

Legislative Council Panel on Constitutional Affairs

**Possible models for forming the Legislative Council
by universal suffrage**

At its meeting on 22 September 2006, the Commission on Strategic Development (CSD) commenced discussion on possible models for forming the Legislative Council (LegCo) by universal suffrage. The secretariat of the CSD has earlier provided to the Panel secretariat the relevant discussion paper (CB(2)3062/05-06) for Members' reference.

2. To facilitate further discussion on the subject among CSD members, a workshop was held on 6 November 2006. Sir David Akers-Jones of the Business and Professionals Federation of Hong Kong (BPF) and Mrs Regina Ip of the Savantas Policy Institute were invited to join the workshop to exchange views with CSD members. The proposals from BPF and Mrs Ip are provided at Annexes I and II respectively for Members' reference.

Constitutional Affairs Bureau
November 2006

Annex I

A Bicameral System for Hong Kong

兩院制的 立法機關



Business and Professionals
Federation of Hong Kong
香港工商專業聯會

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兩院制的 立法機關



**Business and Professionals
Federation of Hong Kong
香港工商專業聯會**

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Section I: The Development of Representative Government

1. If you look back fifty years in the history of Hong Kong, you will see a different landscape, full of people differently employed. We have had our measure of good fortune; difficulties have been overcome and things have always turned out better than we could have hoped. But during this period, because of the special circumstances of Hong Kong, representative government developed at a measured steady pace, carefully along somewhat unorthodox lines in response to underlying circumstances, particularly in regard to the looming question of 1997, and it succeeded in combining change with stability. In 1985, following agreement between the Governments of Great Britain and China, preparations were made with the passing of a Basic Law in 1990, to describe in detail the constitutional arrangements for Hong Kong after its return to China in 1997.
2. Nineteen years before that, in 1966, a government Working Party produced a report on how local administration might develop and, inevitably, because these were colonial times, looked to Britain for a paradigm. The Working Party report was overtaken by the disturbed circumstances and events at the end of the sixties and was quietly forgotten. Thereafter development of representative government was diverted into different channels instead of following the elective process and creation of District Councils as

suggested by the Working Party. These channels involved encouraging greater popular participation in public affairs by the formation of many government advisory committees and boards and the opening of district offices in each of the city districts. Legislative Council was also enlarged and made more representative by the deliberate inclusion of many more appointed members drawn from different sectors of society - architects, engineers, accountants and so forth.

3. Meanwhile the masses of people who moved into the new satellite towns in the New Territories had nobody to represent them except village committees. Starting from 1977, District Advisory Boards were appointed to support the work of "departmental officials across the whole spectrum of local administration through discussion and advice." These refreshing initiatives were, however, insufficient. There were questions from some members of the British Parliament as to why Hong Kong was not taking further steps to increase representation. Universal primary school education had been introduced in 1971, Hong Kong generally was becoming a more sophisticated international community. Society was changing and, in response to this changing scene and in anticipation of future demand, a government paper in 1981, "District Administration in Hong Kong", proposed that one third of the members of these District Boards should be elected by popular vote. Elections were totally unexpected by the general public.

They came without forewarning but, after the initial surprise, were generally welcomed.

4. With the inclusion of elected members in District Boards, Hong Kong was taking a decisive step forward in political development. All persons over the age of 21 with three years of residence were enfranchised and this expansion of democracy was matched by the terms of reference of the District Boards which, instead of putting members in the legal straitjacket of conventional local government, encouraged members to discuss any matters affecting local well being. Hong Kong was crossing the river feeling the stones as it went along.
5. However, the 1981 White Paper stated emphatically that, for the time being, the status quo of the Executive and Legislative Councils would not be changed "and should evolve, as in the past, within the imperative of stability which the special circumstances of Hong Kong require." Three years later in 1984, just before the signing of the Joint Declaration between Great Britain and China, a further government paper was published, which built on what had already been achieved.
6. When introducing these next steps, the Governor, Sir Edward Youde, said, "Our present system of Government operates on the basis of consultation and consensus. This unique system

has developed around the representation of the views of the community in two ways: through the representation on the one hand of regional and district interests" and when speaking about Legislative Council, "through the representation of occupational interests such as commerce and industry, law, education, medical and social services..... These two parallel approaches allow time for debate and dissent.....synthesizing the views of geographical and functional constituencies." A gradual approach was therefore proposed so as not to undermine, with the possibility of political agitation, our position as an emerging international industrial, commercial and financial centre. Change, it said, was inevitable but should take place gradually.

7. The 1984 paper went on to propose election of functional representatives rather than their appointment by the Governor, and that members should be elected by their parent organizations and professional bodies. This change from appointment to election is significant in that it marked the start of the subsequent development of the functional constituency concept as an integral part of Hong Kong's political system and whose future role is discussed later in this paper.
8. Meanwhile in order to reflect its growing importance in public affairs and to manage its increasing workload, Legislative Council was expanded from 25 to 44 members in 1980 and to 56 in 1985.

The consequence of this was that Government officials who were members of Legislative Council were now outnumbered by non-official members of the public.

9. In 1987, a further government paper devoted many paragraphs to the role of functional constituencies, and, in commenting on the various views that had been expressed about their role, noted that most contributors favoured the retention of this method for selecting some members of the Legislative Council. The pace was quickening and in 1991 direct elections were proposed for 18 seats of the Legislative Council in addition to the 21 elected functional constituency representatives.
10. From this brief chronicle of event it can be said that far from standing still, at intervals of three or four years Hong Kong was moving forward to develop its own system of representative government.
11. Arriving in 1992, a new Governor, Christopher Patten, presented proposals for further development of the representative system ostensibly to prepare for the return of Hong Kong to the Government of the People's Republic in 1997. He proposed to abolish all the appointed seats in the District Boards and to fill the nine seats to make up the balance of 21 functional constituencies with functional seats which would include the total workforce of

2.7 million based upon the broad industrial groups of the Hong Kong Standard Industrial Classification used for statistical purposes. It was unfortunate that no precise definition of functional constituencies had been included in the Basic Law. Everyone knew what they were because functional constituency members had regularly been referred to as representing associations and professions, indeed from the outset when introducing the concept during a speech to the Legislative Council on 18 July 1984, the Governor, Sir Edward Youde, had said, "by this we mean organizations." The functional constituencies proposed in 1992 went far beyond the boundaries of organizations and were certainly not envisaged by the authors of the 1990 Basic Law. The Governor's proposals provoked a strong reaction from the Chinese Authorities and were to have serious consequences in 1997. They led to the abandonment of the "through train" whereby those elected to the Legislative Council before 1997 had an opportunity to carry on after the return to China. Legislative Council was dissolved and a caretaker Provisional Legislative Council was subsequently formed until fresh elections could be held.

12. In the years which followed 1997 further changes have taken place in the balance between functional and directly elected members and there are now 30 directly elected members of the Legislative Council elected using a list system and 30 functional members.

Section II: The Nine Requirements Before Further Change

13. Our Basic Law holds out the promise of Legislative Council elected by universal suffrage from 2007, but before this can eventuate the Standing Committee of the National People's Congress has indicated that the SAR has to fulfil 9 conditions as follows:

- i) according to the Basic Law, any amendments can only 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 NPCSC for approval or for the record;*
- ii) any proposed amendments must comply with the provisions of the Basic Law. Amendments to the design and principle of the political structure prescribed in the Basic Law must not be lightly contemplated;*
- iii) the appointment of the Chief Executive by the Central Authorities is substantive. No proposed amendments shall affect the substantive power of appointment of the Central Authorities;*
- iv) any proposed amendments must aim at consolidating the executive-led system headed by the Chief Executive and*

must not deviate from this principle of design. They should aim at perfecting the executive-led system, and should not lead to a deterioration of the co-ordination problem of the current relationship between the executive authorities and the legislature;

- v) development towards the ultimate aim of universal suffrage must progress in a gradual and orderly manner step by step. The pace should not be too fast. The progress should accord with the actual situation in the HKSAR, in order to preserve its prosperity and stability;*
- vi) when considering the actual situation, public opinions, as well as other factors, including the legal status of the HKSAR, the present stage of constitutional development, economic development, social conditions, the understanding on the part of the public of "One Country, Two Systems" and the Basic Law, public awareness on political participation, the maturity of political talent and political groups, as well as the relationship between the executive authorities and the legislature, must be taken into account;*

vii) any proposed amendments must enable different sectors of society to be represented in the political structure, and to participate in politics through various channels;

viii) any proposed amendments should ensure that consideration would continue to be given to the interests of different sectors of society; and

ix) any proposed amendments must not bring about adverse effect on the systems of economy, monetary affairs, public finance and others as prescribed in the Basic Law.

14. The Basic Law holds out the promise of a Legislative Council elected by universal suffrage and while there are continuing calls for universal suffrage in 2008, the ruling by the Central Authorities quoted above was issued in keeping with the principle of gradual progress and stable government. In accordance with this and other statements by the Central Authorities, the elections for the Chief Executive in 2007 shall be limited to a broadening to include more people in the process but the election will not be thrown open to universal suffrage. Similarly, with regard to elections for Legislative Council in 2008 a change to a fully directly elected Council has been ruled out. Instead the electoral colleges of the functional constituency members may be modified and improved, while any expansion of the Legislative Council to cope with an

increasing workload must be evenly balanced between directly elected and functional members.

15. Legislative Council will therefore enter the next electoral term of four years ending in 2012 with the same even balance between functional and directly elected members and the voting system prescribed in the Basic Law.
16. To sum up, beginning in 1966 changes have taken place at a steady pace in the representative nature of the Government of Hong Kong. Meanwhile, the population has doubled from 3.4 to 6.8 million. Satellite towns in the New Territories have been established. Industry which was a strong pillar of the economy during the early part of these forty years has migrated to China and the service sector has largely taken its place. Hong Kong started the period with one university, it now has seven. Most significant of all, following the 1984 agreement between Britain and China, Hong Kong's transition to China's rule in 1997 has been smoothly achieved and Hong Kong continues to enjoy its own special characteristics and way of life.

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17. The following sections describe the parameters set out in the Basic Law within which the Legislative Council has to work and explore the possibilities for a further step forward with the introduction of a bicameral system by separating the functional and directly elected members into two chambers in line with the system adopted by many legislatures around the world.

Section III: Composition and Procedures of the Legislative Council

18. The Agreement between the two Governments described in broad detail the main features of Hong Kong's governance, its core values, its civil society and way of life. Hong Kong needed its own legislation and almost before the ink was dry on this Agreement, work began to set out in considerable detail these arrangements in a Basic Law promulgated in 1990.
19. The works of drafting the Basic Law was completed after extensive discussion over a period of five years by a Joint Committee of Hong Kong and Mainland members with the help of a Consultative Committee to the Basic Law drafting members and the publication of drafts for public comment. We are concerned in this paper with those sections of the Basic Law which deal with the formation and procedures of the Legislative Council.
20. Article 68 of the Basic Law describes the method for forming the Legislative Council as follows:

"The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage."

21. The detail of and specific method for the formation of the Legislative Council is carried in Annex II of the Basic Law in accordance with the following words from the third paragraph of Article 68 and Annex II as follows:

"The specific method for forming the Legislative Council and its procedures for voting on bills and motions are prescribed in Annex II: "Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures."

Annex II describes this as follows:

"The Legislative Council of the Hong Kong Special Administrative Region shall be composed of 60 members in each term. In the first term, the Legislative Council shall be formed in accordance with the "Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region". The composition of the Legislative Council in the second and third terms shall be as follows :

<i>Second term</i>	
<i>Members returned by functional constituencies</i>	30
<i>Members returned by the Election Committee</i>	6
<i>Members returned by geographical constituencies through direct elections</i>	24"

The composition of the Legislative Council in the third and subsequent terms removed the members elected by an Election Committee, so that Legislative Council consisted of two numerically equal parts of directly elected and functional members.

<i>"Third term</i>	
<i>Members returned by functional constituencies</i>	30
<i>Members returned by geographical constituencies through direct elections</i>	30"

22. Annex II then goes on to delegate the procedures for election to the Government of the SAR to decide, specify and thereafter to be passed by the Legislative Council as follows:

".....The division of geographical constituencies and the voting method for direct elections therein; the delimitation of functional sectors and corporate bodies, their seat allocation and election methods..... shall be specified by an electoral law introduced by the Government of the Hong Kong Special Administrative Region and passed by the Legislative Council."

The following paragraphs in Section II of Annex II set out the procedures for voting on bills and motions:

"Unless otherwise provided for in this Law, the Legislative Council shall adopt the following procedures for voting on bills and motions :

The passage of bills introduced by the government shall require at least a simple majority vote of the members of the Legislative Council present.

The passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council shall require a simple majority vote of each of the two groups of members present: members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee."

Further development of the formation and method after 2007 is dealt with in Section III of Annex II as follows:

"With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region 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."

23. The description of the voting method set out in Annex II Section II above is virtually a bicameral system within the working of the Legislative Council. This is not dissimilar from the description of governments of other countries with a bicameral system, where it is usual to refer to the system as a whole by a term which embraces both parts of the system. Hence, in the USA, Congress refers to both the House of Representatives and the Senate. Parliament is a word used generally when describing legislatures which refers to the whole, the upper and the lower house. Using this analogy the term "Legislative Council" could be considered to be the Council acting as a whole that is to say, the legislature, and the separation of the directly elected members and the functional members into two chambers could be similarly regarded, jointly they would consist of the Legislative Council as a whole and, in other words, they would be the legislature of the SAR. If this line of reasoning is followed, then any amendment to the method of voting on bills and motions and the procedures to be followed may be agreed in accordance with the provisions of Section III of Annex II of the Basic Law (see para 22 above). Similarly the distribution of seats as between functional and directly elected members can be dealt with under this provision.

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24. Thus the separation of the Council into its two component chambers, functional and directly elected, for the purpose of managing its business envisaged by the adoption of a bicameral system is a matter which can be agreed in accordance with the provisions under Section III of Annex II.
25. The following section will give a brief description of how a bicameral system works and benefits the legislative process in a number of countries.

Section IV: The Law, the Legislative Council and the Next Steps

26. Following elections for the Legislative Council in 2008, the Council will have an even number of seats each for directly elected and functional members. The Council may be bigger but the number of seats will be divided equally. This will obtain until the next election in four years times 2012. What should be the next step forward in our gradual and orderly progress? How are we to meet a requirement that two-thirds of the Legislative Council have to agree to any step forward and to any amendment? How is any change going to meet the nine requirements of the Central Authorities?
27. The second of those requirements is that any amendment must comply with the design and principle of the political structure. The principle is an executive led and accountability system; the design must ensure that different sectors and interests of society are represented and that there must be no adverse effect on the system of the economy and finance, i.e. a balanced budget and financial prudence. We are moreover encouraged further to consolidate the executive led system.
28. Although some of the steps needed to achieve a consolidation of the executive led system are outside the scope of this paper, for the sake of completeness it can nevertheless be suggested that

the structure and functioning of the executive itself needs to change in order to strengthen its position. The so-call "Ministerial" system has not been developed to cover the whole range of government activity. Principal officials are poorly supported with subordinate staff and have no Deputies. The links between Principal Officials and policy advisory committees and commissioners could similarly be strengthened. Consideration could be given as to whether the Chief Executive should continue to be independent of a political party and to the links between the Executive and Legislative Authorities and so forth.

29. The Basic Law confers certain powers on the Chief Executive in respect of bills passed by the Legislative Council. If they are incompatible, he may pass the bill back for reconsideration, or if the Council refuses to pass the budget or any important bill, he may dissolve the Council having consulted his Executive Council (Basic Law Articles 49 & 50).
30. The function and work of the Legislative Council covers all the functions of normal governments elsewhere and members of the Council may introduce bills provided they do not relate to public expenditure or the political structure. The Chief Executive must consent before bills relating to government policies are introduced (Basic Law Article 74).

31. Annex II Section II of the Basic Law also sets out the procedures for voting on bills and motions. Bills introduced by the Government require a simple majority; but bills, motions and amendments introduced individually require a simple majority separately in each of the two sections, directly elected and functional constituency halves, of the Legislative Council. The articles mentioned above are relevant to the need for and functioning of a bicameral system.
32. How are we to move forward bearing in mind the nine requirements and the Articles of the Basic Law described above? We must not derogate from the executive led system, we must make sure that different sectors of society are represented. The changes permitted by the Central Authorities in 2007 strengthen the support for the representation of different sectors of society, the functionals, by emphasizing their equality with directly elected members. The voting system described in Section II of Annex II also keeps a firm grip on the directly elected members. How then can we take a gradual step forward? Nothing should be done to weaken the power of the executive nor should the representation of different sectors and their voice be quietened to an insignificant whisper. The BPF believes that this question can be answered by introducing a true bicameral system.

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33. The implementation of a bicameral system, two chambers, would involve completing the separation of responsibility implicit in the present separate majority voting system on individual bills and motions in the Legislative Council. The Legislative Council collectively would consist of two chambers, a House of Representatives and a Senate of functional members.
34. Election for members of its two chambers would follow whatever modifications are introduced and implemented following the current review.
35. But if the first chamber of direct, elected members is separated from the functionals, there would however be no longer any need it to be the same size as the second chamber. Indeed, since it would have the task of filling the membership of the panels and committees, it would need to have more than the present 30.
36. The first chamber would sit and debate separately. This will encourage more responsible administration and will enable the executive to establish a more direct communication with its representatives.

37. The second chamber would act as a check and balance. Bills would pass from the first chamber to the second for scrutiny and possible amendment. The Bill with or without amendment would return to the First Chamber. If the amendments were not accepted in whole or part, the Bill would return to the Second Chamber for further discussion and so on.

38. In the following pages we discuss how the system is working in countries which have experience of how the system affects the conduct of public affairs and why they continue to retain and respect the system.

Section V: Bicameral Systems Elsewhere

39. A value common to bicameral systems in whichever part of the world they are is that the second chamber is able to apply a check to the work of the first chamber, to correct mistakes and oversight in the drafting of legislation, and to exert a steadying influence on policies and motions conceived in the first chamber, to allow for second thoughts and to admit wider community involvement. There will be differences of view and approach between the two chambers but it is not a closed door situation, differences may be and are ironed out by exchanging views which shuttle between the two or if necessary they can be resolved by a joint conference of both chambers.

USA

40. Practical politics produced the American Senate and called for two legislative Chambers in 1788. Congress is the collective noun used in the United States of America to describe the two chambers of government, the Senate and the House of Representatives (the House). Senators are chosen by the separate States of the Federation by open election, they stand for an election which tends to attract middle aged, well-off candidates who are drawn generally from the among lawyers, business and banking.

^{*}The content of this section has drawn much of its information from "Senates, Bicameralism in the Contemporary World" edited by Samuel C. Patterson and Anthony Mughan and its nine individual contributors. Published by the Ohio State University Press, 1999.

41. While the political system is dominated by two main parties, the directly elected President may not necessarily command a majority of support in the Senate or the House or both. But even with majority support, Senators may, nevertheless, take a different view of matters from the House and a large and cohesive minority may exert considerable power and use the power of the Senate to delay the passage of legislation and the policies and appointments of Government. Senators of the same party may indeed lack strong electoral ties with the President. The Senate is smaller than the House and, because of its numerous committees, Senators are kept busy. Senators are more in the public eye, and use it to publicise problems and, since they come from a different base of representation, promote their own solutions. The Senate may contribute to gridlock by obstruction and filibustering. For all that, the Senate occupies a special place in the American Constitution and although it has changed over time, the framers of the Constitution perceived bicameralism as guarding against a dangerous concentration of power in the House of Representatives. The Senate has remained for well over two hundred years and so it will remain. (Barbara Sinclair)

Canada

42. The Canadian Senate has a total of 104 members who are appointed by the Governor in Council, in effect the Prime Minister,

and retain their seats unless they resign or until the age of seventy-five. "The powers of the Senate are coequal with the House of Commons with the exception that bills for appropriating public revenue or for imposing a tax must originate in the Commons." Legislation may originate in either chamber but in practice most laws are introduced in the Commons. The Senate may amend legislation and may also reject it but this power, with few exceptions, in practice is not invoked. In recent years, the fact that the Senate has had a different political coloration from the Commons has led to prolonged dispute between the two chambers and the Senate became a thorn in the flesh for the Government. The system whereby the members of the Senate are wholly appointed is seen by commentators as being at the root of the problem and there have been calls for reform but agreement on the nature of reform has not been achieved. (C.E.S. Franks)

France

43. Bicameralism was instituted in France in 1795 as a result of the excesses of the single house in the final days of the revolution of 1789. Since then it has had periods of power and of decline as the nature of government and society has changed. It was designed to ensure that "reason prevailed over passion and time and reflection over immediate action." The Senate cannot be

dissolved. Senators are elected for a period of nine years and a third of its membership is renewed every three years which provides a continuity of work and the legislative process. The Senate remains in office when the Lower House is dissolved. In recent years, President de Gaulle, faced with continuing opposition from the Senate, held a referendum in 1969 drastically to alter its membership and functions. The referendum was defeated and the President resigned.

44. Legislation is shaped by negotiation between the two houses of parliament and, if need be to resolve sharp differences, the Government may appoint a committee with equal representation of both houses.

45. The Government may introduce bills into either house with the exception of financial bills. Work done by the Senate on bills which pass from the lower house "corrects inaccuracies, improves wording, and makes legislation more precise and broadly applicable. "

46. The French Senate is elected by a two stage process. The first stage is the election of the country's municipal councils for a period of six years. The second stage is the appointment by the councils of delegates to a senatorial electoral college in each department (district / county) which elects members of the Upper House. Because of the lengthy tenure of office, this electoral process

introduces a degree of permanency among the members and tends to conservatism. Municipal councilors nearing the end of their term will elect a third of the senators for their department who in turn go into office for 9 years. Another element encouraging conservatism is the age requirement which requires Senators to be at least aged thirty five. (Jean Mastias)

Australia

47.¹¹ The Constitution of 1901 established a bicameral parliament consisting of a House of Representatives and a Senate with virtually equal powers. The Senate now is composed of seventy-six members elected for a six-year term¹² by the separate states and territories of the nation. Senators are now elected by the single transferable vote in multi member constituencies as distinct from the single member preferential voting used in elections to the House. Proportional representation thus allows minor parties and independents to exercise considerable power in the legislative process.

48. The Senate is half the size of the House of Representatives. It cannot introduce money bills or amend tax bills or supply bills for the "ordinary annual services of the Government" and requires deadlock between the two houses to be resolved by a joint sitting. Although outnumbered, the Senate has the power to return "any proposed law" with a request for amendment. This may result in

the deadlock procedure which involves a three-month interval before the Senate tries again and in the event of further deadlock there is a dissolution of both chambers and a fresh election before a further joint sitting can be convened. However, it seems that the danger of gridlock has been mitigated to some extent by reference to Senate of committee before the passage of legislation by the House. Question time in the Senate provides another opportunity for Senators to exercise their muscles but strict rules are imposed on the length of questions and the reply by ministers. Questions are limited to one minute and replies to four and lead to lively exchanges. The introduction of proportional representation into elections to the Senate permitted the representation of minor interests who, living between the power of the two main parties of government, have been able to exercise destructive or obstructive bargaining power and led the former Prime Minister Keating to describe the Senate as a "spoiling chamber..... usurping the responsibilities of the Executive drawn from the representative chamber," and "simply holding any government to ransom." "Challenging the traditional model with its implied right to untrammelled rule by the party holding power as the government of the day. Nevertheless the Senate remains as an integral part of the system." (John Uhr)

Ireland

49. The Seanad (Senate) of Ireland is composed of sixty members of whom eleven are nominated and forty-nine elected. The nominated members are nominated, with their prior consent, by the Prime Minister. Three from each of the National University and the University of Dublin. Forty-three are elected from five panels of candidates representing:

- (i) National Language and Culture, Literature, Art and Education and professional interests;**
- (ii) Agriculture allied interests, and Fisheries;**
- (iii) Labour;**
- (iv) Industry and Commerce including banking, finance, accountancy, engineering and architecture;**
- (v) Public administration and social services, including voluntary social activities.**

50. Bills other than money bills may also be initiated in the Senate and may be passed to the House. A bill passed by either House and accepted by the other is deemed to have passed. Money bills are sent to the Senate for recommendation within twenty-one days and may be passed with or without acceptance of the recommendation. Longer periods are allowed for the consideration of other bills but after the expiry of the stated period shall be deemed to have passed. (from the Government of Ireland website)

51. From the foregoing it can be seen that the Parliament of Ireland enjoys many similarities with the functional constituencies of the Hong Kong Government.

General

52. The second chamber or Senate in each of these illustrations is differently composed and functions differently. However, apart from the American Senate, Senates generally enjoy less power and prestige. But as J.S. Mill writes on liberty "in political speculations 'the tyranny of the majority' is now generally included among the evils against which society requires to be on guard." It may be said that Senates are part of this guarding process.

53. For Senates to be elected by the same process which elects the other house would lead to an absurd duplication of their popular base. The second chamber must therefore represent distinctive territorial or functional groups. Their contribution is to improve government, to improve the quality of legislation, to contribute wide reflection, wisdom and different points of view. If they had not played this useful role, they would have been eliminated but second chambers continue to maintain healthy existence around the world despite the shadow of majoritarian criticism.

Section VI: 2012: A Bicameral Solution for the SAR

54. "Give power to the people" and "universal suffrage" were the common cry of thousands who marched in 2003 and 2004. Reacting to these marches and cries, our national leaders called for restraint and to follow the gradual and orderly progress in political development required by the Basic Law. How, then, to meet both the need for restraint and to respond to the general , wish to have a fully directly elected Legislative Council?
55. To have a fully directly elected Council in 2012 and to abolish the functional constituencies would be to leap into an unpredictable future. It would not meet the gradual and orderly criteria and would not be acceptable to the Central Authorities. There are some who say "why change the existing system", but is this really a viable alternative when there is such a persistent demand for change and when we need to make progress towards the goal envisaged by the Basic Law? Will not the demand become more strident? Is there a middle way, a means to compromise between a fully directly elected Legislative Council and the need for restraint, to hear the popular voice, and to make gradual progress but also to respond to the strictures of the nine requirements referred to in Section II above; to ensure, in the words of the Central Authorities, that the management of Hong Kong's Government should remain in the hands "of all sectors of society"? The real question to ask is

whether conflict between popular demand and gradual and steady progress can be avoided. The answer is that it can.

56. The National People's Congress has declared that any changes to the election of the Legislative Council made in 2008 must protect the equal balance between the directly elected and functional constituencies and maintain the separate voting system of the Legislative Council. This clearly indicates a desire, at least for the immediate future, for a continuing role for vocational and functional representatives. Opinion surveys show that Hong Kong people's views are mixed or even contradictory, for while there is a strong wish for direct elections there is also support for the retention of functional constituencies!

57. Many countries have had to face a similar dilemma when developing their democracies, to find a balance between a directly elected legislature and the long term interests of the nation, to provide a necessary check to extremism and to give time during the legislative process for the whole community to think things out clearly. Their answer often lay in having a representative system consisting of two chambers.

58. A two-chamber system was in fact proposed for Hong Kong during the last stages of drafting the Basic Law, but there had already been five years of drafting and the proposal was made too late for it to be properly evaluated.
59. Would a bicameral system provide a solution to our dilemma - the need for gradual change and the call for immediate universal suffrage? Would a bicameral system merely lead to deadlock between the two chambers and to further procrastination in getting things done? We have time now before 2012 to examine how bicameral systems work elsewhere (previous sections have given an introduction to some of them), and how this system could lead to a more thorough examination of the issues before the community and the Government. It could lessen the tension between the two categories of members, directly and functionally elected. It could, if properly structured, lead to greater efficiency and expedition in the conduct of government business.
60. Because of these qualities, two chambers, far from being obsolete or outdated, are found in more than seventy large and small countries around the world - the USA, Canada, Brazil, Australia and the new nations of Eastern Europe, to name but a few. Indeed of some countries which abolished them, 11 have since reinstated them and in 14 nations new second chambers have been created. Of the seventy countries with two chambers, each has adapted them to suit particular circumstances and there is no unanimity in

their composition. Many have arisen from the need to give elected representation to the interests of separate federated States or Provinces. But this is not a hard and fast rule. In some countries the members are appointed, in others the members are based on vocational categories and in others there is a mixed system. It is also interesting to note that even the separate states of federal governments often themselves have a bicameral legislature, e.g. all but one of the United States of America have bicameral systems.

61. Hong Kong has had representation elected by function or vocation in the Legislative Council since 1985. Later, when the Basic Law was completed in 1990, functional representatives continued to be included and they have since become embedded in the governance of the HKSAR. As their number has grown, the composition of FCs has become imprecise. Some professions are represented, others are not, some sectors such as women's organisations are not represented at all, and the inclusion of corporate, rather than individual electors, has been widely criticised. The system therefore has its critics both on legal and ideological grounds. Hopefully, improvements to remove some of the outstanding flaws and objections will be made in time for the next election in 2008.

62. Taking these factors into consideration, we believe the response to the popular cry to have a wholly directly elected Legislative

Council lies in giving the directly elected members of the Council, who would represent parties or who are political independents, a chamber separate from the functionals, and to create a second chamber for the vocational or functional representatives.

63. At present Legislative Council consists of 60 members, 30 directly elected, and 30 functionally elected. As it is, the 60 are hard put to cope with legislation, their work as members of policy panels, special committees and so forth. With the functional representatives moved into a second chamber for the remaining number of directly elected members to perform efficiently will need their present number of 30 to be increased to 40 or more. The number of functional representatives who move into the second chamber may also need to be increased so as to elect separate representatives from those sectors which are now grouped together, e.g. sports and culture, and others who are not represented at all, e.g. Green groups. It may be desirable, too, following overseas experience, to create an Appointments Committee to elect and appoint some distinguished persons to the second chamber or to increase its representativeness in some other way, e.g. regional and university representation. This is clearly a matter for further consideration.
64. It is a general pattern of bicameral systems that the first chamber is larger than the second. This is not only a reflection of the amount of work to be done but results from the nature of the

respective chambers. The second chamber or senate is a place literally to allow for second thoughts to be given to bills and motions passed by the first chamber, to give careful scrutiny, to appoint an expert committee, to seek wider consultation, if necessary to propose amendments to legislation and then to refer the findings of their deliberations back to the first chamber. Ample time would need to be given to the second chamber to conclude its deliberations. The time needed would depend on the nature of the business involved.

65. The question would undoubtedly arise of how to deal with a lack of agreement between the two chambers. There are various ways to do this. It can be done for example by giving the second chamber the power to seek additional time, by appointing a joint committee of both chambers, by providing for bills to shuttle between both chambers until agreement is reached and so forth. Some may say that there will be gridlock but this criticism ignores the dynamics of the situation, the discussion which will take place in the community and the role of the media will play. An improved "ministerial" system, an improved election formula for the election of the Chief Executive, and the development of organic links between the Legislative and Executive Councils will also effect the way in which situations will play out. The whole environment of governance will have changed. It is not suggested therefore there would be a need for the second chamber itself to be given a general right of veto nor would it be desirable.

66. There may be constitutional matters and others which impinge on the powers of the Central Authorities, for these the second chamber could be given the power to exercise a special veto. For other matters, if after thorough debate in both chambers, the unusual circumstances arise that there is final deadlock between the two chambers, reserve powers to make a final decision could be given to the Chief Executive and his Executive Council. The question of the power the second chamber would exercise is important and will require careful examination, here the experience and practice of other second chambers may be helpful. These are practical matters and are capable of solution and should not detract from the general thrust and desirability of freeing the first chamber from the functional representatives and the advantages of the second chamber concept.

67. An additional factor in its favour is that the members of the second chamber, being less in the public eye, would be able to concentrate more on their vocational interests and the details of legislation and also to be concerned about the wider issues of the constitution and human rights.

68. This, then, is a way to meet the need to make gradual and orderly progress, by emulating procedures which are common to many democracies, but to adapt the structure to suit Hong Kong. A second chamber of the kind described would preserve and provide a better check and balance than the present system, in separating

the two components it would help to reduce tensions and dissatisfaction created by the present voting system which requires a separate majority from both the directly elected and functional members for the passage of motions, bills or amendments introduced by individual members. Having a fully elected and some what enlarged first chamber in itself will be a big step forward and will go some way to meet popular demand for universal suffrage.

69. 2012 should not be the end of this evolution, the changes proposed represent a significant step forward and, no doubt, as we move forward thereafter, further modifications can be made. The ideas have previously found support from many commentators but have been taken no further, possibly because of changes may be needed to be made to the main body of the Basic Law. However the changes proposed herein may well fall within the powers conferred by the Annexes of the Basic Law. Some commentators may raise objection even to these proposals, arguing that they are too conservative, we would repeat that some countries, who previously abandoned such a system, have reverted to it, and many others have adopted it, while many other mature democracies, with very many years of experience in democratic institutions, still keep the bicameral system alive and in use.

70. Hong Kong's democratic development is at an early stage, and adoption of a bicameral system would amount to gradual and orderly progress towards greater democracy, while continuing to maintain a legislative body which is representative of all sectors.

71. The BPF now puts this bicameral system forward as a practical solution to the evolution of our constitution. There will be need for further debate about the details but the essence for a middle way is there.

Business and Professionals Federation of Hong Kong

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“Parallel Geographical-Party List” Electoral System by Mrs. Regina Ip

Workshop for the Committee on Governance and Political Development of the
Commission on Strategic Development

Monday, November 6, 2006

Q1 What is the “parallel geographical-party list” (PGPL) electoral system?

A1 The PGPL system is a mixed electoral system that I proposed for the Hong Kong SAR in my master’s thesis recently written at Stanford University. Under PGPL, seats in LegCo would be divided into two categories: (1) seats for multi-member geographical constituencies; and (2) seats for political party lists.

Correspondingly, each voter would be given two votes in a LegCo election — one cast for a candidate or a list of candidate standing in her own district-wide geographical constituency, the other for a party list standing in the Hong Kong-wide constituency. In both categories, the number of elected candidates from each party list would depend on the number of votes the list receives, in accordance with the current electoral rule of proportional representation (PR).

For example, if the number of seats in LegCo is expanded to 80, then a total of 40 seats may be set aside for various geographical constituencies and the remaining 40 for the Hong Kong-wide constituency. The electoral arrangement of the former category would be identical to existing geographical constituency elections of LegCo, while each political party could put forward no more than 40 candidates for inclusion in its own party list for the latter category. Every party list would then win LegCo seats in proportion to the number of votes cast for that particular list.

Q2 Why do you believe this system is appropriate for the Hong Kong SAR?

A2 I believe the PGPL system complies with all the underlying principles governing Hong Kong’s democratic development under the Basic Law: (1) development in light of actual situation; (2) gradual and orderly progress; (3) facilitation of a capitalist economy; and (4) balanced representation. In particular, this mixed system would meet the terms of the last two principles by facilitating the representation of interests across societal sectors. On the one hand, it would allow geographical constituency members of LegCo to focus on the local

interests of their respective districts. On the other hand, it would follow Hong Kong's fine tradition of elite participation in public service, enabling citizens whose experience and expertise transcend geographical constituencies to be returned to LegCo – provided that they are willing to stand for elections as candidates on a party list.

Q3 Is there any other country or territory that uses a mixed electoral system, under which two different groups of members are returned to the legislature?

A3 A mixed electoral system for national legislature is quite common. In fact, as of April 2006, a total of 30 countries and territories around the globe have adopted such an electoral arrangement. They include Germany, Italy, Mexico, New Zealand, Japan, South Korea and Russia.

In Japan, for instance, members of the Diet are returned either from the smaller, local constituencies or from the bigger, block districts. In an election for the House of Representatives, every voter has two votes — one cast for a candidate in his local constituency, the other for a political party, each of which has a list of candidates for each of the 11 block districts. The results of the 300 local constituencies are decided by plurality, whereas the 180 block seats are handed out to the parties in proportion to the number of votes they receive.

The PGPL system proposed herein is a variation of the electoral arrangement used in Japan and many other countries or territories. The increasing prevalence of a mixed electoral system manifests the worldwide recognition of the importance of balanced representation in the legislature.

Q4 You stated that you applaud Sir David Akers-Jones's effort to promote the establishment of a bicameral legislature, which would preserve functional constituencies in LegCo. On the other hand, you suggest that all LegCo members be elected by universal suffrage, a proposal that would eliminate functional constituencies. Aren't these two assertions contradictory?

A4 As I stated in my thesis, I do not espouse the proposal to create a second chamber in the legislature. Doing so would only unnecessarily lengthen the debate on various issues before LegCo and deepen potential schisms in society. Fundamentally, the Basic Law provides that all LegCo members be eventually returned by universal suffrage; this provision suggests that all functional

constituencies must ultimately be abolished.

It was my intention to applaud Sir David's attempt to formulate an electoral system that represents progress toward democratic development and observes the principle of balanced representation. However, preservation of functional constituencies in an upper house will not comply with the principle of universal suffrage. The proposal I put forward can resolve these problems.