩岸局勢和國際關係等，故市民討論政制問題，必須從全面和長遠的角度出發，結合國家與地方的利益。若港人若能對基本法、對一國兩制有正確理解，將有助於中央與香港社會進行理性務實的討論，達成共識，促進全面直選立法會和普選特首的進程。*故此，特區政府需盡快加強有關宣傳和教育工作，具體工作包括：

1.1 強化組織架構：

基本法推廣督導委員會過去未有充分發揮應有作用；民間組織則阻於資源所限，未能大規模展開有關宣傳，導致過去幾年的基本法宣傳教育工作相當有限。因此，*特區政府應該強化，甚至重整基本法推廣督導委員會，並適當調撥資源，充份發揮民間力量*，協助推動市民對基本法的正確認識。

1.2 釐定具體題目：

特區政府過去就基本法的宣傳教育欠缺重點方向，而且往往只重於宣傳市民的權利，忽略教育市民應有的義務，對於中央與特區關係的教育更是乏善足陳。因此，特區政府必須清楚釐訂基本法內需要普及及深化認識的重點項目，尤其在特區政府就重大政策展開諮詢前，更要確保市民對基本法內有關條文具正確而全面的認識，才能引領社會進行理性討論。例如*在政制的發展問題上，政府除了要加強宣傳基本法內第四章有關政治制度的內容外，還須促使市民認識中央與特區關係、特區居民的應有義務等。*

1.3 加強各級公民教育：

除了公眾宣傳，理解和討論基本法的工作也應由學校開始，故特區政府應加強大、中、小學公民教育中有關認識基本法的工作，老師需增加對基本法的理解，以促進學生認識及討論基本法。另外，政府還要確保公務員和資助機構員工對基本法具充份認識。

2. 建立具廣泛代表性的溝通平台：

鑑於政制發展中多項問題涉及「一國」的原則，包括行政長官的委任，故特區政府應與中央研究，參考過去起草基本法過程中諮詢的經驗，設立一個廣納各方人士的平台，讓市民更有效與中央政府溝通。其中一個可考慮的方案是*由人大常委會會轄下的基本法委員會，與特區政府緊密合作，成立一個具廣泛代表性的大型諮詢委員會*，參考過去基本法諮詢委員會的方式，廣納中央及特區政府代表，以及香港社會各界人士，展開全面而有系統的諮詢，並進行理性務實的溝通，透過政治協商達致一套中央政府與香港都能接受的共識方案。

3. 「點止直選咁簡單？」——全盤考慮政制發展

政制改革的目標是優化政府管治(Better Governance)，當中涉及的問題廣泛而複雜。*在政制檢討必須全盤檢討特區的政治制度，行政長官和立法會的選舉制度只是其中一個環節，其他重點包括討中央與特區關係、行政與立法關係、問責制的運作、政黨的角色等，都是核心問題，應該一併考慮，才能達致更好管治的目標。*

4. 釐訂清晰時間表

基本法內訂明特區的政制循序漸進發展，若將來達成的政改方案需經一段時間後，才逐步引入普選行政長官和全面直選立法會，方案亦需清楚訂明時間表，循序漸進的「序」爲何，以回應市民訴求，避免不必要的爭拗。

5. 確保均衡參與

目前香港政黨政治仍在發展階段，而新論壇過去的調查亦顯示，市民對政改步伐緩急未有主流意見。故在政制發展的過程中，必須確保社會各階層能均衡參與，務求令社會各界的利益得到充分平衡。

新世紀論壇

「政制發展與中央角色」調查數據分析

2004 年 2 月 12 日

1.摘要：

- ***四成受訪者不贊成中央參與政制發展討論，***內地法律專家較早前在港的講話內容和態度，亦有四成多受訪者不接受。

- ***市民普遍憂慮中央的參與會拖　政改步伐，並希望在討論過程中優先考慮港人意見***。

- 曾參與七一遊行的受訪者不接受抗拒中央參與的程度比其他人更大，包括不接受中央參與討論，憂慮中央會拖　政改，以及希望優先考慮港人意見的人數比例，都明顯高於沒有遊行者。

- ***市民(無論曾否參與七一遊行)仍普遍期望，與中央建立更多渠道溝通***，將有助於達到港人與中央都接受的共識。但對於政府的專責小組在協助市民與中央溝通上發揮的成效，市民仍未有主流意見。

- 對於政改的步伐，市民仍未有主流意見，整體而言，***與 03 年 8-9 月相比，市民似乎趨向較溫和的進程***，包括支持「盡快全面直選特首和立法會」以及選擇修改基本法，08 年直接普選行政長官的受訪者，比例都略減。

- 對於 08 立法會選擇產生方法，支持和反對保留功能議席者分別維持在 3 成多和 2 成多；支持增加直選議席比例及減少功能組別議席者，則略爲上升。但***整體而言，仍未有明顯的主流意見。***

- ***曾參與七一遊行者較傾向較進取的政改步伐***，包括較多人支持盡快普選特首和立法會，較多人支持改基本法，直接普選特首，以及全面直選立法會。

- ***市民對於以七一遊行的意見亦轉趨冷靜***，贊成和不贊成這次遊行者的比例，在 03 年 7 月至 04 年 1 月的比例都維持不變，但非常贊成者所佔的比例卻明顯下降。而表示會再參與爭取盡快普選特首和立法會遊行者，也明顯下降。但曾參與七一遊行者，仍有逾六成人表示會再參與這類遊行。

2. 研究方法：

- **媒體**：音頻電話調查系統
- **對象**：隨機抽樣，選取 18 至 65 歲人士
- **訪問日期及成功受訪人數：**
  - 04 年 1 月 19-27 日：1802 人
  - 03 年 8 月 27-9 月 14 日：1753 人(只用於 2.2 部)
  - 03 年 7 月 24-27 日：1666 人(只用於 2.3 部)
  - 03 年 9 月 16 日-10 月 1 日：2128 人(只用於 2.3 部)

- **可能導致誤差因素：**
  - 表示自己屬功能組別選民者佔整體受訪者約 20%，比例高於功能組別選民在全港成年人口中的實際比例。
  - 表示自己曾參加七一遊行者的佔約受訪者 30%，比例高於實際參與遊行者佔全港成年人口的比例。

- **導致以上兩項偏差的原因：**
  - 該次調查只訪問 18 至 65 歲人士
  - 較年輕、知識水平較高，以及較關心時事的人士，往往較其他人更願意接受這類訪問。

3. 觀察及分析：

1. 在 1802 名受訪者中，有 37.7%選擇政制改革「循序漸進咁增加普選成份，而且要有清晰既時間表」，佔最大比例，其次有 32.9%認爲要「盡快全面直選立法會同埋行政長官」。在中層階級中，要求「盡快全面直選立法會同埋行政長官」的比例較整體高〔38.6%〕，但選擇「循序漸進咁增加普選成份，而且要有清晰既時間表」〔36.3%〕的比例相約；基層有近四成「循序漸進咁增加普選成份，而且要有清晰既時間表」，佔基層的最大部分〔見表 1a〕。

2. 曾參與七一遊行者，明顯較傾向盡快全面普選特首和立法會(50.9%)，而未有參加七一遊行者，則以循序漸進發展，但要有清晰時間表(38.7%) (見表 1b)。

3. 比較 03 年 8-9 月和 04 年 1 月，要求「盡快全面直選立法會同埋行政長官」有所下低降〔從 37.3%降至 32.9%〕〔見表 1c〕，反映市民對政制發展的進程，略爲轉趨溫和。

4. 被問及是否贊成中央政府參與香港政制發展的討論，整體受訪者中，有四成〔41.1%〕表示「不贊成」，表示「贊成」和「一半一半」者，分別佔 30.3%及 24.9%〔表 2a〕。其中有參加七一遊行者，不贊成的比例達 58.4%，沒參加遊行者，贊成和不贊成的比例相若(37.2%及 32.4%)(表 2b)。

5. 對於內地法律專家的講話內容和態度，整體受訪者中，有近五成〔47.4%〕表示兩者皆不同意，反映情況與表 2 相似；但 32%表示「同意佢地講既內容，但唔同意佢地既態度」，反映專家在討論政改問題時的態度不爲市民接受〔表 3a〕。

6. 有參加七一遊行者，不接受兩位法律專家的講話內容和態度的比例高達 67.6%，但沒有參加遊行者則明顯較溫和，「同意佢地講既內容，但唔同意佢地既態度」，以及內容及態度均不同意者，各佔 37.3%。(表 3b)

7. 問及中央參與政改討論有何影響，有近五成〔46.8%〕認爲會拖慢政制發展的步伐，其中中產更有 53.2%認爲如此〔見表 4a〕。而有參加七一遊行和沒有參加七一遊行者，認爲中央參與會拖慢政改者，也分別佔 62.0%和 39%(見表 4b)。反映市民對中央參與政改討論的憂慮，這也可能是市民不贊成中央參與的部分原因。

8. 被問及應如何處理港人和中央意見時，有過半〔53.7%〕認爲「應該先考慮港人意見，然後再向中央政府反映」、32.4%認爲「由香港市民同中央一齊研究，尋求雙方都接受既共識」〔見表 5a〕，顯示港人普遍希望自己意見能得到優先考慮，但仍有相當部分市民希望與中央一同研究，取得共識。

9. 有參加七一遊行者，認爲要優先考慮港人意願的比例更高達 65.5%，未有參加遊行者持

這種意見的比例只有 47.8%，反映參加遊行者較希望優先考慮港人的意願(表 5b)。

10. 如有多一些渠道與中央溝通，受訪市民一般〔66.1%〕認爲有助於達成一套雙方皆可接受的方案〔見表 6a〕。有參加七一遊行，以及沒有參加遊行者，持這意見者的比例分別達 59.7%及 69.3%(表 6b)。可見***市民雖然抗拒中央參與，但仍希望就政制問題與中央加強溝通。***

11. 被問及由曾司長帶領的專責小組是否足以協助港人與中央溝通時，沒有主流意見：30%認爲「足夠」，27.8%認爲「不足夠」，更有 37%認爲「一半一半」〔見表 7a〕。

12. 有參加七一遊行者認爲不足夠的比例較高(42.3%)，沒參加遊行者認爲足夠的比例則較高(34.7%)(表 7b)，反映有參與遊行者期望更期望有較多溝通渠道。

13. 被問及下任特首應如何產生時，有 36.7%認爲應「修改基本法，直接由全民直選產生」、27.6%認爲「按基本法規定，由一個提名委員會按民主程序提名後，再普選產生」；值得注意的是，雖然中產階級中仍是選擇前者〔36.3%〕比後者〔31.7%〕爲高，但中產階級〔31.7%〕較其他階層更接受「按基本法規定，由一個提名委員會按民主程序提名後，再普選產生」 (表 8a)。

14. 有參加七一遊行者之中，過半人(52.1%)認爲應修改基本法，直接由全民直選特首。而沒有遊行者則沒有主流意見(表 8b)。

15. 按 03 年 8 月與 04 年 1 月所得結果來看，認爲「修改基本法，直接由全民直選產生」有微降〔從 41.6%降至 36.7%〕，認爲「按基本法規定，由一個提名委員會按民主程序提名後，再普選產生」有微升〔從 24.3%升至 27.6%〕〔見表 8c〕；可見市民在有關議題上的意見似乎趨向溫和。

16. 被問及從功能組別產生的議員對議會工作是否有貢獻時，有近三成〔29.3%〕認爲有、42.9%認爲一半一半、二成認爲沒有〔見表 10a〕；非功能組別選民中，亦有近三成〔27.9%〕認爲是有貢獻的，與認爲沒有貢獻者的比例 23.4%相近〔見表 10b〕。這結果與 03 年 8-9 月的調查結果近似〔見表 10d〕。

17. 有參加七一遊行者，認爲功能組別對議會工作有貢獻與沒貢獻者的比例相若，(分別爲 25.4%及 22.6%)。而沒有遊行者，認爲有貢獻者的比例的比例(31.1%)更高於認爲沒有貢獻者(16.5%)(表 10c)。

18. 被問及功能組別是否值得保留時，有過三成〔34%〕表示值得、35.2%表示一半一半、二成表示不值得〔見表 11a〕；非功能組別選民，亦有三成〔32%〕認爲值得保留、35%表示一半一半〔見表 11b〕；這結果與 03 年 8-9 年調查近似(表 11d)。

19. 參加七一遊行者，認爲不值得保留功能組別者(35%)多於認爲值得保留者(26.7%)，沒有參加遊行者，則有 37.8%支持保留功能組別，比例高於不贊成保留者(15.4%)(表 11c)。

20. 就 08 年立法會產生方法並沒有主流意見，選「增加多 d 直選議席，功能組別議席維持係現時既 30 個」、「增加多 d 直選議席，減少 d 功能組別議席」和「全部議席由分區直選產生」皆有二成的受訪者支持〔見表 12a〕；非功能組別選民的傾向與整體受訪者相若，功能組別選民則較多人傾向「增加多 d 直選議席，功能組別議席維持係現時既 30 個」〔25.5%〕(表 12b)。

21. 曾參加七一遊行者之中，選擇「增加多 d 直選議席，減少 d 功能組別議席」和「全部議席由分區直選產生」者較多，分別佔 28.9%及 29.4%。沒有參與遊行者，則沒有明顯的主流意見(12c)。

22. 就同一問題比較兩次結果，除了贊成「增加多 d 直選議席，減少 d 功能組別議席」的選項人數較多〔由 17.6%升至 21.6%〕，其他選項變化不大〔見表 12d〕。

23. 表示有參與去年七一遊行的受訪者有 33.6%，其中中產者佔 42.8%〔見表 13〕；扣除未有參與該次遊行者〔餘下 1197 人〕，有 64.4%支持該次遊行的目的〔見表 14〕；被問及如再有爭取兩個普選的請願遊行時會否參與，有近四成〔39.6%〕表示會，尤以中產階級〔45.4%〕爲甚〔見表 15a〕。

24. 比較三段時期所作的調查，受訪者中表示有參與遊行的人都約爲三成。〔表 13b〕

25. 撇除參與七一遊行者，表示贊成該次遊行目的的受訪者，由 03 年 7 月至 04 年 1 月，一直維持在約 63%的水平，但表示非常贊成者的比例由 03 年 7 月的 39.2%減至 04 年 1 月的 33.9%，而「贊成」者的比例則由 23.5%增至 30.5%〔見表 14b〕，反映贊成者的意見趨向較溫和。

26. 比較 03 年 9 月及 04 年 1 月的數據，就會否參與爭取兩個普選請願遊行的問題，表示「會」者的比例明顯降低〔從 48.8%降至 39.6%〕，當中表示「一定會」者的比例由 29.9%降至 20.5%，表示不會的維持不變〔24.6%〕，但值得留意的是，表示「一定不會」的由 13.8%跌至 6.3%，而表示「不會」者則由 10.8%增至 18.3%。表示「一半一半」者的比例由 17.1%增至 25.3%〔見表 15a〕。反映無論是傾向參與和不參與遊行者，對於以遊行方式表達意見的態度轉趨溫和(表 15c)。

27. 曾參與七一遊行者的比例，表示會再參與遊行的比例佔 68.4%，明顯高於沒有參與遊行者的比例(25.1%)(表 15b)

調查數據：

1a. 你認爲香港既政制發展，包括立法會同埋行政長官選舉方法，應該點樣改革呢？					
	階層(自我界定)				總數
	基層	中層	上層	唔知道	
維持現狀，無需要改變	7.9%	7.0%	7.3%	9.6%	7.8%
逐步增加普選成份，但無需要制定時間表	15.3%	15.7%	17.1%	14.9%	15.4%
循序漸進咁增加普選成份，而且要有清晰既時間表	**39.8%**	**36.3%**	41.5%	34.1%	**37.7%**
盡快全面直選立法會同埋行政長官	31.0%	**38.6%**	22.0%	26.1%	32.9%
無意見	5.9%	2.4%	12.2%	15.3%	6.2%
總數	844 (100%)	656 (100%)	41 (100%)	261 (100%)	1802 (100%)

1b. 你認爲香港既政制發展，包括立法會同埋行政長官選舉方法，應該點樣改革呢？			
	是否有參加七一遊行		
	有	無	總數
維持現狀，無需要改變	3.5%	10.0%	7.8%
逐步增加普選成份，但無需要制定時間表	7.9%	19.2%	15.4%
循序漸進咁增加普選成份，而且要有清晰既時間表	35.9%	**38.7%**	37.7%
盡快全面直選立法會同埋行政長官	**50.9%**	23.7%	32.9%
無意見	1.8%	8.4%	6.2%
總數	605 (100%)	1197 (100%)	1802 (100%)

1c. 你認爲香港既政制發展，包括立法會同埋行政長官選舉方法，應該點樣改革呢？		
	訪問日期	
	03 年 8-9 月	04 年 1 月
維持現狀，無需要改變	8.2%	7.8%
逐步增加普選成份，但無需要制定時間表	12.8%	15.4%
循序漸進咁增加普選成份，而且要有清晰既時間表	34.7%	37.7%
盡快全面直選立法會同埋行政長官	**37.3%**	**32.9%**
無意見	7.0%	6.2%
總數	1753 (100%)	1802 (100%)

2a. 根據基本法附件一同附件二既規定，2007 年以後，行政長官同立法會既產生辦法如果要修改，要立法會三分之二議員贊成、同埋特首同意之外，仲分別要全國人大常委會批准同埋備案。你贊唔贊成中央政府參與香港政制發展既討論呢？					
	階層(自我界定)				總數
	基層	中層	上層	唔知道	
非常贊成	13.0%	16.2%	24.4%	14.6%	14.7%
都幾贊成	15.0%	17.4%	17.1%	13.0%	15.6%
一半一半	26.5%	21.2%	26.8%	28.7%	24.9%
唔係幾贊成	21.4%	22.9%	9.8%	20.7%	**21.6%**
完全唔贊成	20.1%	19.8%	19.5%	16.9%	**19.5%**
無意見	3.8%	2.6%	2.4%	6.1%	3.7%
總數	844 (100%)	656 (100%)	41 (100%)	261 (100%)	1802 (100%)

2b. 根據基本法附件一同附件二既規定，2007 年以後，行政長官同立法會既產生辦法如果要修改，要立法會三分之二議員贊成、同埋特首同意之外，仲分別要全國人大常委會批准同埋備案。你贊唔贊成中央政府參與香港政制發展既討論呢？

	是否有參加七一遊行		總數
	有	無	
非常贊成	6.9%	**18.5%**	14.7%
都幾贊成	9.6%	**18.7%**	15.6%
一半一半	22.5%	26.1%	24.9%
唔係幾贊成	**29.1%**	17.8%	**21.6%**
完全唔贊成	**29.3%**	14.6%	**19.5%**
無意見	2.6%	4.2%	3.7%
總數	605 (100%)	1197 (100%)	1802 (100%)

3a. 最近內地兩位法律專家，係香港提出「一國兩制」必須以「一國」爲前提，香港既政制改革問題，中央有權管到底。你同唔同意佢地講話既內容同態度呢？

	階層(自我界定)				總數
	基層	中層	上層	唔知道	
完全同意	10.8%	11.9%	19.5%	11.1%	11.4%
同意佢地講既內容，但唔同意佢地既態度	31.0%	32.3%	31.7%	34.1%	32.0%
佢地講既內容同態度都不同意	48.1%	50.2%	39.0%	39.8%	**47.4%**
無意見	10.1%	5.6%	9.8%	14.9%	9.2%
總數	844 (100%)	656 (100%)	41 (100%)	261 (100%)	1802 (100%)

3b. 最近內地兩位法律專家，係香港提出「一國兩制」必須以「一國」爲前提，香港既政制改革問題，中央有權管到底。你同唔同意佢地講話既內容同態度呢？

	是否有參加七一遊行		總數
	有	無	
完全同意	4.6%	14.9%	11.4%
同意佢地講既內容，但唔同意佢地既態度	21.3%	**37.3%**	32.0%
佢地講既內容同態度都不同意	**67.6%**	**37.3%**	**47.4%**
無意見	6.4%	10.5%	9.2%
總數	605 (100%)	1197 (100%)	1802 (100%)

4a. 你覺得中央政府參與政改既討論，對香港既政制發展有乜野影響呢？

	階層(自我界定)				總數
	基層	中層	上層	唔知道	
會加快政制發展	13.9%	15.2%	31.7%	12.6%	14.6%
會拖慢政制發展	47.3%	**53.2%**	34.1%	31.4%	**46.8%**
無乜影響	16.8%	17.2%	17.1%	18.0%	17.1%
唔知道	22.0%	14.3%	17.1%	37.9%	21.4%
總數	844 (100%)	656 (100%)	41 (100%)	261 (100%)	1802 (100%)

4b. 你覺得中央政府參與政改既討論，對香港既政制發展有乜野影響呢？

	是否有參加七一遊行		總數
	有	無	
會加快政制發展	11.9%	16.0%	14.6%
會拖慢政制發展	**62.0%**	**39.2%**	**46.8%**
無乜影響	11.2%	20.1%	17.1%
唔知道	14.9%	24.7%	21.4%
總數	605 (100%)	1197 (100%)	1802 (100%)

5a. 你認爲討論政制發展時，應該點樣處理香港市民同中央既意見呢？

	階層(自我界定)				總數
	基層	中層	上層	唔知道	
由香港市民同中央一齊研究，尋求雙方都接受既共識	33.5%	32.5%	34.1%	28.4%	**32.4%**
應該先考慮中央政府既意見，然後由港人討論	8.9%	10.4%	19.5%	13.4%	10.3%
應該先考慮港人意見，然後再向中央政府反映	53.8%	55.5%	43.9%	50.6%	**53.7%**
無意見	3.8%	1.7%	2.4%	7.7%	3.6%
總數	844 (100%)	656 (100%)	41 (100%)	261 (100%)	1802 (100%)

5b. 你認爲討論政制發展時，應該點樣處理香港市民同中央既意見呢？

	是否有參加七一遊行		總數
	有	無	
由香港市民同中央一齊研究，尋求雙方都接受既共識	28.1%	34.6%	**32.4%**
應該先考慮中央政府既意見，然後由港人討論	4.8%	13.1%	10.3%
應該先考慮港人意見，然後再向中央政府反映	**65.5%**	**47.8%**	**53.7%**
無意見	1.7%	4.5%	3.6%
總數	605 (100%)	1197 (100%)	1802 (100%)

6a. 你覺得係討論政制檢討既過程中，如果香港市民可以有多 d 渠道同中央溝通，可唔可以幫助達成一套香港同中央都接受既方案呢？

	階層(自我界定)				總數
	基層	中層	上層	唔知道	
一定可以	30.6%	28.8%	29.3%	24.1%	**29.0%**
應該都可以	36.5%	39.8%	39.0%	32.2%	**37.1%**
一半一半	22.2%	21.3%	22.0%	26.4%	22.5%
唔係幾可以	6.6%	5.9%	4.9%	5.4%	6.2%
完全唔可以	1.5%	1.7%	0%	2.7%	1.7%
無意見	2.6%	2.4%	4.9%	9.2%	3.6%
總數	844 (100%)	656 (100%)	41 (100%)	261 (100%)	1802 (100%)

6b. 你覺得係討論政制檢討既過程中，如果香港市民可以有多d 渠道同中央溝通，可唔可以幫助達成一套香港同中央都接受既方案呢？

	是否有參加七一遊行		總數
	有	無	
一定可以	**26.1%**	**30.4%**	**29.0%**
應該都可以	**33.6%**	**38.9%**	**37.1%**
一半一半	25.5%	21.0%	22.5%
唔係幾可以	9.8%	4.3%	6.2%
完全唔可以	2.6%	1.3%	1.7%
無意見	2.5%	4.1%	3.6%
總數	605 (100%)	1197 (100%)	1802 (100%)

7a. 特區政府成立左一個由政務司司長曾蔭權領導既專責小組，研究涉及政制發展既基本法條文，而且同時向中央政府，同埋香港社會徵詢意見。你認爲呢種安排，足唔足夠幫香港人同中央溝通呢？

	階層(自我界定)				總數
	基層	中層	上層	唔知道	
非常足夠	9.8%	7.3%	7.7%	8.8%	8.7%
都幾足夠	20.3%	23.6%	25.6%	17.9%	21.3%
一半一半	36.5%	36.8%	35.9%	39.6%	37.0%
唔係幾足夠	22.3%	22.3%	17.9%	15.4%	21.2%
完全唔足夠	5.7%	7.9%	7.7%	5.8%	6.6%
無意見	5.4%	2.1%	5.1%	12.5%	5.2%
總數	844 (100%)	656 (100%)	41 (100%)	261 (100%)	1802 (100%)

7b. 特區政府成立左一個由政務司司長曾蔭權領導既專責小組，研究涉及政制發展既基本法條文，而且同時向中央政府，同埋香港社會徵詢意見。你認爲呢種安排，足唔足夠幫香港人同中央溝通呢？

	是否有參加七一遊行		總數
	有	無	
非常足夠	5.7%	10.1%	8.7%
都幾足夠	14.2%	24.6%	21.3%
一半一半	35.8%	37.6%	37.0%
唔係幾足夠	**28.5%**	17.8%	21.2%
完全唔足夠	**13.8%**	3.2%	6.6%
無意見	2.1%	6.7%	5.2%
總數	605 (100%)	1197 (100%)	1802 (100%)

8a. 根據基本法第 45 條規定，行政長官既最終產生辦法，係由一個具廣泛代表性的提名委員會，按民主

程序提名後，再進行普選產生。你認爲下一屆既特首應該點樣產生呢？					
	階層(自我界定)				總數
	基層	中層	上層	唔知道	
維持翻用 800 人既選舉委員會選出來	5.2%	4.6%	7.3%	8.8%	5.5%
用一個有人數多 d，有多 d 民意代表既選委會選出來	20.4%	19.2%	14.6%	21.1%	19.9%
按基本法規定，由一個提名委員會按民主程序提名後，再普選產生	**27.0%**	**31.7%**	19.5%	20.3%	**27.6%**
修改基本法，直接由全民直選產生	**38.0%**	**36.3%**	43.9%	32.6%	**36.7%**
其他方法	3.8%	6.1%	9.8%	5.4%	5.0%
無意見	5.6%	2.1%	4.9%	11.9%	5.2%
總數	844 (100%)	656 (100%)	41 (100%)	261 (100%)	1802 (100%)

8b. 根據基本法第 45 條規定，行政長官既最終產生辦法，係由一個具廣泛代表性的提名委員會，按民主程序提名後，再進行普選產生。你認爲下一屆既特首應該點樣產生呢？			
	是否有參加七一遊行		總數
	有	無	
維持翻用 800 人既選舉委員會選出來	2.3%	7.2%	5.5%
用一個有人數多 d，有多 d 民意代表既選委會選出來	10.7%	24.6%	19.9%
按基本法規定，由一個提名委員會按民主程序提名後，再普選產生	27.3%	27.7%	**27.6%**
修改基本法，直接由全民直選產生	**52.1%**	29.0%	**36.7%**
其他方法	5.5%	4.8%	5.0%
無意見	2.1%	6.8%	5.2%
總數	605 (100%)	1197 (100%)	1802 (100%)

8c.根據基本法第 45 條規定，行政長官既最終產生辦法，係由一個具廣泛代表性的提名委員會，按民主程序提名後，再進行普選產生。你認爲下一屆既特首應該點樣產生呢？		
	訪問日期	
	03 年 8 月	04 年 1 月
維持翻用 800 人既選舉委員會選出來	6.9%	5.5%
用一個有人數多 d，有多 d 民意代表既選委會選出來	20.2%	19.9%
按基本法規定，由一個提名委員會按民主程序提名後，再普選產生	24.3%	27.6%
修改基本法，直接由全民直選產生	**41.6%**	**36.7%**
其他方法	2.8%	5.0%
無意見	4.2%	5.2%
總數	1753 (100%)	1802 (100%)

9a. 你係唔係立法會選舉既功能組別選民呢？					
	階層(自我界定)				總數
	基層	中層	上層	唔知道	
係	16.0%	30.3%	19.5%	17.6%	21.5%

唔係	64.5%	58.8%	61.0%	50.6%	60.3%
唔知道	19.5%	10.8%	19.5%	31.8%	18.1%
總數	844 (100%)	656 (100%)	41 (100%)	261 (100%)	1802 (100%)

9b. 你係唔係立法會選舉既功能組別選民呢？

	是否有參加七一遊行		總數
	有	無	
係	27.1%	18.7%	21.5%
唔係	59.5%	60.7%	60.3%
唔知道	13.4%	20.6%	18.1%
總數	605 (100%)	1197 (100%)	1802 (100%)

9c. 你係唔係立法會選舉既功能組別選民呢？

	訪問日期	
	03 年 8-9 月	04 年 1 月
係	22.5%	21.5%
唔係	61.4%	60.3%
唔知道	16.1%	18.1%
總數	1753 (100%)	1802 (100%)

10a. 你認爲由功能組別產生既立法會議員，對議會工作有無貢獻呢？

	階層(自我界定)				總數
	基層	中層	上層	唔知道	
非常有貢獻	6.5%	7.5%	7.3%	4.6%	**6.6%**
都幾有貢獻	22.6%	23.3%	24.4%	21.1%	**22.7%**
一半一半	43.8%	40.4%	46.3%	45.6%	**42.9%**
無乜貢獻	15.8%	21.3%	12.2%	12.3%	17.2%
完全無貢獻	3.3%	3.2%	2.4%	1.9%	3.1%
冇意見	7.9%	4.3%	7.3%	14.6%	7.5%
總數	844 (100%)	656 (100%)	41 (100%)	261 (100%)	1802 (100%)

10b. 你認爲由功能組別產生既立法會議員，對議會工作有無貢獻呢？

	是否功能組別選民			總數
	是	否	不知道	
非常有貢獻	11.9%	**5.5%**	4.0%	6.6%
都幾有貢獻	29.1%	**22.4%**	15.9%	22.7%
一半一半	39.9%	42.0%	49.2%	42.9%
無乜貢獻	14.2%	**20.3%**	10.4%	17.2%
完全無貢獻	3.1%	**3.1%**	2.8%	3.1%
冇意見	1.8%	6.5%	17.7%	7.5%
總數	388 (100%)	1087 (100%)	327 (100%)	1802 (100%)

10c. 你認爲由功能組別產生既立法會議員，對議會工作有無貢獻呢？

	是否有參加七一遊行		總數
	有	無	
非常有貢獻	6.4%	6.7%	**6.6%**
都幾有貢獻	19.0%	24.6%	**22.7%**

一半一半	41.3%	43.7%	**42.9%**
無乜貢獻	23.5%	14.0%	17.2%
完全無貢獻	4.1%	2.5%	3.1%
冇意見	5.6%	8.5%	7.5%
總數	605 (100%)	1197 (100%)	1802 (100%)

10d.你認爲由功能組別產生既立法會議員，對議會工作有無貢獻呢？(整體受訪者)		
	訪問日期	
	03 年 8-9 月	04 年 1 月
非常有貢獻	7.6%	6.6%
都幾有貢獻	24.0%	22.7%
一半一半	42.0%	42.9%
無乜貢獻	17.7%	17.2%
完全無貢獻	3.2%	3.1%
冇意見	5.4%	7.5%
總數	1753 (100%)	1802 (100%)

10e.你認爲由功能組別產生既立法會議員，對議會工作有無貢獻呢？(非功能組別選民)		
	訪問日期	
	03 年 8-9 月	04 年 1 月
非常有貢獻	5.5%	5.5%
都幾有貢獻	24.3%	22.4%
一半一半	42.7%	42.0%
無乜貢獻	19.1%	20.3%
完全無貢獻	3.3%	3.1%
冇意見	5.1%	6.5%
總數	1076 (100%)	1087 (100%)

11a. 你認爲由功能組別產生立法會議席，係未來兩三屆立法會裏面，值唔值得保留呢？					
	階層(自我界定)				總數
	基層	中層	上層	唔知道	
非常值得	10.1%	10.5%	2.4%	8.4%	**9.8%**
都幾值得	24.6%	25.0%	22.0%	21.1%	**24.2%**
一半一半	34.5%	33.8%	46.3%	39.5%	**35.2%**
唔係幾值得	14.6%	16.6%	9.8%	10.0%	14.5%
完全唔值得	7.7%	9.3%	7.3%	2.3%	7.5%
無意見	8.5%	4.7%	12.2%	18.8%	8.7%
總數	844 (100%)	656 (100%)	41 (100%)	261 (100%)	1802 (100%)

11b. 你認爲由功能組別產生立法會議席，係未來兩三屆立法會裏面，值唔值得保留呢？				
	是否功能組別選民			總數
	是	否	唔知道	
非常值得	16.0%	**8.1%**	8.3%	9.8%
都幾值得	28.6%	**23.9%**	19.9%	24.2%

一半一半	35.1%	**35.0%**	36.4%	35.2%
唔係幾值得	9.8%	17.1%	11.6%	14.5%
完全唔值得	6.4%	9.1%	3.4%	7.5%
無意見	4.1%	6.8%	20.5%	8.7%
總數	388 (100%)	1087 (100%)	327 (100%)	1802 (100%)

11c. 你認爲由功能組別產生立法會議席，係未來兩三屆立法會裏面，值唔值得保留呢？

	是否有參加七一遊行		總數
	有	無	
非常值得	8.8%	10.4%	**9.8%**
都幾值得	17.9%	27.4%	**24.2%**
一半一半	32.4%	36.7%	**35.2%**
唔係幾值得	22.3%	10.6%	14.5%
完全唔值得	12.7%	4.8%	7.5%
無意見	6.0%	10.1%	8.7%
總數	605 (100%)	1197 (100%)	1802 (100%)

11d. 你認爲由功能組別產生立法會議席，係未來兩三屆立法會裏面，值唔值得保留呢？(整體受訪者)

	訪問日期	
	03 年 8-9 月	04 年 1 月
非常值得	**10.7%**	**9.8%**
都幾值得	**27.0%**	**24.2%**
一半一半	32.5%	35.2%
唔係幾值得	14.0%	14.5%
完全唔值得	8.7%	7.5%
無意見	7.1%	8.7%
總數	1753 (100%)	1802 (100%)

11e. 你認爲由功能組別產生立法會議席，係未來兩三屆立法會裏，值唔值得保留呢？(非功能組別選民)

	訪問日期	
	03 年 8-9 月	04 年 1 月
非常值得	8.9%	8.1%
都幾值得	25.7%	23.9%
一半一半	33.9%	35.0%
唔係幾值得	16.2%	17.1%
完全唔值得	9.6%	9.1%
無意見	5.8%	6.8%
總數	1076 (100%)	1087 (100%)

12a. 你認爲 2008 既立法會應該點樣產生呢？

	階層(自我界定)				總數
	基層	中層	上層	唔知道	
30 個直選議席，再加 30 個功能組別議席	11.3%	10.1%	7.3%	10.0%	10.5%

同時增加直選同埋功能組別議席既數目	13.9%	10.2%	17.1%	11.9%	12.3%
增加多 d 直選議席，功能組別議席維持係現時既 30 個	19.2%	**23.9%**	17.1%	16.1%	**20.4%**
增加多 d 直選議席，減少 d 功能組別議席	21.3%	**24.7%**	24.4%	14.6%	**21.6%**
全部議席由分區直選產生	20.1%	**21.6%**	17.1%	16.1%	**20.0%**
其他	4.3%	3.7%	7.3%	10.3%	5.0%
無意見	10.0%	5.8%	9.8%	21.1%	10.0%
總數	844 (100%)	656 (100%)	41 (100%)	261 (100%)	1802 (100%)

12b. 你認爲 2008 既立法會應該點樣產生呢？

	是否功能組別選民			總數
	是	否	不知道	
30 個直選議席，再加 30 個功能組別議席	15.7%	9.6%	7.6%	10.5%
同時增加直選同埋功能組別議席既數目	11.1%	13.3%	10.4%	12.3%
增加多 d 直選議席，功能組別議席維持係現時既 30 個	**25.5%**	20.1%	15.3%	20.4%
增加多 d 直選議席，減少 d 功能組別議席	19.6%	**23.4%**	18.3%	21.6%
全部議席由分區直選產生	19.1%	22.2%	14.1%	20.0%
其他	3.6%	4.1%	9.5%	5.0%
無意見	5.4%	7.3%	24.8%	10.0%
總數	388 (100%)	1087 (100%)	327 (100%)	1802 (100%)

12c. 你認爲 2008 既立法會應該點樣產生呢？

	是否有參加七一遊行		總數
	有	無	
30 個直選議席，再加 30 個功能組別議席	6.0%	12.9%	10.5%
同時增加直選同埋功能組別議席既數目	7.8%	14.6%	12.3%
增加多 d 直選議席，功能組別議席維持係現時既 30 個	19.3%	**21.0%**	**20.4%**
增加多 d 直選議席，減少 d 功能組別議席	**28.9%**	18.0%	**21.6%**
全部議席由分區直選產生	**29.4%**	15.3%	**20.0%**
其他	3.8%	5.6%	5.0%
無意見	4.8%	12.7%	10.0%
總數	605 (100%)	1197 (100%)	1802 (100%)

12d. 你認爲 2008 既立法會應該點樣產生呢？(整體受訪者)

	訪問日期	
	03 年 8 月	04 年 1 月
30 個直選議席，再加 30 個功能組別議席	11.4	10.5%
同時增加直選同埋功能組別議席既數目	18.4	12.3%
增加多 d 直選議席，功能組別議席維持係現時既 30 個	19.7	20.4%
增加多 d 直選議席，減少 d 功能組別議席	**17.6**	**21.6%**
全部議席由分區直選產生	20.1	20.0%

其他	4.2	5.0%
無意見	8.6	10.0%
總數	1753(100%)	1802(100%)

12e. 你認爲2008既立法會應該點樣產生呢？(非功能組別選民)		
	訪問日期	
	03年8月	04年1月
30個直選議席，再加30個功能組別議席	10.1%	9.6%
同時增加直選同埋功能組別議席既數目	18.6%	13.3%
增加多d直選議席，功能組別議席維持係現時既30個	21.0%	20.1%
增加多d直選議席，減少d功能組別議席	17.9%	23.4%
全部議席由分區直選產生	21.7%	22.2%
其他	3.0%	4.1%
無意見	7.7%	7.3%
總數	1076 (100%)	1087 (100%)

13a. 你有冇參與舊年7月1號既遊行呢？					
	階層(自我界定)				總數
	基層	中層	上層	唔知道	
有	29.4%	**42.8%**	34.1%	23.8%	**33.6%**
無	70.6%	57.2%	65.9%	76.2%	66.4%
總數	844 (100%)	656 (100%)	41 (100%)	261 (100%)	1802 (100%)

13b. 你有冇參與舊年7月1號既遊行呢？			
	訪問日期		
	03年7月	03年9月	04年1月
有	30.9	33.4%	33.6%
無	69.1	66.6%	66.4%
總數	1666 (100%)	2128 (100%)	1802 (100%)

14a. 你贊唔贊成呢次遊行既目的呢？					
	階層(自我界定)				總數
	基層	中層	上層	唔知道	
非常贊成	36.2%	34.9%	29.6%	25.6%	**33.9%**
都幾贊成	31.5%	29.9%	25.9%	29.1%	**30.5%**
唔係幾贊成	15.4%	18.7%	25.9%	19.1%	17.3%
完全唔贊成	8.1%	10.4%	11.1%	9.5%	9.1%
無意見	8.7%	6.1%	7.4%	16.6%	9.2%
總數	596 (100%)	375 (100%)	27 (100%)	199 (100%)	1197 (100%)

14b. 你贊唔贊成呢次遊行既目的呢？			
	訪問日期		
	03年7月	03年9月	04年1月
非常贊成	**39.2%**	34.3%	**33.9%**
都幾贊成	**23.5%**	29.7%	**30.5%**
唔係幾贊成	15.7%	16.4%	17.3%
完全唔贊成	11.5%	9.2%	9.1%
無意見	10.2%	10.4%	9.2%
總數	1151	1418	1197

	(100%)	(100%)	(100%)

15a. 如果再有爭取07年普選行政長官同08年全面直選立法會既請願或遊行，你會唔會參加呢？					
	階層(自我界定)				總數
	基層	中層	上層	唔知道	
一定會	19.9%	**24.2%**	19.5%	13.4%	**20.5%**
都會	19.1%	**21.2%**	26.8%	12.6%	**19.1%**
一半一半	25.1%	24.1%	22.0%	29.5%	25.3%
唔會	18.7%	15.9%	17.1%	23.4%	18.3%
一定唔會	6.0%	6.1%	7.3%	7.3%	6.3%
視乎情況	11.1%	8.5%	7.3%	13.8%	10.5%
總數	844 (100%)	656 (100%)	41 (100%)	261 (100%)	1802 (100%)

15b. 如果再有爭取07年普選行政長官同08年全面直選立法會既請願或遊行，你會唔會參加呢？			
	是否有參加七一遊行		總數
	有	無	
一定會	**43.1%**	9.1%	**20.5%**
都會	**25.3%**	16.0%	**19.1%**
一半一半	18.2%	28.9%	25.3%
唔會	5.1%	**25.0%**	18.3%
一定唔會	0.5%	**9.2%**	6.3%
視乎情況	7.8%	11.9%	10.5%
總數	605 (100%)	1197 (100%)	1802 (100%)

15c. 如果再有爭取07年普選行政長官同08年全面直選立法會既請願或遊行，你會唔會參加呢？			
	訪問日期		
	03年7月	03年9月	04年1月
一定會	N/A	**26.9%**	**20.5%**
都會	N/A	21.9%	19.1%
一半一半	N/A	**17.1%**	**25.3%**
唔會	N/A	**10.8%**	**18.3%**
一定唔會	N/A	**13.8%**	**6.3%**
視乎情況	N/A	9.5%	10.5%
總數	N/A	2128 (100%)	1802 (100%)

受訪者個人資料：

16. 請問你幾多歲？					
	階層(自我界定)				總數
	基層	中層	上層	唔知道	
18-25	23.6%	11.0%	17.1%	24.1%	18.9%
26-35	17.3%	20.4%	12.2%	16.9%	18.3%
36-45	24.3%	29.7%	14.6%	18.4%	25.2%

46-55	21.7%	26.8%	36.6%	23.8%	24.2%
56-65	13.2%	12.0%	19.5%	16.9%	13.4%
總數	844 (100%)	656 (100%)	41 (100%)	261 (100%)	1802 (100%)

17. 請問你既*家庭*，每個月平均收入大概有幾多呢？					
	階層(自我界定)				總數
	基層	中層	上層	唔知道	
無收入	9.4%	3.5%	4.9%	20.3%	8.7%
20000 蚊以下	63.2%	16.2%	36.6%	58.6%	44.8%
20000 至 45000 蚊	24.8%	46.3%	22.0%	17.2%	31.5%
45000 至 70000 蚊	1.9%	21.3%	9.8%	2.7%	9.3%
70000 蚊以上	0.8%	12.7%	26.8%	1.1%	5.8%
總數	844 (100%)	656 (100%)	41 (100%)	261 (100%)	1802 (100%)

新論壇 NEW FORUM

新聞稿

四成市民不願中央參與政改討論
新論壇促請中央與特區和衷共濟

2004 年 2 月 12 日

新論壇於本年 1 月，以音頻電話系統成功訪問 1802 名市民，結果發現約四成受訪者不贊成中央政府參與香港的政制發展討論，並有四成半受訪者認爲中央的參與會拖慢政改步伐。然而，逾六成市民相信，更多的溝通渠道將有助香港與中央取得共識 (調查詳細結果見附件)。

新論壇認爲，在「一國兩制」的原則下，在香港政制發展的過程中，中央政府必然存在重要角色。***相當部分港人不接受中央參與政改討論，無疑是特區及中央面對的一項挑戰。***在這情況下，***中央與香港社會必須和衷共濟***，在互相尊重和諒解的前提下，進行理性務實的政改討論。事實上，***市民亦普遍期望透過與中央的溝通達成共識。***

特區政府除了要徹底落實向中央反映港人意見之外，還要幫助市民***充分及全面了解中央與特區的關係，並說明政改「點止直選咁簡單？」***。中央政府也應該認識香港目前的狀況，採取主動措施，爭取全港市民認識「一國兩制」的內涵，說明特區的發展與全國的關係。

基於以上考慮，新論壇重申兩項建議：

1. 推動市民全面認識一國兩制及基本法：

政府應該強化或重整基本法推廣督導委員會，並透過適當調配資源，動員民間組織協助宣傳教育；在大、中、小學的公民教育中，加強基本法及一國兩制的認識，並確保各級公務員及資助機構員工對基本法有充分理解；同時也要重新釐定推廣基本法的重點題目，權利與責任並重，並加深市民了解中央與特區關係。

2. 建立中央與港人的溝通平台：

特區政府應與中央政府合作，研究提供一個中央與港人溝通的平台，透過有系統而廣泛的諮詢及協商，達成一套香港社會與中央都接受的共識方案。其中一個可考慮的形式，是由全國人大常委會授權予轄下的基本法委員會，與特區政府合作，組織一個廣納中央和特區政府代表，及香港各界人士的大型諮詢委員會。

新世紀論壇

中央政府角色與政改步伐
政制發展民意調查結果

2004年2月12日

目錄

1. 調查方法

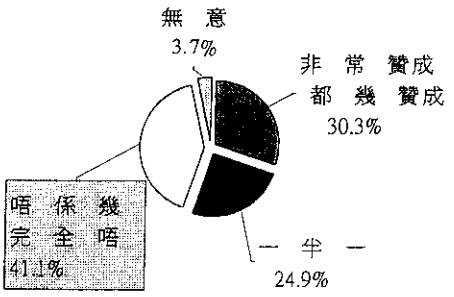
- **媒體**：音頻電話調查系統
- **對象**：隨機抽樣，選取18至65歲人士
- **訪問日期及成功受訪人數**：
  - 04年1月19-27日：1802人
  - 03年8月27-9月14日：1753人(只用於2.2部)
  - 03年7月24-27日：1666人(只用於2.3部)
  - 03年9月16日-10月1日：2128人(只用於2.3部)

新論壇 NEW FORUM

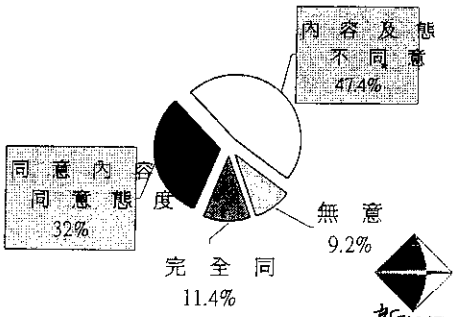
2. 調查結果

2.1 中央政府角色

2.11 是否贊成中央參與香港政制發展討論？



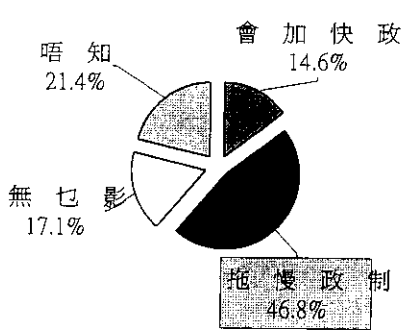
2.12 是否同意兩位內地法律專家講話內容及態度？



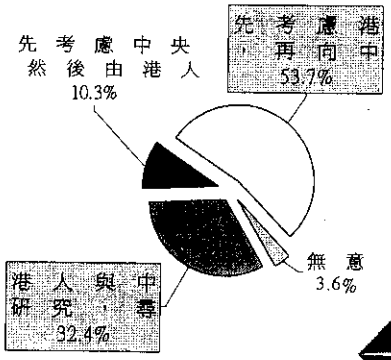
新論壇 NEW FORUM

受訪人數：1802

2.13 覺得中央參與政制發展討論有何影響？



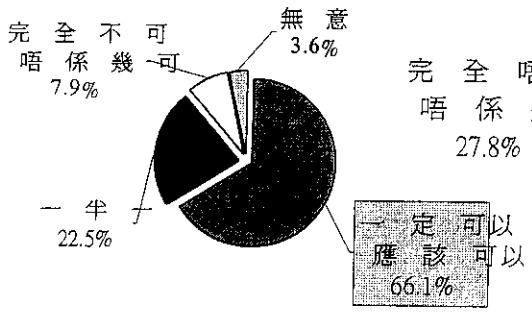
2.14 應該如何處理港人及中央意見？



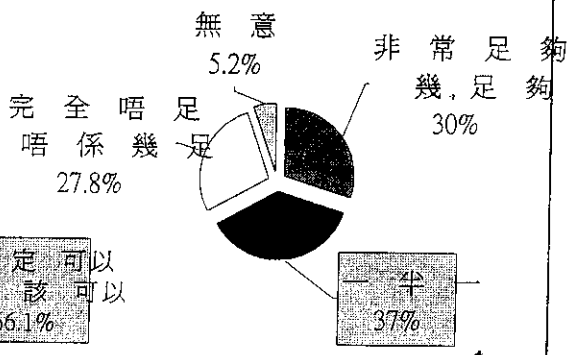
新論壇 NEW FORUM

受訪人數：1802

2.15 更多溝通渠道可否幫助香港與中央達共識？



2.16 專責小組是否足夠幫助港人與中央溝通？



新論壇 NEW FORUM

受訪人數：1802

2.2 政制發展步伐

2.21 香港政制應如何改革？

	03年8-9月		04年1月
維持現狀，無需改變	8.2%	→	7.8%
逐步加普選成份，但無需要制定時間表	12.8%	→	15.4%
循序漸進增加普選成份，並有清晰時間表	34.7%	→	37.7%
盡快全面直選立法會和特首	37.3%	→	32.9%
無意見	7.0%	→	6.2%
受訪者總數	1753		1802

新論壇 NEW FORUM

2.22 下屆特首應如何產生？

	03年8-9月		04年1月
維持以800人選委會選出	6.9%	→	5.5%
以一個人數較多，具較多民意代表的選委會選出	20.2%	→	19.9%
按基本法，由提名委員會提名，再普選產生	24.3%	→	27.6%
修改基本法，直接由普選產生	41.6%	→	36.7%
其他方法	2.8%	→	5.0%
無意見	4.2%	→	5.2%
受訪者總數	1753		1802

新論壇 NEW FORUM

2.23 立法會功能議席

2.23a 功能組別議員對議會工作有否貢獻？

		03年8-9月		04年1月
整體受訪者	非常有貢獻及幾有貢獻	31.6%	→	29.3%
	一半一半	42.0%	→	42.9%
	無乜貢獻及完全無貢獻	20.9%	→	20.3%
	無意見	5.4%	→	7.5%
	受訪者總數	1753		1802
非功能組別選民	非常有貢獻及幾有貢獻	29.8%	→	27.9%
	一半一半	42.7%	→	42.0%
	無乜貢獻及完全無貢獻	22.4%	→	23.4%
	無意見	5.1%	→	6.5%
	受訪者總數	1076		1087

新論壇 NEW FORUM

2.23b 功能議席在未來兩三屆立法會值得保留？

		03年8-9月		04年1月
整體受訪者	非常值得及幾值得	37.7%	→	34.0%
	一半一半	32.5%	→	35.2%
	唔係幾值得及完全唔值得	22.7%	→	22.0%
	無意見	7.1%	→	8.7%
	受訪者總數	1753		1802
非功能組別選民	非常值得及幾值得	34.6%	→	32.0%
	一半一半	33.9%	→	35.0%
	唔係幾值得及完全唔值得	25.8%	→	26.2%
	無意見	5.8%	→	6.8%
	受訪者總數	1076		1087

新論壇 NEW FORUM

2.24 08年立法會產生方法

2.23c 整體受訪者意見

	03年8-9月		04年1月
30直選 + 30功能	11.4%	→	10.5%
同時增加直選及功能	18.4%	→	12.3%
增直選，功能維持30個	19.7%	→	20.4%
增直選，減功能	17.6%	→	21.6%
全部議席由直選產生	20.1%	→	20.0%
其他	4.2%	→	5.0%
無意見	8.6%	→	10.0%
受訪者總數	1753		1802

新論壇 NEWFORUM

2.23e 非功能組別選民意見

	03年8-9月		04年1月
30直選 + 30功能	10.1%	→	9.6%
同時增直選及功能	18.6%	→	13.3%
增直選，功能維持30個	21.0%	→	20.1%
增直選，減功能	17.9%	→	23.4%
全部議席由直選產生	21.7%	→	22.2%
其他	3.0%	→	4.1%
無意見	7.7%	→	7.3%
受訪者總數	1076		1802

新論壇 NEWFORUM

2.3 對遊行的態度

2.31 曾否參加七一遊行？

	03年7月	03年9月	04年1月
有	30.9%	33.4%	33.6%
無	69.1%	66.6%	66.4%
受訪者總數	1666	2128	1802

新論壇 NEW FORUM

2.32 是否贊成七一遊行目的？
（只包括沒有參加七一遊行者）

	03年7月	03年9月	04年1月	
非常贊成	39.2%	34.3%	33.9%	62.7% ↓ 64.4%
都幾贊成	23.5%	29.7%	30.5%	
唔係幾贊成	15.7%	16.4%	17.3%	
完全唔贊成	11.5%	9.2%	9.1%	
無意見	10.2%	10.4%	9.2%	
受訪者總數	1151	1418	1197	

新論壇 NEW FORUM

2.33 會否再參加爭取07普選特首及08全面直選立法會的遊行？

（包括全數受訪者）

	03年9月	04年1月	
一定會	26.9%	20.5%	48.8% ↓ 39.6%
應該會	21.9%	19.1%	
一半一半	17.1%	25.3%	
唔會	10.8%	18.3%	
一定唔會	13.8%	6.3%	
視乎情況	9.5%	10.5%	
受訪者總數	2128	1802	

新論壇 NEW FORUM

3. 結果總結(1)—中央角色

3.1 四成受訪者不贊成中央參與政制發展討論。內地法律專家較早前的講話，也普遍不被港人接受。反映相當部分市民未全面理解基本法內規定中央政府在政改的角色

3.2 市民普遍擔心中央的參與會拖慢政改步伐，並希望優先考慮港人意見。中央及特區政府應正視市民這印象，回應市民的憂慮和訴求。

3.3 市民普遍相信與中央建立更多渠道溝通，有助於達成共識。但對於特區政府的專責小組在協助市民與中央溝通上的成效，仍未有主流意見。

新論壇 NEW FORUM

3. 結果分析(2)—政改步伐

3.4市民對政改仍未有主流意見，但與03年8-9月相比，民意似乎趨向較溫和的進程，支持「盡快全面直選特首和立法會」和「修改基本法，08年直接普選特首」的受訪者比例都略減。

3.5對於未來兩三屆立法會，支持和反對保留立法會功能議席者的比例一直維持在3成多和2成多；支持08年增加直選議席及減少功能組別議席者，則略為上升。但整體而言，仍未有明顯的主流意見。

新論壇 NEW FORUM

3. 結果分析(3)—對遊行態度

3.6贊成和不贊成七一遊行者的比例，在03年7月至04年1月的比例都維持不變，但非常贊成者所佔的比例卻明顯下降。而表示會再參與爭取盡快普選特首和立法會遊行者，也明顯下降。反映市民對於七一遊行的看法亦轉趨溫和。

新論壇 NEW FORUM

4. 建議

4.1 推動全面認識基本法

政改涉及「一國」原則，市民對基本法的全面理解，有助中央與香社會進行理性務實的溝通，加快達成共識，落實政改。

強化組織架構：強化或重整基本法推廣督導委員會

發揮民間力量：透過適當調配資源，動員民間組織

釐定重點題目：權利與義務並重，加深中央地方關係認識

各級公民教育：包括大、中、小學，公務員、資助機構員工，都要確保對基本法有全面認識

新論壇 NEW FORUM

4.2 建立中央與港人溝通平台

特區政府應與中央合作，研究提供一個中央與港人溝通的平台

透過有系統的廣泛諮詢和政治協商，達成共識方案

可考慮方案：
由全國人大常委會授權予轄下的基本法委員會，與特區政府緊密合作，組織一個廣納中央和特區政府代表，及香港各界人士的大型諮詢委員會

新論壇 NEW FORUM

5. 備註

可能導致誤差因素：

- 表示自己屬功能組別選民者佔整體受訪者約20%，比例高於功能組別選民在全港成年人口中的實際比例。
- 表示自己曾參加七一遊行者的佔約受訪者30%，比例高於實際參與遊行者佔全港成年人口的比例。

導致以上兩項偏差的原因：

- 該次調查只訪問18至65歲人士
- 較年輕、知識水平較高，以及較關心時事的人士，往往較其他人更願意接受這類訪問。

新論壇 NEW FORUM

回應市民訴求 盡快諮詢政改

2003 年 9 月 28 日

1. 背景：

新論壇在本年 8 月 27 日至 9 月 14 日，以音頻電話成功訪問了 1753 名市民，了解他們對政制發展的意見。在 1753 名受訪者中，自我界定爲基層者佔 43.8%；中產階級佔 37.2%；上層有 3%；不知道自己所屬階層者佔 16%。另外，整體受訪者中，22.5%表示自己屬功能組別選民；不屬功能組別者佔 61.4%；不知道的有 16.1%。

2. 結果分析：

2.1 政改步伐——盡快普選與循序漸進比例相若

全部 1753 名受訪者中，*對於香港政制改革步伐的意見分歧*。37.3%的受訪者表示應「盡快全面直選立法會及行政長官」，同時有 34.7%表示應「循序漸進咁增加普選成份，而且要有清晰時間表」，而「逐步增加普選成份，但無需要制定時間表」佔 12.8%，另有 8.2%贊成維持現狀。中產階層的選擇與整體的分別不大〔見表一〕。

2.2 特首產生辦法——直選特首與保留選委會

2.21 被問及下一屆特首應該如何產生時，有 41.6%的受訪者選擇「修改基本法，直接由全民直選產生」；24.3%認爲「按基本法規定，由一個具廣泛代表性的提名委員會，按民主程序提名後，再普選產生」；20.2%認爲「以一個有人數較多，有較多民意代表的選委會選出來」。中產階層的傾向與整體相若。〔見表三〕

2.22 對於選舉特首的選舉委員會，*39.3%受訪者認爲，加入全體 500 多名區議員，可以增加選委會的代表性*；29%表示一半一半；22.6%表示不可以〔見表五〕。

2.3 逾三成人贊同保留立法會功能界別

2.31 被問及功能組別立法會議員對議會工作的貢獻，整體受訪者中有 31.6%認爲有功能組別議員有貢獻；42%表示一半一半；20.9%表示沒有貢獻。中產階級的意見與整體相若〔見表七〕。

表示自己屬功能組別選民的受訪者中，有 43.8%認爲功能組別議員有貢獻；38%表示一半一半；16.7%表示沒有貢獻。在不屬功能組別的受訪者中，認爲功能組別議員有貢獻者，亦佔近三成(29.8%)，比例略高於認爲沒有貢獻者(22.4%)〔見表八〕。

2.32 對於功能組別議席是否值得保留，整體受訪者中，*37.7%認爲值得保留功能組別*；32.5%表示一半一半；22.7%表示不值得。中產階層的意見相若〔見表九〕。

在功能組別選民中則有 50.9%表示值得保留功能組別議席；25.8%表示一半一半；18.2%表示不值得。*非功能組別的選民，認爲值得保留者的比例(34.6%)亦略高於認爲不值得保留者(25.8%)*〔見表十〕。

2.33 被問及是否贊成多些立法會議員由區議員互選產生，贊成和不贊成者，分別佔 38.1 和 33.6%，22%表示一半一半。在中產階級中，贊成者和不贊成者的比例亦相若(分別佔 36.5%和 39.1%)〔見表十一〕。

功能組別選民較傾向贊成增加區議員互選產生立法議席，44.3%表示贊成，29.8%不贊成，而非功能組別選民贊成和不贊成的比例相若(分別 36.7%和 37.5%)〔見表十二〕。

2.4 六成人認同增加立法會議席有助反映民意

2.41 *60.6%的受訪者認同，增加立法會議席可更有效反映民意、推動議會工作*〔見表十三〕。中產階級與整體意見相若。功能組別和非功能組別選民的傾向亦與整體比例接近(表十四)。

2.42 就著增加立法會議席有助反映民意，在 1399 名表示認同和「一半一半」的受訪者中，*對於增加議席的方法亦有各種主張。總體而言，以贊成增加直選議席的較多*。30%認爲，應該「同時增加功能組別議席和直選議席」；26.4%認爲要「取消所有功能組別議席，全部議席由直選產生」；23.3%認爲「淨係增加直選議席，功能組別議席維持不變」。中產階層的回應亦與整體比例相若〔見表十五〕。

另外，屬非功能組別的選民，也有 30.3%贊成一併增加功能組別議席和直選議席； 27.7%認爲「取消所有功能組別議席，全部議席由直選產生」；24.5%表示「淨係增加直選議席，功能組別議席維持不變」〔見表十六〕。

2.43 *對於 2008 年立法會產生方法，全體 1753 名受訪者有不同意見*，20.1%選擇「全部議席由分區直選產生」；19.7%選擇「增加直選議席，功能組別議席維持現時的 30 席」；18.4%選擇「同時增加直選和功能組別議席既數目」；17.6%選擇「增加直選議席，減少功能組別議席」。總的來說，以增加直選議席的意見佔較數。中產的意見與整體相若〔見表十七〕。

在功能組別選民與非功能組別的受訪者，對於 08 年立法會產生方法同樣沒有一致意見，而兩組受訪者之間也沒有顯注差異〔見表十八〕。

3. 總結及建議：

3.1 檢討政制 回應訴求

是次調查結果顯示，市民對於政制改革步伐快慢有不同意見。除了支持全面直選行政長官和立法會的意見外，相當部分的市民，包括部分中產人士和非功能組別的選民，會選擇以循序漸進的方式，逐步增加普選成份。

新論壇認爲，***政府在致力改善經濟的同時，也須回應市民訴求，盡快展開有關政制發展的諮詢，***帶領社會討論，平衡各方意見。正因爲市民在政改問題上的意見分歧，政府必須盡快展開有關的諮詢，讓社會有更充分的時間，進行全面、深入而理性的討論，凝聚共識。

新論壇認爲，政府適宜及早準備政制改革的諮詢，而且不應因爲憂慮議會選舉會變得更政治化而延遲諮詢，政改諮詢不應與選舉相提並論。

3.2 全面反映各方意見

新論壇對於政制改革的進程持開放態度，並希望在有關諮詢過程中，各方面的意見都應得到充分反映和考慮，而政府也應透過廣泛諮詢和深入研究，得出爲各方所接受的政改方案。

附表：

政制發展電話調查結果

訪問日期：2003 年 8 月 27 日至 9 月 14 日
訪問對象：18 至 65 歲人士
有效受訪人數：1753 人

你認爲香港既政制，包括立法會同埋行政長官選舉方法，應該點樣改革呢？

表一	受訪者階層(自我界定)				整體
	基層	中產階級	上層	唔知道	
維持現狀，無需要改變	7.9%	6.6%	13.2%	11.4%	8.2%
逐步增加普選成份，但無需要制定時間表	14.8%	12.1%	3.8%	10.4%	12.8%
循序漸進咁增加普選成份，而且要有清晰既時間表	34.1%	36.0%	30.2%	34.3%	34.7%
盡快全面直選立法會同埋行政長官	37.4%	41.1%	43.4%	27.1%	37.3%
冇意見	5.7%	4.1%	9.4%	16.8%	7.0%
總數	768 (100%)	652 (100%)	53 (100%)	280 (100%)	1753 (100%)

你認爲香港既政制，包括立法會同埋行政長官選舉方法，應該點樣改革呢？

表二	受訪者是否功能組別選民			
	是	否	唔知道	整體
維持現狀，無需要改變	9.9%	8.0%	6.4%	8.2%
逐步增加普選成份，但無需要制定時間表	12.4%	14.1%	8.2%	12.8%
循序漸進咁增加普選成份，而且要有清晰既時間表	32.9%	34.9%	36.9%	34.7%
盡快全面直選立法會同埋行政長官	40.8%	37.1%	33.3%	37.3%
無意見	4.1%	5.9%	15.2%	7.0%
總數	395 (100%)	1076 (100%)	282 (100%)	1753 (100%)

根據基本法第 45 條規定，行政長官既最終產辦法，係由一個具廣泛代表性的提名委員會，按民主程序提名後，再進行普選產生。你認爲下一屆既特首應該點樣產生呢？

表三	受訪者階層(自我界定)				總數
	基層	中產階級	上層	唔知道	
維持翻用 800 人既選舉委員會選出來	6.6%	6.0%	7.5%	9.6%	6.9%
用一個有人數多 d，有多 d 民意代表既選委會選出來	20.4%	17.6%	34.0%	22.9%	20.2%

按基本法規定，由一個具廣泛代表性的提名委員會，按民主程序提名後，再普選產生	24.1%	29.4%	13.2%	15.0%	24.3%
修改基本法，直接由全民直選產生	42.2%	43.1%	37.7%	37.5%	41.6%
其他方法	3.3%	1.4%	3.8%	4.6%	2.8%
無意見	3.4%	2.5%	3.8%	10.4%	4.2%
總數	768 (100%)	652 (100%)	53 (100%)	280 (100%)	1753 (100%)

根據基本法第 45 條規定，行政長官既最終產辦法，係由一個具廣泛代表性的提名委員會，按民主程序提名後，再進行普選產生。你認爲下一屆既特首應該點樣產生呢？

表四	受訪者是否功能組別選民			
	是	否	唔知道	整體
維持翻用 800 人既選舉委員會選出來	8.9%	6.6%	5.3%	6.9%
用一個有人數多 d，有多 d 民意代表既選委會選出來	20.3%	19.9%	21.3%	20.2%
按基本法規定，由一個具廣泛代表性提名委員會，按民主程序提名後，再普選產生	23.3%	26.5%	17.4%	24.3%
修改基本法，直接由全民直選產生	43.3%	40.6%	43.3%	41.6%
其他方法	1.8%	2.6%	5.0%	2.8%
無意見	2.5%	3.8%	7.8%	4.2%
總數	395 (100%)	1076 (100%)	282 (100%)	1753 (100%)

如果係下屆特首選舉時，選舉委員會裏面加入全部 500 幾個區議員作爲成員，你認爲可唔可以增加選委會既代表性呢？

表五	受訪者階層(自我界定)				總數
	基層	中產階級	上層	唔知道	
一定可以	15.9%	14.9%	20.8%	13.2%	15.2%
應該都可以	24.6%	24.5%	20.8%	22.1%	24.1%
一半一半	30.7%	27.3%	17.0%	30.7%	29.0%
唔係幾可以	12.8%	15.3%	20.8%	10.4%	13.6%
完全唔可以	8.1%	11.3%	9.4%	5.7%	9.0%
冇意見	7.9%	6.6%	11.3%	17.9%	9.1%
總數	768 (100%)	652 (100%)	53 (100%)	280 (100%)	1753 (100%)

如果係下屆特首選舉時，選舉委員會裏面加入全部 500 幾個區議員作爲成員，你認爲可唔可以增加選委會既代表性呢？

表六	受訪者是否功能組別選民			
	是	否	唔知道	整體
一定可以	20.8%	14.5%	10.3%	15.2%
應該都可以	20.0%	25.7%	23.8%	24.1%
一半一半	26.6%	28.3%	35.1%	29.0%
唔係幾可以	14.2%	14.4%	9.6%	13.6%
完全唔可以	10.6%	9.0%	6.4%	9.0%
冇意見	7.8%	8.1%	14.9%	9.1%
總數	395 (100%)	1076 (100%)	282 (100%)	1753 (100%)

你認爲由功能組別產生既立法會議員，對議會工作有無貢獻呢？

表七	受訪者階層(自我界定)				總數
	基層	中產階級	上層	唔知道	
非常有貢獻	6.6%	8.6%	9.4%	7.9%	7.6%
都幾有貢獻	24.1%	24.2%	15.1%	25.0%	24.0%
一半一半	42.8%	39.9%	45.3%	44.3%	42.0%
無乜貢獻	18.9%	19.5%	22.6%	9.6%	17.7%
完全無貢獻	3.0%	3.8%	5.7%	1.8%	3.2%
冇意見	4.6%	4.0%	1.9%	11.4%	5.4%
總數	768 (100%)	652 (100%)	53 (100%)	280 (100%)	1753 (100%)

你認爲由功能組別產生既立法會議員，對議會工作有無貢獻呢？

表八	受訪者是否功能組別選民			
	是	否	唔知道	整體
非常有貢獻	16.2%	5.5%	3.9%	7.6%
都幾有貢獻	27.6%	24.3%	17.7%	24.0%
一半一半	38.0%	42.7%	45.4%	42.0%
無乜貢獻	14.7%	19.1%	17.0%	17.7%
完全無貢獻	2.0%	3.3%	4.3%	3.2%
冇意見	1.5%	5.1%	11.7%	5.4%
總數	395 (100%)	1076 (100%)	282 (100%)	1753 (100%)

你認爲由功能組別產生立法會議席，呢種選舉安排值唔值得保留呢？

表九	受訪者階層(自我界定)				總數
	基層	中產階級	上層	唔知道	
非常值得	10.4%	11.7%	17.0%	7.9%	10.7%
都幾值得	27.2%	28.1%	15.1%	26.4%	27.0%
一半一半	34.0%	28.2%	37.7%	37.5%	32.5%
唔係幾值得	13.9%	16.3%	11.3%	9.6%	14.0%
完全唔值得	8.1%	10.7%	17.0%	3.9%	8.7%
冇意見	6.4%	5.1%	1.9%	14.6%	7.1%
總數	768 (100%)	652 (100%)	53 (100%)	280 (100%)	1753 (100%)

你認爲由功能組別產生立法會議席，呢種選舉安排值唔值得保留呢？

表十	受訪者是否功能組別選民			
	是	否	唔知道	整體
非常值得	18.2%	8.9%	6.7%	10.7%
都幾值得	32.7%	25.7%	24.5%	27.0%
一半一半	25.8%	33.9%	36.5%	32.5%
唔係幾值得	10.9%	16.2%	10.3%	14.0%
完全唔值得	7.3%	9.6%	7.1%	8.7%
冇意見	5.1%	5.8%	14.9%	7.1%
總數	395 (100%)	1076 (100%)	282 (100%)	1753 (100%)

你贊唔贊成有多幾個既立法會議員由區議員互選產生呢？

表十一	受訪者階層(自我界定)				總數
	基層	中產階級	上層	唔知道	
非常贊成	15.9%	15.0%	18.9%	15.0%	15.5%
都幾贊成	24.0%	21.5%	15.1%	23.2%	22.6%
一半一半	23.2%	19.5%	18.9%	25.0%	22.0%
唔係幾贊成	18.5%	21.5%	24.5%	15.0%	19.2%
完全唔贊成	13.2%	17.6%	18.9%	9.3%	14.4%
冇意見	5.3%	4.9%	3.8%	12.5%	6.3%

總數	768 (100%)	652 (100%)	53 (100%)	280 (100%)	1753 (100%)

你贊唔贊成有多幾個既立法會議員由區議員互選產生呢？

表十二	受訪者是否功能組別選民			
	是	否	唔知道	整體
非常贊成	21.0%	13.7%	14.9%	15.5%
都幾贊成	23.3%	23.0%	20.6%	22.6%
一半一半	19.5%	21.4%	27.7%	22.0%
唔係幾贊成	15.4%	21.6%	15.6%	19.2%
完全唔贊成	14.4%	15.9%	8.5%	14.4%
冇意見	6.3%	4.6%	12.8%	6.3%
總數	395 (100%)	1076 (100%)	282 (100%)	1753 (100%)

你認爲增加立法會議席既數目，對於更有效反映民意，同埋推動議會工作，會唔會有幫助呢？

表十三	受訪者階層(自我界定)				總數
	基層	中產階級	上層	唔知道	
一定有幫助	30.5%	33.0%	32.1%	21.8%	30.1%
有d幫助	31.4%	29.9%	13.2%	32.9%	30.5%
一半一半	17.7%	17.8%	35.8%	23.6%	19.2%
無乜幫助	12.6%	11.3%	7.5%	6.4%	11.0%
完全無幫助	3.0%	3.8%	9.4%	2.1%	3.4%
無意見	4.8%	4.1%	1.9%	13.2%	5.8%
總數	768 (100%)	652 (100%)	53 (100%)	280 (100%)	1753 (100%)

你認爲增加立法會議席既數目，對於更有效反映民意，同埋推動議會工作，會唔會有幫助呢？

表十四	受訪者是否功能組別選民			
	是	否	唔知道	整體
一定有幫助	39.7%	28.7%	21.6%	30.1%
有d幫助	25.8%	31.2%	34.4%	30.5%
一半一半	18.2%	18.3%	24.1%	19.2%

無乜幫助	8.4%	12.4%	9.6%	11.0%
完全無幫助	2.5%	3.6%	3.5%	3.4%
無意見	5.3%	5.8%	6.7%	5.8%
總數	395 (100%)	1076 (100%)	282 (100%)	1753 (100%)

如果要增加立法會議席，你認爲點樣增加法會好ｄ呢？

表十五	受訪者階層(自我界定)				總數
	基層	中產階級	上層	唔知道	
淨係增加功能組別議席，直選議席維持不變	7.5%	7.8%	14.0%	10.0%	8.2%
功能組別議席同埋直選議席一齊增加	31.1%	31.7%	23.3%	24.2%	30.0%
淨係增加直選議席，功能組別議席維持不變	22.3%	26.2%	25.6%	18.7%	23.3%
取消所有功能組別議席，全部議席由直選產生	27.2%	27.6%	30.2%	20.5%	26.4%
其他	3.3%	2.1%	4.7%	7.3%	3.5%
無意見	8.7%	4.6%	2.3%	19.2%	8.6%
總數	611 (100%)	526 (100%)	43 (100%)	219 (100%)	1399 (100%)

如果要增加立法會議席，你認爲點樣增加法會好ｄ呢？

表十六	受訪者是否功能組別選民			
	是	否	唔知道	整體
淨係增加功能組別議席，直選議席維持不變	12.7%	7.4%	4.9%	8.2%
功能組別議席同埋直選議席一齊增加	33.2%	30.3%	24.3%	30.0%
淨係增加直選議席，功能組別議席維持不變	22.1%	24.5%	20.8%	23.3%
取消所有功能組別議席，全部議席直選產生	24.5%	27.7%	24.3%	26.4%
其他	2.7%	2.9%	7.1%	3.5%
無意見	4.8%	7.4%	18.6%	8.6%
總數	331 (100%)	842 (100%)	226 (100%)	1399 (100%)

你認爲 2008 既立法會應該點樣產生呢？

表十七	受訪者階層(自我界定)				總數
	基層	中產階級	上層	唔知道	
30 個直選議席，再加 30 個功能組別議席	11.8%	11.7%	11.3%	9.3%	11.4%
同時增加直選同埋功能組別議席既數目	19.8%	17.8%	15.1%	16.4%	18.4%
增加多 d 直選議席，功能組別維持現時既 30 個	19.5%	22.2%	18.9%	14.6%	19.7%
增加多 d 直選議席，減少 d 功能組別議席	16.9%	19.3%	28.3%	13.2%	17.6%
全部議席由分區直選產生	21.6%	20.6%	20.8%	15.0%	20.1%
其他	3.4%	2.9%	3.8%	9.6%	4.2%
無意見	6.9%	5.5%	1.9%	21.8%	8.6%
總數	768 (100%)	652 (100%)	53 (100%)	280 (100%)	1753 (100%)

你認爲 2008 既立法會應該點樣產生呢？

表十八	受訪者是否功能組別選民			
	是	否	唔知道	整體
30 個直選議席，再加 30 個功能組別議席	15.9%	10.1%	9.6%	11.4%
同時增加直選同埋功能組別議席既數目	18.5%	18.6%	17.4%	18.4%
增加多 d 直選議席，功能組別議席維持現時既 30 個	20.0%	21.0%	14.5%	19.7%
增加多 d 直選議席，減少 d 功能組別議席	17.5%	17.9%	16.3%	17.6%
全部議席由分區直選產生	17.0%	21.7%	18.8%	20.1%
其他	4.8%	3.0%	8.2%	4.2%
無意見	6.3%	7.7%	15.2%	8.6%
總數	395 (100%)	1076 (100%)	282 (100%)	1753 (100%)

表十九：請問你幾多歲？

年齡組別	受訪者階層(自我界定)				總數
	基層	中產階級	上層	唔知道	
18-25	24.9%	10.0%	18.9%	26.4%	19.4%
26-35	19.1%	23.0%	9.4%	12.1%	19.2%
36-45	24.3%	33.1%	30.2%	25.7%	28.0%
46-55	22.4%	23.2%	26.4%	18.6%	22.2%
56-65	9.2%	10.7%	15.1%	17.1%	11.2%
總數	768 (100%)	652 (100%)	53 (100%)	280 (100%)	1753 (100%)

請問你既職業係

表二十	受訪者階層(自我界定)				總數
	基層	中產階級	上層	唔知道	
專業人士	9.4%	25.0%	15.1%	5.4%	14.7%
管理階層	3.5%	19.9%	11.3%	2.5%	9.7%
中小企老闆	4.4%	17.6%	30.2%	5.7%	10.3%
一般打工仔	51.7%	21.2%	28.3%	38.9%	37.6%
家庭主婦	11.6%	7.2%	9.4%	24.3%	11.9%
學生	11.3%	3.5%	0	13.9%	8.5%
退休人士	3.4%	3.2%	1.9%	3.6%	3.3%
以上全部都唔係	4.7%	2.3%	3.8%	5.7%	3.9%
總數	768 (100%)	652 (100%)	53 (100%)	280 (100%)	1753 (100%)

你係唔係立法會選舉既功能組別選民呢？

表二十一	受訪者階層(自我界定)				總數
	基層	中產階級	上層	唔知道	
係	17.8%	30.8%	30.2%	14.6%	22.5%
唔係	66.4%	58.4%	54.7%	55.7%	61.4%
唔知道	15.8%	10.7%	15.1%	29.6%	16.1%
總數	768 (100%)	652 (100%)	53 (100%)	280 (100%)	1753 (100%)

前基本法草擬委員譚惠珠女士

之意見書

（甲） 基本法對政治體制設定的原則

〈請參閱本文附件 1、附件 2、附件 3 及附件 4〉

（乙） 如採用基本法附件一和附件二所規定的修改程序（即只修改行政長官和立法會的產生辦法），而該些修訂符合基本法第 45 及第 68 條，則不須援引基本法第 159 條的規定。全國人民代表大會常務委員會可以批準或不批準修改行政長官的產生辦法，也可以將修改立法機關的產生辦法備案或不備案，如該等修改不獲批準或備案，則沿用原有的產生辦法和有關的選舉法例以產生新一屆的行政長官和立法機關，因為其產生辦法可以修改也可以不修改，原有的安排也不失效。如基本法附件一及二均不修改，但香港特別行政區要修改選舉法例（例如：選民資格、功能團體的劃分等等）則援引基本法第 17 條的規定處理。

（丙） 有關修改行政長官及立法會產生辦法的啟動

基本法第 45 及 68 條條文中“如有需要”四字前雖然沒有主詞，但如果中央不認為有修改的需要，香港特區提出修改亦不會成功。因此，必需是中央認為〈或也認為〉有需要，才能啟動附件一、二的程序。至於附件一、附件二所說“如需對本附件的規定進行修改，須經立法會全體議員三分之二通過.....”並非指由立法會啟動修改該些附件，而是指香港特別行政區進行本地立法以體現該些附件的修改時，需要 2/3 多數票通過，有別於一般本地立法，政府提案只需簡單多數票通過。

（丁） “2007 年以后”是包括 2007 年第三屆行政長官的產生辦法。

（戊） （一）基本法第 1 條說明「香港是中國不可分割一部份」如何充分體現此「一國」原則？

(1) 體現「一國」的原則，其中一個極重要的原素，是維護國家的主權、統一和領土完整。（見基本法導論）例如：基本法第 23 條的規定。

(2) 中央必須自始至終參與政制發展的檢討，並主導解釋基本法第 45 條和第 68 條的原意。

（二）如何體現基本法第 12 條「香港特別行政區直轄中央政府」原則？如上(2)

（三）基本法第 45 及 68 條中的「實際情況」應如何理解？政制的發展必須符合中央對香港基本方針政策有利於資本主義經濟發展。〈請參閱本文附件 1 及附件 2〉

（四）「循序漸進」應如何理解

見蕭蔚雲談“香港特別行政區要逐步發展符合香港實際的民主制度，又見基本法導論有關立法會選舉的內容。〈請參閱本文附件 1 及附件 2〉

（五）「兼顧各階層利益」應如何理解

見蕭蔚雲及基本法導論。〈請參閱本文附件 1 及附件 2〉

（六）「有利於資本主義經濟發展」應如何理解

體現基本法第五章，尤其是第 105 到 119 條。(對基本法第 107 條及 119 條的討論，請參閱附件 4)

（己） 個人意見：2007 / 2008 年不適合普選行政長官 / 立法會全部議席

(1) 普選必須有政黨運作，政黨尚需要成熟過程，完善自身建設，未有一個政黨可以兼顧各階層利益之前，不適宜普選行政長官或全部立法會議席。

(2) 經濟結構正在轉型，政體轉變大構成不穩定因素，影響政策的連貫性、延續性和本地及外來投資者的信心，應先集中力量處理好經濟轉型。

(3) 全普選立法會議員或普選行政長官可能會使政府政策向某方面的利益〔例如公屋住戶〕傾斜，因而不能照顧各階層的利益及保持基本法中對管理經濟的要求。〔如低稅率，儘量收支平衡、量入為出等〕，又不能平衡納稅者(30%)與不納稅者(70%)的權利與義務。

(4) 分區直選是在 1988 年開始，前后不過十五年，實際情況是立法會中經常有議員由於沒有自己功能組別的範圍作

發言人，主要靠抨擊政府以樹立其形象。若 2008 年全面普選立法會議員則難以估計多少有質素的人士願意參選，又是否在政府的主要政策範疇均有對該範疇有認識、有代表性的人士監督政府。因此，2008 保留功能團體的議席是符合香港的實際需要的。

(5) 功能組別的議員能代表不同背景，包括專業、商界、金融界等等香港經濟實力所在的行業的專長，可以「對口」監督或協助政府部門的工作，符合行政與立法「互相制衡」及「互相配合」所需，能兼顧各階層利益，因此，必須保留該等議席，直到有成熟的政黨能真正代表各階層的利益，才可著手取消功能團體的議席。

(6) 增加工商專業界參政機會。

譚惠珠 2/2004
前基本法草擬委員

[附件 1]

設計香港特區政治體制的幾個原則

肖蔚雲（Ref.姬鵬飛的講話）

（一） 要符合「一國兩制」的原則

設計香港特別行政區政治體制當遵守的具體規定是(1)維護國家的統一與主權，要明確體現中央與香港特別行政區關係是單一制下中央與地方行政區的關係，行政長官，主要官員等由中央人民政府任命。香港特別行政區立法機關制定法律、通過的財政預算案要報中央備案等。(2)香港特別行政區享有高度自治權。行政長官在當地通過協商或選舉產生，香港特別行政區行政機關和立法機關由當地人組成，主要官員由行政長官提名等。(3)規定的行政長官、立法機關，行政機關的產生辦法，以及行政機關與立法機關的關係。

（二） 要有利於香港的繁榮、穩定、兼顧各階層利益

(1) 中國對香港的基本方針政策中，有四處「不變」[現行社會制度、經濟制度不變、生活方式不變、法律基本不變。]。有四處規定保持[保持自由港和獨立關稅地區的地位，保持國際金融中心地位，保持財政獨立]。

以上的規定說明，為了香港的繼續繁榮和穩定，就要保持香港原有的資本主義制度和許多具體制度。在不損害國家主權的原則下，原有制度盡可能不作大的改變，以維護香港的穩定與經濟繁榮。香港資本主義經濟的發展離不開工商業界的努力，廣大工作和其他階層也為香港的繁榮作出了貢獻，今後仍需要這種努力。因此，為政治上經濟上需要兼顧各階層的利益，政治體制的設計必須兼顧各階層的利益，妥善地處理政治權力的分配，以達到合理地分享所創造的財富和經濟利益。

（三） 保持原有政治體制中的優點，逐步發展適合香港的民主參與

(1) 起草基本法，包括設計政治體制，其中很重要的一條必須從香港的實際出發，使未來的政治體制能夠符合香港的實際情況。香港的經濟能夠發展到現在的規模與速度，

其原因之一是在政治體制也有一些適應與經濟發展的特點和優點，這些在 1997 年後香港特別行政區也是可以汲取和保留的，當然，對那些殖民主義的內容，也必須堅決去掉，不能照搬，照抄別的國家或地區的政法結構...或議會制，總統制的政權形式，因為香港不是一個國家...不能照搬「三權分立」的原則，這一原則也不符合香港的實際情況，不利於香港特別行政區的政制運作和經濟發展...香港特別行政區也不能搬用內地的人民大會制。

(2) 鄧小平同志說「要創造條件，使香港人能順利地接管政府」。「我們相信香港人能治好香港，不能繼續讓外國人統治。」「港人治港」這是真正的民主，否認這一民主制或認為中國政府阻礙在香港特別行政區實行民主制，這是不好的，因為這完全是顛倒了是非和事實真相。

(3) 香港特別行政區要逐步發展符合香港實際的民主制度。

(i) 發展民主制要保持香港的穩定與繁榮。1997 年我國對香港恢復行使主權，這是一個巨大的變化，是為了.....實現國家的統一。為了保持香港的穩定與繁榮，各方面的變化應盡可能小一些.....力求實現平穩交接。

(ii) 逐步發展民主制符合香港的實際情況.....香港各界人士對選舉制度的看法，對實行直接選舉和間接選舉的比例分配還存在很大的分歧。所以逐步發展民主制是比較穩妥的，符合香港的實際，這種穩妥決不是什麼保守，而是為了更好的發展和前進。

(iii) 民主的實質在香港由誰來管理，是由香港永久居民管理香港的事務，還是由非當地人中的外國人管理香港。這是區分香港有否民主制的標誌，這是香港特別行政區實行民主政制的首先要解決的問題，離開這一點就談不上民主制。至於實行直接選舉還是間接選舉，功能團體選舉的進程、比例，這也是民主制組成部份，但不能籠統地說有間接選舉，功能團體就不是民主制度或沒有民主，這也要看香港的具體情況和條件而定，符合香港實際情況的民主制和選舉制度才是比較好的制度.....。

(iv) 各國選舉的制度的歷史發展証明它本身也有一個發

展過程。英國由 1688 年實行資本主義選舉到 1949 年才實行一人一票，1969 年才規定年滿 18 歲及以上的合眾國公民有投票權……香港現有的選舉制度是從 1985 年開始……需要有一個發展過程，這樣既符合選舉制度的發展規律，又可以協調香港各界人士在選舉制度上所存在的分歧。

[附件 2]

香港特別行政區政治體制體現的三項原則〈基本法導論〉

（一） 三項原則就是

(1) 按一國兩制的方針，從香港的法律地位和實際情況出發，既有利於維護國家的主權，統一和領土完整，又能保証香港特別行政區實行高度自治。

(2) 有利於香港的經濟繁榮與社會穩定是有助于香港的資本主義經濟的發展，同時兼顧社會各階層的利益。

(3) 既能保持香港原有政治體制中行之有效的部份，又循序漸進地發展適合于香港情況的民主制度。

（二） 政治體制要解決的主要問題

(1) 政權機構之間的職權劃分〈基本法第四章〉
(2) 權力的行使和監督
(3) 權力與責任的關係

（三） “基本法”處理(二) 的方法

(1) 行政主導，行政長官是特區首長，代表特區；對中央人民政府及特區負責〈基本法第 48(2), 48(3), 48(5), 48(8), 48(9), 48(1), 48(4), 48(7), 48(10); 76, 49, 50, 51; 48(6), 90, 19〉。

(2) 行政長官對中央人民政府負責，承擔的是行政責任，他亦負責執行「基本法」，由特區選出的是特首「候任人」，要有中央的任命才成為行政長官。

(3) 行政機關與立法機關互相制衡又互相配合。(基本法第49, 50, 51, 52(2), 52(3), 74, 73(9)) 行政機關與立法機關是有職能分工上的不同，不存在誰凌駕于誰之上的問題，或法律地位上主從之分。制衡中有配合，配合中有制衡。

(4) 權力與責任的關係

(i) 政府對立法會負責屬于政治負責，由立法機關行使制定法律和監督政府的職能，是一種橫向的負責，

其內容通常主要指(1)執行立法機關通過的法律；(2)定期向其報告工作；(3)答覆立法會的質詢；(4)徵稅、公共開支等須經立法機關批準或認可等。

(ii) 行政長官「對特區負責」屬於政治負責，這一種負責，究竟是對特別行政區立法會負責呢？還是同時（或最終）向香港特別行政區居民負責？根據基本法第 64 條的規定，行政長官以特別行政區首長的身份對立法會負責（基本法第 64 條）。

（四） 立法機關的選舉

(1) 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，最終達到全部議員由普選產生。(這裡的普選，應指是分區的直接選舉，而普選行政長官，則是全港選民一人一票選出行政長官）香港的實際情況，就是在 1985 年才開始有選舉的產生的立法會議員，1991 年首次引入直接選舉（18 名）議員，而另有功能團體及委任議員，通過三種渠道產生，逐步發展香港的民主制度不能過速，發展超過香港社會承受能力的直接選舉，不利于香港的繁榮和穩定。

(2) 要兼顧各階層的利益。香港在 97 年后仍實行資本主義制度，因此，未來立法會的產生方式，必須兼顧香港的工商界、專業界和勞工界等各階層的利益，適應這種要求，就應採取不同的選舉方式使各階層的代表人物仍能通過不同的途徑有機會參與政治活動。所以，民主制度的發展應兼顧各階層的利益，逐步發展適合香港的民主參與。以有利于香港經濟的繁榮和社會穩定。

(3) 保留原有政制中行之有效的部份及循序漸進地發展適合于香港情況的民主制度。香港的選舉制度不能在 1991 年的情況停滯不前，否則就沒有照顧到香港居民中一部份人要求更多民主參與，也忽視了將來香港特別行政區立法會的議員最終應由普選產生的目標……選舉方式必須符合社會發展的水平和目標才能有效。香港特別行政區立法會的選舉方式是要有利于社會穩定和經濟發展，背離這個目標的選舉方式是不可取的……沒有一個循序漸進的過程，發展過快，不利于保障立法會有社會各界的

代表參與，不利于各方面的利益得到照顧，這將會引起社會的動盪，影響社會穩定和繁榮。

(4) 採用混合選舉

它符合香港民主制度的發展實際，社會各界可以通過不同的渠道進入立法會。它的比例可以按特區的實際情況和循序漸進原則予以變更，以適應民主發展的要求。體現了混合選舉的靈活性，隨著社會經濟、政治、文化的發展，公民參政意識的逐漸成熟，選舉經驗的累積，社會各階層的變化，直接選舉和間接選舉、功能選舉與地域選舉的比例是可以調整的，發展的趨勢將會是直接選舉的比例不斷增加……但此變化並非一下子完成的，是有一個逐漸變化過程，經過發展，將建立起適合香港特別行政區社會發展要求的民主制度。

[附件 3]

1987 年 4 月 16 日鄧小平對草委深入闡明“一國兩制”方針

談到香港的選舉問題時，鄧小平說：“香港將來是香港人來管理，管理香港事務的人的標準是愛國、愛香港。普選不一定能全都選出這樣的人。”鄧小平認為，最近香港總督衛奕信說要循序漸進，這個看法比較實際。

鄧小平說，任何國家，包括一個國家的地區，一定要根據自己的特點來決定自己的制度和管理的方式，還有一個問題，切不要以為香港的事情全部由香港人來管；中央一點都不管，就萬事大吉。這種想法是不實際的，中央確實不干預特別行政區的具體事務，中央不需要干預。但是，如果香港發生了危害到國家根本利益的事，或者出現損害香港自己根本利益的事情，那時，北京能不過問嗎？如果中央把什麼權力都放棄了，就可能出現一些混亂，損害香港利益，所以， 保持中央的某些權力，對香港有利無害。

1997 年後，香港有人罵中國，罵中國共產黨，我們還是允許他罵。但是如果變成行動，把香港變成一個在“民主”的幌子下反對大陸的基地，那就不行。

附件四爲書籍之影印本

因版權關係，在此不作轉錄

與政制發展專責小組會面（13.2.04）

問題	民主動力立場
1. 有關文件中提及《基本法》第一條說明香港是中國不可分離的部份，充分體現「一國」	根據回歸以來多項調查顯示，香港市民對國家的歸屬感越益增強，對中央政府的信任更勝香港特別行政區政府，所以香港人的政治取向不會走向「港獨」。同理，爭取政改並不等於要求「港獨」；《基本法》更訂明香港政治制度發展以普選行政長官及全體立法會議員爲目標。
2. 有關文件中提及《基本法》第十二條「香港特區直轄中央人民政府」的原則	根據《基本法》，行政長官及各主要官員均須履行《基本法》的規定；各主要官員更須定期到北京述職，而經普選產生的行政長官需由中央人民政府批准，並需繼續履行現有的職責，以體現《基本法》第十二條的原則。
3. 有關文件中提及《基本法》第43及45條「行政長官由中央人民政府任命，既對中央人民政府負責，又對香港特區負責」的原則	正如前述，由普選產生的行政長官需要對中央及特區負責。而《基本法》第四十五條亦訂明，「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，一個有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」。因此，爭取行政長官盡早由普選產生、使行政長官更具代表性和認受性正是體現《基本法》第四十五條的精神。
4. 有關文件中提及《基本法》第45及68條，說明要「根據特區的實際情況和循序漸進的原則…」中的「實際情況」如何理解	「循序漸進」定下了必定要與以前的產生辦法不同，且定下朝向普選進展的幅度。「實際情況」則指根據社會不同因素，判定07/08是否可實行全面普選。有關因素包括：(1)政治、社會及經濟情況、(2)選民的素質（如教育水平）能否支持、(3)市民是否有強烈訴求，和(4)現行體制有否根本問題需透過全面普選解決。
5. 有關文件中提及《基本法》第45及68條說明要「根據特區	要符合「漸進」，行政長官選舉委員會和第四屆立法會產生辦法必要與以前不同，朝向普選方向發展。至於能否再向前走至07年普選行政長官，08年普選全部立法

問題	民主動力立場
的實際情況和循序漸進的原則…」中的「循序漸進」如何理解	會議員，就得視乎「實際情況」；正如前述，「實際情況」的條件亦已完備，故普選行政長官及全體立法會議員有其合理基礎。
6. 姬鵬飛主任於 1990 年發言中提及香港的政治體制必須「兼顧社會各階層利益」	調查發現，市民認爲在推行政改時，勞工及基層人士、中產人士、工商界人士以至中央政府的利益都是重要和需要照顧的，不會一面倒傾向任何一方。同時，全面普選更可讓社會不同階層利益走入議會，代表各自利益。因此，全面普選和「兼顧社會各階層利益」沒有衝突；相反，更可促進社會各階層爭取自己利益。
7. 姬鵬飛主任於 1990 年發言中提及香港的政治體制必須「有利於資本主義經濟的發展」	在全球化下的所有資本主義社會，政府都不能不慎重考慮工商界利益；九十年代中，英國工黨貝里雅政府上台執政，英國福利不增反減，經濟亦有良好進展。因此，民主化和福利主義也沒有必然的關係；民主化並不會阻礙經濟發展。
8. 附件一、二立法形式：修改附件及/或透過本地立法	法律上要修改附件一及附件二，不一定要先作原則性規定的安排。 《基本法》其實已有修改附件的安排，並且有修改附件的實例。《基本法》第十八條規定全國人大常委會可對列於附件三的法律作出增減。全國人大常委會在 1997 年 7 月 1 日及 1998 年 11 月 4 日先後兩次通過關於對附件三所列全國性法律增減的決定。全國人大常委並沒有在作出這兩個決定前先對附件三作出原則性的規定。 因此只需根據附件一及二各自所定的修改程序就可以改變有關產生辦法。不過，雖然憲制上可直接引用附件一、二各自的程序，但在香港本土就不能只修改本地選舉法例，立法會議事規則也要作出相應修改。
9. 修改基本法附件要不要援引《基本法》第一百五十九條的規定	正如內地法律專家指出，《基本法》第一百五十九條規定只適用於《基本法》主體；故修改《基本法》附件不受《基本法》第一百五十九條限制。

問題	民主動力立場
10. 修改產生辦法的啓動	根據《基本法》第74條，政府的法案啓動先由特區政府提出。
11. 如無共識，第四屆立法會是否用第三屆辦法	附件二只規定了首三屆立法會的組成方法。根據「循進漸進」的原則，第四屆立法會的產生辦法是不能沿用第三屆立法會的產生辦法；第四屆立法會選舉應增加其中的民主成份，並最終以全面普選的最終目標。
12. 附件一中「二零零七年以後」的理解(包括2007/不包括2007)	包括2007。

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新力量網絡
2004年2月13日會見政制發展專責小組
意見要點

1. 作爲民間政策智庫，新力量網絡認爲，推行兩個普選（即普選行政長官和普選立法會），是解決特區內部管治困難的關鍵，有利於成功落實一國兩制 。

2. 新力量網絡認爲，特區實行普選，符合一國兩制精神，符合基本法有關香港長遠的政制發展方向的規定，符合有關「循序漸進」和「實際情況」的具體規定。特區實行普選，亦符合社會各階層均衡參與的原則，更有利於強化特區政府的認受性，真正實現行政主導的原則。

3. 政制改革能否成功，將取決於港人能否取得共識，及與中央政府的溝通是否足夠和有效。在這兩個方面，特區政府，尤其是由政務司司長曾蔭權領導的政制發展專責小組，扮演至爲關鍵的角色，責任重大。新力量網絡歡迎專責小組與中央政府已經展開溝通。

4. 社會對專責小組期望甚殷，故此專責小組的工作必須嚴格確保幾項原則：高度透明，諮詢過程和分析必須公開、公平、公正，讓社會廣泛參與，堅定推展更民主政制。專責小組除了向中央政府反映香港內部的不同意見，更應竭力讓中央理解香港的實際情況，而實際情況所指的就是：要解決特區的管治困難，政制改革實刻不容緩。

5. 新力量網絡認爲，專責小組現階段的工作未能符合社會期望，公衆也存在政制檢討進程被拖延的印象。我們對此非常關注，甚表憂慮，並向專責小組提出以下建議，希望小組作出具體行動，加強工作。

(a) 專責小組必須制定機制，加強工作的透明度，特別是與中央溝通方面；並應盡快公佈小組工作的計劃和公衆諮詢時間表，尤其諮詢在何時完成。

(b) 特區政府應成立一個包括社會各界參與的政制發展諮詢委員會，並召開公開的圓桌會議，邀請不同的團體一起討論和交換意見，爲最終達成有關政制發展的共識創造條件。

(c) 爲確保未來政制有效運作，在實行以兩個普選作爲關鍵的政制改革的同時，必須要仔細考慮制度上的配套，例如行政與立法關係、主要官員問責制的進一步發展、公務員體系的角色，和政黨進一步發展所需要的法律和制度上的支持等。專責小組應盡快提出檢討諮詢文件，涵蓋政制及制度配套改革問題。

6. 最終，我們認爲特區政府必須公佈特區政制改革的具體時間表，特別是普選行政長官和普選立法會的時間表。

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SynergyNet's Meeting with the Constitutional Development Task Force
Summary of Points Made on 13 February 2004

SynergyNet is pleased to meet the Task Force for the first time and expresses the following opinions on constitutional reform.

1. SynergyNet believes that universal suffrage in the CE and LegCo elections is of paramount importance to resolving Hong Kong's governance problems and implementing 'One Country, Two Systems' successfully.

2. We believe that universal suffrage is consistent with the spirit of "One Country, Two Systems" and relevant articles in the Basic Law, in particular the principles of "gradual and orderly progress" and "actual situation." The Hong Kong community has been urging for democratic reform ever since the 1980s and there is now a clear majority consensus in support of universal suffrage. Universal suffrage can satisfy the principle of balanced participation of different sectors, and help improve the legitimacy of the HKSAR Government and hence its capacity to lead and govern effectively.

3. The success of the constitutional review depends on whether there is a consensus between the Central Government and HKSAR and within the local community. The Hong Kong community, therefore, has very high expectations of the Task Force to play a critical role in facilitating a consensus. We are pleased that the Task Force has started dialogues with the Central Government authorities.

4. The Task Force is expected to act in strict accordance with the principles of a high degree of transparency and openness, an open, fair and proper process of consultation and participation by all, and a firm commitment towards achieving a more democratic political system. The Task Force should not only reflect the various views from the community but also be committed to enhancing the Central Government's understanding of Hong Kong's urgent needs for constitutional and institutional reforms so as to improve the HKSAR Government's governance capacity.

5. We are deeply concerned that the Task Force has yet to fully meet the community's expectations so far. The public worries that the reform and consultation process is being unduly delayed. We strongly urge the Task Force to take concrete actions and consider the following measures to reassure the community of its firm commitments.

(a) The Task Force should inform the public of its mechanisms for ensuring transparency, in particular in its interactions with the Central Government authorities; and should issue clear timetables for the constitutional review and consultation as soon as possible.

(b) The Government should establish a cross-sector constitutional review consultative committee so as to encourage cross-sector dialogues and to promote consensus-building.

(c) In addition to universal suffrage in electoral systems, other institutional issues are also critical to effective governance - including the relationship between the executive and legislature, the Principal Officials Accountability System, the role of the civil service, and laws and support for the development of political parties, etc. The Task Force should expand the scope of the constitutional review and publish as soon as possible consultation papers covering these critical institutional issues.

6. SynergyNet hopes that this review exercise will produce a clear timetable of implementing constitutional reform, in particular the timetables of universal suffrage in the elections of the CE and LegCo.

新力量網絡
SynergyNet

What Next in Constitutional Reform? Enhancing Representation and Ensuring Effective Governance

Thinking About 2007:

Policy Paper Series No. 1

What Next in Constitutional Reform? Enhancing Representation and Ensuring Effective Governance

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About SynergyNet

SynergyNet, established in February 2002, is a policy network devoted to the formulation of medium to long term strategies and policy proposals for the Hong Kong Special Administrative Region, so as to enhance the quality of governance and promote economic and social progress.

"Thinking About 2007" Policy Paper Series

Think-tanks overseas are used to publishing policy papers to influence new governments. For example, the Fabian Society in Britain published a ***"Second Term Thinking"*** series in the run-up to the 2002 general election, aimed at making a significant contribution to the development of innovative policy options across a range of areas, and stimulating debate both on the key strategic and philosophical directions of the post-election government and the policies that would manifest them.

As a policy think-tank, SynergyNet plans to make contribution towards generating new policy ideas for the next government in 2007. It will identify a number of key policy areas and invite experts (whether members or non-members) to prepare at least one policy paper on each area. These policy papers will be published as part of the ***"Thinking About 2007" Policy Paper Series***, and released over a period of some 30 months from early 2004 onwards. By mid-2006 all will have been published, in time before the next Chief Executive election takes place.

About the author

The author of this paper is Anthony B. L. Cheung, Professor of the Department of Public and Social Administration, City University of Hong Kong. He writes extensively on privatization, public sector reforms, Hong Kong politics and Asian administrative reforms. His latest book is *Governance and Public Sector Reform in Asia: Paradigm Shift or Business As Usual?* (RoutledgeCurzon, 2003). Professor Cheung is active in public service. He has served on the Legislative Council, Housing Authority and various civil service pay advisory bodies, and now sits on the Standing Commission on Civil Service Salaries and Conditions of Service and the Consumer Council. He is currently chairman of SynergyNet.

Table of Contents

Executive Summary

This paper discussed constitutional reform in Hong Kong, at a time when there is much public discontent about government failure and increasing consensus in society that the existing political system no longer works. On top of a looming legitimacy crisis, the SAR Government also faces the problems of weakening policy and administrative capacities and the inability to work with the Legislative Council (Legco) so as to ensure stable and effective government. Without a stable system of governance and public support, it is highly difficult, if not impossible, for the government to steer society forward in the crucial tasks of social development and economic restructuring which are essential to take Hong Kong out of the existing doldrums.

Enhancing the government's representation (hence strengthening its mandate) *and* improving its capacity to run an effective administration and lead the community should be the primary objectives of the Constitutional Reform.

Some major recommendations are made:

On executive-legislative relations:

- To consolidate a system of separation-of-powers and check-and-balance, there is the need to strengthen concurrently the political legitimacy and constitutional powers of the executive and legislative institutions by:
  - Electing both the Chief Executive and all seats of Legco on the basis of universal franchise;
  - Removing the constitutional restrictions on moving private member's bills by legislators so that Legco can play a more active and constructive role in policy-making.

On the election of the Chief Executive:

- Starting with the 3rd term (2007-2012), the Chief Executive will be popularly elected subject to such nomination procedures as prescribed by the Basic Law. In future, as the system of universal suffrage gains experience and becomes consolidated, the Nomination Committee should be dispensed with.
- Where the Nomination Committee exists as the official nomination mechanism, there should still be opportunities for *'preliminary nomination'* by ordinary citizens:
  - Any 500 registered voters (or a larger threshold) can together make a preliminary nomination of a candidate for the Chief Executive post.
  - Preliminary nominees will be scrutinized by the Nomination Committee. Only those preliminary nominees who obtain the endorsement of a minimum of 100 members of the Nomination Committee will be put forward for the final-stage election by universal suffrage.
- The current legislative restriction on the Chief Executive being member of a political party should be lifted.
- Members of all sectors constituting this Committee should be elected on the basis of one-person-one-vote within the sector. The Nomination Committee, with membership from 800 to 1200, will cover broadly four sectors – business, the middle class, the grassroots, and the political sector.

On the election of the Legislative Council:

- The membership of Legco should be enlarged to a total of 90 seats. They should all be elected by universal suffrage through 3 different ways so as to achieve balanced representation:
  - 30 members to be directly elected on the *single-seat geographical constituency.*
  - 30 members to be directly elected on a *regional single-list system.*

- 30 members to come from *defined functional sectors* (similar to existing functional constituencies), *but* to be elected by universal suffrage. However, there are still both problems of principle and practicalities surrounding the provision of such seats.

➢ The new Legco should function fully as a unicameral chamber. The existing requirement for 'split-voting' on motions, bills and amendments to bills moved by legislators should be abolished.

On strengthening the Executive Council:

➢ The new constitutional nature of the Executive Council (Exco) as government cabinet should be further institutionalized so as to strengthen executive leadership and coordination.

➢ Exco should set up major policy committees. Some of them should be chaired by the Chief Secretary for Administration and some by the Financial Secretary.

➢ The Chief Executive's Office (CEO) should be strengthened in its role as Cabinet Secretariat. The Director of CEO should be taken up by the most senior member of the civil service, who concurrently serves as Head of the Civil Service as well as Cabinet Secretary.

On strengthening policy coordination and legislative liaison:

➢ The role of the Chief Secretary should be strengthened:
- As the 'minister' in charge of civil service policy;
- As the 'coordinating minister' for domestic policies; and
- As the government's chief liaison with the Legco on the day-to-day basis and to be in charge of the government's legislative programme.

On the clear delineation of the ministerial and civil service responsibilities:

➢ The existing post of Secretary for the Civil Service should be dispensed with.

➢ All politically-appointed principal officials should be supported by a similarly appointed Deputy Secretary and, where appropriate, a number of Under-Secretaries.

On the further development of political parties:

➢ The evolution of the SAR's system of government must be conducive to the further development of political parties and the formation of governing coalition between Legco parties and the Chief Executive so as to stabilize executive-legislative relations and to ensure effective government.

➢ A proper Political Parties Ordinance should be enacted.

➢ Some public funds should be appropriated to parties to support their lawful activities according to their share of electoral votes.

Other equally critical issues relating to governance reform – such as the future of the Administrative Class and Directorate system, and the role and functions of Statutory and Advisory Bodies – will be addressed by other Papers to be issued under the 'Thinking About 2007 Policy Paper' series.

The political impasse

1. The political impasse created by Hong Kong's post-1997 constitutional design has long been recognized by local political scientists and politicians alike.[1] In January 2000, the former chairman of the Democratic Alliance for the Betterment of Hong Kong (DAB), Tsang Yok-sing, made open comments to the effect that Hong Kong's system of governance was in danger of losing its political and administrative talent, so much so that the Special Administrative Region (SAR) might eventually be governed by mediocre people.[2] His argument was based on the observations that without any votes in the Legislative Council (Legco), top government officials had to spend too much precious time simply on 'begging votes' from legislators in order to pass legislations and finance bills, while legislators on the other hand lamented about having only votes and yet no active part to play in policy-making. Both sides thus became highly frustrated; in the long-run, talent would not stay in the top echelons of the civil service, nor could political parties attract talent to run for legislative office.

2. In April 2002, prior to the commencement of his second term in July, Chief Executive Tung Chee-hwa introduced a new ministerial system known as 'Principal Officials Accountability System' (POAS)[3], accompanied by a reorganization of his Executive Council (Exco), turning it into a cabinet of ministers (i.e. politically-appointed principal officials) and leaders of major party groups in Legco (namely the DAB, Liberal Party and the Hong Kong Federation of Trade Unions). Tung's political reforms in effect negated the assumptions of the Basic Law drafters that (a) the post-1997 government be led by career civil servants (essentially members of the elite Administrative Class) as principal officials under a Beijing-appointed Chief Executive and that (b) the government be largely free of party-political influence so as to preserve the so-called tradition of executive-led government.

3. In a way Tung was forced by circumstances to go into this route, despite Beijing's previous reservations about 'politicizing' the SAR government. In his first term of office, he could not get along with the senior civil service team headed by former Chief Secretary for Administration Anson Chan. He blamed his lackluster performance and the failure in government on the bureaucrats whom he regarded as not supporting his agenda enthusiastically, if not in effect sabotaging it. He needed to put his own men and women in charge of key portfolios to ensure his policy agenda is implemented. He also thought that by canvassing the support of DAB, the Liberals and FTU through co-optation into Exco, he could forge some kind of governing coalition with pro-government Legco party groups and muster enough

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[1] I. Scott (2000) "The Disarticulation of Hong Kong's Post-Handover Political System", *The China Journal*, No. 43, January, pp. 29-53. Also A. B. L. Cheung (2002) "The Changing Political System: Executive-led Government or 'Disabled' Governance?", in S. K. Lau (ed) *The First Tung Chee-hwa Administration: the First Five Years of the Hong Kong Special Administrative Region*, Hong Kong: The Chinese University Press, pp. 41-68.

[2] Y. S. Tsang (2000) "Letter to Hong Kong", 2 January, Hong Kong: Radio Television Hong Kong.

[3] C. H. Tung (2002) speech at Legislative Council, 17 April.

legislative votes to ensure the smooth passage of government bills and finance requests.

The growing vulnerability of the SAR government

4. By the end of 2003, Tung's master plan has failed totally. His new ministerial team did not work as a united and cohesive political executive, while civil service morale has been fast deteriorating. Two of his trusted ministers left in disgrace in July 2003[4], and several other ministers were seriously harmed by policy and political controversies[5]. Ministers coming from civil service background seem to fare better, but Secretary for the Civil Service Joseph Wong has been squeezed between civil service unions and public opinion over pay cut issues, and the former head of the civil service, Chief Secretary for Administration Donald Tsang, is widely perceived to have been sidelined by Tung. Intra-cabinet rivalries are now an open secret[6].

5. Not only has Tung been unable to keep his ministers in line. His political weakness (seen by some as a liability) led to the resignation of Liberal Party chairman James Tien from Exco on 7 July 2003 following the massive protests against the controversial national security bill (which was subsequently shelved) and the announcement by the new chairman of DAB, Ma Lik, following his party's debacle in the district council election on 23 November 2003, that there was no such thing as a governing coalition and that the DAB would not now feel obliged to support the government.

6. Once again, Tung's government is in a political impasse. Without firm support from a legislative majority, he will face greater political difficulties in the remainder of his term. Already commentators are speculating that he would become a non-performing head of government as he tries not to embark on any major policy initiatives for fear of antagonizing various interests which, after the massive protests of 1 July 2003 against the national security legislation, are now prepared to fight the government at any time. The 1 July protests are a dividing line which marked the political demise of Tung, so much so that his administration is now without either the legitimacy or capacity to lead and mobilize support. Senior civil servants no longer respect their political masters. Meanwhile, following its landslide victory in the district council election, the pro-democracy camp is gearing for another such victory in the forthcoming Legco election in September 2004. Most political commentators expect the 'democrats' to emerge as the most powerful camp after that election even if they are short of a clear legislative majority.

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[4] Former Financial Secretary Antony Leung and former Secretary for Security Regina Ip.

[5] Namely Secretary for Financial Services & the Treasury Frederick Ma (over the penny stocks affair), Secretary for Health, Welfare & Food Yeoh Eng-kiong (over the SARS outbreak), Secretary for Home Affairs Patrick Ho (over the Equal Opportunities Commission scandal), and Secretary for Education & Manpower Arthur Li (over the cutting of university funding).

[6] As revealed, for example, in leaked allegations in March 2003 surrounding Antony Leung's failure to declare interest in his pre-Budget car purchase, which subsequently brought about his downfall and resignation, and open exchanges in November and December 2003 between new Financial Secretary Henry Tang and the education secretary over education budget cuts.

7. The disarticulation between the executive and legislative branches reflects a deeper malfunctioning of the SAR system of government. On top of the legitimacy crisis, the government also faces the problems of weakening policy and administrative capacities and the inability to work with the legislature so as to ensure stable and effective government. Without a stable system of governance and public support, it is highly difficult, if not impossible, for the government to steer society forward in the crucial tasks of social development and economic restructuring which are essential to take Hong Kong out of the existing doldrums.

Why has the Basic Law design failed to work

8. The SAR's constitutional impasse has largely resulted from a Basic Law which essentially provides for a modified extension of a system in use under British colonial rule. The colonial system had three main features:
   - An executive-led system, with powers highly centralized in the Administration, so much so that Legco played only the role of disposing the Executive's proposals;
   - An Administration dominated by the civil servants, with all top posts filled by civil servants who in effect acted as 'ministers'[7]; and
   - An amateurish Exco that constitutionally only advised and assisted the Governor in policy-making, though politically regarded as the latter's inner cabinet.

9. Until the transitional period following the signing of the Sino-British Joint Declaration in 1984, this system worked because all non-official Exco and Legco members were appointed by the Governor on the advice of senior civil servants. They shared a high degree of political consensus and trust, and usually followed the government line. With the introduction of elected seats in Legco, especially after the 1991 direct election, Legco was no longer at the service of the Administration. It has since evolved into a watchdog over the government, causing some Exco members and senior officials to wonder if it had in effect become an 'opposition' body. Because Legco could not constructively share the powers of policy-making and law-initiation (being hindered by Article 74 of the Basic Law), but could only exercise its political muscle through the extreme measures of vetoing government bills, funding requests or even the budget, it had been forced to take an increasingly confrontational stance vis-à-vis the Administration.

10. On the other hand, with the government dominated by civil servants, the career opportunity for politicians was limited. Party politicians could at most aspire to become legislators, but with only a small number of Legco seats available for direct election (24 in 2000 and 30 in 2004), competition is fierce, creating intra-party tensions (as witnessed in the open conflicts between the so-called mainstream and Young Turks factions of the Democratic Party from 1999 to 2002). Political parties'

[7] On the rare occasions where 'outsiders' were brought in to fill the top posts, they were appointed on civil service contracts.

influence is confined to Legco, but with Legco prevented from sharing power with the Chief Executive, all parties could only aim at becoming a more effective watchdog over the government (in effect an opposition) rather than aspire to running the government one day. The Chief Executive Election legislation introduced by Tung in July 2000, which ironically was passed with the support of DAB and Liberal Party, required anyone elected to the top post to be politically non-affiliated, thereby making links with Legco parties all the more uncertain and problematic.

Tung Chee-hwa's half-baked reform of the Executive

11. A comprehensive review of the SAR's constitutional arrangements is long overdue. As Singapore's elder statesman Lee Kuan-yew said in his public lecture in Hong Kong on 25 October 1999, any constitutional document cannot remain unchanged forever otherwise it would become a straitjacket that hindered progress and development. Indeed, the Constitution of the People's Republic of China has been revised several times since its promulgation in the 1950s. Without seeking to amend the Basic Law, Tung Chee-hwa had actually went against its spirit when he introduced the new system of government in 2002 to kick off his second term of office. In essence he has given up government by civil servants and attempted to form a governing coalition with pro-government parties in Legco

12. On the face of it, Tung's introduction of a new ministerial system of political appointments and his co-optation of pro-government parties into Exco in July 2002 seemed geared to solving the problems of grooming political talent and forging closer relations with some Legco parties. In reality, however, he had only aimed to dis-empower the Administrative Class of the civil service and to politically subdue the Legco, hence ensuring his own version of an executive-led system dubbed by some as the 'presidentialization' of the Chief Executive office. Instead of opening up institutional channels for identifying and grooming political talent, he only sought to select a few so-called private sector persons for ministerial appointment. These people, with no previous political experience and little linkage to political parties, have proved to lack the *capacity* to either promote policies or build political alliance with elected politicians. Not only that, they are not provided with political deputies or assistants, but have to continue to rely on permanent secretaries and other senior civil servants for policy support and the defence of policies, hence making it impossible for the senior civil service to settle into political neutrality.

13. Leaders of pro-government groups co-opted by Tung into Exco continued to be viewed as appointed '*ad personam*', following the previous colonial ethos even though the very purpose of securing their participation in government was to win over their party votes in Legco. Since no clear constitutional principle of party involvement in Exco was set out, it became possible for the Liberal Party to desert the government at the last minute over the national security legislation, but still manage to subsequently secure the appointment of its vice-chairman Selina Chow to Exco in place of James Tien who had resigned, and for DAB's new chairman Ma Lik to declare his party outside any governing coalition despite its former chairman

Tsang Yok-sing keeping his Exco seat. There is no coherent principle governing the appointment of non-officials to Exco as the body becomes increasingly seen as the government cabinet.

14. By changing the system of government in July 2002, Tung has *de facto* declared the constitutional arrangements inherited from colonial times and in a sense legitimized by the Basic Law dead. The organic link with the Administrative Class has been severed as the door is now fully opened for politically-appointed principal officials. The support of the senior civil service has in future to be won through institutional partnership and mutual acceptance rather than through placing bureaucrats to fill the top ministerial posts. New venues for identifying, training and grooming political talent have to be found. Political parties have to be given a more constructive role to play in the system of government. Executive-legislative relations have to be properly institutionalized. There is no way to go back to the old regime. Neither is the old system sustainable in the post-1997 political environment when elected elements have become more and more significant.

Fundamental questions of governance

15. The SAR Government under Tung Chee-hwa has failed because of three main reasons:
    - Institutional defects arising from the Basic Law's political system design;
    - Lack of political support due to its weak political mandate; and
    - Unstable executive-legislative relations because of poor articulation with political parties.

    These together have created serious problems of representation, leadership and mobilization for the government, which need to be addressed through a more fundamental review of the SAR's constitutional arrangements.

16. It would be useful to take the debate on governance reform within the context of the 'capacity triangle', which entails three important levels:[8]
    - **State capacity** – the ability to mobilize social and economic power to achieve a wide variety of goals;
    - **Policy capacity** – the ability to marshal information and decision making power to make intelligent choices and to set strategic policy directions; and
    - **Administrative capacity** – the efficient management of resources in the various administrative processes required for delivering the outputs of government, such as public services, enforcement of regulations and so on.

17. The vital ingredient in *state capacity* is "the ability of the regime to foster participation and co-optation".[9] *Policy capacity* entails "the manner in which

[8] The notion of capacity triangle is borrowed from that used by the March 2001 Report of the *'Building Institutional Capacity in Asia'* project, commissioned by the Japanese Ministry of Finance and undertaken by the Research Institute for Asia and the Pacific, University of Sydney. See pp. 14-17 of report

[9] Ibid, p. 15.

relations between the executive and legislature are handled, the manner in which cabinet and other executive decision making systems are organized, serviced and supported, and the ways in which central executive decision makers make use of expert knowledge and analysis." [10] It aims at achieving coordination and effectiveness within decision structures, to respond better to public demands and aspirations. By strengthening policy capacity, state capacity can also be enhanced. *Administrative capacity* entails implementation structures and managerial competence, to ensure efficiency and responsibility in the course of policy and service delivery. The three levels of capacity are mutually supportive and form a building block for effective governance.

18. In the case of present-day Hong Kong, building *state capacity* requires wholesale political reform that can result in a democratically-elected Chief Executive and Legco, the improvement of executive-legislative interaction, the integration of political parties (and various political elites) within the policy making process, and a politically 'inclusive' governance style that facilitates the fostering of active consent and support from the citizenry. The greater its popular mandate, the larger the government's capacity will be in terms of political mobilization and integration. **Enhancing the government's representation (hence strengthening its mandate) *and* improving its capacity to run an effective administration and lead the community should be the primary objectives of the Constitutional Reform.** The following recommendations are made with an eye on achieving such objectives.

Reforms and recommendations

Executive-legislative relations

19. The Basic Law has already placed the SAR's political system firmly on the basis of the separation of executive and legislative powers, in that -
    - the Chief Executive and Legco are independently elected and constituted;
    - legislators cannot be appointed as principal officials even though some of them can be invited by the Chief Executive to sit on Exco; and
    - under Articles 50 and 51, if Legco refuses to pass the budget or any other important government bill *or* the Chief Executive refuses to sign into law any bill passed the second time by Legco, and if consensus still cannot be reached after consultations, the Chief Executive is obliged to dissolve Legco and call new elections; but should the re-elected Legco still refuse to pass the government bill or budget in dispute, or if he still refuses to assent to a Legco bill in dispute, the Chief Executive has to resign.

20. While the Legco's powers to check and balance the Executive is arguably constrained by Article 74 of the Basic Law (in that legislators are not allowed to move bills relating to public expenditure, the political structure or the operation of government and that bills relating to public policy can only be moved by legislators with the written consent of the Chief Executive), the doctrine of separation of

[10] Ibid, p. 16.

powers and check-and-power has been clearly built into the Basic Law. The question is how such doctrine will be practiced by the executive and legislative institutions through interaction within the context of day-to-day politics.

21. To consolidate such a system, **there is the need to strengthen concurrently the political legitimacy and constitutional powers of the two institutions by**:
    - ***Electing both the Chief Executive and all seats of Legco on the basis of universal franchise*** so that there is a clear conferment of mandate to exercise governing and legislative powers from the SAR population in line with the principle of 'Hong Kong people governing Hong Kong' as enshrined in the Basic Law;
    - ***Removing the constitutional restrictions on moving private member's bills by legislators*** so that Legco can play a more active and constructive role in policy-making, instead of being simply a 'questioning' and 'criticizing' chamber. Before Article 74 of the Basic Law is amended, the Chief Executive should make it a point to give general consent to bills on public policy moved by legislators.

22. There might be worries from some quarters that such a full-fledged separation-of-power arrangement would make it impossible to practise an executive-led government. However, such worries are largely academic. If we look at the world around us, both the British Westminster model (whereby government is formed by the majority within Parliament) and the US-style presidential system (whereby the executive is constituted separately from the legislature) feature a strong executive government. The key to a strong government rests with a stable party system as well as electoral arrangements that can lead the formation of a strongly mandated Chief Executive and/or a clear parliamentary majority.

Chief Executive: Election and nomination

23. Under Article 45 of the Basic Law, the Chief Executive has to be ultimately elected on the basis of universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures. Annex I of the Basic Law allows this to take place "for the terms subsequent to the year 2007". This can be interpreted as applicable to the term commencing in 2007, i.e. the third term from 2007 to 2012. However, any amendment to the existing arrangements to accommodate the move towards universal suffrage is subject to the endorsement of a two-thirds majority of all members of Legco and the consent of the Chief Executive, as well as the approval of the Standing Committee of the National People's Congress.

24. In view of the overwhelming public sentiments in favour of electing the Chief Executive on universal suffrage so as to ensure political accountability, it is proposed that **starting with the 3rd term (2007-2012), the Chief Executive should be popularly elected subject to such nomination procedures as prescribed by the Basic Law**. In future, as the system of universal suffrage gains experience and

becomes consolidated, we should consider dispensing with the Nomination Committee.

25. Where the Nomination Committee exists as the official nomination mechanism, **there should still be opportunities for *'preliminary nomination'* by ordinary citizens** as follows:
    - **Any 500 registered voters (or a larger threshold) can together make a preliminary nomination of a candidate for the Chief Executive post.** No registered voter can make more than one such nomination.
    - Preliminary nominees will be scrutinized by the Nomination Committee. **Only those preliminary nominees who obtain the endorsement of a minimum of 100 members of the Nomination Committee will be put forward for the final-stage election by universal suffrage.** This can be in the form of either open nomination by at least 100 members of the Nomination Committee (no member can nominate more than one person) *or* secret ballot by the Nomination Committee whereby each Committee member can vote for only one preliminary candidate and only those candidates securing at least 100 votes would be declared endorsed. In practice this means a maximum of 8 preliminary candidates to be 'screened in' by the Nomination Committee for popular election.

26. **The current legislative restriction on the Chief Executive being member of a political party should be lifted.** Political parties should not be prohibited from fielding their candidates for the Chief Executive post. Party affiliation may actually help to facilitate linkage with Legco parties.

27. While the existing Election Committee comprising 200 members from each of four broad sectors (Annex I of Basic Law) may be regarded by some as a possible model for the future Nomination Committee, in order to ensure that the Nomination Committee is 'broadly representative' (Article 45 of Basic Law), **members of all sectors constituting this Committee should be elected on the basis of one-person-one-vote within the sector.**

28. **The 4 sectors may be as follows:**
    - Industrial, commercial and financial sectors (broadly representing 'business');
    - The professions (broadly representing the 'middle class');
    - Labour, residents and grassroots organizations (broadly representing the grassroots); and
    - The ***elected*** political sectors (members of Legco and District Councils, and Hong Kong deputies to the National People's Congress).

29. The total membership of the Nomination Committee can be 800 (as for the Election Committee) or an enlarged number such as 1000 to 1200.

Legislative Council: Mixed direct elections

30. The reason why the present SAR government finds Legco so threatening and disturbing is that it is led by a Chief Executive who is not democratically elected vis-à-vis a partially directly-lected legislature. If the Chief Executive is elected by universal suffrage as proposed above, s/he will possess even greater political legitimacy than a fully directly-elected Legco. **Once both the executive and the legislature are democratically elected, Legco can properly settle into the role of a legislative organ with broad representation, to check and balance the executive.** Legco panels should hold public hearings on public policies and call public officials to account. Legco members should also be able to introduce bills if necessary in competition with the executive, but legislative time and priority should still be reserved for government business and bills.

31. **In formulating recommendations on the composition of Legco, there are three important points of consideration:**
   - All seats should be elected by universal suffrage.
   - The total membership should be expanded so as to generate larger legislative capacity.
   - As far as practicable, means should be found to encourage the participation of business and professional people in Legco.

32. **The membership of Legco should be enlarged to a total of 90 seats**, so as to create more opportunities to groom elected politicians and to provide enough legislative capacity for the increasing volume of lawmaking and policy scrutiny work undertaken by Legco. More members will be available to serve various Legco panels and bills committees.

33. It is proposed that the **90 Legco members be all elected by universal suffrage, but through 3 different ways so as to achieve balanced representation:**
   - **30 members to be directly elected on the *single-seat geographical constituency*,** using the 'first past the post' principle. There will therefore be 30 constituencies each with a population of around 200,000 to 250,000. This will produce legislators who are more oriented towards the local constituency interests.
   - **30 members to be directly elected on a *regional single-list system*.** There will be three regions – namely Hong Kong Island, Kowloon and the New Territories. Depending on the percentage of votes received by each list, the available seats of each region (which varies according to population size) will be apportioned accordingly. This is similar to the existing proportional representation system. The advantage of such method of election is that (a) it produces legislators more attentive to regional and territory-wide interests, and (b) it is conducive to the development of political parties who are encouraged to put forward single lists of candidates for election.
   - **30 members to come from *defined functional sectors* (similar to existing functional constituencies), *but* to be elected by universal suffrage** in the

same way as the other two types of membership. This method of election can address the concern of those business and professional sectors that worry that direct election may not attract enough professional and functional talent to join the legislature. However, there are both problems of principle and practicalities surrounding the provision of such seats, which will be discussed in greater depth in the following paragraphs.

34. **Ideally all members of a democratic Legco should be openly nominated and elected by universal suffrage.** There are those who, however, still doubt if this would attract enough business and professional people to take part in the election. If the intention is to preserve functional representation, the easiest way to do it is to keep the existing 30 'functional constituency' seats. This arguably would be most reassuring to established 'functional' organizations like business and commerce chambers and banks, but would contravene the principle of universal suffrage. If it is proposed to keep existing functional constituency seats only as a transitional arrangement, to be abolished within a specified period of time, the question remains as to how functional representation can still be ensured when such functional seats are finally given up – in other words, what would be the triggering point for making the transition to a legislature fully elected by universal suffrage? **Hence I have ruled retaining existing 'functional constituencies' out as an acceptable option.**

35. **A compromise solution that can enable business and professional people to join Legco is to provide for a category whereby nomination is made by defined functional sectors while election is by universal suffrage.** This can be done in two ways.

- ***Either*** to turn all functional constituencies into 'occupational constituencies' so that every citizen belongs to one of these constituencies and can take part in the election of their functional/occupational representative - This would be similar to the 'new functional constituencies' adopted for the 1995 Legco election. The problem with such kind of election is that it may be regarded as just another form of direct election that does not really help to elect business and professional people into Legco;
- ***Or*** to confine nomination of candidates by recognized bodies within defined functional sectors (such as business and commerce chambers, trade unions and professional societies), but to open the election to universal suffrage. This option is similar to a suggestion made by The Hon. Andrew Wong, Legco member, a few years ago. It has the advantage of making it mandatory for candidates to come from business and professional backgrounds while not compromising the principle of election by universal suffrage.

36. Even if we go along this latter route, one major technical problem has to be solved. If we require all registered voters within the population to pick 30 candidates out of a much longer list of candidates during an election, this might be taxing their knowledge of candidates and capacity to choose too much. In practice, candidates standing for election will have to campaign throughout the territory and may find it difficult to cope with the election logistics. One alternative is to adopt a single-list

system so that business and professional candidates form into single-lists for competition, and voters choose the 'list' rather than individual candidate, and depending on the share of votes among the various contending 'lists', the 30 seats will be distributed accordingly. A downside of this approach is that it allows business and professional people to stay in politics without joining parties, which may be unfavourable to the development of political parties.

37. The new Legco should function fully as a unicameral chamber. The existing requirement for 'split-voting' on motions, bills and amendments to bills moved by legislators (i.e. functional constituency legislators and the rest of the membership to vote in separate categories and any motion/bill/amendment can only be carried if it receives a concurrent majority in both categories of legislators) should be abolished. Unless such restriction is lifted, the executive-legislative relations will continue to be skewed.

Executive Council: Further institutionalization of the executive branch

38. With the introduction of the new ministerial system in July 2002, the Exco has become in effect a government cabinet, not just the Chief Executive's top advisory body as described in the Basic Law to extend the previous colonial setup. **The new constitutional nature of Exco as cabinet should be further institutionalized so as to strengthen executive leadership and coordination**:
   - As at present, all principal officials in charge of policy portfolios should serve on Exco.
   - Leaders or representatives of Legco party groups should join Exco on the premise of a governing coalition ***only if*** their parties officially take up coalition responsibilities. As councilors-without-portfolio, these members should have an important role to play in policymaking, and not just as 'non-official members' in the traditional sense. They should be allowed to chair important Exco committees. Their party colleagues can be appointed as principal officials.
   - **Exco should set up major policy committees (not just one Policy Committee as at present).** Some of these policy committees should be chaired by the Chief Secretary for Administration and some by the Financial Secretary as senior members of Exco on behalf of the Chief Executive. Another arrangement is to for the Chief Secretary to chair a Domestic Policies Committee and the Financial Secretary to chair an Economic and Finance Policies Committee.
   - **The Chief Executive's Office (CEO) should be strengthened in its role as Cabinet Secretariat.** The Director of CEO should be taken up by the most senior member of the civil service, who in that capacity concurrently serves as Head of the Civil Service, permanent secretary to the Chief Executive (and even the Chief Secretary for Administration), as well as Cabinet Secretary. This will ensure a closer working relationship between Exco and the Civil Service. The Director of CEO should hold regular meetings with permanent secretaries of various bureaus.

Chief Secretary for Administration: Strengthening policy coordination and legislative liaison

39. As the second most important office after the Chief Executive, the Chief Secretary for Administration should be properly recognized as deputy to the Chief Executive and be served by either the Director of CEO as well, or a separate permanent secretary of the Chief Secretary's Office. **The role of the Chief Secretary should be three-fold**:
    - As the 'minister' in charge of civil service policy;
    - As the 'coordinating minister' for domestic policies and in that capacity to chair the Exco's Domestic Policies Committee as suggested above;
    - As the government's chief liaison with the Legco on the day-to-day basis, to be in charge of the government's legislative programme and to hold weekly meetings with leaders of major party groups in Legco to iron out policy issues and to receive ideas towards the legislative agenda.

Clear delineation of ministerial and civil service responsibilities

40. For the institutional neutrality and integrity of the civil service, we must not allow its upper echelons to be over-politicized. **To be loyal to the government of the day does not mean that the principle of neutrality should be compromised.** To that extent, the present practice of requiring permanent secretaries and other senior civil servants to openly ***defend*** policy decisions and engage in lobbying politics carries a lot of risk to the institution. They should only offer anonymous policy advice to principal officials who have to be publicly and fully responsible for whatever decisions taken.

41. **The existing post of Secretary for the Civil Service should be dispensed with.** The Chief Secretary for Administration should take up the political role as 'minister' for the civil service on behalf of the Chief Executive. The Director of CEO, as head of the civil service, should work closely with the Chief Secretary for Administration on civil service matters.

42. **All politically-appointed principal officials should be supported by a similarly appointed Deputy Secretary and, where appropriate, a number of Under-Secretaries** who, together with the Secretary's personal assistants and press secretary, constitute the 'ministerial team'. This in effect serves as the principal official's *political wing* vis-a-vis the *civil service wing* headed by the permanent secretary. Public defence of policy decisions and legislative and political lobbying should be the responsibility of the principal official and his/her ministerial team.

43. The further development of the ministerial layer will certainly have a great impact on the current Administrative Class and Directorate system, which needs to be reformed quite thoroughly in terms of the roles, responsibilities and numbers of administrative officers. Otherwise, there could be 'too many' policy-makers in each policy bureau thus hindering the decision-making process. *[A separate Policy Paper*

on the Future of the Administrative Class will be issued by SynergyNet in due course.]

Political parties: Basis for proper institutionalization

44. Political parties are not highly relevant to the existing political order which is built on an executive-led system previously suppressing the growth of representative government. **As Hong Kong moves ultimately into a full-fledged democracy, parties must feature more prominently in such a system,** *either* giving rise to a majority party or a majority coalition of parties within Legco, which can work (and thus sharing power) with the Chief Executive, *or* enabling a Chief Executive with party-political background to be popularly elected.

45. The evolution of the SAR's system of government must be conducive to the further development of political parties and the formation of governing coalition between Legco parties and the Chief Executive so as to stabilize executive-legislative relations and to ensure effective government.

46. In the absence of any relevant legislative framework, existing political parties in Hong Kong are registered as either societies under the Societies Ordinance or limited companies under the Companies Ordinance. Neither of such registration is geared towards the nature of activities of parties. **A proper Political Parties Ordinance should be enacted** to facilitate political party development and to regulate the registration and operation of political parties (including party finance) so as to ensure transparency.[11]

47. **Some public funds should be appropriated to parties to support their lawful activities according to their share of electoral votes**. This of course should only constitute one source of income for parties. The more diverse the source of party income, the less likely it is for parties to be subject to the control or undue influence of one principal donor or a few big donors.

Statutory and advisory bodies

48. No discussion of improving Hong Kong's system of government is complete without reforming statutory and advisory bodies – in terms of appointment, roles, functions and powers. The advisory system had played an important part in the colonial period when the British administration recognized its lack of mandate and tried to use non-officials co-opted into statutory and advisory bodies to give government policies a sense of public legitimacy. However, such administrative absorption has all along been criticized as too much biased towards business and professional people in the appointment of members. After the introduction of the new ministerial system in 2002, the politically-appointed principal officials are

[11] For a discussion of Political Party Law, please see R. Yep (2003) "Political Reform and Political Parties", in C. Loh and Civil Exchange (eds) *Building Democracy: Creating Good Government for Hong Kong*, Hong Kong: Hong Kong University Press, pp. 61-70.

centralizing policy powers, rendering advisory bodies increasingly peripheral to the policy-making process. It is time to have a full review of statutory and advisory bodies and to undertake a major reform in line with those reforms proposed for the executive and legislative institutions. *[A further Policy Paper on Statutory and Advisory Bodies will be issued by SynergyNet.]*

Concerns about constitutional reform

49. The above recommendations are made with the view that Hong Kong should install a democratic system of government based on universal suffrage. We recognize that there are reservations about constitutional reform on the part of the Central Government in Beijing and among some sectors in Hong Kong, notably the business sector. Their concerns are largely as follows:

- Electing both the Chief Executive and Legco by universal suffrage might allow the executive and legislative institutions to be captured by populist politics that ignore long-term economic and social interests in favour of short-term distributive and redistributive measures.
- The business sector particularly worries that a popularly-elected government might go for 'free-lunch' welfare policies that impose greater tax burden on business and that more party-political infighting would make Hong Kong's environment more turbulent and less favourable for business investment.
- The Central Government is concerned that political forces hostile to the national government might manage to capture the Chief Executive post or a majority of Legco seats through popular elections, hence leading to unstable or even acrimonious central-SAR relations.
- The Central Government is also concerned that popular elections might not create an outcome that could broadly be representative of major interests in Hong Kong.
- Taking into consideration the erratic quality of elected politicians and political parties in Hong Kong, as well as the low degree of institutionalization of parties, some worry that moving into a system of government that depends solely on electoral politics and parties might adversely affect the quality of government.

50. Whether or not a popularly-elected Chief Executive, together with a fully directly-elected legislature, may opt for "free lunch" welfare policies depends more on the future policy preference of the SAR population. There is no direct correlation between democracy and welfare. We have seen many Western democracies rolling back the frontier of the welfare state over the past two decades mainly because of electoral reversal. The Hong Kong population is not particularly known for favouring big government or unlimited welfare expenditure. I would argue that with greater democratic participation, it helps to reduce rather than increase the risk of policy-making appeasing narrow vested interests. If we look at the SAR government today, the fact that it is not democratically elected and that it is politically weak has in effect rendered it more easily captured by various sectoral interests and not in a position to take some necessary bold steps.

51. Neither is there necessarily negative correlation between democracy and economic development. There are no doubt examples of new democracies, mainly in under-developed countries, mis-managing their economies. But at the same time, all advanced nations are democracies. Given Hong Kong's current level of socio-economic development and the high level of educational attainment of its population, there is no reason to believe that its sophisticated electorate will elect a Chief Executive who lacks the capacity to manage the economy.

52. The Central Government in Beijing should not be wary of popular election producing an '"anti-central government" Chief Executive. Most Hong Kong people treasure stable Central-SAR relations and would expect any Chief Executive to be capable of communicating and cooperating effectively with the Central Government. Indeed, a candidate who is widely seen as lacking such capability is unlikely to get elected.

53. Finally, one should not see the profiles of elected politicians and parties as static. Should the constitutional arrangements be changed, I am sure politicians and parties will undergo transformation and realignment, and new talent from all walks of life will join the political scene as well, hence creating more and better choices for the electorate. In the process parties will grow in a more constructive manner.

54. In any case one should not discard too casually various concerns and doubts about election by universal suffrage if the Constitutional Review is to achieve the purpose of consensus-building on how best to take governance reform forward. Pro-democracy parties, groups and advocates have to address them most seriously and to enter into active dialogues with those who are hostile to or skeptical of change, using reason and sound analysis instead of simply demands and rhetoric to present the case why the quality of government would not deteriorate and how broad sectoral representation can be ensured in a democratic political system based on the principles of universal suffrage and majoritarian rule.

55. **The Constitutional Review is not just about whether or not to elect the Chief Executive and all members of Legco by universal suffrage. It should also generate political reform measures that promote the proper institutionalization of elected politicians and political parties.** Existing parties should demonstrate that they have or can develop the capacity to take broad public interest into account in their political and policy positions and to take up the responsibilities of government. The more parties are capable of attracting talent and support from a broad spectrum of society, the better they are able to reassure the Central Government and the business sector that they can make full democracy in the SAR work. The Review is therefore as much a process to improve the political software as to install better hardware for Hong Kong. All stakeholders should put their heads and hearts together to make it succeed.

面向二零零七：

憲制改革的下一步？
加強代表性，保證有效管治

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政治困局

1. 目前特區面對的政治困局源於九七回歸之後的憲制安排；行政立法關係出現矛盾，尤其是焦點所在。政府有權而無票，而立法會卻有票而無權，以至行政機關和立法機關的政治能量互相抵消，最終出現一個政治的超級悶局。

2. 二零零二年四月，特首董建華建議實行主要官員問責制，將行政會議改組爲執政內閣，由主要官員和政黨領袖組成。

3. 到二零零三年底，特首的政治改革已經徹底失敗。前任財政司司長梁錦松和前任保安局局長葉劉淑儀宣告辭職，自由黨主席田北俊退出行政會議，民建聯新任主席馬力公開表示不會加入行政會議，否定執政聯盟的存在，並且表明民建聯不一定在立法會內支持政府的法案。

4. 七一遊行更是特首董建華政治衰落的分水嶺。目前政府既沒有管治合法性，也缺乏管治能力。一般相信，今年九月立法會選舉之後，反對政府的勢力將進一步擴大，加深政府所面對的管治危機。

5. 行政立法機關各走各路，反映了特區政制的深層缺陷。沒有穩定的管治和公眾支持，政府根本沒有能力去處理社會的進一步發展和經濟轉型，令香港走出目前的悶局。

6. 特區憲制上的困局，源於基本法決定將殖民地時代的政治制度保留下來。殖民地時代的政治制度有三個特徵：
   - 行政主導，立法只扮演一個被動的，回應的角色；
   - 行政系統以公務員爲主體，由高級公務員擔任部長；
   - 行政會議扮演一個提供意見和輔助總督施政的角色。

7. 由於所有的行政會議和立法會的議員來自總督的委任，彼此存在高度的共識和信任，所以這套制度行之有效。不過，在一九九一年立法會部份議席實行直選之後，立法會已不再必然地支持政府，反而開始扮演監察政府的角色。

8. 另一方面，由於政府官員以公務員爲主，令有志從政的人的發展機會受到限制。他們事業的頂峰就是晉身立法會，但是由於議席有限，導至競爭激烈，引發參選的政黨內訌。另一方面，由於目前的制度令立法會不能分享權力，令立法會議員扮演消極的反對派角色。在 2000 年 7 月通過行政長官選舉條例明確規定，行政長官不能有任何政黨背景，令行政立法關係缺乏制度聯繫，充滿不確定性。

董建華主導的行政機關的改革破漏百出

9. 在缺乏修改基本法的配合之下，董建華在 2002 年實行主要官員問責制，實際上

已經違背了基本法的原意。他放棄了公務員主導政府的傳統，改而嘗試與立法會部份政黨領袖組成管治聯盟，作爲他施政的基礎。

10. 董建華實行主要官員問責制，目的是要從公務員手中收回行政權力，但是卻未有解決政府缺乏政治人才的問題。他所委任的主要官員（又稱部長），不少來自商界，但是卻缺乏政治能力，亦缺乏與政黨的聯繫。此外，他們只是一人上任，未有自己的副手分擔工作，仍需繼續依賴常任秘書長和其他公務員，去給予政策支持和辯解，令資深公務員不可能實行政治中立的原則。

11. 雖然董建華委任部份政黨領袖進入行政會議，是爲了建立管治聯盟，但是這些政黨領袖仍被視爲以個人身份加入。由於在憲制上沒有清楚說明政黨參與行政機關的可能性，所以在通過國家安全條例草案的關鍵時刻，自由黨主席田北俊突然退出行政會議，而民建聯新任主席馬力公開表明不會加入行政會議，亦否定管治聯盟的存在。

管治的根本問題

12. 特區政府管治失敗的原因有三點：
    - 基本法所規定的政制安排在設計上出現缺陷；
    - 政治授權不足，導至政治支持度的不足；
    - 由於排斥政黨制度而導至行政立法關係的不穩。

    結果，政府在代表性、領導能力和動員能力方面出現嚴重問題。要從根本上解決問題，就必須進行憲制檢討。

13. 管治改革的辯論應環繞三方面來進行：
    - 整體的施政能力 – 在達至一系列施政目標的過程中，所需要的社會與經濟方面的動員能力；
    - 政策能力 – 在選擇和確定施政方向的過程中，所需要的收集資料和決策的能力；
    - 行政能力 – 在落實政策和提供服務的行政過程中，能否有效率地進行資源管理的能力。

14. 整體施政能力的關鍵，是市民的參與和民意的吸納。政策能力是指最高的行政決策者如何處理行政和立法關係，組織、協助和支援內閣和其他行政決策系統，及怎樣使用專家的知識和分析，以確保決策過程的協調和有效性，及回應公眾的要求和期望。如果政策能力得到加強，整體的施政能力也會加強。行政能力是指在落實政策的能力方面，是否有效率和負責任。

15. 以目前香港的情況而言，要增加整體的施政能力，就要進行整套的政治改革，普選特首和立法會，改善行政立法關係，在政策製訂的過程中整合政黨和其他政治精英，及確立一種兼容並包的管治風格，以爭取市民的接受和支持。民意授權的程度愈高，政府進行政治動員和整合的能力也愈強。所以，憲制改革的首要目標，就

是要提高政府的代表性和民意授權，同時加強政府的行政和領導社會的能力。以下爲達至目標的建議：

改革和建議

一、*行政立法關係*

16. 基本法已經確立了行政權力和立法權力分立的基本原則：
- 行政長官和立法會的選舉和組成彼此獨立；
- 立法會議員不可能被委任爲主要官員，而只可以被行政長官邀請進入行政會議；
- 基本法五十條及五十一條規定，如果立法會否決財政預算案或其他重要的政府法案，或行政長官拒絕通過簽署將立法會所通過的法案變成法律，並且在與立法會諮詢之後仍然未能取得共識，行政長官有權解散立法會，並重新進行選舉。不過，如果選舉之後重組的立法會仍然否決財政預算案或政府法案，而行政長官堅拒簽署的話，行政長官需要辭職。

17. 雖然在一定程度上，立法會制衡行政長官的權力受到基本法七十四條限制（立法會議員不能通過牽涉公共財政、政制或政府運作的議案；同時，只有得到行政長官的書面同意，立法會有關公共政策的議案才能成爲動議），但是權力分立和制衡的原則已經被清楚寫入基本法，問題不過是在行政立法機關的互動過程中，這些原則將會怎樣實踐。

18. 爲鞏固這套制度，行政和立法兩者的政治認受性和憲制權力都有必要加強：
- 普選行政長官和所有立法會議員，以確立在管治和立法方面的民意授權，落實基本法所規定的港人治港的原則；
- 解除立法會議員提出私人草案的憲制上的限制，使立法會能在政策製訂的過程中扮演更積極和具有建設性的角色，而非只是質詢和批評的角色。在基本法七十四條仍未修改之前，行政長官應表明，樂於同意讓立法會議員提出有關公共政策的草案。

19. 在權力分立的政治安排全面落實之後，個別人士可能會對特區政府是否能夠繼續行政主導感到憂慮。但是，這些憂慮並不實際。環顧其他國家，不論是英式的議會制，還是美式的總統制，它們的政府都是有實力的。關鍵是建立穩定的政黨政治，及良好的選舉安排，令行政長官和議會的多數派得到充分的民意授權。

二、*行政長官：選舉與提名*

20. 基本法四十五條規定，行政長官應經由一個有廣泛代表性的提名委員會提名，經民主程序，最終由普選產生。基本法附件一列明，普選特首可以在二零零七年之後的新一屆政府開始。這可以被理解爲是從二零零七年開始，也就是從二零零七年

到二零一二年的第三屆政府。但是，對於現行政制的修改，必須同時得到立法會三分之二的議員通過，特首的同意，和全國人民代表大會常務委員會的通過。

21. 有鑑於目前民意強烈要求普選行政長官，以增加政治問責性，我建議從特區第三屆政府（2007-2012 年）開始，特首經過基本法所規定的提名程序之後，再普選產生。將來，在普選的經驗逐漸累積，運作成熟之後，可以考慮撤消提名委員會。

22. 目前，提名委員會爲官方提名機制。但是，市民應該被容許透過初步提名的程序參與特首選舉：

- 只要得到 500 名已登記選民的支持，任何一位候選人就可以被初步提名爲行政長官候選人。任何已登記選民只能提名一人；
- 被初步提名的候選人再由提名委員會審查，在取得提名委員會內最少一百名成員的認可之後，才能進入最後的競選階段。認可提名的程序可以是公開的，也可以經由提名委員會委員進行不記名投票之後產生。關鍵是每個提名委員會委員只能認可一個候選人的提名。換言之，在八百人的提名委員會內，最多可以有八名候選人經過認可提名之後進行普選。

23. 目前對行政長官必須沒有政黨背景的限制應被撤消。政黨亦不應被禁止推舉黨員成爲行政長官候選人。行政長官的政黨背景可能令他更能夠加強與立法會的聯繫。

24. 目前選舉委員會由四個不同界別，合共八百人的組成。雖然有人或會認爲，這種安排可以作爲以後的提名委員會的組成模式，但是爲了確保提名委員會具有廣泛代表性，來自所有界別的提名委員會委員都應在其所屬界別內經由一人一票產生。

25. 這四個界別分別是：

- 工業、商業和金融界別；
- 專業界別；
- 勞工、居民及基層組織；
- 經由選舉產生的政界（立法會及區議會議員，港區人大代表）。

26. 提名委員會的人數可以是八百人（即與選舉委員會一樣），也可以增加至界乎一千至一千二百人。

三、*立法會：混合直接選舉*

27. 現屆特區政府對立法會感到不安和受到威脅，原因是行政長官並非民選，而立法會卻起碼是部份由民選議員組成。如果行政長官由普選產生，它的認受性將比一個經由全體普選議員組成的立法會更高。一旦行政立法機關都經由普選產生，立法會作爲一個擁有廣泛代表性的，能夠監督和制衡行政機關的角色將可以確立。立法會專責小組可以就公共政策舉行公開聽證會，傳召政府官員解釋。如有需要，立法

會也可以提出草案，跟行政機關進行競爭。當然，優先次序應該賦予政府所提出的草案。

28. 在有關立法會的組成方面：

- 所有議席應由普選產生；
- 議席數目應該擴大，以增強立法會的工作能力；
- 可行的話，應尋找方法以鼓勵商界及專業人士參與。

29. 立法會的議席應擴大至 90 席，從而增加培育政治人才的機會，及提高立法會應付繁重的立法工作和審議政策的能力。這樣的話，參與立法會事務委員會和條例草案委員會的議員數目將可以增加。

30. 90 名經由普選產生的議員將來自 3 個不同途徑，以確保廣泛的代表性：

- 30 名議員由分區單議席單票制，依從簡單多數制原則產生。換言之，全港將分爲 30 個選區，每一區的人口界乎 20 萬至 25 萬。經由這種途徑產生的議員將更能專注於反映地方選區的利益；
- 30 名議員由大選區單一名單制產生。全港將分爲港島、九龍和新界三個大選區。議席分配將視乎每一張參與名單所得的選票比例而定，而議席數目則視乎某一大選區的人口數目而定。這種安排與現時的比例代表制相似。大選區單一名單制的優點是：（1）經由這種途徑產生的議員將更專注於全港的，或跨選區的利益，（2）這種安排可鼓勵政黨的發展，以提出參選名單；
- 30 名議員來自指定的功能界別（跟目前的功能組別相似），但是與分區單議席單票制和大選區單一名單制一樣，經全港一人一票選舉產生。這種安排將能夠照顧商界和專業團體的想法，因爲它們憂慮直接選舉未必能吸引商界和專業人士參選。不過，這種安排存在原則上和操作上的問題。在以下幾節，我將較詳細討論。

31. 當然，一個民選的立法會最好經由公開提名，然後經由普選產生。但是，有人或會擔心，這將難以吸引商界和專業人士參選。如果目前政制要確保功能組別代表，最簡單的做法就是保留 30 個功能議席。這當然可以令現存的功能團體，包括商會和銀行放心，但是卻違反一人一票選舉的原則。如果將目前的功能團體選舉視爲過渡性質，然後在一段時間之後廢除，將來的政制能否確保功能組別代表，仍然是一個問題。這樣，在邁向最終的普選制度的路途上，我們就連走出第一步的動力也不能被確定。所以，我認爲不應該保留目前的功能團體選舉。

32. 爲了確保商界和專業人士能夠參與未來的立法會，一個折衷的方案是建立一條途徑，讓功能團體有權提名候選人，但是選舉仍是一人一票的直接選舉。具體方式可以有兩種：

- 將所有功能組別變爲職業組別，讓每一名市民都有一個所屬的組別，及參與他所屬的功能或職業組別的選舉。這跟 1995 年立法局選舉所採納的新功能組別相似。這種選舉安排的問題在於，它可能被視爲一種變相的直接

選舉，未必能確保商界和專業人士能夠進入未來的立法會；

- 由指定的功能組別（例如商會、工會和專業團體）所屬團體提名候選人，然後經一人一票選舉立法會議員。這與幾年前立法會議員黃宏發的建議相似，好處是候選人必然來自商界和專業背景，但又不會與普選原則相違背。

33. 就算我們選擇第二種方式，仍然存在一個技術性問題。如果我們要求選民從一個更長的名單之中選擇 30 名候選人進入立法會，選民可能會感到缺乏資料，亦不容易作出決定。在實際過程之中，候選人亦可能爲競選活動期間的後勤安排感到頭痛。另一個選擇是採用名單制，讓來自商界和專業界別的候選人組成單一名單參選。換言之，選民將選擇參選名單，而非個別候選人。30 個議席將按照每張名單的選票比例分配。這種安排不足之處在於，商界及專業人士毋須加入政黨，亦可以參與政治。這對於政黨的發展沒有好處。

34. 未來的立法會將會以單議會制運作。所以，目前以分組點票方式通過立法會議員提出的動議、草案和草案修訂案的做法應被廢除。否則，行政立法關係將仍是不平衡的。

四、行政會議：行政機關的進一步制度化

35. 自 2002 年 7 月實行主要官員問責制之後，行政會議實際上已不單是好像基本法所指的特首的智囊，而是政府的內閣。這個新的角色應該進一步制度化，以加強政府的領導和協調：

- 正如目前的安排一樣，問責官員應繼續成爲行政會議成員；
- 立法會內所有願意加入管治聯盟的政黨的黨魁或代表，應該加入行政會議，同時確保他們兼負管治聯盟的責任。雖然這些政黨背景的成員不需要負責處理任何政策範疇，但應擔任重要的政策制訂的角色，而不只是傳統意義的非官守成員的身份。他們應被容許出任行政會議之內的重要委員會的主席一職，而所屬政黨的黨員則可以出任問責官員；
- 行政會議不應該只有一個政策委員會，而應設立不同的政策委員會。某些委員會應由政務司司長擔任主席，另一些則應由財政司司長出任主席。另一個可能的安排是由政務司司長出任內務政策委員會主席，而財政司司長出任經濟及財務委員會主席；
- 特首辦公室應該強化爲內閣秘書處。特首辦公室主任應由最資深的公務員出任。同時，他不應單是內閣秘書，亦應該成爲公務員之首，行政長官和政務司司長之下的常任秘書長。這種安排能加強行政會議與公務員的聯繫。特首辦公室主任應該經常與各政策局的常任秘書長舉行會議。

五、政務司司長：強化政策協調及與立法會的聯繫

36. 作爲行政長官之下的最重要官員，政務司司長應被認可爲他的副手，並得到特首辦公室主任的輔助，或指派另一位常任秘書長擔任政務司司長辦公室主任。政務司司長的角色有三方面：

- 處理公務員政策的部長；
- 負責協調特區內務政策的部長，並擔任內務政策委員會的主席；
- 作爲行政機關與立法會的主要和經常的聯繫，負責政府的立法議程，同時與立法會內主要政黨舉行每周例會，以商討及解決政策問題，同時收集對政府立法工作的意見。

六、清楚界定部長與公務員之間的不同責任

37. 爲了維護公務員系統的中立性和完整性，高級公務員的工作不應過份政治化。今時今日，公務員效忠政府，不等於犧牲政治中立的原則。所以，要求常任秘書長和其他高級公務員爲政策決定公開辯解和進行政治遊說的做法，已經對公務員系統構成不少風險。他們只應以不具名方式對問責官員提供政策上意見。

38. 公務員事務局局長的職位應被廢除。政務司司長應該成爲處理公務員事務的部長。特首辦公室主任作爲公務員之首，應該與政務司司長緊密合作。

39. 除了以政治方式任命問責官員（部長）之餘，應同時任命一位副部長和一定數目的助理部長，再加上部長的私人助理和新聞秘書，以組成問責官員的工作團隊。這個工作團隊應與常任秘書長及其屬下的公務員隊伍區分開來。爲政策決定公開辯解和進行政治遊說的工作，應屬於部長及其工作團隊的職責範圍。

40. 部長及其工作團隊的進一步發展，一定會影響政務主任階層和首長級公務員系統。所以，政務主任階層和首長級公務員系統有必要進行更徹底的改革，特別是他們的角色、責任和人數。否則，可能會在每一個政策局內出現太多政策制訂者的角色，從而影響決策過程。

七、政黨：進一步制度化的基礎

41. 由於目前的政制屬於行政主導，所以政黨的角色可說是無關宏旨。當香港實行全面的民主之後，政黨應扮演更重要的角色，例如成爲執政黨或執政聯盟的一份子，與行政長官分享權力和一起工作，或派出其黨員參與競選行政長官職位。

42. 特區政制的發展，應有利於政黨的進一步發展，和執政聯盟的組成，確保行政立法關係的穩定，和有效管治。

43. 由於缺乏適用的法例，目前香港的政黨不是以社團條例之下的社團身份登記，就是以公司條例之下的公司身份登記。應該通過適當的政黨法，能夠幫助政黨的發展，和規管政黨的登記及運作（包括政黨的財政來源），以增加透明度。

44. 政黨應按照它們所得的選票比例，得到政府的公費資助，以支持它們的活動。這當然只是指政黨一部份的經費。政黨的經費愈多元化，就愈容易避免受到個別贊助人的控制或過分的影響。

八、法定及諮詢組織

45. 任何有關改革香港政制的討論，都不可能不提到法定及諮詢組織，特別是成員的委任、組織的角色、功能和權力。在殖民地時代，由於英國政府承認自己缺乏民意授權，所以法定及諮詢組織扮演重要的角色，特別是利用它們的非官守委員的身份去提高管治合法性。但是，長久以來，這種政治吸納被批評爲傾向委任商界和專業人士。2002 年實行主要官員問責制之後，政治任命的主要官員不斷收權，令法定及諮詢組織在政策制訂方面的權力進一步被邊緣化。現在是時候全面檢討法定及諮詢組織，同時進行與行政機關和立法機關相配合的改革。

關於憲制改革

46. 上述建議是基於香港應透過普選建立民主政府而作出的。我們明白中央政府和特區內某些界別，特別是商界對於憲制改革的顧慮。

47. 商界擔心一個經由普選產生的政府會爲了爭取選票而大派免費午餐，結果要加稅，令商界負擔更加。不過，在民主與福利之間並不存在必然的關係。近二十年，西方民主國家不少都因爲選民改變意向而削減福利。港人從來對大政府或沒有限制的福利開支沒有好感。另一方面，一個經由民選產生，具有強大民意基礎的政府，才不會因爲要討好個別利益團體而大派免費午餐。

48. 有人亦擔心民主會令民粹主義抬頭，結果爲了解決短期問題而犧牲了長遠的經濟發展。但是，所有發達國家都是實行民主的。此外，亦沒有理由相信政治上成熟的港人會選擇一個沒有能力搞好經濟的人出任行政長官。

49. 憲制改革不只是要不要普選行政長官和所有立法會議員。它也是一個有關怎樣使參與選舉的政治人物和政黨活動的制度化的問題。政黨應該證明它們有能力提出一套能夠回應公眾利益的政綱和政策，並且組織一個負責任的政府。政黨愈能夠吸引人才和社會廣泛的支持，就愈能夠令中央政府和商界對民主的可行性放心。

-- 完 --

香港民主促進會回應政制發展專責小組

前言

香港民主促進會是一個智囊團機構，我們並不支持成員參加選舉。我們絕大多數成員都是商業和專業背景的。在表達我們觀點的時候，我們盡力與社會各階層交流意見。在討論香港未來政制改革時，他們的觀點也會對我們產生了一定的影響。

雖然北京的領導人態度保守，但並不排除香港未來進行政制改革的可能性。目前是一個很好的機會，通過政制發展專責小組幫助香港人和中央政府達成基本共識。

"一國兩制" 的成功是一個很顯然的目標。

另一個很顯然的共同目標是建立一個更加負責，更穩定和富有遠見的香港特別行政區政府。因此，香港人和北京領導人應該一起努力，向世界證明中國統治下的香港是有能力比英國統治下的香港做得比更好。

中國已經踏上了漫長的現代化之路，政制發展專責小組應該強調香港的制度可以作爲中國建設現代化社會的示範。這個示範性的制度是不限於商業和專業知識轉移，中國也可以參考香港法治和公民社會發展的模式。政制發展專責小組應該向中央政府說明，一個開放、民主的香港不會影響香港和整個中國的穩定和繁榮。

回應政制發展專責小組

以下用斜體字列出的是我們回應政制發展專責小組所提出 12 個問題的答案。

1. 《基本法》第 1 條說明香港是中國 "不可分離" 的一部份

   同意

2. 《基本法》第 1 2 條說明香港特區直轄於中央政府

   同意

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3. 《基本法》第４５條和６８條說明行政長官由中央政府任命，對中央政府和香港政府負責。

同意

4. 《基本法》第４５條和６８條說明行政長官和立法會選舉改革必須要根據"特區的實際情況"

同意，但是由於這一原則是寫在"根據循序漸進原則"之前，因此相對於"循序漸進原則"，"根據特區的實際情況"應該具有更重大的意義。換言之，更加快速的改革步伐是可以接受的。

5. "要遵循循序漸進原則"

同意，但應該是在"考慮到香港具體形勢"的前提下，更加快速的改革步伐是可以接受的。

6. 在 1990 年通過《基本法》時，《基本法》中明確規定在制定政治框架部份，應"兼顧社會各階層的利益"

在涉及《基本法》關鍵條款事項時，應該對《基本法》的具體內容給予相當的關注，而不是關注人們 — 不管他們是什麼人，對《基本法》的各種不同意見。否則我們會陷入"人治"而不是"法治"的模式之中。當然，我們也同意爲了在以後立憲進程中達成更加廣泛的共識，我們應該聽取來自各階層的相關意見，並給予適當的權衡。

7. 同時，該目標應該是"有利於資本主義經濟的發展"

同意，這一點已經是眾多經濟學家和社會學家所廣泛認同，並且已出版的諸多文獻材料已經很好的證明了這一點。例如 ***Amartya Sen*** *教授的《發展就是自由》一書。只有在完全的民主體系下，才能充分發揮資本主義經濟的發展潛力。*

8. 修改《基本法》附件 I 和 II 所規定的行政長官和立法會產生辦法應該採用何種立法程序?

根據《基本法》附件 I 第 7 段和附件 III 中第三款，香港立法機構可以對此進行修改。
此外，我們也要指出香港立法會應該增加立法會議員的席位，我們相信這提議是有相當廣泛支持的。而這些新增的議席對於提高立法會的效率是必不可少的。我們也認爲增加立法會席位，也是可以在本地立法修改的。

9. 《基本法》第 159 條規定了修改《基本法》本身的正式程序 – 在修改《基本法》附件時，有沒有必要遵循第 159 條?

沒有必要。正如上面第 8 點所稱述，這兩項附件已經明確署名它們可以由香港立法機構進行修改。

10. 啓動修改有關行政長官和立法會產生辦法的具體程序是什麼?

啓動立法過程的一般程序應該可以適用，因爲這一涉及政治框架方面立法內容，根據目前的條款, 該立法過程應該由特區政府牽頭啓動和完成。

11. 2008 年之後立法會選舉的方式是否適用此後諸條款?

是的。由於《基本法》附件 II 第三款使用了“如果有必要”這一專門用語，因此明確表明了目前存在的立法會機制是可以延續和適用的。

12. 應該怎樣理解《基本法》所指出“2007 年之後”可以進行進一步改革“2007 年之後”的這一用語？

我們對附件 I 中第 7 段的理解爲：有關第三屆行政長官選舉，如有必要，改變行政長官選舉過程和方式是可以進行的。

關於香港民主化對香港與大陸關係的意見

目前，在香港當地和中國大陸，在香港民主化問題上，除了對於民主化對香港經濟和資本主義發展的影響這一問題外，尤其在香港民主化與大陸政局關係的問題上，還存在著一些看來較爲模糊的認識。這方面歸結起來主要有以下幾點：

1. 香港實行民主化的步伐，必須考慮大陸民眾的接受能力，尤其是這一進程對大陸政局的影響。

2. 是否推進香港民主化，必須考慮到另一個因素，即西方勢力可能借民主化之名，行顛覆中國之實的陰謀。

對此，香港民主促進會的立場是：

1. 香港的“一國兩制”，是人類歷史上史無前例的創舉。這一創舉對台灣和國際社會的昭示意義不言而喻。即使就大陸和香港關係這一框架而

言，香港無疑代表了一種先進的生產力、與國際先進文明接軌的楷模以及大陸未來的發展方向。既然這樣，當大陸社會因持續、高速的經濟發展而迅速呈現開放和多元局面之時，香港即將開始的民主化進程，從長遠看必然對大陸具有積極、正面的借鑒意義：即使香港民主化過程中可能產生的暫時負面因素，也將現有的“一國兩制”框架下、被阻隔和消除在羅湖口岸的香港一端。不然，我們便無以解釋香港依然擁有的新聞自由以及許多關於大陸政局的負面報道，爲什麼沒有對大陸的現有政局造成沖擊。

2. 任何一個人都可以理解這一種擔憂，擔心西方國家插手中國的內政，插手香港當地的事務。但在當今世界，民主已經成爲世界潮流，是一種公認的價值觀。在這一種情況下，香港和中央政府應用更爲理性，更有策略和有效的方法師接過民主的旗幟，然後以自己的方式來主導民主的進程。從最近中國在朝核問題和台灣問題上的突破，我們可以看到北京領導人事實上已經有這樣的一些思路。北京領導人在朝核問題上從以前的超脫到後來積極介入，以及在台灣問題從以前不承認外國因素，到後來承認外國因素，同時有效利用外國因素，其中的有益經驗是：一、必須正視客觀事實的存在；二、在正視現實的基礎上，有效利用一些因素來爲我所用。因此在香港民主化問題上，我們認爲，政制小組如能成功說服北京領導人採取「與其消極不如積極，與其被動不如主動」的思路，對香港和整個中國都是有好處的。

我們希望以上發表的意見是有用和積極的。

香港民主促進會
2004 年 2 月 13 日

Friday, 13 February 2004

HONG KONG DEMOCRATIC FOUNDDATION SUBMISSION TO TASK FORCE ON CONSTITUTIONAL DEVELOPMENT

Introduction

The Hong Kong Democratic Foundation is a think tank. It does not support its members to run for election. The majority of our members have business and professional background. In formulating our views, we also try our best to talk and listen to various people in the community and we are influenced by their knowledge in our discussion on further political reform in Hong Kong.

Although taking a conservative position, it seems the Beijing leadership has not ruled out further political reform in Hong Kong. At this stage, there is a good opportunity for the Task Force to assist Hong Kong people to establish some common goals with the Central Government.

The success of the One-Country-Two-Systems principle is an obvious goal.

Another common goal is building a more accountable and predictable HKSAR Government. This way, Hong Kong people and the Beijing leadership could work together and prove to the rest of the world can that Hong Kong can do better under Chinese rule than under British rule.

As China embarks on her long road of modernization, the Task Force should also help highlight Hong Kong's role as a guide in building a modern society in China. This role as a guide need not be restricted to business and professional knowledge transfer. China can also use Hong Kong as a model in the rule of law and development of a civil society. The Task Force should help Hong Kong to communicate to the Beijing leadership that that the transformation to an open, democratic system in Hong Kong need not run against the principles of stability and prosperity -- for Hong Kong and for China as a whole.

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Response to the Task Force

The twelve questions to which the Task Force is seeking answers are listed below with our response in italic type:

1. Article 1 provides that Hong Kong is an "inalienable part" of China.

   Agree.

2. Article 12 provides that Hong Kong "comes directly under" Beijing

   Agree.

3. Articles 45 and 68 provide that the "CE is appointed" by Beijing and that he is "accountable" to both Beijing and Hong Kong

   Agree.

4. Articles 45 and 68 provide that in electoral reform relating to the CE and LegCo it "....must be specified in the light of the actual situation" in Hong Kong

   Agree, but since this phrase comes before "in accordance with the principle of gradual and orderly progress" this consideration should have greater weight than "the principle of gradual and orderly progress" i.e. a faster pace of development could be acceptable.

5. and "in accordance with the principle of gradual and orderly progress"

   Agree, but with the proviso that "in the light of actual conditions" a faster pace of development could be acceptable.

6. In 1990, in passing the Basic Law (BL), it was noted that in designing the political structure "consideration must be given to the interests of the different sectors of society"

   In determining matters in regard to the BL the focus should be on the actual wording of the BL and not on comments made by people on the BL, no matter whom they were, as otherwise we enter the real of "rule by man" rather than "rule of law". However, we do agree that in reaching a consensus over further Constitutional Development the views of all sectors need to be taken into consideration and properly weighed.

7. At the same time, the aim must also be to "facilitate the development of the capitalist economy"

Agree. It is well recognized by both economists and sociologists and there is a good body of published literature on this, for example Professor Amartya Sen's "Development is Freedom", that the full potential of a capitalist economy can only be properly realized under a fully democratic system.

8. What legislative process should be used for amending the methods for electing the CE and LegCo as set out in Annexes I and II of the BL?

It seems very clear from paragraph 7 of Annex I and Section III of Annex II that these can be amended by legislation in Hong Kong.

We would also like to point out that increasing the number of LegCo seats, for which there seems to be considerable support within the community and which we believe is very necessary to improve the efficiency and effectiveness of LegCo, can also be effected through legislation in Hong Kong.

9. Article 159 provides a formal process for amending the BL itself – in amending the Annexes, is there also a need to follow Article 159?

No. As noted in point 8 above, these two Annexes make it clear that they can be amended by legislation in Hong Kong.

10. What is the process for initiating amendments relating to the methods for election of the CE and LegCo?

The normal procedures for initiating legislation should apply and since such legislation is in respect of the political structure, in accordance with present rules, this legislation needs to be initiated by the Government.

11. Whether the method for forming LegCo post 2008 may apply to subsequent terms.

Yes. Since Section III of Annex II uses the phraseology "if there is a need", the clear assumption and implication is that if there is not a need the existing LegCo structure remains until such time as it is determined there is a need for change.

12. How the phrase "subsequent to the year 2007" should be read where the BL indicates further reform could take place.

    Our reading of paragraph 7 of Annex I is that any changes that is felt necessary to the method of selecting the Chief Executive can be made for the third term Chief Executive selection process.

Conclusion – implications of Hong Kong's democratization on Hong Kong – Mainland relationship

There are very diverging views and concerns in Hong Kong and in the mainland on the subject of further democratization in Hong Kong. Other than concerns about the effects of further democratization on economic development and on capitalism in Hong Kong, there are also some seemingly unclear and not well defined views which could be summarized as follows:

1. The pace of democratization in Hong Kong must take mainland China into consideration. Particularly, if such development is: i) acceptable to the masses in China and ii) how such development might affect political development in mainland China.

2. Whether Hong Kong should have further democracy should take another factor into consideration – if western power and unfriendly influences might make use of further democratization in Hong Kong to subvert and work against the interests of China.

The Hong Kong Democratic Foundation's position on those two concerns is as follows:

1. Hong Kong's "One Country Two Systems" is an unprecedented "invention" in human history. The implications of this "invention" to Taiwan and to the international community are clear and important. Even on the framework of China-Hong Kong relations alone, Hong Kong could be described as the newer and more advanced dynamism that could help China as a whole to make the transition to become an international, modern and advanced society. Given this, and as sustained and rapid economic growth will inevitably bring about a more open and diverse society in mainland China, further democratization in Hong Kong will only have positive and guiding effects on China's nation building process. Even if further democratization in Hong Kong were to have short-term negative effects on China, those effects will be stopped and isolated on the Lo Wu side of the border under the "One Country Two Systems" framework. How else would one explain why the "negative reporting" on China politics in Hong Kong has had no effect inside China?

2. Anyone could understand the worry of foreign influence meddling in China internal politics and in Hong Kong affairs. But democracy is an accepted value and trend in today's world. Under these circumstances, a more rational, strategic and effective way to take on and to lead democratic development in Hong Kong is probably the preferred direction. Some of these thinking are already evident in the way the Beijing leadership took on the nuclear crisis in North Korea and on the Taiwan question From indifference to active involvement in North Korea and from denial of foreign influence to admitting and actively using foreign influence to China's advantage in on the Taiwan situation, we learn that the Beijing leadership is quite capable of : i) recognizing facts and situations objectively; and ii) base on those positive, objective and practical recognitions, use those situations to China's advantage. For the above reasons, we feel that on the subject of further democratization in Hong Kong, we feel that Hong Kong and China as a whole would be better off if the Task Force could help persuade the Beijing leadership to participate actively rather than reacting passively and negatively.

We hope our comments to the Task Force have been useful and constructive.

HONG KONG DEMOCRATIC FOUNDATION
Friday 13 February 2004

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綠皮書：香港特別行政區政制改革檢討
GREEN PAPER : REVIEW OF THE POLITICAL SYSTEM IN THE HONG KONG SPECIAL ADMINISTRATIVE REGION

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組織簡介

· 民主動力

「民主動力」是由一群學者、專業、政界及社區人士組成的政治團體，以爭取民主政制爲目標，並致力發展公民社會。一方面，我們以學術研究爲工作重點，定期就港人共同關心的議題進行研究；另一方面，我們亦積極參與和籌劃社會行動，爭取把民主成爲社會發展的重要議題。

· 香港民主促進會

香港民主促進會是一個由一群本地人士組成的獨立、多種族、多元文化的政治智囊團體，致力發展和改善政府政策，使香港成爲一個更開放和進步的社會。香港民主促進會以研究和推動公共政策爲工作重點，主要活動包括探索影響香港經濟、政治和社會的問題，發表有關的政策論文。

鳴謝

盧兆興博士義務參與撰寫本綠皮書，民主動力及香港民主促進會謹此鳴謝。此外，兩會亦對香港民主促進會爲小冊子出版的慷慨捐助衷心致謝。

About Us

· Power for Democracy

Power for Democracy (PFD) is a political organization made up of academics, professionals, political and community leaders with the aim of promoting a democratic political system and the development of civil society. To this end, we are committed to research on those topics of public concerns. We also make an effort in participating in and organizing social campaigns to articulate the promotion of democracy as an important agenda item for social development.

· Hong Kong Democratic Foundation

The Hong Kong Democratic Foundation (HKDF) is an independent, multi-racial, multi-cultural political think tank made up of local people committed to shaping government policy in order to make Hong Kong a more open, progressive society. To this end, the HKDF focuses on the development and promotion of policies. Our primary activity is to seek to influence Hong Kong's economic, political and social development in accordance with the above. This we aim to accomplish through the production of position papers on relevant topic.

Acknowledgement

PFD and HKDF would like to express our gratitude to Dr. Sonny Lo who worked on the Green Paper on a voluntary basis. The financial contribution made by the HKDF in support of the printing of this pamphlet is also most gratefully acknowledged by the two organizations.

綠皮書：香港特別行政區政制改革檢討

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摘要

考慮進行政制改革是香港當前的要務。《基本法》訂明了實行普選的最終目標，雖然沒有確切的時間表。香港市民經已表達他們對民主的訴求，一個負責任的政府必須爲此做好規劃工作。

這份綠皮書推出的目的是希望透過突顯一些有待探討的重要問題，促進社會的討論。考慮到香港現時的情況，以下是幾個主要有待探討的範圍：

1. **行政長官** 必須決定二零零七年及以後行政長官的產生辦法，包括以下的方案：(甲) 維持現時選舉委員會選舉行政長官的模式；(乙) 維持現時選舉委員會選舉行政長官的模式，但擴大委員人數以增加其代表性；(丙) 行政長官候選人經選舉委員會提名後以普選方式產生；(丁) 行政長官候選人在獲得一定數目的選民支持後以普選方式產生。

2. **立法會** 至於立法會的組成則有以下方案：(甲) 不變；(乙) 增加直選及減少功能組別議席；(丙) 只增加直選議席，以增加立法會議席的整體數目；或同時增加直選及功能組別議席，兩者增加的數目可以相等；(丁) 建立兩院制：由功能組別、港區全國人大代表及港區全國政協委員組成上議院，以及由直選議員組成下議院；(戊) 立法會議席全面直選。最後，立法會的直選和功能組別選舉安排亦有檢討的需要。

3. **行政立法關係** 其中一個方案是維持現時由親政府政黨及無政黨背景的主要官員組成執政聯盟；另一方案則由擁有多數議席的政黨或政黨聯盟組成政府。同時，政府亦應考慮增加立法會的權力。

4. **政黨與公民社會** 政黨就政治人才招攬、整合社會上不同意見、以及就各項政策不同意見建立共識等方面均擔當重要的角色，政府應確認它們的法律地位，亦應協助推動它們的活動。在香港逐漸發展的民間團體同時亦擔當重要的角色，政府應積極推動它們的發展。

5. **地方行政** 現時，香港並無擁有實權的地方行政層級。地方行政機關的建立有助推行更能切合該地區需要的政策，其問責性亦可望加強，同時亦可增加市民對社區的認同。因此，當局應考慮建立一個擁有實權的地方行政層級。

進行公眾諮詢的辦法亦十分重要。公眾諮詢有助社會對有關問題形成共識，亦有助加強從而產生的政治制度的認受性。進行公眾諮詢的方法包括由政府成立「民意評估辦事處」、舉辦公眾論壇、立法會聽證會、進行民意調查、以及舉行制憲會議。假若行政長官要在二零零七年三月經由普選產生，有關立法程序須於二零零六年三月前完成；現在只餘下僅兩年多的時間，故此諮詢公眾必須加快進行。

目錄

第一章：政制改革檢討的必要

1.1 改革的必要

這份綠皮書推出的前提是本港的政治制度必須進行改革。《基本法》訂明了本港循序漸進的憲法精神；雖然沒有確切的時間表，但香港政制發展顯然是以實現全面民主化爲目標，逐漸增加立法會內的直選議席。因此，一個負責任的政府必須就此等變革作適當的準備，並在作出任何決定前充分諮詢公眾。

再者，現時特區政府的管治架構亟需進行改革：由於逐漸擴展其民意基礎的立法機關並無實權，在面對具有相當權力但卻由缺乏民意基礎的選舉委員會選出的行政長官時，兩者關係難免並不理想。特首董建華於二零零二年七月推行高官問責制，部份原因就是想改善行政立法關係。

香港正處於由殖民管治過渡至現代民主制度的轉型期。香港是其中最後經歷非殖民地化過程的地方，故此，很多殖民地時期的管治特色仍然保留著，如行政會議、一個不是由選舉產生的領袖、以及一個像十八和十九世紀時期英國殖民地般行使政治權力的官僚系統。這樣的管治模式，對於一個處於二十一世紀，並冀望成爲世界級城市的特別行政區來說，自有明顯不足的地方。

鑑於全面民主化是本港政制發展的最終目標，明確的時間表和路線圖實屬必要。政制改革的成功，有賴市民的積極參與和具研究基礎的理性討論。政治參與固然是自覺行爲，但特區政府對鼓勵市民的投入和保證市民的意願受到尊重實屬責無旁貸。

政制改革的公眾諮詢應以正式的諮詢文件爲起點，臚列所有可行的方案以及其相關的問題。該文件將就促進討論承擔有關的角色，甚至可爲相關的民意調查提供基礎，以瞭解大部份沉默的市民的取態。

1.2《中英聯合聲明》及《基本法》

根據《中華人民共和國政府和大不列顛及北愛爾蘭聯合王國政府關於香港問題的聯合聲明》，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。《聯合聲明》附件一訂明香港特別行政區立法機關由選舉產生。行政機關必須遵守法律，對立法機關負責。

《基本法》第四十三條訂明香港特別行政區行政長官須對中央人民政府及香港特別

行政區負責？第四十五條規定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，最終達至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產生的目標。

《基本法》第六十八條亦訂明立法會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，最終達至全部議員由普選產生的目標。

此外，《基本法》附件一訂明二零零七年以後各任行政長官的產生辦法如需修改，須經立法會全體議員三分之二多數通過，行政長官同意，並報全國人民代表大會常務委員會批准。

同樣，《基本法》附件二訂明二零零七年以後香港特別行政區立法會的產生辦法和法案、議案的表決程序，如需對本附件的規定進行修改，須經立法會全體議員三分之二多數通過，行政長官同意，並報全國人民代表大會常務委員會備案。

由於《聯合聲明》及《基本法》均爲香港特別行政區二零零七年以後的政制改革檢討提供了法律基礎，特區政府自應盡快展開檢討的工作。

1.3 政府及社會對政制改革訴求的回應

二零零三年七月一日超逾五十萬人的大遊行，表達的不單是對政府二十三條立法的不滿，更突顯了公眾對民主政制的渴求。面對公眾對政制改革的訴求，政府曾表示將於二零零四年開展政制改革的檢討工作。及後，政制事務局局長林瑞麟表示當局即將於二零零三年年底前公佈政制檢討的時間表，而公眾諮詢則隨即在二零零四年年初展開。

值得注意的是，當一些爭取民主的民間團體要求政府不遲於二零零三年年底展開政制改革諮詢的同時，部份商界人士亦表明支持盡早展開諮詢工作。

鑑於公眾對民主改革的殷切期望，民主動力及香港民主促進會決定以此綠皮書推動諮詢公眾的工作，目的在喚起公眾對這一重要議題的關注和引發討論；兩會相信，全港市民的積極參與是整個諮詢過程成功的關鍵。

1.4 政制檢討時間表

政制改革檢討時間表的設計必須使中央人民政府、香港特別行政區政府和立法會能

夠在二零零六年三月前完成所有決策和立法程序，使在二零零七年三月普選行政長官成爲一個有可能實現的選項。有志參選的人士最少應有一年時間仔細計劃他們的參選安排和籌備競選活動。由於公眾廣泛憂慮時間不足將會成爲政府延遲實行某個爲社會人士普遍支持方案的藉口，一個合理、容許所有可行方案有機會真正實現的時間表，將有助顯示特區政府對公眾諮詢的誠意和認真考慮所有可行的方案。

供各界討論的時間表

行政長官選舉

現時至二零零四年九月	公眾諮詢 公眾諮詢包括由政府發佈正式的諮詢文件（即綠皮書）。文件內應詳列所有可行的政制改革方案，讓公眾透過清楚界定的渠道表達意見，而政府在過程中應積極扮演促進社會討論和公眾參與的角色
二零零四年十月至二零零五年三月	就行政長官的產生辦法發佈白皮書，並根據需要遵循《基本法》附件一採取相應行動修訂選舉辦法
二零零五年四月至二零零六年三月	由立法會通過行政長官選舉的相關法例
二零零六年四月至二零零七年三月	選舉的前期準備工作及實際競選活動的展開
二零零七年三月	選舉行政長官
二零零七年七月	新一屆行政長官正式就任

供各界討論的時間表

立法會選舉

現時至二零零五年六月	公眾諮詢 公眾諮詢包括由政府發佈正式的諮詢文件（即綠皮書）。文件內應詳列所有可行的改革方案，讓公眾透過清楚界定的渠道表達意見，而政府在過程中應積極扮演促進社會討論和公眾參與的角色
二零零五年七月至二零零六年六月	就立法會的產生辦法發佈白皮書，並根據需要遵循《基本法》附件二採取相應行動修訂選舉辦法
二零零六年七月至二零零七年六月	由立法會通過立法會選舉的相關法例，當中包括界定選區或功能組別
二零零七年七月至二零零八年九月	選舉的前期準備工作及實際競選活動的展開
二零零八年九月	選舉立法會

第二章：選舉行政長官

論者經常認爲香港的政治制度是「行政主導」，但「行政主導」一詞並不是一個十分有意義的概念。由於任何政體的原動力和管治上的倡議主要均來自行政當局，所有的政府體制皆可被視爲「行政主導」。不過，香港政治體制的確把大部份權力集中於行政機關，而立法機關只能享有相對較少的權力。

2.1 方案 1：維持現時選舉委員會選舉行政長官的模式

在二零零二年三月，第一屆行政長官被八百人的選舉委員會推選連任，成爲第二屆行政長官；現時組成選舉委員會和產生行政長官的模式可予以保留。

2.2 方案 2：維持現時選舉委員會選舉行政長官的模式，但擴大委員人數以增加其代表性

一個牽涉最少變更的方案是在維持現時選舉委員會產生行政長官模式的同時，擴大委員人數及增加其民主成份。委員人數可考慮由現時的八百人增加至一千或一千二百人（甚至更多），亦可擴大參與選舉選委會委員的社區組織和功能團體範圍，如少數族裔團體等。

擴大選舉委員會的組成有助增加其認受性和代表性。但由於行政長官是由一小撮人選出，大部份市民未能參與，行政長官將難免繼續被批評爲由「小圈子選舉」產生，對加強其認受性幫助不大。

理論上，選舉委員會可按照美國的選舉團模式進行全面民主化；這樣的話，行政長官其實是由普選產生的選舉委員會循間接選舉產生。當然，有不同的方式達至以絕對多數決定行政長官人選的目標。

2.3 方案 3：行政長官候選人經選舉委員會提名後以普選方式產生

若行政長官能夠由普選產生，候選人可經由選舉委員會提名；同時，若現行的有關法例需要改變，行政長官候選人的參選資格和要求應詳細訂明，雖然這些改變不能超越《基本法》的規定。

成爲正式的行政長官候選人要取得一定數目的選委會委員的提名，這樣的安排有助限制參選人數目。如提名只需要較小數目委員的支持（五十位左右），這將能爲更多

不同政治背景的人提供參選機會，雖然仍會有部份候選人無法競逐；而一個較高的提名要求（如一百位委員或更多），則更多候選人無法參與競逐。

此方案的「好處」在限制競逐行政長官候選人的數目，而弊端在讓一些被選委會委員主觀認爲不適合的候選人被排拒於外。在選委會的組成未能充份代表社會各個階層和普遍民意的前提下，其提名的候選人的認受性將難免受到質疑。

這裡有兩個值得注意的問題。有關選委會代表性的問題已經論及；面對選委會的有限功能（自二零零零年後選委會不再選舉任何立法會議員而根據本方案只負責行政長官候選人的提名），選委會是否還應該保留？

再者，一般相信將會超過兩位候選人競逐行政長官，如勝出的候選人須得到選委會委員絕對多數的支持，這樣的規定將導致類似法國總統選舉的情況出現，即由兩位首回合贏得最多支持的候選人參與第二輪角逐。

2.4 方案 4：行政長官候選人在取得一定數目的選民支持後以普選方式產生

在欠缺像美國般成熟的兩黨制下，如果行政長官需要根據普遍及平等的選舉產生，當局就要設計某種能夠限制候選人數目的提名制度，讓選民能有合理的選擇。正如2.3部份所述，提名可以由選委會負責，候選人的正式參選資格亦可以由一定數目已登記選民的簽名確認。上述兩種做法並行亦可，而這樣所需的選委會委員提名人數可以稍爲提高。

就取得正式參選資格所需的已登記選民支持人數，合理的數目可介乎50,000至100,000人。當然，這個數目可再探討。

2.5 普選行政長官的時間表

《基本法》訂明行政長官最終要以普遍及平等的選舉產生，而是否於二零零七年落實這項規定是目前政制改革檢討的最關鍵問題。

若在二零零七年實行普選，自無須實施任何過渡性的選舉安排。但如果普選的目標要在較後的時間才能實現，政府則必須爲二零零七年或以後的選舉作出過渡性的安排。

第三章：立法會的組成及選舉

現時立法會的六十個議席中，有二十四個是由直選產生，另有六席（百分之十）是由只有狹隘民意基礎的選舉委員會選舉產生，其餘的三十個議席（百分之五十）則經由大部份並無廣泛民意基礎的功能組別選舉產生。從國際標準而言，這樣的安排相當不尋常。《基本法》訂明了立法會增加直選議席的發展方向，這將會不斷提高立法機關的代表性和認受性。而隨著立法會直選議員逐漸增加而立法會議席尚未能全體由直選產生，解決分組點票及有關問題將會愈加重要；而應否增加立法會的權力以配合其民主化將在下一章討論。

3.1 方案 1：不變

雖然此方案可避免爭拗，但這違背了《基本法》訂明的政制發展方向，亦違反了「循序漸進」的概念。

3.2 方案 2：增加直選及減少功能組別議席

改革立法會的其中一個建議是增加直選議席，以及同時減少功能組別議席的數目。

直選議席增加的數目和功能組別議席減少的數目均是探討的範疇。兩者當然可以相同，即維持現時立法會的整體議席數目不變。但這其實並無必要，因爲立法會的整體議席數目可以增加或減少。過去已有很多增加議席的建議，而減少議席則不見有什麼支持。

減少功能組別議席的建議甚具爭議性，而且決定取消哪些組別議席亦會很困難。

3.3 方案 3：只增加直選議席，以增加立法會議席的整體數目；或同時增加直選及功能組別議席，兩者增加的數目可以相等

增加立法會議席的建議得到一定的支持，因爲這個方案較易爲既得利益者所接受。

雖然香港特別行政區立法會議員的數目很小，但立法會委員會的數目卻與世界上很多大國的議會相約。這顯示個別議員需付出大量的時間應付各個委員會的會議；亦可能對議政質素有負面影響。雖然公眾可能關注增加整體議員數目所牽涉的開支，但這個方案預期對提升議會的貢獻會有所幫助。

增加立法會議席的方案有三：只增加直選議席；大幅增加直選議席的同時亦增加小量的功能組別議席；以及增加同等數目的直選和功能組別議席。

其中一個建議是增加直選議席至六十個，同時維持現有功能組別議席的數目。這樣的話，直選議席將佔議會整體議席三分之二的多數，爲將來的民主政制改革以及最終最消所有功能組別議席奠下基礎。

3.4 方案 4：建立兩院制：由功能組別、港區全國人大代表及港區全國政協委員組成上議院，以及由直選議員組成下議院

另一方案是在立法會建立兩院制。上議院由功能組別議員組成，亦可包括港區全國人大代表和港區全國政協委員，而下議院則由普選產生的議員組成。這個方案可參考美國或英國兩院互動的政治制度爲藍本。當然，兩院的職權需要清楚界定，上議院可模擬美國權力甚大的參議院，或是英國權力相當有限的上議院。

由於現時立法會議員個人提出的議案、法案和對政府的修正案均須分別經功能團體選舉產生的議員和其他的議員兩部分出席會議議員各過半數通過，上述兩院制的方案實際上是建基於現行的安排。

若兩院擁有相約的權力可能導致運作上的遲緩和政府的癱瘓。此外，由於大部份功能組別只由數目很小的選民組成，這樣的安排很難令人信服，而上議院亦無可能擁有如由直選產生的下議院同樣的認受性和代表性。

3.5 方案 5：立法會議席全面直選

社會上對在二零零八年全面直選立法會所有議席有一定的訴求，而這個方案亦是目前政制改革檢討中十分重要的部份。若這個最終目標需要延遲實現，則當局必須考慮上述的方案作爲過渡性的安排。

3.6 立法會的選舉辦法

若立法會在二零零八年後仍然保留功能組別議席，功能組別的民主化和擴大其選民基礎是必須考慮的問題。所有僱員和工人應該與企業家和僱主同時有權參與功能組別的投票。

現行立法會的直選安排亦有檢討的需要，特別是如果直選議席有一定程度的增幅。

在欠缺成熟的政黨制度下，在擁有多個議席的中型選區，選民只能從很多張候選人名單中選擇一張，這樣的安排有明顯的局限；若同一選區擁有超過五個議席或出現多張名單，投票過程會變得十分混亂。

以上提出需要改變選舉辦法的考慮，必須與不斷變更選舉辦法帶來的弊端同時衡量。自從本港引進地區直選以來，選舉安排已經作出四次的變更，這樣頻繁的改變令市民對選舉過程的認識模糊，市民亦無從認同某種選舉辦法。鑑於《基本法》的規定，改變是不能避免，但爲日後選舉安排的變更訂立一個明晰的藍圖將有助把干擾減到最低限度。

增加直選議席較合理的做法是增加選區數目，該數目可增至十八個而與區議會的數目銜接。

另一方案是重新引進單議席單票制。但這個安排可能會徹底改變立法會內的政治生態，因爲這將會促成兩黨制和立法會內穩定多數的出現。在現行制度下，獨立候選人和規模較小的政黨仍有贏取議席的可觀勝算，爲獨立候選人和小型政黨提供了生存空間。

第四章：行政立法關係

與很多海外政治體制比較，香港的立法會享有相對有限的權力。由於香港特別行政區將逐漸實現全面民主，政制改革不可能只局限在選舉制度的層面上，其中一項重要改革是行政機關與立法機關的關係。

4.1 提案的權力

根據《基本法》（第七十四條），立法會議員只可提出「不涉及公共開支或政治體制或政府運作」的法律草案，「凡涉及政府政策者，在提出前必須得到行政長官的書面同意」。在立法會民主化的前提下，這樣的限制實在無法令人信服，而在行政長官不是由普選產生的情況下更甚。當局應考慮增加立法會的權力，包括提出私人條例草案的權力。

4.2 立法會的表決程序

再者，現時立法會的表決程序規定，任何由議員提出的動議、法案及修訂議案均需要得到超過一半出席的功能組別以及由地區直選產生的兩組議員同時通過（二零零四年選舉後將沒有選舉委員會產生的議員）；即使同時增加功能組別和直選議席，這種制度的維持仍會遭受重大的壓力。

4.3 政府在立法會內的多數支持

維持政府的暢順運作依靠立法會內穩定多數的支持。在特首董建華的第一屆任期，政府得到親政府政黨的支持。這三個親政府政黨的領袖獲委爲行政會議的成員。但這項安排的基礎薄弱，它們對政府的支持並不穩定，政府往往需要在背後進行大量的討價還價工作。行政會議內政黨成員在公眾表達不滿情緒後的離任突顯了這個制度的薄弱基礎。

隨著直選議席的增加，政府在立法會內維持穩定多數的支持將愈加困難，而現行有利於獨立人士和規模較小政黨的直選制度亦會使這個問題進一步惡化。爲了爭取游離的關鍵票以取得到多數支持，政府可能需要對一小撮獨立議員和小政黨作出重大讓步，情況可能會和以色列國會相像。以色列國會內有多個規模很小的政黨，由於它們擁有組成執政聯盟所需的關鍵票，它們影響力之大往往與其規模不成比例。

當大多數或全部的立法會議席由直選產生，行政長官有可能不能在立法會取得穩定

多數的支持，甚至要面對多數議席爲反對派掌握的挑戰。如果出現這種情況，香港將要面對如法國總統所面臨的因反對黨佔據國會內多數議席而出現的「共治」局面。

鑑於上述的討論，政府應考慮各種行政和立法機關關係的方案。在持續民主化的前提下，認受性／代表性、監察與制衡、政府的穩定性和效率均是重要的考慮。

4.4 方案 1：維持現時由親政府政黨及無政黨背景的主要官員組成執政聯盟

雖然香港特別行政區政府不是由執政黨組成，但在行政會議內，親政府政黨領袖、無政黨背景的問責官員、以及一些委任成員組成了一個鬆散的執政聯盟。

這樣安排的好處是使行政機關能夠更有彈性地挑選不同界別的精英加入政府。在這種制度下，行政長官超越政黨政治，理論上因而可以號召社會各方的支持。但由於這項安排並非建基於意識形態或政治取態上清楚的共識，聯盟內的政黨爲吸引選民要承受著相當的壓力，而政府未必能吸納其政策建議從而滿足它們的要求。這些政黨不時公開反對政府的立場、甚至在立法會上公然批評政府。

4.5 方案 2：由擁有立法會多數議席的政黨或聯盟組成政府

另一方案是由在議會內擁有多數議席的政黨或聯盟組成政府。不過，只要立法會的選舉辦法和組成維持不變，個別政黨很難成爲多數黨或組成穩定的多數聯盟。假若立法會所有議席皆由直選產生，出現多數黨或組成多數黨聯盟的可能性會大大提高。再者，若以單議席單票制進行直選，這個可能性將會更高。在這種情況下，兩黨制或兩大政黨聯盟的出現大有可能。

至於行政長官與立法會的關係，若行政長官能夠取得多數黨或多數黨聯盟的支持，政府運作將會穩定而有效率。但若行政長官需要面對由反對派掌控的立法會，政府將要面對很大的困難。不過，在現有的政制安排下，行政長官對取得立法會多數支持並沒有把握；而隨著立法會議席的增加，要取得立法會多數支持會越加困難。

4.6 方案 3：由多個政黨組成政府

除正式改革現行制度外，亦可考慮擴大執政聯盟的基礎。行政長官可委任多個政黨領袖和較具影響力的獨立議員進入行政會議，增加在立法會取得多數支持的機會。不過，這樣的安排需要行政長官就建立共識擁有高度的政治技巧，但政府在立法會內的穩定多數支持依然不能獲得保證。

假設行政長官由普選產生，而大部份政黨能夠維持務實和溫和的政策路線，這或許是一個可行的方法。但這樣的安排亦有可能令立法會內的爭辯不休首先在行政會議內出現，對政府的有效運作無疑會產生負面影響。

總括而言，在《基本法》的框架下，行政立法關係存在著頗爲棘手的問題，在現階段實難提出理想的解決方法。如果就朝著總統制或議會內閣制有較清晰的發展方向，對解決問題會有所幫助。

第五章：政黨的角色及公民社會的發展

民主政制的建立有賴發展成熟、有效率和擁有廣泛群眾基礎的政黨。政黨招攬政治人才、整合社會上不同意見、以及促進市民就各項政策上的不同意見建立共識；故此，缺乏有效的政黨，社會將難以整合。一九九一年立法會開始引進小量議席的直選，現存的政黨（包括它們的前身）歷史尚短；與此同時，很多會社、社團、慈善團體、政團和其他民間團體亦相繼發展起來。傳媒活躍地討論政府政策和社會議題，市民透過示威活動表達他們的不滿。很多民意調查均顯示公民責任的意識，或許包括最近市民對政府的不滿，使各項選舉取得令人滿意的投票率。

然而，香港公民社會的發展仍然落後於很多已發展及發展中國家。雖然香港的示威活動頻繁，但除了一九八九年六四事件和二零零三年「七・一」的大型示威外，示威的規模往往很小，政黨成員人數亦一直維持在十分低的水平。由於缺乏資源，它們往往只懂批評而未能提出實質的建議，或者說，他們缺乏提出實質政策建議所需的研究資源。支持公共政策討論的資源，如政策研究中心等，十分有限，結果往往令政黨不能深入探討問題，甚至在個別議題上完全缺乏討論。此外，很多諮詢組織未能發揮最大作用，收集意見的渠道效率欠佳。

現行的政治制度對推動公眾政治參與不能發揮作用。如果選舉制度能夠有所改變，引進行政長官普選和立法會議席全面直選，正式與非正式的公眾政治參與將會大大地提高，而政黨亦會有更好的發展基礎。

規範行政長官選舉的法例訂明，行政長官當選後必須退出政黨，這項安排與所有民主國家和中國大陸的慣常做法大相徑庭。

另一方面，自二零零四年起，政府對立法會選舉的經費，將會提供部份補助。這無疑是一項進步的措施。

在各界正思量憲政安排的同時，亦不應忽略探討政黨的角色和公民社會的發展。

訂立政黨法可以作爲一個起步點。現時政黨普遍根據有限公司條例或社團條例註冊。這不單並不妥當，更模糊了政治與商業活動的界線。當局應給予政黨更明確的地位並以政黨身份正式註冊。

此外，政府對民間團體發展的支持亦十分重要；政府應聆聽它們的意見和爲它們提供所須的資源，包括舉行會議的場地和透過大眾傳媒表達意見的渠道等；而增強諮詢組織的代表性亦對此有所幫助。

第六章：地方行政

隨著特區政府於一九九九年取消市政局及區域市政局，並承擔起它們的大量工作，從前存在的地方行政層級已告消失。雖然區議會仍然存在，但它們只扮演諮詢角色。鑑於立法會議員的地位較爲顯著，區議員的諮詢角色甚至比較過去還遜色。

在大部份國家，地方行政機關均被委以重要的功能。權力的下放使市民對其地方管治者有更強的認同，地方行政機關因而更有問責性，其所推行的政策亦更能切合該地區的需要。地方行政機關的弊端在於可能出現資源重疊，致使不能達致規模經濟，而各地區之間的不同規定和程序亦可能對各項經濟活動產生負面影響。

有論者認爲，香港的面積有限，根本無需要建立地政行政層級。但是，地方行政層級的建立將無疑有助促進地區民間活動的發展和市民對社區的認同。更多不同地區反映其需要和意見，亦有助完善整體的政策制定。香港很多政府服務，不論是教育或衛生設施，均由全港性的大型機構提供，它們既不能緊貼居民，也缺乏競爭。權力下放可有助改善服務質素，而引入地區之間的競爭亦對資源的有效運用有所裨益。

假若香港重新引入地方行政層級，我們必須認識從前模式的弊端。市政局及區域市政局享有相當有限的權責，當中主要與康樂和衛生事宜有關。批評者曾指出它們的工作與其所享有的龐大財政資源並不相稱，因此，我們有需要重新探討地方行政機關所應擔當的角色。

6.1 方案 1：維持現狀 – 最小規模的地區行政

根據這方案，地方行政機關維持其現有的最低限度規模，區議會亦只擔當諮詢的角色。

6.2 方案 2：恢復原有市政局／區域市政局模式

從前的市政局及區域市政局可考慮再次成立，並維持其本來有限的權力。

6.3 方案 3：引進擁有一定行政權力的新地方行政層級

地方行政機關的正常模式應包括更大執行政策權力的下放，舉例而言，地方行政機關在提供公共醫療和公屋服務方面應被賦予更大的責任。這樣的安排可能涉及將現有的全港性機構，如房屋委員會和醫院管理局，分爲若干的地區服務單位。

在地方行政的層面，可考慮予在區議會內佔有大部份議席的政黨或政黨聯盟一定的權力和管理區內的事務。它可以成立一個執行委員會，而民政事務處則負責協助執行委員會的運作。

第七章：公眾諮詢的監察及民意評估

現時香港的政制缺乏認受性，因此，就建議中的政制改革所進行的公眾諮詢亟須爲廣大市民認同。恰當的公眾諮詢過程，將會爲改革本身以及整體的政制帶來認受性。

7.1 方案 1：政府成立「民意評估辦事處」進行公眾諮詢

香港政府一向以綠皮書的方式就有關政制改革的問題諮詢公眾。社會普遍期望政府能夠發佈正式的諮詢文件，臚列所有可行方案，讓公眾以較有系統的形式，透過清楚界定的渠道就文件的內容表達意見。推出正式的諮詢文件將有助市民瞭解各個方案的利弊和所牽涉的問題，更有助以民意調查的方式將公眾的意見量化。爲了準確及全面地掌握公眾表達的意見，政府可成立「民意評估辦事處」。關心政制發展的市民可向辦事處表達其意見，而辦事處將會負責收集意見撰寫報告。民意評估辦事處將會向一個由有聲望的社會領袖組成的委員會負責，而委員會將會指導辦事處職員處理公眾提交的意見書以及出版報告的工作。

成立民意評估辦事處的好處在於有一個專門組織負責收集和評估公眾意見，以及撰寫報告書。辦事處應有足夠的資源以鼓勵及促進有關議題在社區的討論。如果委員會成員由行政長官委任，其中立性和客觀性很容易受到質疑。因此，由行政長官提名並由立法會通過其委任是一個較易爲社會接受的選擇。

7.2 方案 2：公眾論壇

政府可考慮於全港十八區舉行公眾論壇。各區議會及民政事務處應扮演積極的角色，鼓勵市民踴躍發表意見；政府亦應歡迎和支持各社會團體討論有關議題和舉辦公眾論壇，就政制改革鼓勵市民發表意見。

7.3 方案 3：立法會聽證會

與此同時，立法會亦可舉行有關政制改革的聽證會和發表報告書。

7.4 方案 4：民意調查

香港政府過去曾委託辦理多項有關市民對政制改革意見的民意調查。爲了保證民意調查的中立性，政府應把委託辦理民意調查的工作交由民意評估辦事處處理。該辦事處應不能夠免受政府影響，獨立處理委託辦理民意調查的工作。

7.5 方案 5：制憲會議

很多海外國家均曾舉行制憲會議，探討如何進行政制及/或憲制改革。政府應歡迎並支持民間團體舉辦的制憲會議。

7.6 方案 6：綜合以上各方案

由於以上各方案並不互相排斥，公眾應積極考慮以上所有或部份方案的同時進行。

總結：未來的路向

這份文件勾劃出香港特區政治改革的各種選項。雖然文件在有限資源的條件下完成，但希望它可以作爲一個起點，供公眾討論和探討各項改革建議的優劣。

任何政治制度均須與時俱進，而改革過程應以社會的普遍訴求爲依歸。政制改革一定要建基於社會的普遍支持，而政府進行公眾諮詢也要保證市民的意見能得到充份的尊重。

GREEN PAPER:

REVIEW OF THE POLITICAL SYSTEM IN THE HONG KONG SPECIAL ADMINISTRATIVE REGION

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EXECUTIVE SUMMARY

It is necessary for Hong Kong to consider constitutional reform. The Basic Law mandates change towards universal suffrage, albeit without a timetable for the complete process. Hong Kong people have expressed their demand for democracy. A responsible government must plan for these changes.

The purpose of this Green Paper is to facilitate public discussion by highlighting major issues to be decided upon. Taking into account Hong Kong's circumstances, it is suggested that the following are the key decision areas:

1. **The Chief Executive**. The method of election of the Chief Executive in 2007 and thereafter has to be determined. The options are (a) existing mode of election by the Election Committee; (b) expanding the Election Committee; (c) election by universal suffrage after nomination by the Election Committee; (d) election by universal suffrage after nomination by the public.

2. **The Legislative Council**. As to the composition of Legco, the options are (a) no change; (b) increase in directly elected seats and decrease in functional constituency seats; (c) increase in the total number of seats by increasing the number of directly-elected seats only, or increasing both types of seats, perhaps equally; (d) establishing two houses, with an upper house composed of functional constituencies, NPC Deputies and CPPCC Delegates, and a lower house composed solely of directly-elected members; (e) direct election of the entire Legco. Finally, the methods of elections to Legco have to be considered.

3. **Relations between the Executive and the Legislature**. One option is the present practice of government by a coalition of pro-government parties and non-affiliated officials. Alternatives would include government by a single party or a coalition. Consideration should be given to expanding Legco's powers.

4. **Political parties and civil society**. Political parties play a crucial role in political recruitment and consolidating public opinion into a consensus to support policy. Political parties should be recognized in law and their activities promoted. Civic groups, which are developing rapidly in Hong Kong, also play a vital role and need to be fostered.

5. **Local Government**. At present, Hong Kong has no local tier of government with executive powers. Local government can provide more tailored services, better accountability, and foster civic identity. Consideration should be given to establishing a tier of local government with some executive powers.

The method of public consultation is also important. Thorough public consultation will not only facilitate the building of a consensus within the community, but also help legitimize the resultant political system. Options include setting up a governmental Public Opinion Assessment Office, holding public forums, conducting Legco hearings, conducting opinion surveys and holding constitutional conventions. The public consultation process must be expedited, because the legislative process must be completed by no later than March 2006 - little more than two years hence - if the Chief Executive is to be elected by universal suffrage in March 2007.

CONTENT

CHAPTER ONE:
THE NEED TO REVIEW THE POLITICAL SYSTEM

1.1 The need for reform

The premise of this Green Paper is that reform of the political system is necessary. This is because even on its own terms the constitution mandated by the Basic Law is in the process of change – with a gradual expansion of directly-elected seats in the legislature and a progression, albeit without a definite timetable, towards full democracy. A responsible government therefore must plan for these changes; and an accountable government must consult the public before making any decision.

Further, the current governance structure of the HKSAR appears to be in need of reform: a legislature enjoying an increasing mandate from the people but which has limited power, facing an executive selected by a narrowly-based committee but which wields very considerable power. The relationship between the Executive and the Legislative Council has been unsatisfactory. Partly to improve this relationship, the Tung administration introduced the Principal Officials Accountability System in July 2002.

Essentially, Hong Kong is in transition between a colonial administration and a modern democracy. Hong Kong was the last major territory to be decolonized, and so it retained forms of governance such as the Executive Council, an unelected leader, and a bureaucracy wielding political power, that characterized Britain's colonies in the eighteenth and nineteenth centuries. These forms of governance are inadequate for the SAR in the twenty-first century, particularly when it seeks to be a "world-class city."

As full democracy is the ultimate goal, a timetable has to be set, and a roadmap has to be defined. Success of political reform can only be guaranteed when the people actively participate in it and are involved in a process of rational, well-researched deliberation. Political participation is a voluntary act, but the HKSAR government has the responsibility of facilitating such participation and ensuring that people's views will be respected.

The starting point of public consultation should be a document identifying the questions and the options to be considered. The document serves the useful role of generating discussions and may even provide the basis for public opinion surveys to ascertain the attitudes of the silent majority.

1.2 The Sino-British Joint Declaration and the Basic Law

According to the 1984 Joint Declaration of the Government of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland on the question of Hong Kong, the Chief Executive of the Hong Kong Special Administrative Region (HKSAR) would be appointed by the Central People's Government on the basis of the results of elections or consultations to be held locally. Annex I of the Joint Declaration stipulates that the legislature of the HKSAR shall be constituted by elections, and that the executive authorities shall abide by the law and shall be accountable to the legislature.

Article 43 of the Basic Law stipulates that the Chief Executive of the HKSAR shall be accountable to the Central People's Government and the HKSAR. Article 45 stipulates that the method for selecting the Chief Executive shall be specified in the light of the actual situation in the HKSAR 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.

Article 68 of the Basic Law also stipulates that the method for forming the Legislative Council shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.

Moreover, Annex I of the Basic Law stipulates that if there is a need to amend the method for selecting the Chief Executive for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval.

Similarly, Annex II of the Basic Law states that with regard to the method for forming the Legislative Council of the HKSAR and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for the record.

In view of the fact that both the Joint Declaration and the Basic Law provide the legal basis for the review of the political system of the HKSAR beyond 2007, the Government of the HKSAR should conduct such a review as soon as possible.

1.3 The responses of the Government and the community to the recent demand for political reform

The mass demonstration of more than 500,000 people on July 1, 2003 expressed not only opposition to the Government's proposed legislation under Article 23 but also the desire for constitutional reform. In response to the public demand for democratic reform, the Government initially promised that the review of the political system would be conducted in the year 2004. The Secretary for Constitutional Affairs, Stephen Lam Sui-lun, further indicated that a timetable for the review of the political system would be released before the end of 2003 and public consultations would start at the beginning of 2004.

It is significant that not only have pro-democracy groups demanded that public consultation on political reforms by the Government should take place at the end of 2003 at the latest, but some members of the business community have also voiced their support for the review of the political system to start as soon as possible.

Due to popular demand for democratic reform in the HKSAR, Power for Democracy and the Hong Kong Democratic Foundation have decided to present this Green Paper for public consultation. Their aim is to generate interest in and debate on this important subject, as they believe that the active participation of Hong Kong people in the public consultation process is the key to its success.

1.4 Timetable for the review

The timetable for the review of the political system should be designed in such a way that the Central People's Government, the HKSAR Government and the Legislative Council can complete the decision-making and legislative processes no later than March 2006. The rationale is to ensure that the direct election of the Chief Executive by universal suffrage in March 2007 will remain a viable and realistic option; and interested persons will have at least one year to ponder their candidacies and prepare for their election campaigns. A reasonable timetable allowing for the implementation of all possible options will reflect the sincerity of the HKSAR Government in consulting the public and genuinely considering all options. There is a serious concern that inadequacy of time will be used as an excuse to delay the implementation of a popularly supported option.

Timetable Proposed for Discussion:

Election of the Chief Executive

Now – September 2004	Public consultation Public consultation involves the release of a proper consultative document, a Green Paper, by the Government listing all possible options for the public to articulate their views through well-defined channels. The Government should also assume responsibility to encourage and facilitate public participation in the discussions
October 2004 – March 2005	Release of a White Paper on the method of election of the Chief Executive, and taking steps to implement changes of the method, if necessary, in accordance with the provisions of Annex I of the Basic Law
April 2005 – March 2006	Legislative Council to enact legislation on election of the Chief Executive
April 2006 – March 2007	Preparation for election campaign and actual election campaign
March 2007	Election of the Chief Executive
July 2007	Assumption of office by the new Chief Executive

Timetable Proposed for Discussion:

Election of the Legislative Council

Now – June 2005	Public consultation Public consultation involves the release of a proper consultative document, a Green Paper, by the Government listing all possible options for the public to articulate their views through well-defined channels. The Government should also assume responsibility to encourage and facilitate public participation in the discussions
July 2005 – June 2006	Release of a White Paper on the method of election of the Legislative Council, and taking steps to implement changes of the method, if necessary, in accordance with the provisions of Annex II of the Basic Law
July 2006 – June 2007	Legislative Council to enact legislation on election of the Legislative Council, including the definition of the respective constituencies
July 2007 – September 2008	Preparation for election campaign and actual election campaign
September 2008	Election of the Legislative Council

CHAPTER TWO: ELECTION OF THE CHIEF EXECUTIVE

Hong Kong's system of government is often characterized as "executive-led." This is in itself not a very meaningful characterization since all forms of government are executive-led, in the sense that the driving force and main source of initiative in governance is the political executive. However, it is true that in Hong Kong there is a high concentration of power in the executive branch. The legislature has relatively less power.

2.1 Option 1: Retaining the existing mode of the Election Committee for the Chief Executive

In March 2002, the first Chief Executive was re-elected as the second Chief Executive by an 800-member Election Committee. The existing composition of the Election Committee can be retained, as can the current method of electing the Chief Executive.

2.2 Option 2: Retaining the existing mode of the Election Committee but expanding it and enhancing its representativeness

A minimalist reform approach is to retain the existing mode of the Election Committee, while attempting to expand and democratize it. The size of the Election Committee can be expanded from 800 members to 1,000, 1,200 or even more. The social groups and functional groups electing representatives to the Election Committee can be broadened in scope to involve new groups such as the ethnic minorities, etc.

Expanding the composition of the Election Committee has the advantage of enhancing its legitimacy and representativeness. However, the disadvantage is that as long as the Chief Executive is selected by a relatively small group of people and the majority of the population cannot participate in the process, critics will view it as a "small-circle election" that does not confer much legitimacy upon the elected Chief Executive.

Theoretically, the Election Committee can be fully democratized following the U.S. model of an Electoral College. In this case, the election of the Chief Executive would become an indirect election, by the Electoral College which itself is elected by universal suffrage. There are various formulae for reaching an absolute majority in support of a candidate.

2.3 Option 3: Election of the Chief Executive by universal suffrage after nomination by an Election Committee

If the Chief Executive is elected by universal suffrage, the nomination of the candidates may be vested in the hands of the existing 800-member Election Committee. The eligibility and requirements of the candidates for the Chief Executive position have to be spelt out, if changes to the existing statute are considered desirable, though they must not go beyond the requirements in the Basic Law.

Formal candidacy requires the nomination by a number of Election Committee members. The number required would limit the number of candidates. A low threshold such as 50 can facilitate candidates from various political backgrounds but will still bar some candidates; a high threshold such as 100 or more may bar even more candidates from the competition.

While the "advantage" of this option is to minimize the number of candidates who will run for Chief Executive, its disadvantage is that it will screen out candidates who are deemed to be unfit by the Committee members. In the event that the Election Committee's composition cannot fully represent either all the sectors of the community or the opinions of the public, the legitimacy of the candidates will be questioned.

Two relevant issues may be raised here. The representativeness of the Election Committee has already been discussed earlier. In view of the limited function of the Election Committee (it does not elect any member of the legislature after 2000 and only nominates Chief Executive candidates in this mode of election), is it worth the effort to maintain the Election Committee?

Further, if there are more than two candidates standing for Chief Executive, the requirement of an absolute majority support for the successful candidate may involve two rounds of voting, with the two leading candidates entering the second round as in the election of the French President.

2.4 Option 4: Election of the Chief Executive by universal suffrage after candidates have obtained the support of a significant number of voters

If the Chief Executive is elected by universal and equal suffrage, in the absence of a mature two-party system like that in the U.S., some kind of nomination process may need to be devised to limit the number of candidates to give the electorate reasonable choices. The nomination may be performed by an Election Committee as outlined in 2.3 above, or a candidate may qualify for formal candidacy through the collection of a number of supporting signatures from registered voters. A combination of both may also be adopted; and under such circumstances, the threshold at the Election Committee may be set higher.

A reasonable number of registered voters whose support is required for formal candidacy may range from 50,000 to 100,000. Again, the number required is open for discussion.

2.5 Timetable for the direct election of the Chief Executive

The election of the Chief Executive by universal and equal suffrage is an ultimate goal recognized by the Basic Law. Whether or not it will be introduced in 2007 is the most crucial issue in the present review of the political system.

If direct election is to be introduced in 2007, no transitional election method needs to be introduced. However, if direct election is to be introduced at a later date, then some transitional arrangement should be made for the election in 2007 or beyond.

CHAPTER THREE: COMPOSITION AND ELECTIONS OF THE LEGISLATIVE COUNCIL

At present, 24 of the 60 seats in the legislature are elected by universal suffrage, 6 (10%) by a narrowly-based Election Committee, and 30 (50%) by functional constituencies, many of which are narrowly based. This is a highly unusual arrangement by international standards. The Basic Law sets the direction for increasing the number of legislators elected by direct election. This will enhance the popular mandate and legitimacy of the legislature. If the proportion of directly-elected legislators falls short of 100%, it would also be important to resolve the issue of the split voting procedure. Whether the increasing mandate of the legislature should be matched by a corresponding expansion in its powers will be discussed in the following chapter.

3.1 Option 1: No change

While this option avoids debates and controversies, it is not in line with the direction of evolution set out in the Basic Law. It is also against the concept of "gradual and orderly change."

3.2 Option 2: Increase in directly-elected seats and decrease in functional constituency seats

One option is to increase the number of directly-elected seats, and decrease the number of seats returned by functional constituencies.

The number of directly-elected seats to be increased and the number of functional constituency seats to be reduced can be discussed. However, while the two numbers may be the same, thus maintaining the existing size of the legislature, they do not have to be so, because the number of members in legislature may be expanded or reduced. The latter has attracted little support, while increasing the number of legislators has been suggested by many.

Reducing the number of functional constituency seats would be controversial, and it might be difficult to identify which of the existing functional constituency seats should be abolished.

3.3 Option 3: Increase in the number of Legislative Council seats by increasing the number of directly-elected seats only, or increasing both types of seats, perhaps equally

There is support for increasing the number of Legislative Council seats as this option is supported by vested interests.

The HKSAR legislature has almost as many committees as in parliaments of major countries, yet Hong Kong only has a fraction of the legislators. This puts heavy demand on the time of individual legislators, and arguably correspondingly lowers the quality of input into legislative deliberations. Increasing the number of legislators will improve the contribution of the legislature, though the public may be concerned with the value for money.

There are three approaches to increasing the number of seats in the Legislative Council: increasing directly-elected seats only, substantially increasing directly-elected seats but only have a few more functional constituency seats, and increasing both types of seats equally.

One suggestion is to increase the number of directly-elected seats to sixty while maintaining the existing number of functional constituency seats; in this way, directly-elected seats will constitute a two-thirds majority paving the way for further democratic reforms to the extent of eventually abolishing all functional constituency seats.

3.4 Option 4: Establishing two houses, with an upper house composed of functional constituencies, NPC deputies and CPPCC delegates, and a lower house composed solely of directly-elected members

Another option is to establish two houses in the HKSAR legislature: an upper house composed of functional constituency seats alone, or involving Hong Kong deputies of the National People's Congress and delegates to the Chinese People's Political Consultative Conference as well; and a lower house composed solely of directly-elected members. This model may follow either the American or the British system of legislature where an upper house co-exists with a lower house. The respective powers of the two houses will have to be worked out. The upper house may be as powerful as the U.S. Senate or enjoy more limited powers as the House of Lords

in the United Kingdom.

The option of a bicameral legislature is based on existing practice. Today, Legislative Council's voting procedures for proposals put forward by members stipulates that the members from the functional constituencies and the other group of members vote separately.

A bicameral legislature with roughly equal powers for both chambers tends to be cumbersome and may paralyze the working of the government. It is also difficult to justify because most functional constituencies consist only of a small number of voters and cannot claim the kind of legitimacy and representativeness enjoyed by the lower house which is elected by universal suffrage.

3.5 Option 5: Direct election of the entire Legislative Council

There is a demand that all seats in the Legislative Council should be directly elected by 2008; and this is a very important option to be considered in this review of the political system. If this ultimate goal is to be delayed, then the above options will have to be considered as transitional arrangements.

3.6 Methods of elections to the Legislative Council

If the functional constituencies are to be retained beyond 2008, one should consider democratizing and expanding the respective electorates. The employees and workers should be included as well as the entrepreneurs and employers.

The existing mode of direct elections to the Legislative Council should also be reviewed; this is especially so if the number of directly-elected seats is to be increased substantially. Multi-seat medium-sized constituencies in which voters can vote for only one slate has limitations in the absence of a mature political party system. Voting can become quite confusing when there are more than five seats in a constituency, and when there are many slates to choose from.

The need for change for reasons such as the above has to be balanced against the disadvantage of continual change. The arrangements for the directly elected constituencies have been changed four times since their introduction, creating a barrier to people's understanding of, and identification with, the election process. Further change is unavoidable, since it is mandated by the Basic Law. However, as far as possible a framework should be devised to accommodate any scheduled future

changes in the electoral arrangements with the minimum of disturbance.

If the number of directly-elected seats is to be increased, one option is to increase the number of constituencies. The latter may rise to eighteen so as to coincide with the number of District Councils.

Another alternative is to re-introduce the single-member constituency, first-past-the-post system. However, this may change the ecology of the legislature in a significant way, as it tends to facilitate the emergence of a two-party system and a stable majority in the legislature. The present system, on the other hand, facilitates independent candidates and small political parties as their chances of securing seats in the Legislative Council remain promising.

CHAPTER FOUR: RELATIONS BETWEEN THE EXECUTIVE AND THE LEGISLATURE

At present in comparison with many overseas polities, the Hong Kong legislature has relatively limited powers. As the HKSAR evolves to a full democracy, the reforms should not be restricted to the electoral systems. One major area for reform is the relations between the executive and the legislature.

4.1 Power to introduce bills

According to the Basic Law (Article 74), only bills "which do not relate to public expenditure or political structure or the operation of the government may be introduced" by the legislators, and the "written consent of the Chief Executive shall be required before bills relating to government policies are introduced." In view of the democratization of the Legislative Council elections, such restrictions can hardly be justified. This is especially so when the Chief Executive is not elected by universal suffrage. Consideration should be given to increasing the power of the Legislative Council, including that to introduce private members' bills

4.2 Voting procedures in the Legislative Council

Further, for the passage of motions, bills or amendments to government bills proposed by members, the Legislative Council's procedures for voting require the support of more than half of the members returned by functional constituencies and those returned by geographical constituencies through direct elections present (after the 2004 elections, there will be no more legislators returned by the Election Committee). The maintenance of such a procedure will come under considerable pressure even if both the number of directly-elected and functional constituency seats increase.

4.3 Majority support for the Government in the Legislative Council

The smooth functioning of a government is dependent on majority support in the legislature. In the early years of the Tung administration, it received support from pro-government parties. Leaders of three such parties and organizations have been appointed to the Executive Council. But the foundation of this arrangement is weak, support from the parties is far from assured and much bargaining goes on behind the scene. The resignation of party members of the Executive Council following expressions of public discontent highlights the fragility of such a system.

The maintenance of a safe majority support for the government will become increasingly difficult when the number of directly-elected seats is increased. The problem will be exacerbated by the existing method of direct elections which encourages independents and small parties. In order to win the critical votes to secure majority support, the government may have to make big concessions to a small number of independent legislators or one or two small parties. The situation may be similar to that of the Israeli Knesset, which is characterized by a number of very small parties which, because they hold pivotal votes necessary for the formation of ruling coalitions, wield influence out of proportion to their respective sizes.

When the majority or all of the seats in the Legislative Council are directly elected, there is a distinct possibility that the Chief Executive will not be able to command a safe majority in the legislature; in fact, he/she may even face a majority opposing him/her. Then Hong Kong will have to encounter a "co-habitation" situation such as in France, where the President has to deal with an opposition party controlling a majority in the National Assembly.

In view of the above, it is important to consider various options concerning the relationship between the executive and the legislature. Assuming progress in democratization, the main considerations are legitimacy/representation, checks and balances as well as stability and efficiency in the government.

4.4 Option 1: Retaining the Existing Practice of a Governing Coalition Composed of Pro-Government Parties and Non-party Affiliated Principal Officials

Although there is no ruling party in the government of the HKSAR, a loose form of governing coalition exists in the Executive Council, which is composed of pro-government political party leaders, non-party affiliated principal officials and some appointed members without ministerial portfolios.

The advantages of the existing arrangement is that it is flexible, allowing the administration to recruit talent from various sectors. Under such a system, the Chief Executive is above party politics and in theory can appeal to the entire community. But this arrangement is not based on a clear consensus regarding ideological values and policy orientations. The political parties within the coalition are under pressure to maintain their appeal to the electorate, and the administration may not be able to satisfy them through incorporation of their policy inputs. It is not unusual that these

political parties openly disagree with the administration and criticize it in the Legislative Council.

4.5 Option 2: A Majority Party or a Majority Coalition Forming the Government

An alternative is to allow a majority party or a coalition which commands a majority of the seats in the Legislative Council to form the government. However, as long as the methods of elections to the Legislative Council and its composition remain unchanged, it will be difficult for a party to emerge as the majority party or for a stable majority coalition to be formed. If all the seats of the Legislative Council are to be directly elected, then the probability of a majority party/coalition will be enhanced. Further, if the single-member constituency, simple-majority system is to be adopted in the direct elections, then the likelihood will be very high. Under such circumstances, the emergence of a two-party system or two broad coalitions of political parties will be a likely scenario.

On the relationship between the Chief Executive and the legislature, if the Chief Executive can secure the support of the majority party or the majority coalition, the functioning of the government will be stable and efficient. If the Chief Executive faces an opposition controlling a majority in the Legislative Council, the situation may become difficult. However, under existing arrangements, there is no guarantee that the Chief Executive can secure a majority support in the Legislative Council, and this will become more difficult when the Legislative Council expands.

4.6 Option 3: Involving a Group of Parties Forming the Government

An alternative to formally changing the system is to widen the base of support of the governing coalition. The Chief Executive may appoint leaders of a number of political parties as well as influential independent legislators to the Executive Council to enhance the chance of securing majority support in the legislature. However, such an arrangement would impose exacting demands on the Chief Executive's political skills in consensus building without providing the guarantee of a stable majority support in the legislature.

Assuming that the Chief Executive is elected by universal suffrage and most political parties in the territory remain pragmatic and moderate in policy orientations, this may be a workable arrangement. But there is also the likelihood that the debates in the Legislative Council simply take place first in the Executive Council, and the

efficiency of the government will be adversely affected.

In sum, given the provisions of the Basic Law, the relationship between the Executive and the Legislative Council will probably become more problematic. It is difficult to envisage satisfactory solutions at this stage. Clearer indications concerning the evolution towards a presidential system or a parliamentary system would be helpful.

CHAPTER FIVE: THE ROLE OF POLITICAL PARTIES AND THE DEVELOPMENT OF CIVIL SOCIETY

A democratic system depends on the development of mature, effective and broadly-based political parties. Political parties engage in political recruitment, aggregate community opinion and build consensus around policies; without effective political parties, society will not be integrated easily. Direct elections for a number of seats in the Legislative Council have been held since 1991; and existing political parties, including their predecessors, have a short history. Clubs, societies, charities, political groups and other civic bodies have developed. The media actively discuss government policies and social issues; the people vent their feelings through demonstrations. Opinion polls suggest that the relatively satisfactory turnouts in the elections have been motivated by a sense of civic responsibility, as well as, perhaps more recently, dissatisfaction with the Government.

Notwithstanding these developments, Hong Kong's civil society remains less developed than that of many other countries, including those in developed and developing countries. Although there are frequent demonstrations in Hong Kong, attendance is thin (except in May-June 1989 and July 2003); membership of political parties remains miniscule. They often criticize, but rarely have developed alternatives to offer, and most lack the resources to produce such alternatives. Intellectual resources such as policy institutes to support debates on public policy are limited, with the result that such debates are often shallow, and on some issues, entirely lacking. Advisory committees exist but in many cases are not very effective channels to gather community opinion.

The current political system has not been designed to foster popular participation. If the electoral systems are changed, i.e., introducing direct elections of the Chief Executive by universal suffrage and the direct elections of all seats of the legislature by universal suffrage, popular participation in both formal and informal politics will certainly improve, and political parties will have a better foundation to develop.

In the ordinance on the election of the Chief Executive, the successful candidate must resign from his/her party before taking up office. This practice is in contradiction to the normal practice in all democracies and in Mainland China.

On the other hand, government compensation for part of the campaign finance of Legislative Council elections starting in 2004 is a progressive step forward.

While deliberating the formal constitutional arrangements in the review of the political system, the role of political parties and the development of civil society should not be neglected.

A starting point may be a law on political parties. At present, political parties generally have to constitute themselves as companies limited by guarantee or register under the Societies Ordinance. This is undesirable, and can give rise to difficulties in distinguishing political activities from commercial activities. Political parties should be given a distinct status and should be able to register as such.

It will also be important for the Government to support the development of civic groups, for example, by attending to their views and by providing them with access to necessary resources such as meeting places and public media. Reforms to make the advisory committees more representative would also help.

CHAPTER SIX: LOCAL GOVERNMENT

In 1999, with the termination of the Urban and Regional Councils and the assumption of the bulk of their work by Hong Kong's Central Government, the pre-existing tier of local government in Hong Kong was largely abolished. The District Councils remain, but their role is advisory. Given the prominence of the Legislative Councillors, even the advisory role of the District Council members is perhaps smaller than it was in the past.

In most countries, significant functions are devolved to local levels of government. Such devolution makes for better identification of the citizen with those governing him/her, stronger accountability, and better tailoring of services to the needs of particular districts. The disadvantages of local government are that duplication of resources can arise, economies of scale may fail to be achieved, and differences in local rules and procedures may hamper economic activities.

It can be argued that because of its geographical compactness, Hong Kong does not need a tier of local government. However, the establishment of such a tier would be helpful in fostering local civic activity and civic identity. Policy formulation at the territory-wide level would be improved with more input on local needs and differences. In Hong Kong many government services, such as education and health, are provided through large-scale monolithic institutions that are neither close to the customer nor subject to competition. Devolution could bring improvement in service quality and, by introducing inter-district competition, greater efficiency in the use of resources.

If local government were restored in Hong Kong, the drawbacks of the pre-existing model need to be recognized. The Urban and Regional Councils had only very limited responsibilities, mainly those relating to recreation and hygiene. One of the complaints about them was that they did little relative to the very extensive revenues they enjoyed. A rethinking of the role of local government would be desirable.

Option 1: Status quo – minimum local government

Under this option local government organs remain at a minimum, with the District Councils assuming an advisory role only.

Option 2: Reversion to Urban Council/Regional Council model

The former Urban Council and Regional Council may be re-established with their former limited powers.

Option 3: Introduction of a new tier of local government with some executive powers

A normal system of local government would include devolution of more substantial powers to implement policy, for example, local government may take over responsibility for the provision of health care and housing. This in turn may involve dividing up the existing territory-wide Housing Authority and Hospital Authority into district units.

At the level of local government, a political party or a coalition of political parties that capture most of the seats in a particular District Council may be given some powers to manage the district affairs. It can form an executive committee to exercise such powers and the City District Office can assist the committee.

CHAPTER SEVEN:
MONITORING THE PUBLIC CONSULTATION EXERCISE AND ASSESSING PUBLIC OPINION

Hong Kong's present constitutional arrangements suffer from a lack of legitimacy. The public consultation process on the proposed constitutional reforms will be crucial in validating the reforms in the eyes of the people. The consultation on the proposed reforms will, if conducted properly, legitimize not only the reforms themselves but the constitutional arrangements as a whole.

7.1 Option 1: Government consultation of public views by setting up a Public Opinion Assessment Office

Traditionally, the Hong Kong Government has consulted the views of the public through the publication of Green Papers. It is expected that a formal consultative document will be released listing all possible options for the public to articulate their views through well-defined channels. The document should serve to identify issues and questions, formulate options, and allow Hong Kong people to express their opinions in a more structured manner. On the basis of the document, public attitudes towards the reform proposals can even be quantified through public opinion surveys. In order to gauge the views of the public accurately and comprehensively, a Public Opinion Assessment Office may be set up. Citizens who are interested in the issue of political reforms can submit their views to the Assessment Office, which will later compile a report on public views. The Assessment Office should be presided over by a prestigious panel of community leaders who command the trust and respect of Hong Kong people. The panel will guide the staff of the Office in the handling of public submissions and in due course the publication of a final report.

The benefit of a Public Opinion Assessment Office is that there is an organization responsible for the collection and assessment of public views, as well as the preparation of a final report. The Office should be given resources to encourage and facilitate discussion at the community level. If the panel is to be appointed by the Chief Executive, its neutrality and objectivity cannot be guaranteed. A more acceptable alternative is for the Chief Executive to nominate the panel, to be endorsed by the Legislative Council.

7.2 Option 2: Public forums

Public forums may be held in the eighteen districts. While District Councils and District Offices should play an active role in encouraging the public to express their views, the Government should welcome and support all social groups to initiate their own discussions or public forums on political reforms in Hong Kong.

7.3 Option 3: Legislative Council hearings

At the same time, the Legislative Council will hold its own public hearings on political reforms and may publish its own report.

7.4 Option 4: Public opinion surveys

In the past, the Hong Kong Government has commissioned opinion surveys to gauge the views of the public on political reforms. In order to ensure political neutrality, the Government should delegate the task to the Public Opinion Assessment Office. The Office will handle the commissioning process in an autonomous way without interference from the Government.

7.5 Option 5: Constitutional conventions

Some overseas countries have held constitutional conventions to guide the design of political and/or constitutional reforms. The Government should welcome and support the organization of constitutional conventions by civic groups.

7.6 Option 6: Combinations of the five options

Since all the options discussed above are not mutually exclusive, the public is invited to consider whether all or some of them should be adopted.

CONCLUSION: THE WAY FORWARD

This document sets out the options for political reforms in the HKSAR. It is hoped that this Green Paper, prepared with very limited resources, will provide a useful starting point for members of the public to consider, debate and discuss the advantages and disadvantages of various reform options.

A political system has to evolve with the times, and it must be guided by the aspirations and demands of the community. Political reforms must be based on the support of society, and a public consultation exercise conducted by the government must guarantee that Hong Kong people's views will be respected.

回應

我們歡迎各界對綠皮書的內容提出評論和意見，並積極參與政制改革諮詢公眾的工作。請將評論或意見電郵至民主動力（exco@pfd.org.hk）或香港民主促進會（hkdf@hkdf.org），或以郵遞方式寄往以下地址：

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Comments Are Welcome

Comments and related opinions on this Green Paper and active participation in the public consultation concerning political reforms are most welcome. Please email them to Power for Democracy (exco@pfd.org.hk) or Hong Kong Democratic Foundation (hkdf@hkdf.org), or send them by post to:

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