

8 March 2004

Mr. Donald Tsang
Head, Constitutional
Development Task Force
Constitutional Affairs Bureau
3/F Main Wing
Central Government Offices
Lower Albert Road

Dear Mr. Tsang,

In respect of the consultative document issued by your Task Force in February 2004, 'Seeking Your Views,' I wish to submit my answers to the questions as set out in the document as follows.

A1

- (1) Elections of the Chief Executive and all Legislative Councillors by universal suffrage do not and will not contravene Article 1 of the *Basic Law*. The existing laws and regulations on eligibility of candidates for these elections shall remain unchanged. The oath to be taken by the elected persons shall remain unchanged.
- (2) Elections of the Chief Executive and all Legislative Councillors by universal suffrage do not and will not contravene Article 12 of the *Basic Law*. The existing laws and regulations on eligibility of candidates for these elections shall remain unchanged. The oath to be taken by the elected persons shall remain unchanged.
- (3) Election of the Chief Executive by universal suffrage does not and will not contravene the requirements that he shall be appointed by the CPG and that he is accountable to both the CPG and the HKSAR. The existing laws and regulations on eligibility of candidates for the Chief Executive election shall remain unchanged. The oath to be taken by the elected person shall remain unchanged.

A2

- (1) 'Actual situation' primarily refers to the wish of Hong Kong residents.
- (2) 'Gradual and orderly progress' implies that the electoral base of the Chief Executive will be enlarged successively. In accordance with this principle, the first Chief Executive was elected by a 400-person committee and the second by a 800-person committee, while the number of generally elected Legislative Councillors has been increased from 20 in 1998, to 24 in 2000 and 30 in 2004 respectively. Accordingly, the electoral base for the third Chief Executive must not be smaller than 1,200 persons, while the number of generally elected Legislative Councillors in 2008 shall not be smaller than 38. On the other hand, elections of the third Chief Executive in 2007 and the whole Legislative Council in 2008 by universal suffrage do not and will not contravene this principle.

A3

- (1) The speech by Ji Pengfei has no legal force except when the court has difficulty in interpreting the provisions in the *Basic Law*. Articles 45 and 68 can be interpreted without recourse to Ji's speech.
- (2) Ditto.

B1

Local legislation is adequate and sufficient. Amendment to Annex I is advisable for the sake of clarity and safety. Amendment to Annex II is superfluous, as Annex II does not prescribe for the composition of the 4th and later Legislative Councils.

B2

No. Paragraph 7 of Annex I and part III of Annex II prescribe for amendment procedures which are independent of, but not supplementary to, Article 159.

B3

As local legislation is adequate and sufficient for the reform, the reform can be initiated by the Hong Kong administration by introducing bills at the Legislative Council.

B4

Although Annex II is silent on this issue, the requirement for 'gradual and orderly progress' in Article 68 implies that the number of generally elected members must increase successively. If the 4th Legislative Council is elected with the same system as the 3rd Legislative Council, the system and the election results may be challenged judicially. Politically, the Council's

legitimacy will be called into question and hence its decisions and actions will not command public trust and support.

B5

In plain and ordinary senses, the Chinese wording of the phrase includes 2007, but the English version does not. However, reference should be made to part III of Annex II in trying to understand the English expression 'subsequent to the year 2007.' The heading of part III is 'Method for the formation of the Legislative Council and its voting procedures subsequent to the year 2007.' Does it refer to years including 2007? Yes. Why? Annex II, in fact the whole *Basic Law*, was drafted with the intention that the 1st Legislative Council will sit from 1997 to 1999, the 2nd from 1999 to 2003, the 3rd from 2003 to 2007 and the 4th from 2007 to 2011. (This plan was upset with the interruption of the sitting of the Provisional Legislative Council during 1997-1998.) Annex II, in its part I, sets out the compositions of the 1st, 2nd and 3rd Legislative Councils but not the 4th. By implication, part III concerns the 4th Legislative Council and beyond. As it was originally intended that the 4th Legislative Council will be elected in 2007, the phrase 'subsequent to the year 2007' in the heading and body of part III should be construed as including 2007.

Furthermore, it is submitted that the discussion about the principles and legislative process should be concluded as soon as possible and the discussion on, and legislation for, the electoral systems for 2007 and 2008 should be started as soon as possible.

Thank you for your attention.

Yours sincerely,

(Signed)

(Sam Mok)