

**Legislative Council Panel on Constitutional Affairs**

**Possible models for selecting the Chief Executive  
by universal suffrage**

The Commission on Strategic Development (CSD) commenced discussion on possible models for selecting the Chief Executive (CE) by universal suffrage at its meeting on 28 July 2006, and further discussed the issue on 23 November 2006. Earlier on, the secretariat of the CSD has provided to the Panel secretariat the relevant discussion papers (CB(2)2835/05-06 and CB(2)436/06-07) for Members' reference.

2. To facilitate further discussion on the subject among CSD members, two workshops were held on 14 September and 3 October 2006 respectively. Sir David Akers-Jones of Business and Professionals Federation of Hong Kong, Professor Wang Ka-ying of the Chinese University of Hong Kong, Mr Lung Ka-lun and Mr George Cautherley of Hong Kong Democratic Foundation and Mr Ivan Choy of the Chinese University of Hong Kong were invited to join the workshops to exchange views with CSD members. The proposals put forth by the above-mentioned speakers are provided at Annexes I to IV respectively for Members' reference.

Constitutional Affairs Bureau  
December 2006

# 2012

Nomination and Election  
of the Chief Executive  
行政長官的提名和選舉



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



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The BPF is a strategic lobbying group founded in 1990 as a successor to the Group of 89 members of the Basic Law Consultative and Drafting Committee. It conducts research into issues of critical importance and makes recommendations on the basis of betterment of the whole society. Recent recommendations of the BPF include the bicameral system, abolition of estate duty, points system for immigration and a number of papers on health reform.

We welcome views on this paper and our other work; please contact the BPF Secretariat (Tel: 2810-6611; Fax: 2810-6661; Email: [info@bpf.org.hk](mailto:info@bpf.org.hk)). Further information on BPF could also be found on its website: [www.bpf.org.hk](http://www.bpf.org.hk).

工商專聯成立於1990年，致力政策研究及游說工作，創會會員為基本法諮詢及起草委員會中提出「八十九人方案」的委員。本會探討與香港息息相關的議題，並以社會整體利益為依歸，出謀獻策，近期的建議包括推行兩院制、撤銷遺產稅，實施優秀人才入境計分制等，並發表了一系列醫療改革文章。

我們歡迎各界對本文及工商專聯其他工作提出意見，請與秘書處聯絡（電話：2810-6611；傳真：2810-6661；電郵：[info@bpf.org.hk](mailto:info@bpf.org.hk)）。如需更多本會資料，可瀏覽本會網站：[www.bpf.org.hk](http://www.bpf.org.hk)。

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## **2012 Nomination and Election of the Chief Executive**

### Preamble

Any approach to the question of constitutional change and reform in the SAR has to take account of the fact that any change which is in conflict with and involves changes to the Basic Law may open up a demand for further changes to be made not necessarily related to constitutional issues.

In addition, changes which are within the scope of the Basic Law require the support of two thirds of the members of the Legislative Council and this level of support may be difficult to obtain.

These restrictions suggest that changes proposed should try to avoid these problems.

The following paragraphs relate to the nomination and election of the CE after 2007.

### Qualifications

#### Residence

1. Article 44 of the Basic Law requires the CE to have "ordinarily resided in Hong Kong for a continuous period of not less than 20 years". A person who formerly resided here for 20 years, then went away and subsequently returned, could be eligible. This means that many eminent Chinese nationals who were former residents of Hong Kong and are now residing overseas could stand for election; however, those who had or have had a shorter period of stay in the SAR than 20 years are excluded. Clearly any change to this 20-year provision needs to be carefully circumscribed but it should be said that if the 20-year residence requirement were relaxed the pool of

qualified candidates for the highly responsible office of CE might be enhanced. The residence requirement could be reduced, say, to 10 or 15 years but the number of years residence immediately before election takes place should be prescribed.

### Party Membership

2. Under the election rules promulgated by the HKSAR, but not found in the Basic Law, candidates for the post of Chief Executive cannot be affiliated to a political party. Although political parties have not yet developed so fully as to attract a mass base in Hong Kong, doubtless they will further develop in that direction in the years between now and 2012. It has often been said that the Chief Executive lacks support in the Legislative Council and that as a result many proposals of the Executive are simply not put to the Council. If, however, the Chief Executive had his roots in a political party and had the support of that party in the Legislative Council, it would make his life much easier and would strengthen the executive power of the CE and his government.
3. With this in mind it is proposed that candidates for nomination to the post of CE should be able to have party affiliation. Following election the winning candidate could be required to sever membership from his or her party.

### Nomination

4. The final choice among the short-listed candidates for election to the office of CE, in accordance with the objectives in Article 45 of the Basic Law, should be by some form of universal suffrage. This objective is the prime focus of much of present political agitation and has even attracted the formation of an Article 45 Concern Group. A response to this concern could be achieved in the year 2012 if the Election Committee, which now elects the Chief Executive, became in effect a Nominating

Committee, its objective being to put forward a short-list of candidates for election by all registered voters for the final choice of CE, following which appointment by the Central People's Government would take place.

#### Composition of the Future Nominating Committee

5. The Election Committee which currently elects the Chief Executive consists of four sectors each comprising 200 delegates. These 200 delegates are themselves elected or chosen by either the individual members or presumably by the elected committee of the relevant organisation. The members of these organisations who have registered to vote is 220,000 while the total membership of the organisations will of course be very much larger and represent a sizeable proportion of the eligible population. In other words, the Committee is grounded on a very broad base.
6. The First, Second and Third Sectors of the Committee elect or select their representatives some by the votes of individual members, e.g. the teaching profession, and some chosen by the committee of the organisation, e.g. trade unions. In order to make sure the representatives do indeed represent the general membership of the constituent organisation there should be an effort to systematise the method of selection and to endeavour to involve the general membership on these organisations in the election of their representatives.
7. The Government proposed reforms in 2006 to expand the Committee to 1,600. The proposal was included in a package of measures and was defeated by the Legislative Council. While an enlargement may seem better in appearance and more representative, the current Committee of 800 it should be said could in fact be relied upon to elect a candidate with broad support.
8. The Fourth Sector comprises the individual members of representative bodies having a largely political role.

To enhance the authority of this sector a number of new seats were proposed to be elected by an electoral college of all the District Councillors. Changes in the District Councils are currently being examined and the role of the appointed members will no doubt be discussed during the course of this review. Thus the inclusion or not of District Councillors should wait until this review is complete.

### The Nomination Procedure

9. At present nominations of the Chief Executive are by open nomination. However most parliamentary systems have adopted systems of secret ballot taking the view that it should not become common knowledge whether particular persons did or did not support a particular candidate. The revelation of these personal details puts unnecessary and undesirable pressure on the individual. Nomination should be based on a closed-ballot to minimise political interference and to raise the credibility of the entire process.
10. Each candidate should secure the support of at least 12.5% of members in the Nominating Committee to be nominated this would mean nomination by at least 100 members out of a Nominating Committee of 800. This level of support required for a nomination to succeed would discourage abuse of the system by frivolous candidates and inhibit the intrusion of interest groups whose focus was a single issue and instead would encourage participation in the process of only those candidates with a wide body of support.
11. Other means, too, can ensure that candidates enjoy a broad body of support. To be successfully nominated a candidate might be required to secure at least 20 nominations from each of the four sectors named in Annex 1 of the Basic Law and each candidate in addition should have among his nominators the support of at least 15 of the 60 members of Legislative Council. This requirement would limit the number of candidates to four to enter the final election process.



12. Hong Kong has a quasi presidential system. Studies have shown that multiple parties and factions tend to destabilise and create indecisive government, exacerbate executive-legislative tensions and deepen social cleavages. The various measures suggested in preceding paragraphs would facilitate development of coalitions between legislators with common interests into three, or ideally two, groups to give support to particular candidates.

*(Please refer to Appendix 1 for an illustration of the above nomination requirements recommended by the BPF.)*

#### Choice of the final candidate

13. These foregoing paragraphs aim at improving the nomination process. In 2012 after the completion of nomination, the final choice between the competing candidates should be put to all registered voters finally to elect the CE through a one man one vote process. This would amount to universal suffrage for the election of the CE and the ultimate goal stated in the Basic Law (Article 45) would have been achieved. The Chief Executive at the end of the day could legitimately claim that he had wide public support.
14. In the event of the final election taking place between more than two candidates in which no candidate obtains a majority of the votes, the merit of a two-round run-off between the two candidates with the highest number of votes needs evaluation. In theory it should produce a majority winner, while a weakness of the one-round first-past-the-post voting method is that it may produce a winner with less than 50% of the total voting support. However, the possibility of a

run-off discourages the coalition of opposing forces during the run up to the first round election in the hope of winning a second round runoff. Political elites making the decision to run their own candidates can have as their goal either to finish in the top two in the first round or to demonstrate an electoral following that can be delivered in the runoff election to one of the top two finishers in exchange for benefits in the future. Studies have shown the percentage of votes received by two leading parties in these circumstances tend to be smaller than those in one-round elections. Moreover, the run-off system encourages the development of political factions rather than major coalitions.

15. For these reasons it is proposed that for the CE election, the one-round first-past-the-post voting method is the preferred option. In such a system, the candidate with the largest number of votes wins the election. Political forces hence tend to form a broad coalition behind the "front-runner" and the opposition also tends to coalesce behind one "principal" challenger to gather as many votes as possible. This would contribute to the formation of two or three major groups of legislators and decrease the possibility of a number of small factional groups springing up. This is efficient, simple, low cost and more likely to lead to an acceptable outcome.

July 2006

**An illustration of requirements recommended by the BPF  
for successful nomination of the Chief Executive in 2012**

Premises:

- Nomination Committee = 800 members (made up of four sectors of 200)
- Legislative Council (LegCo) = 60 members
- LegCo members are to remain in the Fourth Sector of the Nomination Committee

**Requirements recommended by BPF**

- Threshold for successful nomination (12.5% of 800) = **100**
- Minimum support from each of the 4 sectors (10% of 200) = 20
- Minimum support from LegCo (25% of 60) = 15

Based on the above, the following is the **composition of the minimum requirement for successful nomination:**

First, Second & Third Sectors:	20@ x 3 sectors	= 60
Fourth Sector:	15 LegCo + 5	= 20
From any of the four sectors		= <u>20</u>
Total nominations		<b><u>100</u></b>

## 對特首普選模式的一些思考

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策發會的管治及政治發展委員會七月底第五次會議開始討論特首普選的可能模式，會中臚列出各界就特首普選模式向政制發展專責小組、立法會和策發會提交的書面意見撮要。

首先，筆者同意政府有關特首普選牽涉的問題較立法會全體議席普選為簡單容易，故此前者可先於後者而推行的判斷。就政治的角度而言，先普選特首而後普選立法會全體議席，基本上也符合香港特區憲政設計所強調的行政主導的需要。如果立法會先於特首實現全面普選化，非普選產生的特首便很難有足夠的民意認受性駕馭全面普選產生的立法會，到時行政主導的憲政構思便隨時有被立法主導取代之虞。

無論如何，判斷特首普選較為簡單容易畢竟只是相對於立法會全體議席普選而言。現實的情況是中央政府和香港社會各界對如何和何時普選特首迄今仍存有很大的分歧，欠缺共識。欠缺共識主要是因為中央（也包括香港商界和其他親中央政治力量）對過快推行普選（包括特首和全體立法會）仍懷有種種的疑慮，擔心過快推行普選會導致福利主義、民粹主義，甚至是分離主義；而民主派則堅持應盡早推行普選和普選的形式必須盡量開放，認為中央的所謂疑慮只是不想推行普選的藉口。

顯而易見，在中央的疑慮與民主派的堅持之間存在著巨大的落差，也突顯出雙方極度缺乏互信。要解決有關落差，推動香港向普選的方向邁進，政治妥協是必須的前提。妥協就是各退一步，求同存異，縮窄落差，尋找雙方可以接受的普選模式和普選時間的共識作為推動普選的起點。事實上，《基本法》亦規定，無論是特首普選或是全體立法會普選，都必須根據香港特別行政區的實際情況和循序漸進的原則來推動，而不是只根據一方的堅持或理想一蹴而就。

香港特別行政區的實際情況是一方面中央和香港部份界別及政治團體確實對過快推行普選有所疑慮，而另一方面民主派和主流民意是希望盡早推行普選。要平衡二者，按循序漸進的原則，尋找一個雙方可以接受的妥協性普選模式和落實有關普選模式的日期，然後透過具體的實踐讓雙方建立更多的互信，並在互信的改善中推動發展更開放的普選模式，應不失為一中庸平正的出路。

扼要歸納前述策發會臚列各界提交的有關特首普選模式的書面意見撮要，不難發現，各界爭議的焦點主要在於提名委員會組成和提名門檻，至於應何時推行普選並沒有觸及。背後透露的訊息似乎是，只要提名委員會的組成和提名門檻能夠限定於不會引發中央過於疑慮的「安全系數」之內，民主派堅持要盡早（2012 年）推行特首普選並不是問題。

然而，怎樣的提名委員會的組成和提名門檻才是中央的「安全系數」的底線呢？有意見認為將現有的選舉委員會的組成模式直接過渡為提名委員會的組成模式，並保持 100 人的提名門檻，應是一個可供討論的方向。也有論者同意可以沿用現有的選舉委員會制度，但認為應設立較高的提名門檻，亦有論者認為應將提名門檻降低。筆者的看法是，不論是將提名門檻升高或降低，都會引發新的爭議，而維持不變可能是促成妥協的最佳選擇。畢竟，現時選舉委員會的制度和提名門檻已相當保守，進一步升高 100 人的提名門檻，只會壓抑民主派妥協的意欲，也未必為主流民意所認同。

換言之，筆者認為，以保持現有的選舉委員會的制度和提名門檻不變回應中央的「安全系數」的需要，直接將相關制度過渡為提名委員會的組成模式和提名門檻，然後根據有關的提名程序爭取在 2012 年普選特首，以回應民主派對盡早普選的堅持，應較可能成為中央與民主派之間在普選特首問題上達致妥協的基礎。當然，這樣的妥協基礎只是筆者按常理的粗略推斷，實際的發展還須視乎各方互信的程度和具體談判議價的結果。在這過程中，門檻的緊與寬之間固然可以因談判的結果而有所調整，而相關制度的發展配套，如不同屆次的提名委員會的組成和提名門檻如何具體地循序漸進邁向更開放的方向，同樣可以成為不同妥協調整方案的組成要件。

總言之，筆者對中央的建議是，普選是《基本法》對香港市民的莊嚴承諾，總須有一個具體的起點，而香港市民也一向溫和理性，不必過於提防。至於筆者對民主派的建議則是，即使是較為保守的提名門檻，也不必斷然拒絕，因為不論提名門檻如何保守，只要有超過一位候選人面對全港選民的檢驗與選擇，候選人就不可能閉門造車，而是會在選民中作出激烈的競爭。而有關的競爭，不僅會大大提高特首當選者的政治認受性和問責性，更會為香港的民主政治實踐累積寶貴的經驗。這樣的寶貴經驗的累積，而不是無休止的爭論，才是推動香港民主政治不斷向前發展的最佳憑藉。

# 甚麼是中央的「安全系數」？

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上週六筆者在本欄指出，要在香港盡早落實特首普選，必須盡量紓緩中央對「安全系數」的疑慮。對於中央的「安全系數」的疑慮，迄今各界有有不同的解讀。其中有一派認為，現有特首選舉委員會的組成模式和 100 人的提名門檻，便應是中央的「安全系數」的底線，超越此底線越多，中央的疑慮越大，相關的特首普選模式為中央接受的可能性越低。故此，從相反的角度看，只要將現有選委會的組成模式和 100 人提名門檻保持不變，直接過渡成為未來的提名委員會的組成模式和提名門檻，便應可照顧到中央的「安全系數」的底線。換言之，這一派人士相信，只要守住這一道底線，中央便會同意在 2012 年普選特首。

然而，筆者認為，這樣理解中央的「安全系數」，明顯過於片面和簡化，嚴重低估了現有選委會的組成模式和相關提名門檻結合起來在特首選舉中所產生的高度「可預見性」。而這高度「可預見性」，才應是中央計算其「安全系數」的主要基礎。任何未來特首普選模式只要大幅降低有關的高度「可預見性」，都不太容易為中央所接受。

現在要分析的是，現有選委會的制度是如何確保特首產生的高度「可預見性」呢？依筆者之見，關鍵在於現時由四大界別合共 800 人組成的選舉委員會，其產生的方式確保了絕大部份（八至九成）的成員均是親中央人士，而其所設置的 100 人提名門檻，則進一步限制了不為中央所喜歡的人士意外通過提名門檻的可能性。這樣的制度設計突顯出確保特首產生的高度「可預見性」主要關鍵其實不在於 100 人的提名門檻，而是那 800 人組成的選委會成員絕大多數都是親中央人士。在這樣的制度設計下，即使有某位不為中央所喜歡的人士成功通過 100 人的提名門檻，但特首選舉面對的只要仍是這 800 人組成的選委會而不是全港選民，他（她）也絕不可能成功當選特首。這才是中央計算「安全系數」時最重要的「安全筏」。

若上述的分析離事實不太遠，前述那種認為只要將現有選委會的組成模式和 100 人提名門檻直接過渡成為未來的提名委員會的組成模式和提名門檻，中央就會贊同 2012 年普選特首的觀點，其對中央「安全系數」的理解的嚴重低估也就暴露無遺。有關觀點的主要盲點在於它根本沒有評估過由 800 人選舉委員會選舉特首躍向全港選民普選特首的巨大差異，以及這樣的巨大差異對特首選舉結果所帶來的巨大「不可預見性」。無疑，將現時選委會的組成模式和 100 人提名門檻直接過渡成為提名委員會的組

成模式和提名門檻，可以大大降低了不為中央喜歡的人士意外通過特首提名門檻的可能性，但對中央而言，這樣的關卡構成的特首普選模式所蘊含的「不可預測性」和現有選委會制度所蘊含的「不可預測性」是完全不能相提並論的，原因有二。

首先，中央應清楚知道，現有選委會的組成模式和 100 人提名門檻並不能完全杜絕意外的發生，即不為中央喜歡的人士仍有一定的空間爭取到 100 位選委會成員的提名而成為合資格的特首候選人，但這樣的意外並不可能改變選舉結果，因為選委會仍是由絕大多數親中央的人士支配，不為中央喜歡的特首候選人絕不可能取得選委會過半數的成員支持而當選特首。相反，如果只將現有選委會制度直接過渡為提名委員會制度便於 2012 年立即開放特首普選，不為中央喜歡但意外通過提名門檻的候選人，便隨時有可能在特首普選中擊敗中央屬意的候選人而當選特首。對於這樣的「不可預見性」，中央應有深刻的警覺，也因為如此，其接受相關的特首普選模式的可能性絕不可能很高。

其次，普選特首就意味開放候選人在全港選民中公開競爭，亦即意味選民和各種社會、政治及經濟團體可直接影響候選人的政治立場和政綱，從而大大增加了候選人為了爭取選民支持而被選民重新塑造的空間。因此，即使嚴格的提名制度可確保成功通過提名程序的特首候選人都能夠為中央所接受，但普選特首帶來的開放性競爭，無可避免地會促使特首候選人在爭取選民支持的過程中不斷改變其政治立場和政綱，而這樣的改變或多或少地會與中央原先的期望背道而馳，形成了新的「不可預見性」。有關新的「不可預見性」，在現時的選委會制度中是不可能出現的，因為候選人面對的是同質性極高的 800 名選委會成員，而不是階級和意識形態差異極大的數百萬香港選民。對於這種「不可預見性」，中央同樣不會毫無警覺，而一旦有所警覺，便肯定會降低其接受以收緊提名程序換取於 2012 年普選特首的可能性。

綜合上述兩點「不可預測性」分析，筆者判斷，以現時選委會制度（包括 100 人的提名門檻）直接過渡為提名委員會制度的特首普選模式與中央對「安全系數」的理解與要求仍然相去甚遠，中央接受的機會頗低。而即使進一步收緊提名程序，包括在組成提名委員會的四大界別中設置某個比率的次級提名門檻（如每個界別規定必須取得一成至兩成的提名人數）和提高整體的提名門檻（如從 100 人提高至 150 至 200 人），中央也未必會接受。原因可能在於，中央根本未有心理和政治準備面對 2012 年開放特首普選。須知道，對中央而言，特首普選不論以任何保守的模式進行，只要超過一位候選人面向全港選民的競爭，它在政治上就不只是一種量的擴充，而是質的躍進，這種質的躍進一經開始，便難以回頭，並肯定會為香港的政治生態帶來難以預測、翻天覆地的變化。僅是這一點，從沒有經過普選洗禮的中央就不能不戒慎恐懼。

也許正是這種戒慎恐懼，儘管近期香港內部對特首普選模式的討論顯得煞有介事，但迄今為止，筆者從未見過中央官員對 2012 年這個神奇年份表過態。這現象背後所可能蘊含的政治訊息，總難免令筆者對 2012 年普選特首不敢過份樂觀。





# **THE HONG KONG WE WANT: THE POLITICAL SYSTEM YOU DESIGN FROM TODAY TO 2047<sup>1</sup>**

Sonny Shiu-Hing Lo<sup>2</sup>

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<sup>1</sup> A Hong Kong Democratic Foundation Project.

<sup>2</sup> Sonny Lo is Associate Professor in the Department of Political Science at the University of Waterloo, Ontario, Canada. The views expressed in this paper are the responsibility of the author alone.

## **Foreword**

This book comes at a most opportune time as we look ahead into the confusing political landscape beyond the next elections.

There are cries for democracy and universal suffrage but little help to decide which way to turn to achieve this goal. There are options, opportunities and obstacles about the road ahead are mapped out comprehensively and will be an invaluable travelling companion as we journey towards “the Hong Kong we want”.

Our most sincere and grateful thanks are due to Dr Sonny Lo for this painstaking analysis.

Sir David Akers-Jones

## **Foreword**

Among the many projects the Hong Kong Democratic Foundation sponsored over the years, this must be the one that can be considered not only as the most important and timely but also the most needed at this stage of our political development. This excellent work will join others in contributing to the on-going debates about governance in Hong Kong. I congratulate Dr Sonny Lo for producing such a significant piece of work, thoughtfully done.

Dr Edgar W K Cheng

## **Foreword**

Prof Lo's "Roadmap" is a breath of fresh air in Hong Kong's current political atmosphere. When most discussions on our political future focus solely on a "magical date" for universal suffrage, Prof Lo draws attention to an indispensable aspect of democratization that has unfortunately been overlooked: institutional design. I am glad to see that Prof Lo has presented so many prospective choices for Hong Kong, and it is my sincere hope that his work will help steer our deliberations as we forge ahead with devising democratic institutions that respect the Basic Law and Hong Kong's unique status as a Special Administration Region of China.

Regina Ip Lau Suk-yee

## **Foreword**

Dr Sonny Lo and the Hong Kong Democratic Foundation have done a great service to all of us interested in constitutional development by producing a comprehensive background document to help Hong Kong consider the way forward. The strength of this document is that it is deliberative and not prescriptive in approach. This approach should allow people of different political persuasions to enter into exploration about the many challenging issues in constitutional design.

Christine Loh

## Preface

In producing “The Hong Kong We Want: The Political System You Design From Today To 2047”, Dr Sonny Lo, a former colleague from the University of Hong Kong and currently at the University of Waterloo, has made a very important contribution to the debate about Hong Kong’s democratic future.

The political development of Hong Kong is at a crossroads. While public sentiments toward the Hong Kong Special Administrative Region Government (HKSARG), buoyed by a strong economic recovery and the departure of former Chief Executive Tung Chee Hwa, have improved significantly, the Hong Kong society has remained deeply polarized politically, and public demand for full democracy has not been met.

The government’s constitutional reform package was rejected by the pan-democratic camp late last year on the ground that the package did not provide a clear path and time-table forward for democracy. From an international perspective, given the economic development of Hong Kong, the level of education of the population, the SAR’s legal foundation, and with a well-established bureaucratic machinery, it is difficult to argue that Hong Kong is not ready for democracy as promised by the Basic Law. Hong Kong people deserve full democracy with universal suffrage.

Political developments elsewhere, however, have suggested that democratization can be a highly tortuous process even after the introduction of universal suffrage. In fact some political scientists have argued that institutional design is a key in the expansion and consolidation of democracies. While the need to design the appropriate democratic institutions should not be an excuse for delaying democratic change, in our quest for faster democratic change, the public should have an informed debate on institutional arrangements. Although the timetable for the introduction of full universal suffrage is still uncertain, I believe, Hong Kong needs to chart the way forward by addressing the crucial question of what are the political institutions that would facilitate and ensure stable democratic development for the SAR.

We would have to examine a wide range of issues, covering not only electoral arrangements for the election of the Chief Executive, the Legislative Council, and the District Councils, but also questions such as the structure of the legislative council, mechanisms to manage central-local relations between the SAR and Beijing more effectively, and the role of political parties. We also need to have political support for such arrangements from the full spectrum of political interests and views.

Dr Lo has provided a very balanced and comprehensive analysis on the institutional and practical options that we would have to address as we prepare for a democracy which is sustainable. This very useful roadmap provides a basis for more informed discussions and debates about democratic change and is one that deserves our full attention.

Dr James T H Tang  
Department of Politics and Public Administration  
University of Hong Kong  
June 2006

## **Introduction**

The Roadmap project was suggested to the Hong Kong Democratic Foundation by friends keen to see serious and informed debate on the future of Hong Kong's constitutional development.

From the outset, the Roadmap was conceived with the objective of providing a broad framework document to encourage discussion and debate. While not claiming to be totally exhaustive, this document does attempt to map out the issues, processes and mechanisms relevant to the achievement of good governance and constitutional development in as comprehensive manner as it can.

Since this is a dynamic, rather than a static, document it does not purport to espouse a particular correct or ideal road to follow, but rather offers various alternative paths which the community might consider in order to stimulate discussion and debate and additional ideas for consideration. We would therefore like to encourage academics, politicians and anyone interested in the development of good governance and constitutional evolution to feel free to contribute their own ideas to the issues covered by the Roadmap, as well as introducing relevant issues that have not been addressed by this document, so as to assist the community in reaching a consensus of this most important subject. We would be pleased to incorporate any such ideas as part of this framework document, so it can be as comprehensive an overview of the issues as possible.

The Hong Kong Democratic Foundation would like to extend its deepest gratitude to Dr Sonny Lo for taking up the daunting challenge, which so far no one else has attempted, with such enthusiasm, commitment and vigour. Dr Lo's Roadmap must surely rank as the most comprehensive single document yet produced on the issue of good governance and constitutional development for Hong Kong.

Lastly, but by no means least, we are indebted to the encouragement given to the process of debating the roadmap for Hong Kong's future constitutional development by the writers of the Foreword and Prefaces, Sir David Akers-Jones, Dr Edgar Cheng, Mrs Regina Ip, Ms Christine Loh and Professor James Tang.

Hong Kong Democratic Foundation



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## **Executive Summary**

Designing Hong Kong's political system from now to 2047 will be a huge challenge to all the people of Hong Kong if the territory is to maintain its uniqueness and competitive edge in the years to come.

Political reform and the "one country, two systems" are not only compatible but also beneficial to the principle of "Hong Kong people ruling Hong Kong." Political reform does not mean that Hong Kong's political system will have to copy from any Western model, but it means that the people of Hong Kong will design a more accountable and democratic system unique to the circumstances of the Hong Kong Special Administrative Region (HKSAR).

In April 2006, it was reported that mainland Chinese scholars laid down six preconditions for democratization in Hong Kong: political consensus among the Hong Kong people, the need to legislate on Article 23 of the Basic Law, the need to prevent redistribution of economic power, the lack of any law governing political parties, the need to enhance patriotic education, and the necessity of achieving equal participation in politics. All these preconditions will inevitably be subject for further debate among the people of Hong Kong. This roadmap already suggests that consensus building can be experimented and achieved through the discourse on political reform from now to 2047; that a national security legislation for Hong Kong should be reconsidered and discussed in the coming years alongside the discourse on political reform; that the bicameral system may be seen as a stop-gap measure preventing any possible redistribution of economic power; that a law governing political parties can be considered; that patriotic education has already been implemented and can be deepened further; and that equal participation in politics will be guaranteed in a more democratic system in the HKSAR. In brief, the preconditions outlined by mainland Chinese scholars can be achieved alongside with the gradual process of democratization in Hong Kong.

### **1. The Chief Executive Election**

#### **Structural reforms**

(a) Option 1: Direct election of the Chief Executive through universal suffrage as soon as possible, namely 2012, will be one of the alternatives that can be considered by the people of Hong Kong.

(b) Option 2: Another more moderate alternative is to increase the membership of the Chief Executive Election Committee, turn it into a Nominating Committee that conducts a primary election among the candidates, and allow all eligible voters to elect the Chief Executive by universal suffrage after the “screening” of candidates by the Nominating Committee.

(c) Option 3: The third alternative is to simply widen the membership of the Chief Executive Election Committee. This will be a very small step toward democratization of the Chief Executive elections.

### **Process Enhancements**

(a) The fourth alternative is to make the Chief Executive elections more competitive by allowing candidates to affiliate with political parties. This will encourage the growth of political parties along the process of democratizing the Chief Executive elections. Having a political party background, the elected Chief Executive will be expected to acquire the strong support of his or her political party in the legislature.

(b) The fifth option is to increase the competitiveness of the Chief Executive elections by various other means, such as improving the nomination and election process and engaging the ordinary citizens to participate in the candidates’ public consultative forums.

(c) The final option is to improving public consultations on the methods and timetable of selecting the Chief Executive through universal suffrage. Such improvements can be made through the use of citizens assembly, opinion surveys, constitutional conventions, and constitutional review conferences.

## **2. The Legislative Council**

### **Structural Reforms**

(a) Option 1: Increasing the members of directly elected members and functional constituency members proportionately will represent an incremental step toward democratization of the legislature.

(b) Option 2: Adopting two Houses with a fully directly-elected Lower House will protect the interests of the occupational sectors and the pro-democracy call for a fully directly-elected legislature.



(c) Option 3: Reforming the functional constituencies can make the legislature more representative.

(d) Option 4: Abolishing functional constituencies will prepare the legislature for a fully directly elected chamber.

(e) Option 5: Maintaining the Number of Legislative Councilors as 60 but fully democratizing the election of functional constituency representatives will make the whole legislature in conformity with the principle of achieving universal suffrage. While functional groups can nominate candidates to participate in the functional constituency elections, each citizen will have two votes: one voting for his or her desired candidate in a particular geographical constituency and the other voting for a representative for his or her occupational sector.

### **Process Enhancements**

(a) Constantly reviewing and increasing the number of legislators in light of population changes in all districts will better reflect demographic changes in the process of gradual political development.

(b) Reforming the Legislative Council's scrutinizing capacity will increase the healthy checks of the legislature on the executive branch of the government.

(c) Reviewing the passage of private member's bill (Article 74 of the Basic Law) will be one of the reform options.

(d) Setting up LegCo's Standing Committees parallel to various ministerial portfolios under the Principal Officials Accountability System will enhance the legislature's ability to monitor the government.

(e) Option 5: Harmonizing executive-legislative relations through formal and informal meetings will reduce any possibility of a political impasse between the two branches.

(f) Option 6: Consolidating the constitutional conventions in LegCo will democratize its operations through the entrenchment of democratic traditions.

(g) Option 7: Each elected LegCo member nominating an ad hoc member to work in LegCo will increase the opportunities for political talents to exercise their leadership while minimizing the workload of legislators.

### **3. Hong Kong's Bicameral System as a Way Forward?**

### **Structural Reforms**

(a) Option 1: A 60-member Upper House and a 60-member Lower House will help Hong Kong embark on a fully bicameral system.

(b) Option 2: A 30-member Upper House and 60-member Lower House will represent a smaller upper house but a larger lower chamber.

### **Powers**

(a) Giving veto power to the Upper House over bills passed by the Lower House will maintain the current practice of having functional constituency members checking the power of the directly-elected members in LegCo.

(b) Restricting the veto power of the Upper House will prevent it from being too powerful vis-à-vis the Lower House.

(c) Disallowing the Upper House to initiate bills will empower the Lower House and let the former play the role of a second deliberative body.

(d) Allowing the Upper House to initiate bills will allow any occupational groups to raise any issues of concerns that necessitate discussions and debate in the Lower House.

(e) Giving special veto power to the Upper House will prevent the Lower House from having excessive powers.

(f) Disallowing special veto power to the Upper House will allow the Lower House to play the role of being the most important legislative body.

(g) Upper House that set up committees to study bills and legislation passed by the Lower House will enhance its role as a second deliberative chamber.

(h) Studying the possibility of revising the Basic Law in the event of the adoption of a bicameral system will prepare for a smoother process of political discussion on the ramifications of setting up the two houses.

### **Other Possibilities**

(a) Option 1 (Developing a mixed parliamentary-presidential system): Although Hong Kong's system is akin to a presidential one it is somewhat of a hybrid and as

further experience is gained from practice it might be concluded that it "can evolve into a mixed presidential-parliamentary system with Hong Kong features."

(b) Option 2 (Moving toward a pure parliamentary system): However, although the present system leans towards the presidential, it contains the basic elements that would facilitate conversion to a parliamentary system, in which the Chief Executive (Prime Minister) would be elected from within the majority party in the Legislative Council.

(c) Option 3 (Moving toward a pure presidential system): At a later stage it may be prudent to revisit and debate the pros and cons of the current hybrid system, a fully presidential system or a fully parliamentary system, but this should be done with caution. "Given the Basic Law's tendency to establish a shadow presidential system in Hong Kong, where the Chief Executive will be ultimately elected by universal suffrage, a more pure form of presidential system can be developed further, especially after the consolidation of the Principal Officials Accountability System that can be seen as the Hong Kong version of the presidential appointees."

#### **4. The Executive Council**

##### **Structural Reforms**

(a) Option 1: A more pluralistic coalition Executive Council with members from all political party backgrounds will generate a politically heterogeneous leadership with consensus reached by all sides.

(b) Option 2: Setting up an office or a committee bridging ExCo and LegCo relations will minimize the political deadlock between the executive and legislative branches of government.

(c) Option 3: Maintaining the existing pro-governmental coalition Executive Council will enhance the solidarity of the political leadership.

##### **Process Enhancements**

(a) Matching advisory committees with ExCo Members' responsibilities and interests will generate strong research support for ExCo members and fully utilize the expertise of advisory bodies.

(b) Making ExCo members and Principal Officials chair the relevant advisory committees will elevate the importance of the committees while enriching the governing ideas of the ruling elites.

## **5. The Principal Officials Accountability System**

### **Process Enhancements**

(a) Establishing the post of Deputy Secretaries will alleviate the workload of the Secretaries and increase the opportunities for political talents to exercise leadership.

(b) Creating and expanding Political Assistants under the leadership of Principal Officials will create a batch of political talents for Hong Kong's future developments.

(c) Educating Deputy Secretaries and Political Assistants on ethical governance by the Independent Commission Against Corruption will help the government establish good governance amidst a gradual process of democratization.

(d) Allowing some Principal Officials, Political Assistants and Deputy Secretaries to retain political party affiliation will encourage the growth of political parties in a healthy and partnership manner.

(e) Disallowing Principal Officials, Political Assistants and Deputy Secretaries to have any political party background will create a more politically neutral ruling stratum.

## **6. District Councils**

### **Structural Reforms**

(a) Option 1: Reforming the District Management Committees can better integrate the District Councils into Executive Committees that embraces officials of government departments, District Officers and occasionally the Secretary for Home Affairs. Empowering District Management Committees mean that they can regularly invite higher-level officials, such as the Secretary for Home Affairs, the Principal Secretary for Home Affairs, and other departmental heads to their meetings. If District Management Committees are empowered, it may not be necessary to set up a Steering Committee on District Administration as suggested by the government's consultative document in April 2006.

(b) Option 2: Taking on the functions of the former Urban and Regional Councils will enhance the powers of District Councils.

(c) Option 3: Reorganizing 18 District Councils into several more powerful Councils will have the advantages of empowering them, attracting more candidates in district-level elections, and enlarging the future geographical constituencies.

(d) Option 4: Reestablishing a middle-tiered elected institution to tackle environment, hygiene and health issues will resurrect a body similar to the now defunct Urban and Regional Council while empowering it to deal with the more urgent issue of public health and hygiene. With the abolition of the Urban and Regional Council, there have been concerns that supervision on the work of public health, environment and hygiene appears to be insufficient. Therefore, a revived form of the late Urban and Regional Council will not only help the Government effectively deal with public health and hygiene but also provide the necessary safeguards against any possible maladministration.

(e) Option 5: Retaining but reducing the number of appointed members will be in conformity with the principle of gradual democratization, especially as critics have worried that the Government may use appointments to balance the composition of each District Council after its direct elections.

(f) Option 6: Abolishing the appointed members but enhancing the number of ad hoc members will democratize the composition of District Councils while training more political talents at the district level.

### **Process Enhancements**

(a) Coopting more ad hoc members from Areas Committees, Mutual Aid Committees and Owners Corporations will train more political talents at the District Councils while fully utilizing the expertise of grassroots-level community activists.

(b) Meeting higher-level officials regularly will enhance the communication between District Councils and the Principal Officials and also empower the District Councillors to influence government policies.

(c) Meeting LegCo members annually will facilitate discussions between District Councillors and legislators while elevating district-level issues to the concerns of LegCo members at the territorial level.

(d) Reforming Area Committees will increase their role and functions while ensuring that their expertise can be utilized by District Councils.

(e) Inculcating ethics among District Councils members by the Independent Commission Against Corruption will be a necessary step to enhance the good image and the integrity of District Councillors.

(f) Democratizing the work of District Offices will be a step in accordance with the principles of good, transparent and accountable government.

## **7. Civil Servants**

### **Structural Reforms**

(a) Option 1: Abandoning the revolving door for civil servants to join the POAS will mean that once civil servants opt for political careers, their neutrality will be affected and they should not return to work in the bureaucracy for fear of having obvious political orientations.

(b) Option 2: Maintaining the revolving door for civil servants to join the POAS will continue to allow those who are interested in a political career to join the ruling stratum at the top. The expertise of many senior civil servants will also contribute much to the governance of the HKSAR at the top political level. But those civil servants who have political experience will be welcome to return to the bureaucracy and contribute to the work of the civil service.

### **Process Enhancements**

(a) Enhancing the training of political tolerance of civil servants toward public criticisms will help entrench a more democratic governing culture that views public criticisms as positive and healthy.

(b) Strengthening the sense of political neutrality of civil servants will prevent the street-level bureaucrats from forging hidden links with politicians outside the purview of both the public and their bureaucratic superiors.

## **8. Advisory Committees**

### **Structural Reforms**

(a) Option 1: Reorganizing advisory committees to match the ministerial portfolios under the Principal Officials Accountability System will enhance the research support for the Principal Officials while elevating the importance of various advisory bodies. The committees will also become organized in a much better and coherent way.

(b) Option 2: Having Principal Officials and ExCo members chair advisory committees will create a cabinet-style system in which “cabinet members” will receive sufficient research support and expert advice from the relevant committees.

### **Process Enhancements**

(a) Avoiding overlapping memberships of advisory committees will prevent members from having excessive commitments while maximizing the opportunities for other talents to participate in the governance of Hong Kong.

(b) Forging new partnerships with other institutions such as think tanks and policy bureaus will enhance their mutual communications, coordination and sharing of expertise as well as ideas.

(c) Opening the meetings of some advisory committees to the public will democratize the political system although some committees that discuss issues of sensitive nature cannot open their meetings to the public.

## **9. Political Parties**

### **Structural Reform**

(a) Option 1: Considering a Political Party Law will be in line with the gradual political development and democratization of Hong Kong.

### **Process Enhancements**

(a) Providing more subsidies to all party candidates will encourage the people of Hong Kong to participate in party politics and to join parties as a stepping stone toward a political career. It will also stimulate the development of political parties.

(b) Providing a fixed amount of subsidies to all political parties will treat them fairly without generating an image of a bias in favor of particular group.

## **10. Governmental and Non-Governmental Think Tanks**

### **Process Enhancements**

- (a) Making reports and studies of all think tanks publicly accessible will be conducive to a more sophisticated process of political discourse on various policy issues while informing the public adequately of various policy recommendations and alternatives.
- (b) There is a need to increase the dialogue, coordination and cooperation among governmental and non-governmental think tanks. Better coordination will serve the interests of the public and maximize the better use of capital, knowledge as well as expertise.
- (c) Establishing cooperative partnerships between think tanks and Policy Bureaus can improve governance by linking the expertise and ideas of the private sector with the public sector.
- (d) Institutionalizing the relations between think tanks and universities will fully utilize the knowledge and expertise of researchers and academics to the benefit of Hong Kong's future developments.
- (e) Adopting five-year plans for Hong Kong's various policy issues will be in conformity with the Mainland's traditional practice of implementing five-year plans for national development.
- (f) Improving the partnerships between think tanks and advisory committees will improve the governance of Hong Kong while maximizing the use of human resources and intellectual as well as professional ideas.

## **11. Public Corporations**

### **Structural Reforms**

- (a) Option 1: Increasing the powers of the Office of the Ombudsman and the Director of Audit to check the administration and finance of all public corporations and statutory bodies. As long as the Government provides funding to these bodies, they have to be financially, administratively and publicly accountable.
- (b) Option 2: Increasing the powers of the Office of the Ombudsman and the Director of Audit to check the administration and finance of some public corporations and statutory bodies. Some statutory bodies such as universities may be exempted from



the purview of the Ombudsman and the Director of Audit in the event that they are already under the scrutiny of other mechanisms.

## **12. The Training of Political Talents and Leaders for Hong Kong Beyond 2047**

### **Processes**

(a) Setting up a cross-parties school to train political talents. The establishment of such party schools is common in many countries and Hong Kong can consider its formation under the Central Policy Unit even though political parties in the HKSAR are relatively small.

(b) Political training of civil servants on the POAS will be necessary as some of them may have misunderstanding on its operations. A deeper understanding will also facilitate those civil servants who make decisions to join the POAS in the future.

(c) Introducing Political Assistants or ad hoc members to LegCo will enhance the opportunities of training political talents while reducing the heavy workload of legislators.

(d) Expanding the number of ad hoc members in District Councils will provide additional avenues for community activists to participate in local politics and governance.

(e) Improving the performance appraisal of political appointees at all levels will be a must to ensure that they will observe the principles of good governance, honesty and integrity. Their public image will shape the assessment of the POAS.

(f) Selectively but cautiously injecting political appointees into other institutions like advisory committees and the Strategic Development Commission will gradually increase the number of political talents for the HKSAR.

## **13. Democratizing the Process of Public Consultations: Relations Between the Hong Kong Government and its People**

### **Process Enhancements**

(a) The use of a Citizen Assembly followed by local referendum on political reform will be an innovative and democratic means of gauging public opinions.

(b) Holding constitutional conventions to hammer out solutions on political reform will be another innovative experiment with the process of reaching a consensus on Hong Kong's democratization.

(c) Consulting the views of the Hong Kong people through independently conducted public opinion surveys and territory-wide public forums will remain the traditional means of measuring public sentiments, although the process of setting up public opinion assessment office can be refined.

#### **14. Facilitating the Political Dialogue Between the Hong Kong People and PRC Government**

##### **Process Enhancements**

(a) Creating the positions of special observers for mainland researchers on Hong Kong to attend meetings of Hong Kong's political institutions will formalize a channel through which mainland researchers will better understand the operations and discussions of the HKSAR polity.

(b) Holding annual conferences between Hong Kong and China's think tanks on Hong Kong affairs will have to be more extensive than before as the communications from both sides have much room for further improvement.

(c) Both the HKSAR Government and the Mainland's Hong Kong Macao Affairs Office can facilitate the process of forging more dialogue Between Hong Kong groups and mainland groups and authorities. Hong Kong groups still need the assistance from the HKSAR Government and Beijing to find the "perfect" match in their quest for communication and cooperation with the parallel mainland organizations.

#### **15. The Process of Invalidating Hong Kong Law and Interpreting the Basic Law**

##### **Processes and Enhancements**

(a) Keeping a low profile of Basic Law Committee members in public on controversial issues will increase their impartiality especially as they serve like common-law court judges presiding over contentious cases concerning the Basic Law.

(b) Improving the process of SCNPC officials consulting the Hong Kong people will harmonize the legal systems between Hong Kong and China.

(c) Making the reports, deliberations and voting decisions of the Basic Law Committee more transparent will help harmonize the two legal systems and minimize any unnecessary mutual distrusts.

(d) An elaboration of the SCNPC decision by attaching an appendix will be in conformity with the process of harmonizing the two legal systems. It will also help the people of Hong Kong to understand fully the rationale behind the SCNPC decision.

(e) Setting up a Hong Kong Public Law Study Group and allowing its non-governmental legal experts to make their case in future Basic Law Committee and SCNPC's public consultations with the Hong Kong people will not only harmonize the two legal systems but also enhance the impartial image of Basic Law Committee members.

(f) The HKSAR Government can speed up and deepen its study of all the provisions of the Basic Law so as to preempt the possibility of any abrupt or crisis situation in the interpretation of the Basic Law.

(g) Briefing the Hong Kong court judges on the Basic Law Committee's documents and deliberations will be necessary so that the Hong Kong court judges will have a deeper understanding of the Chinese perspective on Hong Kong's constitutional law.

## **16. The Process of Reviewing the Basic Law for Hong Kong Beyond 2047**

### **Process**

(a) Setting up a Basic Law Review Committee to review the Basic Law will be necessary to prepare a long-term political discourse on the HKSAR developments after 2047.

## **17. E-Government and Better Access to Government Documents**

### **Process Enhancements**

(a) Reviewing any 30-year rule for government documents to be released to the public for research will be necessary as researchers, reporters and ordinary citizens have their rights and interests to understand governmental decisions and perspectives on various events after a long period of time.

(b) Reorganizing a Hong Kong archive for all the government documents since retrocession on July 1, 1997 will be conducive to the protection of historical documents on Hong Kong and to the interests of researchers, journalists and the public.

(c) Enhancing e-Government by improving each government department's website and making application forms available to the public will create an open government that is so essential in the process of democratization.

**18. A gradual timetable and roadmap can perhaps buy time for the people of Hong Kong to consider the long-term directions of their political system.**

**19. Conclusion: The people of Hong Kong are educated, politically mature and rational enough to reach a consensus on their roadmap for the HKSAR polity from now to 2047.**

## **Introduction: Designing Hong Kong's Political System from Now to 2047**

With the rapid emergence of the People's Republic of China (PRC) as a global power, and in the wake of the deepening of economic reforms in the local governments of the Pearl River Delta (PRD) region, some people in the Hong Kong Special Administrative Region (HKSAR) are worrying that the HKSAR is encountering a danger of becoming an economic periphery of China. However, the PRC Premier Wen Jiabao remarked in April 2006 that Hong Kong's special economic role will remain irreplaceable because of its freest economy, strong legal system and rich entrepreneurial experience.

While many people of Hong Kong have been focusing on how the economy and society of the HKSAR can be transformed so that the HKSAR will remain economically competitive and socially vibrant. The question of political reform in the HKSAR towards the year 2047, when the current Basic Law will be up to review, revisions and possible extension, appears to be relatively neglected and largely regarded as of secondary importance.

It is common to hear the argument that the HKSAR should focus on economic and social development rather than political disputes. This argument gains currency among many people of Hong Kong. Nevertheless, many people of Hong Kong appear to turn a blind eye to the fact that economics and politics are intertwined, that political reform can facilitate Hong Kong's economic vitality and prosperity, and that democratic reform requires a real and long-term vision for the HKSAR in the years not only approaching but also beyond 2047.

Without a far-sighted vision of the HKSAR, the Chinese city itself will perhaps encounter the likelihood of becoming economically and even politically marginalized. A decade later, China and its southern regions will develop economically and technologically in such a rapid way that the HKSAR will find it increasingly difficult to maintain its competitive edge. Politically, while the PRC has been reforming its system in a far more transparent and an accountable way than before, the HKSAR polity appears to reach a stagnant phase without any significant breakthrough.

While many people of Hong Kong pride themselves as possessing the rule of law, a very vibrant financial system, and an assertive mass media, they cannot be complacent. Nor should they believe that by leaving the HKSAR political system intact, Hong Kong will remain competitive economically, legally and socially in the

long run, especially in the years approaching 2047 when some sectors of the population will perhaps become more anxious and uncertain about their future. In particular, as globalization is deepening in all parts of the world, Hong Kong's neighboring regions are improving their competitiveness to such an extent that the HKSAR's gradual but subtle decline since its retrocession to the motherland has been raised as a concern amongst many overseas observers. Although many people of Hong Kong still firmly believe in their city's competitive edge, they cannot deny the fact that outside observers have viewed the recent and long-term developments of the HKSAR in a far less optimistic manner.

Based on the assumption that Hong Kong will have to develop its political system continuously, in line with the requirement of the Basic Law that the HKSAR will ultimately envisage the selection of the Chief Executive by universal suffrage and the direct election of the whole legislature, this paper is going to propose reform options and a political roadmap for Hong Kong so that all the people of Hong Kong can ponder seriously what type of political system they deserve in the years approaching 2047. A political vision is necessary for Hong Kong to maintain its economic competitiveness, buttress its respectable rule of law, retain its regional status as a financial center, and to consolidate its social pluralism.

It must be noted that Hong Kong is economically and socially ready for a more democratic political system. With a relatively highly educated population, an assertive mass media, a strong legal system, the HKSAR deserves a more democratic system that can empower all the citizens of Hong Kong. After all, the principle of "Hong Kong people ruling Hong Kong" is predicated on the assumption that the HKSAR has "a high degree of autonomy," not simply socio-economically and legally but also politically.

Indeed, the HKSAR must change its political system gradually and incrementally in accordance with the Basic Law and the wishes of the central government in Beijing. Hong Kong is by no means an independent political entity but a Special Administrative Region of the PRC that enjoys "a high degree of autonomy." The HKSAR should develop its own democratic system without necessarily copying from the Western experiences directly. Any change in the HKSAR political system should have the full support of the central government in Beijing. Hong Kong cannot afford to confront its own motherland politically. However, the people of Hong Kong must engage in an active political dialogue with the PRC officials, experts and academics who are deeply interested in the HKSAR's political development.

Some people argue that prior to democratic reform in the HKSAR, the people of Hong Kong need to develop their “maturity,” political parties should expand their operations to their utmost limit, and the tax system has to be changed. It must be noted that the people of Hong Kong are already politically mature although some of them are not interested in political participation. In terms of awareness, the people of Hong Kong are highly politically informed. In terms of behavior, the people of Hong Kong are not hesitant to participate in politics, to make their demands and to voice their grievances. The massive protests on July 1, 2003 and July 1, 2004 were a testimony that the people of Hong Kong are not only politically assertive but also remarkably rational as well as orderly. It is absolutely an unconvincing argument that the people of Hong Kong remain politically apathetic. If political apathy persists, it can be found in a minority of the Hong Kong population. Cognitively, an overwhelming majority of the Hong Kong people are well aware of the ongoing political events.

Furthermore, the argument that political parties must become mature first before political reform can be accelerated is unconvincing. The fact that political parties are “weak” is attributable to the relatively undemocratic, archaic and semi-colonial political system of the HKSAR. This vicious circle has to be broken by the implementation of democratic reform that will empower political parties.

Political parties are often portrayed negatively by the mass media, but their positive contributions to the stability of the political system through interest articulation and aggregation have been constantly played down. The media’s negative coverage of political parties can perhaps be attributed to the background and training of many reporters and editors, who were not fully trained in political science and who constantly search for negative coverage of political parties to sensationalize their political news stories. On the other hand, it must be admitted that many political party members have not learnt how to manage their internal differences in an internally democratic way, but they usually rely on the sensational media to highlight their disputes and settle their differences. This phenomenon is perhaps unfortunate in the HKSAR where the mass media are expected to be more neutral, more rational and less sensational and where politicians should learn the art of internal compromise and consensus.

Finally, the argument that tax reform should be implemented prior to democratic reform assumes that economics is superior to politics, that political reform would

perhaps create a polity beneficial to “welfarism.” The argument of having tax reform precede any democratic reform turns a blind eye to the fact that political reform can and will transform the HKSAR into a special polity within China so that its competitive edge vis-à-vis the PRD region and other Asian nation-states as well as city-states. It can also be argued that by having a more democratic system in which different societal interests are represented, the discussion on tax reform will also be facilitated. A political system that is both democratic and inclusive can hopefully try to reach compromise on controversial issues such as tax reform and the introduction of sales tax.

Although democracy is an ideal that cannot be fully realized in many Western democratic states, democratization is arguably a matter of degree in all the countries in the world. Above all, democracy as both an institution and a spirit can help political and social actors to settle their differences in a more transparent and tolerant manner. Political tolerance is arguably a neglected but an indispensable ingredient in any democracy. If the HKSAR is to become a unique polity under the Chinese sovereignty, political tolerance and democracy—both in institutional and spiritual terms—should arguably be developed and entrenched further.

In short, the people of Hong Kong must admit the fact that political reform is not a poisonous weed that will ruin the HKSAR economically, socially and legally. Instead, democratization is an ongoing process in which the HKSAR will be able to project itself as a unique city in China, prevent itself from being economically marginalized, and to buttress its existing strengths such as the rule of law, the vibrant mass media and the much envied financial centre in the world. Democratization can bring different groups and social classes together in order to achieve consensus on various issues, including tax reform and political differences.

If political reform can enhance the international and regional status of Hong Kong, this paper is going to propose a comprehensive overview and gradual reform of its existing system, institutions and operations. Its objective is to delineate various reform options for the people of Hong Kong to ponder seriously and to devise their own special system that will perhaps bring the HKSAR beyond 2047.



## **Political Reform and the “One Country, Two Systems”**

There are five major factors explaining why political reform in the HKSAR is in line with the principle of “one country, two systems” that was advanced by the very far-sighted late Chinese leader Deng Xiaoping.

First, the PRC system is constantly characterized by planning, such as the five-year plans, the entry into the World Trade Organization (WTO), the holding of the Olympics Games in 2008, and as such, the HKSAR’s polity should also have better planning. If both Beijing and the HKSAR insist on a gradual, orderly and incremental approach to Hong Kong’s political reform, then it is fully justifiable to lay out the entire process by charting options and a possible roadmap.

Second, the 1984 Sino-British Joint Declaration is now 21 years old, and the “one country, two systems” that is supposed to last for fifty years is entering the ninth year (nearly 20%). If the HKSAR continues to delay the process of charting all its options for political reform, history will perhaps assess its governing elites in a relatively critical way. Critics will perhaps argue that any lack of political creativity in designing the polity of the HKSAR will cast doubts on the feasibility and success of the “one country, two systems.” To be fair, since the retrocession of the HKSAR to China, the people of Hong Kong have been continuing to enjoy “a high degree of autonomy” in legal, social and economic affairs. Politically, however, the HKSAR has to do more in order to prove that the “one country, two systems” model will surely be a successful model for the Republic of China (ROC) on Taiwan. After all, it was the original intention of the PRC leaders to use Hong Kong, and Macao, as a model to appeal to Taiwan leaders for reunification and reintegration in the long run.

Third, as China is rising politically and economically, it is increasingly confident that democratic development in the HKSAR can strengthen Beijing’s international image, project Hong Kong as a real alternative to Taiwan’s political future, and represent a very unique and an unprecedented Chinese model of political experiment. In short, as long as the people of Hong Kong fully respect the sovereignty of their motherland and do not interfere with the political development in the PRC, democratization in the HKSAR is and will by no means a security threat to the central government in Beijing. An increasingly democratic polity and marketized economy of the PRC not only look to the rule of law in Hong Kong as a model, but also see gradual democratization as absolutely in line with its national security objective. Democratic

development will in fact make Hong Kong more politically stable and beneficial to the central government in Beijing.

Fourth, the legitimacy and governing crises of the HKSAR from 1998 to 2004 were attributable partly to its institutional defect and democracy deficit. The fact that many people of Hong Kong are constantly demanding the direct election of the Chief Executive through universal suffrage points to the institutional defect and democracy deficit in the HKSAR. Rule by a virtuous leader cannot solve the root problem of Hong Kong's underlying political problem. Institutional reform and democratization are the panacea to the persistent and hidden crisis of legitimacy in the HKSAR where a majority of citizens are highly educated, politically mature, behaviorally rational and yet critical of any maladministration. The principle of "Hong Kong people ruling Hong Kong" means that most Hong Kong people are demanding a much better political system than ever. From this perspective, the government of the HKSAR must continue to evolve its polity from now to 2047 and beyond.

Fifth, the people of Hong Kong have historically been nationalistic and patriotic, and therefore democratization in the HKSAR will by no means pose a political menace to the central government in Beijing. The people of Hong Kong accepted the 1997 retrocession and constantly rejected the Taiwan independence movement. They also share the joy of Beijing's global emergence, entry into the World Trade Organization and the superb performance of Chinese athletes in the Olympics Games. There is absolutely no grounds for fearing that democratization would make Hong Kong a political pawn or a Trojan horse for any Western imperialism against Chinese national interests. A more democratic Hong Kong will prove to the world that China is politically confident and tolerant of the HKSAR's democratic development, that Hong Kong can become an exemplar of how other parts of the world can deal with two different systems in a harmonious and successful way. Democratization in the HKSAR will by no means "Taiwanize" Hong Kong politically. Instead, democratization will carve a niche in Hong Kong with a special political system of its own, distinct from Taiwan and yet symbolic of the success of "Hong Kong people ruling Hong Kong."

In a nutshell, democratic development in Hong Kong will be in conformity with the PRC's multi-faceted planning, the HKSAR's timing of its own future development, Beijing's confidence in the ability of "Hong Kong people ruling Hong Kong," the need for Hong Kong to address the problems of institutional defect and democracy deficit, and the nationalistic and patriotic aspirations of the Hongkongers. Both China

and Hong Kong will benefit tremendously from a carefully crafted and designed democratic blueprint for the HKSAR.

## **Preconditions for Democratization in Hong Kong**

In April 2006, it was reported that mainland Chinese scholars laid down six preconditions for democratization in Hong Kong: political consensus among the Hong Kong people, the need to legislate on Article 23 of the Basic Law, the need to prevent redistribution of economic power, the lack of any law governing political parties, the need to enhance patriotic education, and the necessity of achieving equal participation in politics. All these preconditions will inevitably be subject for further debate among the people of Hong Kong. This roadmap already suggests that consensus building can be experimented and achieved through the discourse on political reform from now to 2047; that a national security legislation for Hong Kong should be reconsidered and discussed in the coming years alongside the discourse on political reform; that the bicameral system may be seen as a stop-gap measure preventing any possible redistribution of economic power; that a law governing political parties can be considered; that patriotic education has already been implemented and can be deepened further; and that equal participation in politics will be guaranteed in a more democratic system in the HKSAR. In brief, the preconditions outlined by mainland Chinese scholars can be achieved alongside with the gradual process of democratization in Hong Kong.

In other words, the preconditions constructively laid down by mainland Chinese scholars are issues that need to be addressed by the people of Hong Kong, especially the members of the political opposition or the pro-democracy camp. The need for political consensus among the people of Hong Kong is a must if any political reform blueprint can be implemented smoothly. In this aspect, this roadmap will propose ways in which the democratic forces and the government can enhance communication and hopefully political consensus in the long run. Politics is not only about conflicts, but it entails consensus and the idea of making compromise. The abortive attempt at legislating Article 23 of the Basic Law by the Hong Kong government in July 2003 was attributable to a mix of factors: a misstep by the authorities to promote the legislation in a great hurry, the lack of inadequate explanation from both the government and the pro-establishment forces on the details of the legislation, and the deep public fear of the negative implications of the legislation. All nation-states in the world have their national security legislations. As a Special Administrative Region of the PRC, Hong Kong has the obligation to legislate on Article 23 of the Basic Law. The question is how to make the proposed legislation understandable and acceptable to the public. The miscommunication over the Article 23 debate in 2003 should be avoided in the HKSAR in the years to come.

Whether Hong Kong has an unequal distribution of economic power and whether democratization will tip the balance in favor of particular social and economic sectors are highly debatable issues. It is not the intention of this roadmap to engage in this controversial debate. However, if one assumes that economic power in Hong Kong would be affected by any democratization blueprint, the bicameral or two houses model to be proposed in this roadmap can perhaps be considered as a temporary political reform blueprint that on the one hand maintains the *status quo* in the distribution of economic power and on the other hand searches for a long-term political model acceptable to all parties and sectoral groups.

A law governing political parties will be necessary for Hong Kong to develop a more democratic political system. It is odd for Hong Kong's political parties to register and persist without a law governing them. While some parties may be concerned that any law governing political parties may turn into a legal tool for political control, there are perhaps no grounds for this anxiety. Rather, a political party law can force all political parties to be transparent in their financial support and practical operations. Hammering out a political law will prove to be a gigantic task for Hong Kong's political elites as it will test their ability to make compromises and achieve consensus.

Patriotic education has already been implemented in recent years, particularly after the debacle over the discussion of Article 23 of the Basic Law in 2003. However, the majority of the people of Hong Kong have long been patriotic. Yet, their patriotism tends to be rational and pragmatic, meaning that while they strongly identify themselves as culturally and ethnically Chinese, most of them may not translate their cultural patriotism easily into political loyalty to any political group or party. This rational patriotism of the people of Hong Kong appears to be a far cry from the mainland Chinese, whose cultural identification is perhaps closely intertwined with their political identification of the regime and party in power. Perhaps the issue of patriotic education in Hong Kong is proceeding in a natural and gradual manner that, by the time Hong Kong will accept a more democratic system, the worry about democracy electing an unpatriotic leader will slowly fade away. The acceleration of patriotic education in Hong Kong can also go hand in hand with a more gradual and orderly process of democratization. Both processes are complimentary and by no means mutually exclusive.

Finally, the question of achieving equal participation in politics is perhaps up to different interpretations. It can be argued that by having a more democratic system,

the institutions in place will protect the interests of all parties, groups, and sectoral interests. While Western democracies are by no means the ideal and perfect model in which equal participation can be achieved because of the persistent gap between the haves and have-nots, a more democratic system should simultaneously address the critical issue of how to narrow such economic and political gap. If none of the political systems in the world can achieve perfect and ideal “equal” participation of all in the political life, the discussions on political reform in Hong Kong should perhaps bear in mind the need to care for the politically powerless and economically deprived people. From another angle, the real world of democracy will have to achieve equal participation of all social sectors in politics—a very difficult but often an ideal task indeed.

In short, the preconditions set out by the mainland Chinese scholars are issues that require further in-depth discussions among the people of Hong Kong. Unfortunately, it seems that the political discourse after the Legislative Council’s rejection of the political reform blueprint proposed by the Tsang administration has become stalled, at least in the short run. It is hoped that the people of Hong Kong will treat all these issues in a more positive way and that they will engage in deeper political discourse. Perhaps, political reform in Hong Kong will accelerate the fulfillment of these preconditions, thus allaying the anxiety of the central government about any undesirable impact of Hong Kong’s democratization.

In May 2006, the Strategic Development Commission of the HKSAR Government asserted that its discussions of political reform contained an essential principle, namely Hong Kong would not move toward “welfarism.” From an objective standpoint, it seems that the concept of welfare state has not been fully understood by the majority of the Hong Kong people. Welfare states in the West certainly do not have a low tax rate regime as compared to Hong Kong, but they do have a democratic system that empowers the citizens and allows them to remove the regime in power through regular elections. The majority of Hong Kong people appear to regard welfare states as “undesirable” mainly due to the relatively high tax rates. Nevertheless, it has been neglected that, in the past decades, many Hong Kong people emigrated to those countries where the tax rate is much higher than the HKSAR. Many of them have been comfortably adapting to the life in welfare states, which provide a stable polity, empower them through national-level elections, and embody a relatively popular social welfare system. The strong social security net and the empowerment of citizens through the direct election of their chief executive have been crucial phenomena neglected by those Hong Kong people constantly critical of

the welfare states in the West. In view of an emergent aging population, and an increasing grass-roots demand for more social welfare from the government, the HKSAR perhaps has much to learn from selected policies of the welfare states. The stereotyped impression on the welfare states narrowly focuses on their tax system. Yet, this superficial image has turned a blind eye to the political empowerment of citizens through direct elections of their chief executive and the strong social security regime of the welfare states. Indeed, it will take a long time for some people of Hong Kong to alter their deep-rooted bias upon “welfarism,” which is just narrowly defined as having a high tax regime. The argument that Hong Kong should not move toward “welfarism” in the sense of having a high tax rate is a valid one; nevertheless, the twin features of citizen empowerment and strong social security net in welfare states should not be easily swept under the carpet.

## **1. The Chief Executive Election**

### **Structural Reform**

#### **(a) Option 1: Direct Election of the Chief Executive through Universal Suffrage as soon as possible, namely 2012**

The question of the election of the Chief Executive by universal suffrage in 2007 was a bone of contention in the HKSAR prior to the interpretation of the Basic Law by the Standing Committee of the National People's Congress (SCNPC) in April 2003. Even after the SCNPC interpretation, some people of Hong Kong demand that the HKSAR should have the Chief Executive directly elected by citizens through universal suffrage as soon as possible. In fact, Article 45 of the Basic Law, which states that "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," does not specify a timetable, which has become a contentious issue in the HKSAR.

After the SCNPC interpretation of the Basic Law in April 2003, the next possibility for Hong Kong people to have their Chief Executive directly elected through universal suffrage will be the year 2012.

However, the option for Hong Kong to achieve the ultimate objective of having the Chief Executive elected by universal suffrage as soon as possible has two major preconditions. First, the people of Hong Kong themselves must reach a consensus on the matter. Second, the central government in Beijing must approve such an election method. In the short term, it seems that both conditions cannot be easily met.

#### **(b) Option 2: Increasing the Membership of the Chief Executive Election Committee, Turning it into a Nominating Committee, and Allowing All Eligible Voters to Elect the Chief Executive by Universal Suffrage after Screening by the Nomination Committee**

Hence, a more mid-term solution to the existing problem is to enhance the number of Election Committee that selects the Chief Executive from 800 to, say, 1,600 or 2,400. The HKSAR Government proposed in 2005 that the Election Committee should be expanded to 1,600 members. However, the proposal did not receive the two-thirds support of the Legislative Council. Part of the reasons for the Legislative Council's rejection was perhaps due to the lack of reform that would widen the base of electorates substantially. In light of this weakness, this paper proposes that another



mid-term solution is (1) to increase the number of the members of the Election Committee, and (2) to change the Election Committee into a Nominating Committee simultaneously. In other words, after the Nominating Committee endorses a number of candidates, who will have to compete among themselves by gaining a certain percentage of votes from the Nominating Committee, then all the eligible voters in the HKSAR will be entitled to vote for their Chief Executive candidates. In this way, the ultimate objective of having the Chief Executive elected by universal suffrage would be achieved. At the same time, the Nominating Committee will be able to decide those candidates who are eligible to compete in the stage of universal suffrage. This proposed mid-term model has the advantage of not only protecting the interest of the central government in Beijing but also achieving the democratic objective of having the Chief Executive elected by universal suffrage.

#### (c) Option 3: Widening the Membership of the Election Committee

A more conservative approach is to simply widen the composition of the Chief Executive Election Committee, but this proposal became abortive in 2005 as it could not acquire the two-thirds majority support of the members of the Legislative Council. This option is arguably so conservative that it will perhaps be bound to be rejected in the legislative assembly.

### **Process Enhancements**

#### (a) Making the Chief Executive Elections More Competitive by Allowing Candidates' Party Affiliations

Indeed, the mid-term solution suggested above (option 2) will need to hammer out a number of thorny issues, notably the timetable of implementing this mixed model of universal suffrage and political screening by the Nominating Committee. Moreover, some Hong Kong people have already demanded that the Chief Executive should have a particular political background. The question of the political party background of the Chief Executive is controversial. Supporters of "partisanization" note that the Chief Executive must need the support of larger political parties to get his or her bills and policies endorsed by the Legislative Council. However, opponents may argue that partisanization may affect the neutrality of the Chief Executive and it runs counter to the Basic Law, which leaves consideration autonomy and leeway to the question whether the Chief Executive should have political party background.

Many political parties in Hong Kong have already advocated that the future Chief Executive should be allowed to have party affiliations. This option is feasible and can

be considered especially if the HKSAR will proceed toward the direct election of the Chief Executive through universal suffrage. With a party machinery's full political support a Chief Executive candidate will be able to appeal to all voters in a more effective manner.

#### (b) Making the Chief Executive Elections More Competitive

Another short-term solution to reform the Chief Executive election is what the HKSAR government suggested, namely making the electoral process more competitive. The Chief Executive Election and Legislative Council (LegCo) Election (Miscellaneous Amendments) Bill 2006 tabled to lawmakers on March 8, 2006. According to the Bill, if only one Chief Executive candidate is validly nominated, election proceedings will continue. When voting, Election Committee members can indicate in the ballot papers either to support or not support the sole candidate. A sole candidate will be returned at the election if the number of supportive votes he obtains constitutes more than half of the total number of valid votes cast. However, if the number of supportive votes obtained by a sole candidate falls short of more than half of the total valid votes cast, the nomination and election process will start afresh. If, at the close of the new and subsequent rounds of nominations, there is still only one candidate, the election process will be repeated until a candidate is returned.

Other methods of increasing the competitiveness of the Chief Executive elections include, for example, requiring the Chief Executive candidates to put forward the names of their proposed Principal Officials, to hold public consultative forums in which ordinary citizens can also attend and question the candidates, and to allow all candidates equal time in the mass media to publicize their platforms. These methods can be considered and implemented in anticipation that the Chief Executive will be ultimately elected by citizens through universal suffrage.

#### (c) Improving the Public Consultations on the Methods and Timetable of Selecting the Chief Executive through Universal Suffrage

The timetable of realizing the election of the Chief Executive by universal suffrage is bound to be a contentious issue in Hong Kong. However, if the principle of "Hong Kong people ruling Hong Kong" is fully implemented, several alternatives of deciding the timetable of the Chief Executive's election method can be considered: (1) forming a citizen assembly in which one or two hundred randomly selected registered voters discuss and decide amongst themselves a proposed timetable that will be voted by all Hong Kong people in a local referendum; (2) conducting randomly sampled surveys of the views of the Hong Kong people so that the HKSAR

Government and Beijing would decide the timetable; (3) holding constitutional conventions that will invite political parties and concerned groups to hammer out a proposed timeline for the Legislative Council to decide further; and (4) a constitutional review conference composed of Beijing's experts on Hong Kong and the HKSAR party leaders, legislators and concerned groups so that a consensus between the central government and Hong Kong will be reached.

Arguably, after the political protests on July 1, 2003, the dialogue between Hong Kong's concerned groups and Beijing was insufficient. Nor was the HKSAR Government had the vision of initiating any constitutional conventions in Hong Kong and any constitutional review conference that could invite the mainland Chinese experts on Hong Kong to discuss political reform in the HKSAR. The lessons of the political impasse leading to the SCNPC interpretation of the Basic Law in April 2004 should be learnt by the people of Hong Kong, including their Government that is supposed to enjoy "a high degree of autonomy."

The processes of deliberating the most desirable timetable of having the Chief Executive directly elected by universal suffrage are actually far more significant than the ultimate goal of achieving universal suffrage. Without the multi-dimensional processes of communication between the Hong Kong Government and Beijing, between the Hong Kong people and their Government, and amongst the concerned Hong Kong groups and parties, fragmentations of opinions rather than a political consensus will persist. If the people of Hong Kong are generally educated, politically mature and rational, the lessons of the lack of political discourse shortly after July 1, 2003 have to be borne in mind.

## **2. The Legislative Council**

The most controversial stipulation in the Basic Law with regard to the composition of the Legislative Council is Article 68, which states that “the ultimate aim is the election of all the members of the Legislative Council by universal suffrage.” Without a concrete timetable of democratization, direct election of the entire LegCo is constantly a bone of political contention in the HKSAR.

### **Structural Reforms**

#### **(a) Option 1: Increasing the Members of Directly Elected Members and Functional Constituency Members Proportionately**

In 2005, the HKSAR government’s proposal of widening the LegCo composition from 60 members to 70 failed to obtain two-thirds majority support of the legislators. The proposal intended to allow 5 new members returned from District Councils and the other five returned from direct elections. Apparently, the proposal was a progressive one. Unfortunately, due to insufficient time and inadequate dialogue between the HKSAR Government and the political opposition, the proposal became abortive. The implication is that any further reform of the LegCo will be very difficult.

This proposal can surely be reconsidered in the future with better explanation and promotion on the part of the HKSAR Government. Although critics see this proposal of increasing the number of directly-elected members and functional constituency members as a stagnant democratizing formula, it does represent a very small step toward democratization of the legislature.

#### **(b) Option 2: Adopting Two Houses with a Fully Directly-Elected Lower House**

To break the current political *cul-de-sac* regarding LegCo’s composition, this paper will propose a bicameral system suitable for both the HKSAR and the PRC. Arguably, a bicameral system with two chambers—the upper and lower ones—will on the one hand maintain an executive-dominant system and on the other hand achieve the objective of having a legislature fully directly elected. The next section will provide further justifications for the proposed bicameral model.

#### **(c) Option 3: Reforming the Functional Constituencies**

While the enlargement in the number of LegCo members became abortive in 2005, reform of the functional constituencies can perhaps be deepened. The ways in which functional representatives are elected can be democratized further, including (1) the possibility of widening the franchise of electors eligible to vote for their functional representatives, (2) the enlargement of the number of electors beyond those executive committee members in corporate organizations eligible to vote in functional constituencies elections, and (3) the consideration of co-opting new functional groups, particularly women groups, ethnic minorities and youth organizations that are relatively under-represented in the existing LegCo or (4) transforming the existing functional constituencies into a smaller number of multi-seat constituencies to reduce the likelihood of uncontested seats, provide functional constituency voters with broader candidate choice and better facilitate political party participation in the functional constituencies.

#### (d) Option 4: Abolishing Functional Constituencies

The eventual abolition abolishing functional constituencies is required by the Basic Law, yet has become extremely controversial in the HKSAR, given their nature of protecting the vested interests of various groups, ranging from business organizations to labor groups. However, as will be proposed in the next section, having a bicameral system with an upper house protective of the interest of the business sector will arguably maintain the general political *status quo* in Hong Kong while maximizing the available space for the direct election of the entire legislature. Hence, the option of abolishing the functional constituencies will perhaps be politically acceptable to the vested interest groups in the event that a bicameral system is adopted.

#### (e) Option 5: Maintaining the Number of Legislative Councilors as 60 but fully democratizing the election of functional constituency representatives

A final democratizing model for Hong Kong's Legislative Council is to maintain the existing way of 30 directly elected representatives through geographical constituencies while democratizing the elections of the functional constituency representatives to the fullest extent. This means that functional constituency groups can nominate representatives to run in territory-wide direct elections. They can put forward candidates to participate in functional constituency sectors, such as education, law, commerce, accounting, and other existing professions as stipulated in the Basic Law. However, after the nomination process, the candidates will compete in territory wide elections in which each citizen will have two votes, one voting for a representative in his or her geographical constituency and the other voting for another

representative in his or her occupational sector. In this way, democratization of the entire Legislative Council will be in conformity with the principle of achieving universal suffrage for the whole legislative body. While functional constituencies will be maintained, their electoral method will be democratized to the fullest extent.

### **Process Enhancements**

#### **(a) Constantly Reviewing and Increasing the Number of Legislators in Light of Population Changes**

However, the people of Hong Kong will have to decide whether they would like to see a larger legislative chamber with more representatives articulating their interest. As the population of Hong Kong is gradually increasing, it will be necessary for the HKSAR Government to constantly review the proportion of LegCo members to the entire population. Some adjustments will perhaps be necessary to reflect demographic changes. Those constituencies that deserve to have more directly elected members will have to be revamped and expanded, while the implications for the number of functional constituency members will also have to be taken into consideration.

#### **(b) Reforming the Legislative Council's Scrutinizing Capacity**

In the medium term, the LegCo will still be an evolving institution in which several reform areas can be considered to enhance its scrutinizing capacity.

#### **(c) Reviewing the Passage of Private Member's Bills (Article 74 of the Basic Law)**

First, the process of private member's bills, which 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 (Annex II of the Basic Law), can be reviewed. While not many legislators have advocated a change to this voting procedure, a few have expressed their reservations about the power and discretion of the LegCo President in determining whether their bills can be initiated. According to Article 74, LegCo members "may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government polices are introduced." By convention, the LegCo President decides whether such private member's bills are related to public expenditure or political structure or the operation of the government—wordings that are ambiguous and can

be interpreted very broadly. From this perspective, any review of the private member's bills in LegCo should reconsider the ambiguous wordings and determine whether more concrete guidelines can be advanced to decide bills that "are related to public expenditure or political structure or the operation of the government."

#### (d) Setting Up LegCo's Standing Committees Parallel to Ministerial Portfolios

Second, to empower LegCo and to ensure its monitoring role vis-à-vis the executive branch, the LegCo can reconsider an idea floated in the 1990s that standing committees parallel to governmental secretaries could be established. In light of the establishment of the POAS in July 2002, the LegCo can reformulate the idea of setting up standing committees that correspond to the ministerial portfolios of the POAS. In this way, a better checks and balance system can be instituted.

#### (e) Harmonizing Executive-Legislative Relations through Formal and Informal Meetings

Ideally the ExCo can harmonize its relationships with the LegCo. In fact, such harmonization process can take the form of not only reinstituting a body similar to the former UMELCO but also conventionalizing the existing communication channels. It is common that ExCo members meet LegCo members in various occasions, such as informal and formal gatherings. Nevertheless, regular meetings between ExCo and LegCo members, between Principal Officials and LegCo members should ideally be held so that better communications will hopefully bridge any political gap between the executive and the legislative branches.

#### (f) Consolidating the Constitutional Conventions in LegCo

The LegCo's scrutinizing capability can be enhanced through the consolidation of some existing conventions adopted in the legislative chamber. These conventions governing the LegCo include (1) the good practice of the LegCo President to explain in black and white why he or she disallows a private member's bill to be initiated, (2) the convention of government officials attending LegCo meetings and giving testimony before legislators, (3) the convention of the Chief Executive's question and answer sessions that are regularly held in LegCo, and (4) the convention of government officials communicating with legislators on various matters pertaining to bills and policies. These conventions are extremely important to the healthy and successful operation of the LegCo.

#### (g) Each Elected LegCo Members Nominating an Ad Hoc Member to Work in LegCo

One neglected area of reform in LegCo is the possibility of nominating ad hoc LegCo members to assist elected legislators. At the level of District Councils, ad hoc members have been injected into these advisory bodies since their inception. These ad hoc members play a critical role in alleviating the work load of the elected and appointed District Councilors. So far, surprisingly, little discussion has been engendered to consider the likelihood of each LegCo member nominating one assistant as ad hoc members, who may not have voting rights as with the elected legislators. In some District Councils, the number of ad hoc members is restricted in such a way that they cannot outvote the elected and appointed colleagues in a sub-committee. This practice of having ad hoc members working at the District Councils level remains quite successful. In order to train political talents and leaders in the HKSAR, the idea of injecting ad hoc members without voting rights, or with limited voting rights, should be considered by the LegCo. It is important to note that allowing each legislator to nominate one ad hoc member will by no means upset the current functioning of the legislative chamber. Instead, with proper restrictions, such as limiting the number of ad hoc members in LegCo's panels and perhaps limiting their voting rights as well, ad hoc members will be able to assist LegCo and reduce the tremendous workload on their elected colleagues. In short, the idea of nominating an ad hoc member by each elected legislators can be considered, although the LegCo can discuss the voting power and limitations of ad hoc members in the future.



### **3. Hong Kong's Bicameral System as a Way Forward?**

From a comparative perspective, bicameral systems can provide better checks and balances in Western democracies. In the case of Hong Kong, the objective of introducing the bicameral system—with an upper house and the existing lower or legislative chamber—will have the virtues of protecting the interest of the business sector on the one hand and achieving direct election of the entire legislature through universal suffrage on the other. It must be pointed out that the people of Hong Kong must treat the bicameral model as a non-zero sum game. That is, the bicameral system is not designed to favor a particular sector but it is shaped in a way that can balance the interests of the two significant sectors: pro-business and pro-democracy groups. In other words, Hong Kong has great potential to develop a unique political system different from the West while having an essential ingredient of democracy under the PRC sovereignty. If the democrats in the HKSAR can accept the assumptions that democratization in Hong Kong cannot proceed in a way that will threaten the national interest of the central government in Beijing, and that it will not undermine the current executive-led system, the bicameral system is perhaps a way forward for the HKSAR in the years approaching and beyond 2047. Having a bicameral system can also allow more space and opportunities for political talents to nurture their leadership skills and to acquire more politico-legal experience in the two chambers. In short, the bicameral system, if designed carefully and crafted skillfully, will be a win-win situation for all the political groups in the HKSAR.

It must be noted that the two houses system, or the bicameral model, can be viewed by the people of Hong Kong not necessarily as the final product of democratization, but as an interim solution that will perhaps lead to another ideal political model whose design will depend on two major factors: (1) the consensus among the people of Hong Kong, and (2) China's political reform in the long run. As China is developing a political system more open, more decentralized and more internally as well as externally accountable than before, it is possible that Hong Kong's political model, including the bicameral option, would perhaps converge with China's political development. Therefore, for those Hong Kong people who may reject the bicameral model or the two houses system outright, they should perhaps consider the likelihood that bicameralism in the HKSAR can be seen as an interim solution to the current political impasse in Hong Kong.

Some people argue that the bicameral system may violate the Basic Law in which the future Legislative Council should be constituted by universal suffrage and where the upper chamber is not mentioned at all. Whether the bicameral system violates the

Basic Law is perhaps a matter of constitutional interpretation and re-interpretation, it does raise the important issue of whether bicameralism can be regarded as a short-term or medium-term solution leading to a long-term model satisfactory to all groups, parties and vested interests. In any case, the two houses model can also be viewed as an experiment with the need to balance the interests of the business sector with those of the pro-democracy camp. It may not be a perfect solution, but the bicameral model will perhaps signal the triumph of political compromise and consensus amongst all parties, groups and sectoral interests.

Another argument opposing the bicameral system is that while China and Taiwan have unicameral political models, it is unacceptable for the HKSAR to introduce a bicameral model that will perhaps minimize the utility of the Hong Kong style of “one country, two systems” to reunify Taiwan in the long run.<sup>3</sup> Although both China and Taiwan do not have the bicameral systems, it does not necessarily mean that Hong Kong should jettison the two houses model immediately. First and foremost, Hong Kong’s “one country, two systems” is supposed to be unique and there is nothing wrong if Hong Kong opts for a special model of its own. Second, in the event of China’s long-term political reform, its Chinese People’s Political Consultative Conference (CPPCC) may turn into another political chamber parallel to the upper chamber in some of the Western-style democracies.<sup>4</sup> In other words, China’s political reform may eventually opt for a two houses model which is characterized by the “lower chamber” of the National People’s Congress and perhaps the “upper chamber” of a reformed and an expanded CPPCC. Third, China’s reunification with Taiwan in the long run may lead to the creation of a political linkage institution connecting the two sides. Such linkage institution may take the form of an expanded CPPCC which will incorporate Taiwan representatives, or perhaps a new political institution composed of representatives from Taiwan, Hong Kong and Macao. While this speculation may not come true, the design of a new and an innovative political system in the HKSAR should arguably not be dissuaded by the eventual China-Taiwan reunification process. Arguably, if “one country, two systems” in the HKSAR is a unique one with demonstration impacts on other parts of the world, the design of its political system should be a very special endeavor punctuated by not only Hong Kong Chinese features but also possible experimentation in either the PRC or Taiwan in the long run.

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<sup>3</sup> I am indebted to Professor Ming Chan of Stanford University to this argument.

<sup>4</sup> I am grateful to Professor Ming Chan for this insight as we continued the dialogue on the bicameral system.

How can we design a bicameral system suitable for Hong Kong? Two principles have to be adopted. First, the upper chamber should not be more powerful than the existing functional constituency members who can check the voting behavior of the directly elected legislators. From the pro-democracy perspective, if the upper chamber is less powerful vis-à-vis the lower chamber, the bicameral system would be politically acceptable. Yet, from the standpoint of the business sector, a less powerful upper chamber would perhaps give rise to political “welfarism” and dominance in the lower chamber. The starting point is to maintain at least the current *status quo* of the functional constituencies versus the directly elected sector. The next will be a more careful review of whether the powers between the upper chamber and the lower chamber will be rearranged. Therefore, this paper adopts a more “safer” or perhaps a bit conservative beginning to craft the bicameral system. Second, minimal changes to the existing Basic Law will be made. Although the Basic Law does not provide for the existence of an upper chamber and the bicameral system will entail a possible revision of the Basic Law’s relevant provisions, Beijing appears to adopt an open-minded attitude toward political reforms in the HKSAR. If this analysis is accurate, then minimal changes to the Basic Law can be made to accommodate the introduction of a bicameral system.

### **Structural Reforms**

#### **(a) Option 1: 60-Member Lower House and 60-Member Lower House**

At the beginning, the bicameral system in the HKSAR can have a wholly directly-elected 60-member Legislative Council and a newly created 60-member upper house. Several options for the composition of the upper house can be considered. First, it will be composed of all the existing functional constituencies in the legislature and also new functional sectors such as women, youth and ethnic minorities. Furthermore, some existing functional constituencies can be augmented, such as allocating more upper house seats to the labor groups. Second, the upper house can comprise members from not only functional constituencies but also Hong Kong members of the National People’s Congress (NPC), Hong Kong members of the Chinese People’s Political Consultative Conference (CPPCC), and other former politicians of the HKSAR. The methods of the selection of the upper house can be considered further, but they embrace (1) the current method of electing functional constituency members in LegCo, (2) the election of representatives from among the Hong Kong members of the NPC, and (3) the election of representatives from among the Hong Kong members of the CPPCC. Regardless of the methods of selecting

members of the upper house, the idea is to incorporate existing functional groups and expand new ones into the chamber, which will become a body of second deliberation.

#### (b) Option 2: A 30-member Upper House and 60-member Lower House

Another alternative of reforming the legislature is to introduce a smaller upper house whose composition can come from the existing and the newly added functional constituencies, and a fully directly-elected 60-member lower house. The disadvantage of having a smaller upper house is that its members may have relatively heavy workload including the need to oversee the bills and legislation passed by the lower house.

### **Powers**

#### (a) Giving Veto Power to Upper House over Bills Passed by Lower House

If a more conservative start is adopted in designing the bicameral system for Hong Kong, the upper house will arguably enjoy the power of veto over bills passed by the lower chamber. The existing LegCo has already entrenched separate voting mechanism allowing those members from the functional constituencies some checks and balances upon the directly elected members. This separate voting mechanism can be transferred directly to the set-up between the upper house and the wholly directly elected lower house in the HKSAR.

#### (b) Restricting the Veto Power of the Upper House

Yet, to prevent the second chamber from being too powerful vis-à-vis the lower chamber, the number of vetoes can be restricted annually to, say, a maximum of five times on the lower chamber's passed bills related to government expenditure. If the separate voting mechanism persists in the Basic Law, both the Hong Kong Government and the pan-democratic camp should consider a model that will maintain the existing features at least in the short run, followed by a review in the longer term. Above all, if the central government in Beijing is concerned about a powerful and completely directly elected lower chamber, having the upper chamber enjoy the veto power over bills passed by the Legislative Council a number of times per year will arguably be in conformity with the tenet of gradual and orderly change. If a bill passed by the Legislative Council is vetoed by the upper chamber, both chambers can set up a joint committee along the American model to hammer out a solution on the controversial bill. The time limit of the joint committee to hammer out solutions to controversial bills can be, say, three months, after which the bill in question will be

invalid. Setting a time limit on controversial bills will force the two chambers to come up with a consensus in conformity with the democratic spirit.

Hong Kong's bicameral system will not need to copy from the Western model. The American Senate has powers to approve presidential appointments such as judges and ambassadors. The Hong Kong upper house can be confined to the veto power over bills passed by the lower house. Similar to the second deliberative chamber like the British House of Lords that delays legislation passed by the House of Commons, the Hong Kong upper house can perhaps have the greater power of veto over bills passed by the legislature. Yet, the Hong Kong upper house will be less powerful than the Australian Senate which enjoys the power to return any proposed law with a request for amendment. The Hong Kong upper house will have veto power over bills passed by the lower house only three to five times annually.

#### (c) Disallowing the Upper House to Initiate Bills

Like the Irish Senate, the Hong Kong upper house will have members returned from functional sectors, such as industry, commerce and agricultural interests. But unlike the Irish Senate, the Hong Kong Senate will not enjoy the power to initiate bills—a crucial feature that will be acceptable to the pro-democracy camp in the HKSAR. At present, functional constituency members can initiate private member's bills in the legislature. In short, the Hong Kong upper house can be a unique one different from any Western model. The option of disallowing the Hong Kong upper house to initiate bills will have the advantage of preventing it from becoming too powerful vis-à-vis the fully directly-elected lower house.

#### (d) Allowing the Upper House to Initiate Bills

However, some people may argue that the upper house should retain the power of initiating bills, just like the current practice of functional constituency members who can put forward private member's bills. The advantage of adopting this option is that the political *status quo* of the current legislature will be maintained at the inception of the two houses model, thus conforming to the principle of gradual and orderly change.

#### (e) Giving Special Veto Power to the Upper House

Some people in Hong Kong suggest that the special veto power can be given to the upper house so that it will veto bills and legislation not only passed by the legislature but also related to the relationships between the central authorities and the HKSAR.

The advantage of this option is to maintain an executive-led polity, but its disadvantage is to curb the power of the fully directly-elected legislature.

#### (f) Disallowing Special Veto Power to the Upper House

As mentioned above some people have proposed that the upper house in the HKSAR can have special veto power over matters that impinge upon the power of the Central Authorities. Critics may argue that this special veto power is necessary, for the Basic Law has built in political safeguards against bills passed by the legislature that are not in conformity with the mini-constitution. After all, the Chief Executive can exercise his or her powers to return the bills passed by the legislature, or the lower chamber. Therefore, another alternative is to disallow any special veto power conferred upon the upper house so that the lower house will be able to exercise its functions of scrutiny and law-making more effectively.

#### (g) Upper House Setting Up Committees to Study Bills/Legislation Passed by Lower House

Meanwhile, the upper house in the HKSAR can set up its own committees to scrutinize government policies and those bills passed by the lower chamber. Its committees can make recommendations to the lower house to reconsider and refine some bills that have been passed but accepted by the Senate. In this way, through recommendations made by the Senate, the lower house may like to improve bills that have been already passed without the need of the upper house to exercise its veto power. In other words, the Hong Kong Senate can be a constructive critic and check on the lower house.

In brief, the Hong Kong bicameral model can be characterized by a fully directly-elected lower house, an upper chamber with elected elements and limited power of veto over bills passed by the lower chamber, and a joint committee set up amongst members from both houses to look for solutions to controversial bills. The virtues of this model are: (1) to preserve the existing functional interests, (2) to realize the ultimate objective of having the whole LegCo directly elected, and (3) to create some checks and balances on the lower chamber while simultaneously restricting the veto power of the upper chamber. Arguably, this model will be a win-win situation to all political forces at least in the short run if they really have the political will and acumen to reach consensus on democratization in the HKSAR.

While the Strategic Development Commission has deliberated the desirability of the bicameral model, a special political reform task force can be set up to consider the

technical details of the Hong Kong Senate, its powers and relations with the lower chamber. Moreover, a timetable of experimenting with the bicameral system can be considered.

#### (h) Studying the Possibility of Revising the Basic Law if a Bicameral System is Adopted

Some Hong Kong people are worrying that the bicameral model will necessitate a revision of the Basic Law and thus exceed the political bottom line of the central government in Beijing. This assessment, however, may underestimate the open-minded attitude of many mainland Chinese legal experts on Hong Kong affairs. After all, the Basic Law can be revised under special circumstances in order to achieve the success of “one country, two systems.” If this analysis is accurate, the people of Hong Kong should perhaps ponder their own political system in a much bolder and more creative way that conventional wisdom assumes. In any case, a committee composed of legislators, government officials and legal experts may be established to study the provisions of the Basic Law that will be affected by the implementation of the bicameral system, and to propose revisions to the relevant provisions.

#### **Other Possibilities**

##### (a) Option 1: Moving Toward a Parliamentary Model

It must be noted that apart from the bicameral model, another form of parliamentarism can be considered in the design of Hong Kong’s future political system. Specifically, a unicameral system can be maintained in the HKSAR; nevertheless, the parliamentary feature of having a partisan chief executive supported by a ruling political party dominating the legislature can be considered. The crux of the problem of adopting this unicameral style of a partisan parliamentary model is that the central government in Beijing is concerned about whether the executive-led polity would be undermined, and that “unpatriotic” groups and parties would dominate the legislature. Such a fear will hopefully evaporate as political parties of all ideological spectrums demonstrate their “patriotism” to Beijing. In fact, the anxiety about “unpatriotic groups” controlling the legislature can perhaps be appeased if any party controlling the legislature will be legally required to swear allegiance to the Basic Law and to respect the sovereignty of the central government in Beijing. After all, in the event that political parties that are deemed as “unpatriotic” gain most of the seats in the legislature, their role in Hong Kong’s political arena would perhaps be changed from an opposition one to a ruling party, forcing them to work with the central government

in Beijing. In short, the anxiety of having an “unpatriotic” party controlling the legislature will perhaps be dissipated if a legal requirement of requiring such dominant party to adhere to the Basic Law and to respect Beijing’s sovereignty is enacted—an issue that has not been discussed in Hong Kong’s political reform.

#### (b) Option 2: Moving Toward a Presidential Model

In addition to the parliamentary system in which a dominant or ruling political party plays a crucial role, the presidential form of government can be considered. At present, the Basic Law adopts a system akin to the presidential system in which the Chief Executive can be impeached by the legislature. The adoption of a presidential model of government in Hong Kong will mean that the Chief Executive, if elected by universal suffrage, would arguably be the most prominent player in the political system. Yet, the current system of Hong Kong government is neither parliamentary nor purely presidential, but a hybrid with pre-1997 legacies and features developed since the transfer of sovereignty. The Principal Officials Accountability System can be seen as shadow of a presidential system in which the Chief Executive has his or her own batch of loyal officials. It can also be viewed as having a tinge of parliamentary features as Principal Officials who commit mistakes or involve in scandals may have to adopt the parliamentary convention of ministerial resignation.

#### (c) Option 3: Moving Toward a Mixed Parliamentary-Presidential Model

In designing the HKSAR polity, the broader issues of whether Hong Kong should move toward a more parliamentary, more presidential, or a hybrid of mixed parliamentary-presidential system with Hong Kong features must be considered very cautiously. In the past decades of political reforms in Hong Kong, it seemed that little public discussions were initiated on the proper models for the HKSAR: parliamentary, presidential or mixed parliamentary-presidential system. This was by no means surprising given the complexity surrounding the characteristics of the parliamentary, presidential and mixed parliamentary-presidential systems. However, in the event that the HKSAR has to develop its political system further from now to the years beyond 2047, the broader perspectives of adopting a particular model for Hong Kong will have to be discussed more thoroughly and in detail. It is hoped that the Hong Kong Government, political parties, think tanks, academics and policy concern groups will perhaps educate the public on the defining feature of parliamentary, presidential and parliamentary-presidential models while at the same time outlining their preferred models or visions for Hong Kong’s political future. In this way, the public will



perhaps have a clearer idea of where the HKSAR's political system will evolve from now to at least the years approaching 2047.

## **4. The Executive Council**

### **Structural Reforms**

#### **(a) Option 1: A More Pluralistic Coalition Executive Council with Members from All Political Party Backgrounds**

First, a pluralistic coalition ExCo co-opting legislators with all the different political orientations from the Chief Executive and his or her supporters can be considered. If this approach is adopted, half of the members of the Executive Council can come from members of political parties who are directly elected to the legislature. The proportion of these ExCo and Legislative Council members can follow the proportion of seats occupied by various parties and groups in the directly elected legislative seats. This way, the views in the legislative chamber can be better reflected and represented in the ExCo. Indeed, the downside is that the disputes in the legislature will be transferred to the ExCo. In addition, some members of the legislature may not abide by the principles of collective responsibility and confidentiality in the ExCo. However, if the HKSAR Government dares to implement this pluralistic coalition ExCo and if the principles of collective responsibility and confidentiality can be slightly relaxed, the ExCo will become an area in which political bargaining and compromise will have to take place, thus minimizing the confrontations between the ExCo and the Legislative Council (LegCo).

In a sense, the Strategic Development Commission (SDC) set up by Chief Executive Donald Tsang resembles this type of pluralistic coalition in which members of political parties from various orientations and ideologies express their views on social, political and economic matters. If the operation of the SDC works smoothly, it is desirable to experiment the pluralistic coalition ExCo in the near future. After all, Hong Kong cannot afford to witness persistent gridlocks between the executive branch and the legislature.

#### **(b) Option 2: Setting Up an Office or a Committee Bridging ExCo and LegCo Relations**

Another option of narrowing the gap between the ExCo and LegCo is to set up a joint committee along the line of the former Office of the Members of Executive and Legislative Council (UMELCO). The former UMELCO had the virtue of providing a regular forum in which opinion differences between the ExCo and LegCo could be hammered out. In a sense, it mirrored a joint committee similar but not the same as the joint committee between the American Senate and the Congress—a bridge

between two political chambers. While it is unnecessary to resuscitate the UMELCO to bridge the gap between the ExCo and LegCo, a body parallel to it and composed of both ExCo and LegCo members will be another feasible alternative that can minimize the political impasse in the HKSAR.

In the event that a pluralistic coalition ExCo is experimented, a concomitant of its development will be a division of labor between ExCo members and the Principal Officials. While Principal Officials are the loyal supporters of the Chief Executive and attend legislative meetings to explain and defend government policies, ExCo members can include a variety of party members without the need to be loyal to the Chief Executive. The current ExCo under Chief Executive Tsang envisages occasional public disclosure of the views of a few ExCo members who disagree with the Chief Executive's policies. In a sense, the current pro-government coalition ExCo is not really a strong coalition because of such public dissent within a few ExCo members. If this is the case, then an experiment with a more pluralistic coalition ExCo will not drastically curtail the executive power. Instead, it can be argued that the current set-up, namely Principal Officials do not have to attend all ExCo meetings unless such meetings discuss issues related to their ministerial portfolios, is already paving the way for a more pluralistic coalition ExCo in the long run. This proposed paper argues that a pluralistic coalition ExCo, with more relaxed principles of collective responsibility and confidentiality, will be able to provide a regular forum of bargaining, compromise and dialogue between the Chief Executive and his or her political opponents. At the same time, the Principal Officials can defend the Chief Executive's policies in ExCo meetings. Hence, the current political design is already providing a breeding ground for the future experimentation of adopting a pluralistic coalition ExCo approach.

### (c) Option 3: Maintaining the Existing Pro-Governmental Coalition Executive Council

The current Executive Council (ExCo) adopts a pro-government coalition approach in which political parties supportive of the government are co-opted, thus facilitating the passage of bills and approval of policies in the Legislative Council. The current ExCo also co-opts non-ministerial members who give advice to the HKSAR Government, while Principal Officials do not have to attend all the ExCo meetings unless such meetings touch upon their ministerial portfolios. This pro-government coalition approach combined with the Principal Officials Accountability System (POAS) has an obvious political advantage. The Chief Executive can have a more united coalition

strengthened by non-ministerial advisers while achieving the effectiveness and efficiency of the POAS.

However, the current political set-up has a major disadvantage. The Chief Executive is seen to have his or her clientelist parties and advisors confronting a legislature whose members with different political orientations are permanently excluded from the top echelon of decision making in the HKSAR. The failure of the HKSAR Government to acquire two-thirds of the support of the legislators for its political reform plan in 2005 was a case in point. Similarly, the political debacle over the proposed legislation on Article 23 of the Basic Law in July 2003 remains a vivid example of such political deadlock in the HKSAR.

If the current pro-governmental coalition ExCo has its obvious weakness, the Government of Hong Kong, and also Beijing, should perhaps consider other alternatives that will by no means erode the executive-led system in the HKSAR.

### **Process Enhancements**

#### **(a) Matching Advisory Committees with ExCo Members' Responsibilities or Interests**

Finally, the existing Advisory Committees can be regrouped in such a way as to match the ministerial portfolios of the POAS and also the specific responsibility or interest of the ExCo members. This way, both the non-ministerial ExCo members and the Principal Officials can have better input from their Advisory Committees, thus facilitating better policy making and governance. ExCo members who are the close advisers to the Chief Executive should arguably be provided with better policy research and advice. Here, the Advisory Committees can fill in the persistent gap.

#### **(b) Making ExCo Members and Principal Officials Chair the Relevant Advisory Committees**

A stronger way of linking the expertise of Advisory Committees and the ExCo and Principal Officials is to make the latter two preside over the Committee. This will formalize their linkage and ensure that the top policy makers and advisers get all the necessary research and policy support from the Advisory Committees. In a sense, some of the Advisory Committees will become ExCo committees parallel to the Cabinet Committees in some Western democracies. The idea is to institutionalize the links between ExCo members and Principal Officials on the one hand and Advisory Committees on the other hand.

## **5. The Principal Officials Accountability System**

The Principal Officials Accountability System (POAS) can be expanded a bit further so that more political talents can be trained and nurtured. However, it must be noted that the channels of political entry into the POAS should be opened not solely to existing political parties, but also to civil servants and independent citizens as well as experts. There are several ways in which the POAS can be expanded further.

### **Process Enhancements**

#### **(a) Establishing the Post of Deputy Secretaries**

First, the position of Deputy Secretaries can be created so that these political positions can be made to appointees from various backgrounds, including partisans and civil servants as well as independents. Deputy Secretaries will work with civil servants such as the Permanent Secretaries to assist the Principal Officials.

#### **(b) Creating and Expanding Political Assistants under Principal Officials**

Apart from the position of Deputy Secretaries, a few political assistants can be established under each Principal Official so that they can help alleviate the workload of the Principal Official concerned and learn how to govern the HKSAR. Indeed, the creation of Deputy Secretaries and Political Assistants has to proceed gradually rather than giving an image of rewarding political friends and supporters through a spoil system. The quality of Deputy Secretaries and Political Assistants is far more important than their quantity. On this basis, the HKSAR Government can consider opening new positions of Deputy Secretaries and Political Assistants working for some, not necessarily all, Principal Officials. At a later stage, when the new batch of political appointees performs satisfactorily, the POAS system can be extended further but in a gradual and orderly manner.

#### **(c) Educating Deputy Secretaries and Political Assistants on Ethical Governance by the Independent Commission Against Corruption**

One important precondition of introducing more political appointees to the POAS is that all of them will have to abide by the principle of good governance. Their political and professional integrity will be of utmost importance. Prior to their formal inception of duties, the Independent Commission Against Corruption will have to brief all the appointees on the need to observe ethical issues. Ethical governance is the key element accompanying a well-functioned and respectable expanded POAS. Moreover,

all appointees will have to sign contracts that clearly lay out the penalties governing political misconduct and administrative impropriety.

(d) Allowing Some Principal Officials, Political Assistants and Deputy Secretaries to Retain Political Party Background

Principal Officials can increasingly come from political parties. Since the POAS is a political appointee creation, it is natural that some, but not all, Principal Officials, Deputy Secretaries and Political Assistants will have political party background. In this way, political party members and leaders will be given ample opportunities to govern the HKSAR without the complaint that they are like political vase supportive of unpopular government policies and bills. Sharing of political power is a stepping stone toward the further development of political parties in Hong Kong.

(e) Disallowing Principal Officials, Political Assistants and Deputy Secretaries to Have Political Party Background

Some people in Hong Kong have argued that political parties only taint the operation of the POAS. Therefore it can be contended that political appointees such as Principal Officials, Political Assistants and Deputy Secretaries must abandon any explicit political party background. This option is obviously in line with the argument that the Chief Executive should also be free from party background so that the top governing elites of the HKSAR will continue to stand above partisan interests. However, the result of implementing this option is that political party leaders and members will continue to be deprived of the chance to exercise and demonstrate their leadership through governance. Moreover, the development of political parties will perhaps be severely constrained.

## **6. District Councils**

According to Article 97 of the Basic Law, “District organizations which are not organs of political power may be established in the HKSAR, to be consulted by the government of the Region on district administration and other affairs, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation.” The meaning of “organs of political power” is up to various interpretations. When the Urban Council and Regional Council were abolished, the HKSAR Government maintained that District Councils should not become political organs. Yet, few years later, District Councils are increasingly empowered to assume some of the powers and responsibilities left by the former Urban and Regional Councils, such as the management of swimming pools and community halls. It seems that the governmental interpretation of the “organs of political power” has slightly changed without knowing and admitting this silent transformative process.

Notwithstanding its evolving interpretations, District Councils can be reformed further by the following measures: (1) turning the District Management Committees into a more powerful Executive Committees of District Councils (DC) so as to empower the DCs while simultaneously making the governmental departments more responsive; (2) taking on the function of scrutinizing public health and environmental hygiene and thus filling the political vacuum left by the former Urban and Regional Councils; (3) reorganizing all 18 District Councils to a few powerful ones as suggested by some commentators; (4) reestablishing an elected council as a middle-tiered institution to scrutinize the work of the environmental, health and food hygiene of the HKSAR Government; (5) retaining but reducing some appointed members in District Councils; (6) abolishing appointed members; (7) co-opting members of Mutual Aid Committees, Owners Corporations and Area Committees as new ad hoc members every two years so that local political leaders can be nurtured; (8) meeting higher level government officials such as the Principal Officials annually so as to enhance their mutual communications and interactions; (9) meeting LegCo members annually in a regularized mechanism so that territory-wide representatives can tap the views of district-level deputies; (10) tightening and improving the operations of Area Committees where local activists can be recruited to various Advisory Committees; (11) inculcating ethics among District Councils members and the ad hoc members; and (12) democratizing the work of various District Offices.

## **Structural Reforms**

#### (a) Option 1: Reforming and Empowering the District Management Committees

District Management Committees chaired by the District Officers and attended by departmental representatives to discuss governmental and policy priorities given to all 18 districts can consider further reforms. The Committees, which have co-opted the chairs and deputy chairs of District Councils, can be integrated into the District Councils as Executive Committees composed of more District Councils members elected from among themselves while retaining the memberships of the District Councils chairs and deputy chairs. This way, the accountability of government departments and the top echelon of District Councils can be improved, rather than having a less transparent and more detached District Management Committees where District Officers and departmental officials hold the ultimate power of resource allocations at the district level.

The consultative document on the reforms of District Councils published by the HKSAR Government in April 2006 has raised the idea of forming District Facilities Management Committee. While this idea appears to be innovative, the document has not addressed the issue of how to integrate District Management Committees into District Councils in a more communicative and effective way. In fact, when District Councils take on some of the functions of the previous Urban and Regional Councils, their committee systems can be changed in a way as to reflect the evolving functions. Creating a District Facilities Management Committee under each District Council is arguably necessary.

The government document on the reforms of District Councils proposes the idea of setting up a Steering Committee on District Administration chaired by the Secretary for Home Affairs or the Principal Secretary for Home Affairs and attended by the Heads of Departments. Its regular members comprise those core departments while other department heads may be invited in an ad hoc basis. On the surface this Steering Committee, if established, will be more powerful than the existing District Management Committees chaired by the District Officers. However, the disadvantage of having an additional layer of institutional mechanism is that the proposal has appeared to propose a bureaucratization of district administration. A simple alternative of reform is to reform and empower the District Management Committees. Such reform can take the form of integrating the meetings of the District Management Committees with the District Councils regularly. To empower the District Management Committees, the Secretary for Home Affairs, and/or the Principal Secretary for Home Affairs, can regularly (say, twice a year) attend the District Councils' newly created Executive Committees, which involve the District Officers



and departmental representatives of the previous District Management Committees. This simple way of reforming and empowering the District Management Committees by integrating it into District Councils in the form of new Executive Committees will arguably be less bureaucratized and equally communicative.

After listening to the views of the Executive Committees, the Secretary for Home Affairs will have the responsibility of coordinating with other Secretaries on the priorities and resource allocation given to District Councils. Indeed, if the HKSAR Government really wants to empower District Councils, departmental heads can be invited to the Executive Committee meetings of District Councils on an ad hoc basis and when necessary, rather than establishing a new Steering Committee on District Administration. The government proposal of setting up the Steering Committee on District Administration is well intentioned, but it has neglected the option of how to reform and empower the District Management Committees and integrate them into District Councils and the visits of the Secretary for Home Affairs in a more direct, simple and effective way.

#### (b) Option 2: Taking on the functions of the former Urban and Regional Councils

District Councils can be empowered by taking on the previous functions of the Urban and Regional Councils, such as the management of parks and libraries, hawkers and community halls. Some of these functions have been shouldered by District Councils, which can also deal with environmental, hygiene and health issues that were under the jurisdictions of the Urban and Regional Councils.

#### (c) Option 3: Reorganizing 18 District Councils into Several More Powerful Councils

Some commentators have suggested that the eighteen District Councils should be regrouped into several larger Councils with more political powers rather than having elected and appointed members doing relatively trivial work. This argument points to the political vision of reviving the former Urban and Regional Councils in the form of giving more powers to several, but not eighteen, District Councils. This proposal has its merits as District Councils will be more powerful and the incentive of local activists to participate in District Councils elections will increase. Nevertheless, the demerits of this proposal is that it overlooks the grassroots-level work of many Councils members whose links with constituents are of primary importance in local-level politics, and that there are many other meaningful ways of reforming and empowering District Councils.

(d) Option 4: Reestablishing a Middle-Tiered Elected Institution to Tackle Environment, Hygiene and Health Issues

Another reform option is to rectify the blunder of abolishing the former Urban and Regional Council by reestablishing a newly elected and middle-tiered institution parallel to the powers of the two Councils. In the past the two Councils did provide a useful channel through which local community leaders were trained. The merit of resuscitating the former Urban and Regional Councils, in the form of giving the new institution a new name such as Metropolitan Council, is that it will devote attention on more urgent issues such as public health, infectious disease, environmental protection and food hygiene. Moreover, a newly created middle-tiered council can perhaps consider incorporating the power of urban planning so that they will really be powerful.

(e) Option 5: Retaining but Reducing the Number of Appointed Members

Critics of the appointed members in District Councils argue that the HKSAR Government checks the power of the directly elected members and distort the election results. Defenders of the appointee system contend that the appointees are experts in various professions and that they can contribute immensely to Council work and discussion. Regardless of the debate, the HKSAR Government can consider retaining but reducing the number of appointed members to ensure that the election results will not be arbitrarily distorted.

(f) Option 6: Abolishing the Appointed Members but Enhancing the Number of Ad Hoc Members

A more democratic approach to reforming District Councils is to abolish the appointed members while enhancing the number of ad hoc members who can be appointed by elected members. The ad hoc members can come from certain professions and also District Councils may come up with a certain proportion of ad hoc members coming from these professions. This way, with the abolition of appointed members, their professional expertise will still be incorporated into District Councils by revising the criteria of elected members nominating ad hoc members.

**Process Enhancements**

(a) Coopting More Ad Hoc Members from Areas Committees, Mutual Aid Committees and Owners Corporations

Although District Councils have already appointed many ad hoc members to assist the elected and appointed members in their work, ad hoc members are not changed more regularly so that more political activists at the district level can be nurtured. One idea of stimulating political apprenticeship and leadership at the grassroots level is to change the appointment of ad hoc members every two years so that more activists from Areas Committees, Mutual Aid Committees and Owners Corporations can be coopted. This practice will widen the political horizon and experience of the community leaders at the grassroots level. In other words, the existing ad hoc members of District Councils can serve a shorter period of time to allow more turnovers of local political elites.

#### (b) Meeting Higher-Level Officials Regularly

In recent years, many District Councils members have complained that they cannot communicate directly with higher level officials of the HKSAR Government. In fact, the Government has occasionally sent higher level officials, including some Principal Officials, to local district level to communicate with District Councils members. However, this practice appears to be ad hoc and not really institutionalized as well as regularized. A more regular meeting in the form of annual conference between Principal Officials, or their Deputies, and the District Councils members will help bridge their communication gap. It will also empower District Councils members as they can have direct regular contacts with the top governmental officials.

#### (c) Meeting LegCo Members Annually

Another relatively neglected institutionalized mechanism is to hold annual conference between LegCo members and District Councils members. Although many elected LegCo members are representing their constituencies at the geographical level, a better communication between LegCo and District Councils can be forged by holding an annual meeting or conference. This way, the neglected constituency issues can be more effectively articulated by District Councils members and clearly heard by LegCo members.

#### (d) Reforming Area Committees

Area Committees can perhaps be reformed by coopting those potential political leaders and talents into various Advisory Committees of the HKSAR Government and as ad hoc members of District Councils. Area Committees have been criticized as social gatherings of local activists and dignitaries, but actually they provide an important source of recruiting local political elites and community leaders. Area

Committees also serve as one of the most grassroots-level political ladder through which community activists can climb to the upper level if they have the will to do so. Quite often, government officials who attend Area Committees are of relatively lower level, such as the Liaison Officers of District Offices. Ideally, the District Officers themselves should attend Area Committees more frequently so that the results of the discussions can be more productive and influential on government policies. In short, reforms of the Areas Committees are perhaps long overdue.

(e) Inculcating Ethics Among District Councils Members by the Independent Commission Against Corruption

In recent years, scandals concerning District Councils members have emerged. It is imperative that the Independent Commission Against Corruption has to regularly or annually brief the local elected representatives, and appointed as well as ad hoc members, on the need to observe ethical issues and their integrity. In particular, the rules governing the operation of Councillors' offices, their expenditures and claims for reimbursement, their community hall management, and their local-level group activities and financial committee operations have to be very clear. Otherwise, individual greed can easily undermine the legitimacy and good image of District Councils.

(f) Democratizing the Work of District Offices

Recently, District Offices have made the agendas and minutes of the meetings of all District Councils publicly available through their websites. This is a very healthy and significant step toward the democratization of the operation of District Offices. Such transparency can be enhanced by listing the names and email addresses of District Office staff members who can be approached by ordinary citizens and groups for assistance. The public accessibility of District Office staff members has been relatively neglected, but an open administration dealing with new political, social and economic challenges is expected to be more transparent and also responsive to citizens' queries, demands and requests.

## **7. Civil Servants**

### **Structural Reforms**

#### **(a) Option 1: Abandoning the Revolving Door for Civil Servants to Join the POAS**

Critics of the revolving door argue that civil servants who decide to opt for a political career should better leave the public service for good, for political appointees will abandon the concept of neutrality. After all, political appointees who were formerly civil servants may have conflict of interests if they are allowed to return to the civil service. As Hong Kong has more political talents from different social and economic sectors, the idea of retaining the revolving door for civil servants to return to the bureaucracy after their political career will perhaps be obsolete and outdated.

#### **(b) Option 2: Maintaining the Revolving Door for Civil Servants to Join the POAS**

Some senior civil servants who would like to join the POAS should continue to be allowed to take leave of absence from the public service, thus allowing them to return to the government after their term of political office expires. This revolving door can of course be beneficial to civil servants. However, strict guidelines have to be issued to those civil servants who join the POAS because the society of Hong Kong does not wish to witness a scenario in which after the former Principal Official returns to the civil service, he or she becomes a hidden politician compromising the neutrality of civil servants. In other words, rules of conduct governing a political appointee returning to the civil service will have to be very clear and strict.

### **Process Enhancements**

#### **(a) Enhancing the Training of Political Tolerance of Civil Servants toward Public Criticisms**

Although it is an undeniable fact that civil servants play a significant contribution to the success of Hong Kong's stable, efficient and effective governance, a minority of civil servants often display an undemocratic political culture, believing that public criticisms, media scrutiny and political democracy are definitely harmful to their work. This undemocratic attitude is in part a colonial legacy and also an outcome of their socialization. Very few civil servants were in the past trained in the concepts of democracy, human rights, transparency, openness, accountability and media scrutiny. It is essential that civil servants must maintain their political neutrality—a concept that is not necessarily understood by all of them. It is also imperative that all civil

servants have to be trained to appreciate the positive, but not solely negative, aspects of democracy, human rights, transparency, openness, accountability and media scrutiny. It is therefore the task of the Civil Service Bureau to inculcate the ideas of democracy and accountability to all the civil servants in Hong Kong. Political tolerance and its importance should be inculcated in the regular training of civil servants, who are expected to carry the governance of the HKSAR beyond 2047 in an open-minded and democratic spirit.

#### (b) Strengthening the Sense of Political Neutrality of Civil Servants

Some grassroots-level and street-level bureaucrats interacting with District Councils members appear to have a faint idea of what is political neutrality. In recent years, a minority of district-level government officials, including those working with the District Offices, have been unnecessarily involved in partisan politics, secretly siding with some political parties and thus complicating the operation and internal disputes of some District Councils. This problem will have to be identified, admitted and avoided in the future by inculcating a very clear sense of political neutrality among all the grassroots-level civil servants in the HKSAR. Political neutrality does not embrace simply an avoidance of participation in party politics, but also a distant relationship with District Council members with political party backgrounds. Backroom dealings and gossiping with politicians at the grassroots level should ideally be avoided by all street-level bureaucrats, whose behavior and performance are sometimes out of the control of their superiors in District Offices.

## **8. Advisory Committees**

### **Structural Reforms**

#### **(a) Option 1: Reorganizing Advisory Committees to Match Ministerial Portfolios**

As mentioned above, Advisory Committees will need to be reorganized, regrouped and revamped in such a way as to match the existing and future ministerial portfolios of the POAS. The idea is to provide maximum research support and expert views to each Principal Official and his or her political assistants as well as Permanent Secretaries.

#### **(b) Option 2: Having Principal Officials and ExCo Members Chair Advisory Committees**

The second option is to let Principal Officials and ExCo members chair Advisory Committees so that their cooperative partnership can be strengthened.

### **Process Enhancements**

#### **(a) Avoiding Overlapping Memberships of Advisory Committees**

The overlapping membership of Advisory Committees should be avoided, i.e. no committee member should be appointed to more than two committees. In the event that a member is appointed to more than two committees, his or her time may be insufficient to focus on quality work, discussion and preparation. Above all, political leaders and talents will not be trained effectively if overlapping memberships in Advisory Committees persist and proliferate. It is therefore essential for both the HKSAR Government and its think tank to realize the significance of minimizing overlapping memberships of Advisory Committees. The argument that Hong Kong may not have sufficient talents is merely a justification perpetuating the problem of overlapping memberships in Advisory Committees. In order to let political talents and experts nurture and grow, continuous absenteeism in the meetings of Advisory Committees should ideally entail penalties such as the revocation of membership. It must be noted that members appointed to Advisory Committees should regard their work as a serious one working for public interest, not prestigious rewards in a patron-client political system. The attendance and absence of members of Advisory Committees should also be publicized in the relevant departmental website.

#### **(b) Forging New Partnerships with Other Institutions**

Advisory Committees will need to develop new partnerships with such institutions as the governmental think tank and Policy Bureaus. Traditionally, Advisory Committees have been operating in a relatively isolationist and independent manner without many interactions with the Central Policy Unit and Policy Bureaus. In fact, the expertise of Advisory Committees can contribute to the discussions of think tanks and Policy Bureaus, thus maximizing their overall consultative and expert-providing functions.

#### (c) Opening the Meetings of Some Advisory Committees to the Public

The meetings of some Advisory Committees can be opened to the public and mass media. Of course, for those Advisory Committees that may discuss issues of sensitive nature, such as internal security, they cannot be open to the public. Moreover, Advisory Committees who are chaired by Principal Officials and ExCo members may not be open to the public in the event that the meetings discuss issues related to the security interests of the HKSAR. However, in a democratizing polity, ideally the operations of most Advisory Committees, including both their meetings and reports, can be accessible to the public as far as possible under the condition that the HKSAR and Beijing's security interests are fully protected.



## **9. Political Parties**

### **Structural Reforms**

#### **(a) Option 1: Considering a Political Party Law**

The Basic Law does not mention political parties at all. In reality, however, political parties exist and evolve. The peculiarity of Hong Kong's political parties is that they register under the Company Ordinance rather than any Political Party Ordinance. Ideally, a more mature political system should have a Political Party Law that governs the formation, operation, finance and accounting system of political parties. Having a Political Party Law can also make the financial resources of political parties more transparent rather than hiding any mysterious contributions to the public.

To enhance the development of political parties, the proposed Political Party Law can also consider the requirements that (1) party leaders will have to be elected by a majority of party members, (2) the party will have to uphold the Basic Law, and (3) the party finance will have to be transparent and report to the Government annually as well as publicly accessible. In the event that any political party in the HKSAR has the parochial interest of maintaining the secrecy of its finance and income sources, it can be anticipated that the enactment of any Political Party Law will perhaps be more difficult than conventional wisdom assumes.

### **Process Enhancements**

#### **(a) Providing More Subsidies to All Party Candidates**

Political parties can also be nurtured by governmental subsidies for their members to participate in both District Councils and LegCo elections. Moreover, it is desirable to co-opt various members from different parties into the ExCo, Advisory Committees and the Strategic Development Commission. Such political co-optation should ideally not be biased in favor of those groups supportive of the government. Other political parties should also be included so as to achieve the objective of reaching political harmony in the HKSAR. In brief, candidates from all political parties should be subsidized without any prejudice so that public participation in elections will be maximized to the fullest extent.

A recent attempt by the HKSAR Government to fund the future candidate of District Councils elections in the form of HK\$10 dollars per vote obtained by candidates who get the minimal threshold of 5% of the total vote is a progressive step toward political

reform. It will certainly stimulate political participation of local activists regardless of their party background.

(b) Providing a Fixed Amount of Subsidies to All Political Parties

Another possibility of stimulating party development is to subsidize party headquarter and branches of all political parties by a fixed amount in each of the 18 districts. Even if the subsidy is nominal and minimal, such subsidy will be a testimony that the HKSAR Government is committed to the development of political parties and the encouragement of the formation of party branches that can bridge any communication gap between the citizens and the Government.

## **10. Governmental and Non-Governmental Think Tanks**

Political reform in Hong Kong embraces the democratization of its think tanks—a relatively neglected issue in the HKSAR. Democratization of Hong Kong’s think tanks entails dimensions.

### **Process Enhancements**

#### **(a) Making Reports and Studies of Think Tanks Publicly Accessible**

First and foremost, think tanks need to have their research results and deliberative documents published as much as possible so that the people of Hong Kong will be able to discuss various matters concerning Hong Kong’s future developments, including political reform agendas and blueprints. In the past, part-time and full-time members of the Central Policy Unit were expected to abide by the principle of confidentiality. Although the principle of confidentiality is crucial in any top-level discussions, it is also desirable for the Central Policy Unit to decide what kinds of documents and discussions can be released to the public so that the ordinary citizens will be better informed. Without an informed citizenry, the advices of the governmental think tank remain mysterious. Democratization entails not simply a revamp of political structure and institutions, but also the release of governmental documents that can empower citizens, inform them better and let them have a say in the process of policy making.

#### **(b) Increasing Dialogue, Coordination and Cooperation Among Governmental and Non-Governmental Think Tanks**

Second, there is an urgent need for all the Hong Kong think tanks, either government-funded such as the Central Policy Unit or the privately-sponsored institutes, to have regular dialogue and possible division of labor so that the resources and manpower will be fully utilized. The advantage of having a multiplicity of think tanks in the HKSAR is that they can provide intelligent input and advice to various Principal Officials and Policy Bureaus. However, the downside is that they are fragmented without much coordination, thus inadvertently bombarding various governmental officials and agencies with their policy advice and suggestions. The outcome is a lack of coordination and also a degree of discretion on the part of the Principal Officials and perhaps Policy Bureaus to adopt their intelligent inputs. A better coordination and division of labor among think tanks will provide better and effective policy advice to their clients and targets, which will treat them more seriously.

### (c) Establishing Cooperative Partnerships Between Think Tanks and Policy Bureaus

The relations between think tanks and policy bureaus have not been institutionalized. In the event that officials in various Policy Bureaus meet their corresponding think tanks regularly, it is likely that the policy making process will be perfected. While government officials establish a working relationship with their respective think tanks, the latter can provide specific policy advice to the former, thus forging a real partnership that can improve policy making processes as a whole. Such partnership does not mean that think tanks are competing against the policy bureaus, but the former are expected to provide relevant and expert advice to the latter in a more effective way. On the other hand, the Policy Bureaus can inform the think tanks of the possible policy directions and agendas so that think tanks will be informed of governmental plans. Such dialogue and cooperation will improve the HKSAR governance as a whole.

### (d) Institutionalizing Relations Between Think Tanks and Universities

Similarly, the relations between think tanks and universities in the HKSAR can be institutionalized further. Although the Central Policy Unit has contracted out research projects to university institutes and academics, the process of cooperation with universities has not been formally institutionalized and regularized. Universities in Hong Kong have tremendous amount of experts who can provide effective policy-related advice to the Government of Hong Kong. A better process of coordination between think tanks and all the universities in the HKSAR will surely be beneficial to better governance and policy making. Specifically, university institutes with particular expertise are expected to forge a partnership with the relevant think tanks so that mutual cooperation and exchange of research findings can be conducted. By pooling all the resources, the quality of the HKSAR governance will be enhanced.

### (e) Adopting Five-Year Plans for Hong Kong's Various Policy Issues

Little discussion has been generated in Hong Kong on the desirability of implementing five-year plan along the practice of the PRC. China has been implementing five-year economic plans since the founding of the PRC in 1949. In the HKSAR, think tanks and the Government should consider the practice of formulating five-year plans in economic, social, legal and political reform policies. If the HKSAR is to maintain its competitive edge in the Asia Pacific region, it is arguably imperative for its Government to have more long-term planning. Five-year plans can be a stepping stone to a long-term vision for the HKSAR. Policy Bureaus and

departmental agencies can be encouraged to issue five-year plans, which will generate a degree of policy continuity, stability and visions.

(f) Improving the Partnerships Between Think Tanks and Advisory Committees

Another relatively neglected issue of improving the governance of Hong Kong is the relations between various think tanks and the existing Advisory Committees. In the event that Advisory Committees can be categorized into areas parallel to the portfolios of Principal Officials, and that the discussions of Advisory Committees are better related to the study areas of various think tanks, the coordination between them will be enhanced. At the same time, members of the Advisory Committees will be able to have better and deeper understandings of the work and reports of the governmental and non-governmental think tanks, this facilitating the processes of political dialogue and communications. Democratization also embraces the idea that information can be shared with others, thus generating an environment conducive to better governance.

## **11. Public Corporations**

### **Structural Reforms**

#### **(a) Option 1: Increasing the Powers of the Office of the Ombudsman and the Director of Audit to check the administration and finance of all Public Corporations and Statutory Bodies**

Hong Kong has been traditionally characterized by the existence of various public corporations, which can be regarded as semi-governmental and statutory bodies. In recent years, some of these public corporations have been severely criticized for showing the persistent problems of internal mismanagement and huge over-expenditure. To ameliorate these persistent problems of all public corporations and statutory bodies, the scope of the powers and responsibilities of both the Office of the Ombudsman and the Director of Audit will have to be reviewed.<sup>5</sup> One option is to

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<sup>5</sup> The Office of the Ombudsman of Hong Kong, formerly known as the Office of the Commissioner for Administrative Complaints, was established in 1989. The Office was delinked from the HKSAR Government after the Ombudsman (Amendment) Ordinance came into operation on December 19, 2001. The Ombudsman, appointed by the Chief Executive, ensures that bureaucratic constraints do not interfere with administrative fairness, that public authorities are readily accessible to the public, that abuses of power are prevented, that wrongs are righted, that facts are pointed out when public officers are unjustly accused, that human rights are protected, and that the public sector continues to improve quality and efficiency. The powers and jurisdictions of the Ombudsman embrace the investigation of complaints of maladministration against all government departments (except the Hong Kong Police Force and the Independent Commission Against Corruption) and 17 major statutory organizations--the Airport Authority, Employees Retraining Board, Equal Opportunities Commission, Hong Kong Arts Development Council, Hong Kong Examinations and Assessment Authority, Hong Kong Housing Authority, Hong Kong Housing Society, Hong Kong Monetary Authority, Hong Kong Sports Institute Limited, Hospital Authority, Kowloon-Canton Railway Corporation, Legislative Council Secretariat, Mandatory Provident Fund Schemes Authority, Office of the Privacy Commissioner for Personal Data, Securities and Futures Commission, Urban Renewal Authority and Vocational Training Council. Investigations can be initiated on the Ombudsman's own volition without any complaint being received and it can publish unnamed investigation reports of public interest. The Ombudsman has the power to investigate complaints of non-compliance with the Code on Access to Information by the Hong Kong Police Force, the Independent Commission Against Corruption, the Hong Kong Auxiliary Police Force and the Secretariats of the Independent Police Complaints

expand the powers and responsibilities of the Ombudsman and the Director of Audit to all the existing public corporations and/or statutory bodies. It can be anticipated that strong resistance to this idea will emerge due to vested interests. However, an open society should ideally hold all the statutory bodies and public corporations that receive governmental funding to public scrutiny. Public scrutiny is not a means of politicizing the operations of public corporations and/or statutory bodies. Instead, an expansion of the powers of the Ombudsman and the Director of Audit will be able to improve the internal management of all public bodies, making sure that their staff members will have sufficient grievance channels and that their operations will be checked. Public corporations and statutory bodies will submit their annual reports, both managerial and financial, to the Ombudsman and the Director of Audit. The two bodies will be able to look into the internal operations of all public corporations if they wish to do so. The recommendations of the investigatory reports of the two bodies should ideally be binding to all public corporations.

Since public corporations and statutory bodies receive financial support from the HKSAR Government, their successful operations will maintain the good image and legitimacy of the Government. It is therefore imperative for the HKSAR Government to expand the powers and responsibilities of the two Commissioners to all the public bodies.

(b) Option 2: Increasing the Powers of the Office of the Ombudsman and the Director of Audit to check the administration and finance of Some Public Corporations and Statutory Bodies

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Council and Public Service Commission. However, there are some restrictions to the Ombudsman's powers. For example, it does not normally investigate complaints which have a statutory channel for appeal, or where a similar complaint has been investigated and no maladministration has been found, or complaints which are trivial or made in bad faith. For details, see [http://www.ombudsman.gov.hk/english/09\\_publications/07\\_fact/index.html](http://www.ombudsman.gov.hk/english/09_publications/07_fact/index.html). For the role and powers of the Audit Director, see [http://www.aud.gov.hk/eng/aboutus/about\\_role.htm](http://www.aud.gov.hk/eng/aboutus/about_role.htm). The Director is the external auditor of the accounts of the HKSAR Government. It has wide powers of access to the records of departments; can require any public officer to give an explanation; and is not subject to the direction or control of any other person or authority in performing his duties and when exercising powers. The Director of Audit submits three reports each year to the President of the Legislative Council. The Director's reports are considered by the Public Accounts Committee.

Another reform option is to exempt some statutory bodies, notably universities, from the scrutiny of the two bodies on the grounds of special circumstances. It can be argued that universities are expected to enjoy academic autonomy under the Basic Law, and that any additional public scrutiny will unnecessarily politicize its administration and operation. However, a few critics of universities in the HKSAR have argued that their administration, recruitment, personnel management and research funding need to be regularly scrutinized by more independent bodies due to a hidden concentration and possible abuse of power. This option is undoubtedly a very controversial one. It will be up to the people of Hong Kong to ponder what kind of educational system they expect, embracing their constantly high expectations of all universities to administer their personnel and research funding impartially, effectively, efficiently and economically. The University Grants Council has been playing a very crucial role in effectively scrutinizing grants offered to universities, but whether the Council's operation may need an independent review by either the Ombudsman or the Audit Director is perhaps a relatively neglected issue. The crux of the matter is whether the Ombudsman's and the Audit Director's jurisdictions will be expanded further to encompass all the tertiary educational institutions in the HKSAR. Whether external oversight will improve university administration and help universities achieve excellence is a matter of further discussions.

Regardless of which reform options will be favored and adopted, it is perhaps desirable to expand the scope of power, responsibilities and personnel of both the Ombudsman and the Director of Audit. A democratic society in Hong Kong will be expected to entail the accountability of all public corporations and statutory bodies, and to embrace a revamp in the operations of the two significant bodies that have traditionally played a crucial role in providing internal checks and balances on the HKSAR administration.



## **12. The Training of Political Talents and Leaders for Hong Kong Beyond 2047**

### **Processes**

#### **(a) Setting Up a Cross-Parties School to Train Political Talents**

In many countries, schools are established by the ruling political parties to train their members. In the case of Hong Kong, the Government can consider establishing a cross-parties school that regularly invites party leaders, trainers and members from other nation-states to share their views on party organization, finance and operations. In other words, a cross-parties school will be able to help local political leaders and talents understand how other political parties in the world operate. By learning from the experiences of other nation-states, it is hoped that local political talents will be able to develop their political finesse and leadership. At the beginning such cross-parties school will be a small-scale under the supervision of a think tank, notably the Central Policy Unit. With the passage of time, the cross-parties school can become a statutory body with more independence in its operation, although its finance will at least mostly be derived from the HKSAR Government.

#### **(b) Political Training of Civil Servants on the POAS**

To prepare some senior civil servants to be transferred to Principal Officials, the Civil Service Bureau will annually provide training courses to the civil servants on the technicalities of their possible transferable to the POAS. Such courses should also train civil servants to be more aware of the concepts of accountability, transparency, and political leadership. Former civil servants who have become Principal Officials can be invited to share their views with existing civil servants so that any misunderstanding of the political role of the POAS will be minimized.

#### **(c) Introducing Political Assistants or Ad Hoc Members to LegCo**

While some Political Assistants can be injected into the POAS, they can also be expanded in the operation of LegCo in the form of ad hoc members parallel to those nominated to the District Councils. Each LegCo member can nominate one political assistant to help him or her in the legislative chamber, although their voting power will perhaps be limited by any revised LegCo Standing Order. Other political assistants can be maintained as ad hoc members in all the 18 District Councils.

#### **(d) Expanding the Number of Ad Hoc Members in District Councils**

At present District Councils have varying number of ad hoc members, depending on the practice and tradition of each District Council. To standardize and to expand the practice, each District Council member will be empowered to nominate one ad hoc member so that more political talents can be integrated into District Councils.

(e) Improving the Performance Appraisal of Political Appointees at All Levels

The performance of political assistants will be annually reviewed by all the District Councilors and LegCo members. At the POAS level, Political Assistants will have their performance appraisal conducted by their superiors, namely the Principal Officials and also the Permanent Secretaries. As mentioned above, all Political Assistants are expected to abide by the highest standard of governance, including their integrity and ethical behavior. The performance appraisal of political appointees should be reviewed regularly so as to improve and perfect its operation, thus producing a batch of high quality politicians in the HKSAR.

It must be noted that Political Assistants should not be injected into the HKSAR polity in a massive scale and in a patronage way at the early beginning. The quality of Political Assistants will be far more important than their quantity.

(f) Selectively but Cautiously Injecting Political Appointees into Other Institutions

If the situation is reviewed by the HKSAR Government and Principal Officials very carefully, some Political Assistants can also be injected into, say, Advisory Committees and the Strategic Development Commission. The bottom line is that any increase in political appointments will not increase the governmental budget significantly and that the position to be opened will really be worthwhile. Otherwise, an injudicious process of expanding the system of Political Assistants will perhaps affect the quality of governance if the appointees are very inexperienced and in lack of integrity. Arguably, good government is as important as democratization.

### **13. Democratizing the Process of Public Consultations: Relations Between the Hong Kong Government and its People**

Traditionally, the HKSAR Government has used public forums, surveys and informal as well as formal meetings to solicit the views of the public on various policy issues. However, a more innovative approach can be considered so as to strengthen the governing capacity of the HKSAR Government.

#### **Process Enhancements**

##### **(a) The Use of a Citizen Assembly followed by Local Referendum on Political Reform**

Hong Kong can perhaps learn from the experience of Canada where citizen assembly in the form of 100-200 voters from the registered voters' list are randomly selected to discuss and decide political issues related to electoral reform, such as the adoption of proportional representation system in provincial elections (British Columbia and Ontario). Then the recommendation of the citizen assembly is put in a local referendum whereby citizens decide their favorite electoral system, such as the case of British Columbia. In Hong Kong, the idea of citizen assembly has never been considered, although some research organizations such as the Hong Kong Transition Project once implemented the idea of forming focus groups to allow citizens to discuss various political issues. The idea of forming a citizen assembly to put forward concrete recommendations on electoral reform, then followed by a local referendum, is worthwhile for the HKSAR and Beijing to consider. Such local referendum will arguably not affect the sovereignty of Beijing and the security interest of the HKSAR, especially if the principle of "Hong Kong people ruling Hong Kong" is realized fully.

##### **(b) Holding Constitutional Conventions to hammer out solutions on Political Reform**

From July 2003 to March 2004, the people of Hong Kong hoped to have a more democratic system, but unfortunately constitutional conventions or meetings held by either the Government or political parties did not surface, thus losing the opportunity for a meaningful dialogue among political elites and groups. In the future, constitutional conventions in the form of inviting government officials, political parties and concerned groups should be considered in the discussion on political reform. Such a practice could be seen in South Africa and Taiwan where political breakthrough in the form of a consensus on democratic blueprints could be reached. Think tanks in the HKSAR should also take the idea of constitutional conventions

seriously, especially non-governmental think tanks that have sufficient financial resources.

(c) Consulting the Views of the Hong Kong People through Independently Conducted Public Opinion Surveys and Territory-wide Public Forums

Traditionally, the Hong Kong Government has adopted this alternative of consulting the opinions of the public on various policy issues, including political reforms. While public opinion surveys have been conducted to gauge the views of ordinary citizens, they should ideally be managed by an independent organization composed of public opinion experts and scholars. Ideally, public opinion experts will be drawn from a variety of private organizations and universities so that the methodology of the surveys will be vigorous and reliable. Although the Government may appoint the chairperson and the executive committee members of the independent public assessment organization, the recruitment of other staff members and most importantly the public opinion experts should ideally left to the organization so that it will be seen as enjoying a high degree of autonomy vis-à-vis the Government. If a court judge can be appointed as the chairperson of the public opinion assessment office, it would be ideal. As a result, the findings of its public opinion surveys will become authoritative. Ideally, the findings of the public opinion assessment office will have a significant impact on the final decision made by the Hong Kong Government on the progress and scope of political reform. A detailed report should also be published by the public opinion assessment office so that the public will understand its findings fully. On the other hand, public forums in the HKSAR can be held extensively in all the eighteen districts so as to gauge the opinions of the public more comprehensively. Such public forums can be held by both the Government and the Public Opinion Assessment Office.

## **14. Facilitating the Political Dialogue Between the Hong Kong People and PRC Government**

### **Process Enhancements**

#### **(a) Creating the Positions of Special Observers for Mainland Researchers on Hong Kong to Attend Meetings of Hong Kong's Political Institutions**

Since the political protests on July 1, 2003, the central government in Beijing has sent numerous mainland researchers to understand public opinion in the HKSAR—a very healthy sign of Hong Kong's relations with China. However, to allow mainland researchers and experts to have a deeper understanding of the HKSAR political system, it is necessary for the HKSAR Government and other political parties as well as think tanks to consider the idea of inviting mainland researchers as special observers in the meetings and discussions of various political institutions. This does not mean that mainland researchers and experts are invited to intervene in the HKSAR's internal affairs. Instead, the idea is to let mainland researchers and experts understand the operations and discussions of Hong Kong's political institutions, such as the Strategic Development Commission, Advisory Committees and governmental as well as non-governmental think tanks. Although mainland researchers who wish to have a better understanding of the HKSAR polity can attend meetings of LegCo and District Councils through observation in the public gallery, their understanding of Hong Kong can be deepened further if special positions are provided for them to observe the institutional meetings in an open manner so as to facilitate their better dialogue with the Hong Kong people.

#### **(b) Holding Annual Conference Between Hong Kong and China's Think Tanks on Hong Kong Affairs**

Another way of tapping the views of mainland researchers and experts, instead of allowing them to fully hear the opinions of Hong Kong people, is to hold annual think tank conference between Hong Kong and China on various Hong Kong affairs. Think tanks, both governmental and non-governmental ones, can play a very active role in this regard. Such annual mainland-Hong Kong conference should be institutionalized and regularized by the Central Policy Unit and other non-governmental think tanks. Such conference should invite the researchers working under Beijing's Hong Kong and Macao Study Centre as well as Guangdong Province's newly established Hong Kong and Macao Affairs Office. Other mainland agencies such as the State Council's Hong Kong and Macao Affairs Office and also the Liaison Office in the HKSAR should also be invited. This way, a full-scale communication between Hong Kong

people and Chinese researchers as well as officials will be realized, thus hopefully facilitating a dialogue and consensus between the two sides in the long run. The think tanks from both Hong Kong and China should enhance their meetings and exchange of ideas so that a deeper understanding of the intricacies of the “one country, two systems” will be achieved.

(c) Both the HKSAR Government and the Mainland’s Hong Kong Macao Affairs Office Facilitating the Process of Dialogue Between Hong Kong Groups and Mainland Groups and Authorities

Another useful way of facilitating the dialogue between Hong Kong groups and the mainland organizations and groups is to enhance the role of the middlemen of both the Hong Kong Government and the PRC State Council’s Hong Kong Macao Affairs Office. Quite often the Hong Kong groups may not know the parallel mainland organizations that they should contact, including professional and governmental groups. In this aspect, both the Hong Kong Government and the Hong Kong Macao Affairs Office can perhaps improve their role as the intermediaries, introducing the parallel professional and communicative organizations in China to the Hong Kong side. This process of mutual exchanges and dialogue has been consolidated since July 1, 1997; nevertheless, there is a need to consolidate and enhance the mutually beneficial process further so that the communication channels between Hong Kong and China will be multi-dimensional, multi-faceted, socially diversified and professionally productive.

## **15. The Process of Invalidating Hong Kong Law and Interpreting the Basic Law**

According to Article 17 of the Basic Law, “If the Standing Committee of the National People's Congress, after consulting the Committee for the Basic Law of the Hong Kong Special Administrative Region under it, considers that any law enacted by the legislature of the Region is not in conformity with the provisions of this Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the Region, the Standing Committee may return the law in question but shall not amend it. Any law returned by the Standing Committee of the National People's Congress shall immediately be invalidated. This invalidation shall not have retroactive effect, unless otherwise provided for in the laws of the Region.” Moreover, Article 158 stipulates that “The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress. The Standing Committee of the National People's Congress shall authorize the courts of the Hong Kong Special Administrative Region to interpret on their own, in adjudicating cases, the provisions of this Law which are within the limits of the autonomy of the Region. The courts of the Hong Kong Special Administrative Region may also interpret other provisions of this Law in adjudicating cases. However, if the courts of the Region, in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments on the cases, the courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal of the Region. When the Standing Committee makes an interpretation of the provisions concerned, the courts of the Region, in applying those provisions, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected. The Standing Committee of the National People's Congress shall consult its Committee for the Basic Law of the Hong Kong Special Administrative Region before giving an interpretation of this Law.”

So far Article 17 has not been used, whereas the SCNPC interpreted the Hong Kong Basic Law three times. Article 17 and Article 158 are actually concerned with the process of how to harmonize the operation of the mainland legal system with that of the Hong Kong common-law system, especially as the SCNPC interprets the Basic Law. To harmonize the operation of the two very different legal systems, a number of issues for both Beijing and the HKSAR Government can be considered.

## **Processes and Enhancements**

### **(a) Keeping a Low Profile of Basic Law Committee Members in Public on Controversial Issues**

First and foremost, the members of the Basic Law Committee will have to keep a very low profile in public on controversial matters, especially as the Hong Kong media crave for the views of the Committee members. The reason is that the Basic Law Committee actually has both political and judicial functions. Therefore the Basic Law Committee members are acting like court judges in a common law setting. Any public views expressed by the Committee members will have to stress that they are of personal nature and that they do not represent any consensus of the Committee as a whole. In any case it is advisable that the Basic Law Committee members will have to keep a relatively low profile on all public controversies concerning the interpretation of the Basic Law's provisions. During the 1999 right of abode dispute in the HKSAR, a few members of the Basic Law Committee were active in articulating their views on the matter, thus leading some critics to question their expected role of impartiality. The second and the third SCNPC interpretations did not witness many Basic Law Committee members giving their views in public, although some were tempted and forced to do so by the assertive Hong Kong mass media.

### **(b) Improving the Process of SCNPC officials Consulting the Hong Kong People**

Second, the SCNPC process of consulting the views of the Hong Kong people, notably the period prior to the third interpretation of the Basic Law governing the tenure of office of the successor to the second Chief Executive in April 2004, can be improved further. Prior to April 2004, SCNPC officials went to Shenzhen to consult the views of the Hong Kong people—a very healthy political and judicial process. However, this process can perhaps be improved further by (1) having all members of the Basic Law Committee sitting with the top SCNPC members so that the setting will be similar to a court hearing, and (2) “judicializing” the process of interpreting the Basic Law, to use the word of constitutional law expert Professor Yash Ghai. Having all the twelve members of the Basic Law Committee to beside with the top SCNPC official in Shenzhen to consult the views of Hong Kong people will make the setting more akin to court judges listening attentively to different views on controversial disputes. This practice will enhance the image of impartiality of all members of the Basic Law Committee and judicialize the common-law style of consultation.



(c) Making the Reports, Deliberations and Voting Decisions of the Basic Law Committee More Transparent

Third, the future Basic Law Committee operations can become more transparent by publishing some of its reports and deliberations, including perhaps any voting or non-voting result among the members. Many people of Hong Kong who get used to the common law system are eager to see how the Basic Law Committee members discuss the controversial provisions of the Basic Law. It is also essential for the people of Hong Kong, including local court judges, to understand the spirit of the Basic Law, which is interpreted also by the Basic Law Committee members.

(d) An Elaboration of the SCNPC Decision by Attaching an Appendix

Fourth, while the Hong Kong court judgments are relatively detailed, the SCNPC decisions on its interpretations of the Basic Law have remained relatively brief. Ideally, any future SCNPC interpretation can perhaps be accompanied by an appendix that will explain the decision in a more detailed form, thus harmonizing the two very different legal systems. The people of Hong Kong, who get used to a system in which court verdicts are delivered with explanations from the judges, will welcome such an elaboration of the decision by the SCNPC.

(e) Setting Up a Hong Kong Public Law Study Group and Allowing its Non-Governmental Legal Experts to Make their Case in future Basic Law Committee and SCNPC's Public Consultations with Hong Kong People

Fifth, the people of Hong Kong will have to fully understand that Hong Kong as a non-independent Special Administrative Region will have to accept the power of the SCNPC to interpret the Basic Law. To help Hong Kong people understand the mainland legal operations, a Public Law Study Group can be set up under the State Council's Hong Kong and Macao Study Centre. The Group will be composed of non-governmental legal experts from both Hong Kong and China. These experts can be called upon by the Basic Law Committee whenever a provision of the Basic Law is in dispute and whenever the SCNPC needs to interpret the Basic Law. By encouraging non-governmental legal experts to articulate their arguments, the SCNPC and the Basic Law Committee will act in a far more impartial manner, thus harmonizing the operations of the mainland Chinese and Hong Kong legal systems.

(f) The HKSAR Government Speeds Up its Study of all the Provisions of the Basic Law

Sixth, the HKSAR Government will have to accelerate its study of each provision of the Basic Law. The Central Policy Unit and other non-governmental think tanks should also undertake this very important task to ensure that the interpretation of the provisions of the Basic Law will be consistent with the interpretation from mainland Chinese officials. It was perhaps strange to see the HKSAR Government's original interpretation of the term of office of the successor Chief Executive was different from the mainland Chinese legal experts prior to the April 2004 SCNPC interpretation. To avoid any interpretative differences, the regular dialogue and sharing of findings between Hong Kong and China will be necessary.

(g) Briefing the Hong Kong Court Judges on the Basic Law Committee's Documents and Deliberations

Seventh, the Hong Kong court judges will be annually briefed on the Basic Law Committee's documents and reports. If the HKSAR courts feel the need to refer any provision of the Basic Law to the central government in Beijing for interpretation, their court judges must be better informed of the spirit of the Basic Law in the first place.

Arguably, the above suggestions seek to democratize and judicialize the process of interpreting the Basic Law, this achieving the harmonious operations of the two different legal systems and traditions.

## **16. The Process of Reviewing the Basic Law for Hong Kong Beyond 2047**

### **Process**

#### **(a) Setting Up a Basic Law Review Committee to review the Basic Law**

The process of studying the Basic Law provisions aim at preparing for the possibility of reviewing the Basic Law in the years approaching 2047. In the event that the Basic Law is study earlier, such review will become much easier in the years prior to 2047, thus preempting the possibility of any public uncertainty. A Basic Law Review Committee can also be set up, say, ten years before 2047 so that the future of the HKSAR in the context of China will be delineated and elaborated further. A Basic Law Review Consultative Committee in the form of the Basic Law Consultative Committee that was formed in 1990 will also be established to solicit public views on the matter in the run-up to 2047.

## **17. E-Government and Better Access to Government Documents**

### **Process Enhancements**

#### **(a) Reviewing any 30-year rule for government documents to be released to the public for research**

For the government documents related to Hong Kong before July 1, 1997, it has been a convention that they can be released to the public for research thirty years after the event took place, subject to the review of the government departments concerned and under the condition of protecting the security interest of the Hong Kong government. Surprisingly, little discussion has been generated in the HKSAR public on the better access to government documents continuously after July 1, 1997. In particular, the government correspondence between, say, the Chief Executive and the Chief Executive Office on the one hand and the central government in Beijing on the other hand, will provide very important source of research materials for researchers, journalists, students and ordinary citizens. Ideally there should be some discussions among the Hong Kong public on how best the government documents can be accessible on the condition that the release of such documents will not jeopardize the national security interests of both Hong Kong and China. There should ideally be a balance between the public accessibility to government documents and the need to protect national security interests—a balance that is not easy to be struck in many other countries, including Western-style democracies. If the 30-year rule is to continue for all government documents after July 1, 1997, subject to departmental review of each document, the HKSAR Government can perhaps state it more clearly in its policy concerning the archive's collections so that the public of Hong Kong will continue to have better access to information.

#### **(b) Reorganizing a Hong Kong archive for all the government documents since retrocession on July 1, 1997**

Building up a territory-wide archive for the HKSAR will be a treasure cherished by all the people of Hong Kong, including researchers, journalists and students. This archive should ideally reorganize all government documents in a sophisticated, departmentalized and systematic manner. Although the current archive in Kwun Tong has been maintaining the historical materials of Hong Kong very impressively, more work can be done to improve the public accessibility to the documents of various governmental departments, including the possibility of having a better websites with much accessible sources indicated on the archive's web page. This will improve the operation of e-government in the HKSAR.

(c) Enhancing e-Government by improving each government department's website and making application forms available to the public

E-Government contains not only better governmental websites but also the accessibility of the public to various application forms related to the services of each government department. E-Government ideally provides email contacts of each departmental officer responsible for communicating with the public to citizens. All these features are easier to be said than done even in the case of many Western democracies. Hong Kong is no exception to this rule although its political institutions remain to be democratized further. It must be said that e-Government in the HKSAR has made tremendous progress, but ideally each department should have its own mission, vision and activities to achieve the objectives of improving its websites, placing application forms available to the public on the web page, and ensuring the accessibility and contact methods of its communication officers. Response to emails from members of the public can be ideally designated by each department so as to ensure efficiency in governmental response to queries and questions. This way, e-Government will be part and parcel of democratization in the HKSAR.

## **18. A Proposed Timetable and Roadmap**

The above sections have proposed various reform alternatives in almost all the areas of the government and politics of the HKSAR. In reality, this paper seeks to propose a very comprehensive roadmap for the HKSAR's political reform and for all the people of Hong Kong to ponder seriously. If the preconditions for democratization of Hong Kong embrace a high level of education and political maturity, the people of Hong Kong have already met the criteria. Other "preconditions" of democratization, such as patriotism, can be achieved alongside with a gradual process of political reform. The "preconditions" and democratization are by no means mutually exclusive. The debate over "preconditions" should not pose as an obstacle to further democratic reform in the HKSAR, whose unique "one country, two systems" is actually premised on a special political system without necessarily copying from the Western models. The most significant precondition for further democratization in Hong Kong is to achieve political consensus among various parties and groups. Consensus-building will be the most important factor shaping the directions of democratization in Hong Kong from now to 2047. To achieve political consensus, political parties and groups as well as the government will have to make compromise, sacrifice their own ideal models, and adopt a give-and-take approach to draw up an acceptable blueprint for the HKSAR.

In the immediate future, from 2006 to 2012, most and possibly all of the Process Enhancements in respect of the above proposals can be considered and implemented: making the Chief Executive elections more competitive; thinks tanks more coordinated; ExCo more pluralistic in its coalition; LegCo more reformist; the POAS more vigorous; civil servants more politically open and tolerant; District Councils more powerful; political parties more formally legalized; Advisory Committees more effective; public corporations and statutory bodies more accountable; political talents more fully trained and utilized; governmental public consultations more sophisticated; communications with mainland researchers more formalized and institutionalized; the process of interpreting the Basic Law more harmonized and judicialized; and the degree of e-Government and access to governmental documents much higher. Also by 2012 the Political Party Law will ideally be implemented.

In the short to medium term, from 2012 to 2020, the bicameral system can perhaps be implemented while at the same time allowing the Chief Executive candidates to be screened by a Nominating Committee and then directly elected by all eligible voters through universal suffrage. At the same time the Political Party Law will ideally be implemented. Simultaneously, the process of judicializing and harmonizing the interpretations of the Basic Law will be fully entrenched. Of course, the two houses

system can perhaps be implemented much earlier than 2020 provided that a consensus among the people of Hong Kong can be reached. It must be emphasized that the bicameral system will not necessarily be the endpoint of the HKSAR political development. If it were implemented, the two houses model would perhaps be reformed in such a way as to achieve another ideal model of political system for Hong Kong near or beyond 2047. If the bicameral system were rejected, the people of Hong Kong would still be able to consider another feasible alternative to have their entire legislature fully directly elected by universal suffrage.

In the longer term, from 2030 to 2047, the process of reviewing the Basic Law should ideally begin, consulting the views of the people of Hong Kong. In this way, by 2047, the HKSAR will perhaps be reformulated and redesigned in a way as to match the national developmental strategy of its motherland China. At the same time, the “one country, two systems” will be enshrined and achieved successfully.

## **19. Conclusion**

In conclusion, the people of Hong Kong are educated, mature and rational enough to ponder a more democratic, accountable and responsive political system that will equip them to tackle any challenges in the coming decades beyond 2047. Endowed with an impressively vibrant civil society, strong rule of law, healthy mass media and informed citizenry, the HKSAR will be able to design its own special political system in the forthcoming decades. The proposed reforms and roadmap provide a starting point for all the people of Hong Kong to consider how to design their unique political system at least from now to 2047.



## 行政長官產生辦法

中大政治與行政學系高級導師 蔡子強 建議

- 1 特首的產生辦法，應根據基本法四十五條的規定：由一個具廣泛代表性的提名委員會提名，由全港選民普選產生。我們認為如果提名委員會成員經由民主程序產生，而候選人提名的門檻不會太高，用提名委員會作提名機制，不會違反民主原則。
- 2 特首候選人的提名制度，應根據下列原則：
  - 2.1 提名原則應以民主政治的「不排拒」(non-exclusive)為原則，即提名制度的設計不應為排拒某些政治力量參選而作出。
  - 2.2 提名方法應該有合理的機會，給有一定公眾支持度的候選人獲得提名。
  - 2.3 提名方法及提名委員會的組成，應確保不同社會階層或政治勢力，都有機會提名代表自己的候選人
- 3 提名委員會組成：
  - 3.1 可以大致沿用現行選舉委員會的界別分類，即如果提名委員會有 800 人，其成員可以有 200 名來自工商、金融界、200 名來自專業界別、200 人來自政界、及 200 人來自社會各界等。
  - 3.2 提名委員會各界別的委員應盡量以民主選舉方式產生（見附件），以增強提名委員會的代表性及公信力。
- 4 提名辦法的設計原則：
  - 4.1 改善行政立法關係：希望產生的特首候選人和立法會有一定聯繫，不會出現一位與立法會內各政黨完全沒有政治聯繫，但由於個人民望很高因而在普選中得以當選的特首，令行政立法關係出現緊張。
  - 4.2 均衡參與：特首候選人應在各不同界別和階層有起碼支持，因而不受個別階層仇視，而令其後施政出現困難。
  - 4.3 循序漸進：提名的規定應逐步放寬。放寬的方式可包括：
    - 4.3.1 減低每個界別所需的最低提名人數；或
    - 4.3.2 擴大每個界別的選民基礎。

- 4.3.3 精神是，如果要以一個「門檻」方案來換取各方共識，容許 2012 年進行普選行政長官，那麼這個「門檻」也應同時明確設有一個時間表，在兩、三屆內撤銷。

## 5 提名具體辦法（2012 年）：

- 5.1 例如第一屆普選特首可以要求由較多提名委員提名（例如 100 人），而其後逐漸減少提名所需人數。
- 5.2 任何特首候選人應至少獲得 100 名提名委員提名，才可成為特首候選人；
- 5.3 100 名提名委員內，應在四個不同大組別，均至少可獲得 10 名提名委員提名。這樣可確保該候選人在各不同階層均有最起碼的支持程度，例如起碼可獲得百分之五的工商界提名委員支持等。
- 5.4 100 名提名委員內，應包括起碼 15 名立法會議員。這樣可確保選出的特首至少可獲立法會相當部份議員支持（四份一），亦會令特首候選人不會太多——最多只會是三至四個——避免票數及政治利益過於分散。

## 6 選舉方法

- 6.1 普選投票辦法：採用兩輪投票制。如果第一輪投票，有任何候選人取得過半數的選票，則會當選。如果沒有候選人取得過半數選票，則由得票最高的兩位候選人進入第二輪決選；第二輪決選得票多者勝。
- 6.2 這個制度的優點是可確保最後當選者必然得到過半數票支持，避免出現得票不及一半的少數派行政長官（例如像零零年的陳水扁），而令認受性或立法會內的支持不足。確保行政長官在第二輪投票得過半數票支持，有助提高公信力及增加施政的認受性。此外，外國經驗顯示兩輪投票可容許各政黨候選人在兩輪選舉間協調，有利產生較溫和及較為廣泛接受的當選者，有利加強政黨合作之餘，增強與中央的溝通，也令政見較極端的候選人較難「偷襲」成功。

## 7 中央對行政長官的任命權

如今香港很多人士，對中央政府對香港行政長官任命權的性質，仍未有統一的理解。儘管中央官員多次反覆強調這屬於一種「實質性」任命，但不少香港人士包括部份法律界，仍堅持那應是一種「名義上」的任命權。而如今香港有關的選舉法律，也未有明確針對這一點作出補充，只是一般提及特首出缺後的補舉辦法。如果要在 2012 年實行補選，如何減低北京對此的疑慮和保留，十分重要，因此行政長官任命權的性質，將成了一個不能迴避的問題。

### 附註 提名委員會組成

#### 現時選舉委員會八百人的名額分配

工商金融界 (200 席)	工業一(12) 飲食界(11) 香港僱主聯合會(11) 工業二(12) 酒店界(11) 中國企業協會(11) 進出口界(12) 商界一(12) 金融界(12) 地產及建造界(12) 航運交通界(12) 商界二(12) 保險界(12) 紡織及製衣界(12) 批發及零售界 (12) 旅遊界(12) 金融服務界(12)
專業界 (200 席)	會計界(20) 中醫界(20) 教育界(20) 高等教育界(20) 工程界(20) 醫學界(20) 法律界(20) 資訊科技界(20) 建築、測量及都市規劃界(20) 衛生服務界(20)
勞工、社會服務、 宗教界(200 席)	漁農界(40) 宗教界(40) 體育、演藝、文化及出版界(40) 勞工界(40) 社工界(40)
原政界 (200 席)	全國人大代表(36) 市區區議會(21) 立法會議員(60) 全國政協代表(41) 新界區議會(21) 鄉議局(21)

建議：

1. 原有工商界、人大代表、政協代表、立法會議員、鄉議局等界別，其名額保持不變。工商界內各界別分組的選舉方法和名額保持不變(共 358 人)。
2. 現時在勞工、社會服務及宗教界內的社工界本質上屬專業人士，建議將其改劃入專業界別，令專業界別共有 11 個小分組，各專業界別比例約佔 18 席。
3. 保持區議會共 42 席，不需界分市區與新界，由所有民選區議員（即委任區議員無投票權）投票選出 42 人。選舉方法建議將所有區議會按立法會選區分為五大組，每組選出代表人數按區議員比例劃定，區議員以單一可轉移票制（single transferable vote）選出代表。此制度會令到選出的代表的黨派成份，會大致與區議會內的黨派勢力均衡接近，即某政黨如果在區議會拿得約十份一議席(約 40 名區議員)，則可獲得約四個提名委員席位。
4. 第三界別的 200 席，可擴闊其代表性，按行業選出提名委員，以增強整個提名委員會的代表性和認受性。除了(1)漁農、(2)體育／演藝／文化／出版、(3)宗教外，加入公營機構僱員、學生、持家及退休人士、及其他行業等，平分 200 個名額。所有選民不可重複在專業界別及此界別有選舉權。
5. 如果希望保持一些社會組織的影響力，例如工會、宗教界等，則可以考慮部份席位由這些中介組織選出：例如如果所有註冊工會以單一可轉移票制選出 30 人的話，不同政治傾向的工會都有機會獲得代表。在這方案下，建議組織代表只佔 100 人，例如宗教界 30 人、工會 30 人、漁農、體育及其他組織佔約 40 人等，其餘 100 名提名委員由分行業普選產生。