



**URGENT**

**International Chamber of Commerce - Hong Kong, China Business Council 國際商會 - 中國香港商務局**

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**E414**

By Hand

29 March 2004

The Hon. Donald Tsang, GBM, JP  
Chief Secretary for Administration  
12/F, West Wing,  
Central Government Offices,  
Lower Albert Road, Central,  
Hong Kong

Dear *Donald,*

In response to the invitation of the Constitutional Development Task Force for views on the relevant questions published, we are pleased to enclose our views as attached (enclosure 1). These supplement those views contained in our letter of 26 February 2004, a copy of which is enclosed herewith (enclosure 2).

Yours sincerely,

**Signed**

J. P. Lee

Chairman

Enc.

Cc : Constitutional Development Task Force Secretariat



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Issues of principle and legislative process relating to constitutional development

Question A1. How could Hong Kong's political structure develop in accordance with the following principles in the relevant Basic Law provisions which relate to the relationship between the Central Authorities and the HKSAR:

- (1) Hong Kong is an inalienable part of China (Article 1 of the Basic Law)?
- (2) HKSAR comes directly under the CPG (Article 12 of the Basic Law)?
- (3) The Chief Executive (CE) is appointed by the CPG. He is accountable to both the CPG and the HKSAR (Articles 43 and 45 of the Basic Law)?

Response

In accordance with the Basic Law and the Sino-British Joint Declaration, Hong Kong is an inalienable part of China. As such, it is only logical that the Hong Kong government is directly under the Central government with a high degree of autonomy. Since 1997, Hong Kong has adhered to this position adequately. It may therefore be asked if there is yet any need to revisit Hong Kong's political structure for the purposes raised under (1) and (2).

The Chief Executive is elected/selected by a committee of 800 made up of elected persons from different sectors of the Hong Kong community, and is accountable to the HKSAR. He has therefore a duty to govern in accordance with the wishes of the people in Hong Kong.

At the same time, as the Chief Executive is appointed by the Central government and since Hong Kong is part of China, the Chief Executive must be accountable to the Central government too. Under the principle of "One Country - two systems" and Hong Kong's having a high degree of autonomy,



the Chief Executive will decide under what circumstances and on what issues he would have to consult or take direction from the Central government. He will also have the vital responsibility to reconcile the wishes of the Central government and of the people in Hong Kong. We are not sure why the question is raised and public opinion sought. We consider that existing constitutional arrangements are in place to function properly.

Question A2. On the principles of "actual situation" and "gradual and orderly progress":

- (1) what should "actual situation" constitute?
- (2) how "gradual and orderly progress" should be understood?

Response We have already commented on this issue in our letter dated 26 February 2004.

Question A3. Based on Mr Ji's explanation in 1990, how could the development of Hong Kong's political structure:

- (1) meet "the interests of the different sectors of society"?
- (2) "facilitate the development of the capitalist economy"?

Response (1) Neither (1) nor (2) is set out in any provision of the Basic Law. The only reference to the "previous capitalist system" is in Article 5 which provides that such system and the way of life shall remain unchanged for 50 years.

In any open and democratic society, obviously any government would have the interests of different sectors of the community represented. Since the Basic Law states that ultimately the Hong Kong legislature will be elected by universal suffrage, it is clear that the Basic Law envisages that such



a legislature would be the way by which different sectoral interests would be represented and taken into account. If there is any progress in the political structure, it will be a system or systems moving towards universal suffrage.

What Mr. Ji said is of historical interest and useful background information but would not contradict the express provisions of the Basic Law.

(2) Hong Kong practises the capitalist system, but even that system undergoes change over time. If the political system is to facilitate the development of the capitalist economy, it must also change accordingly. Hong Kong's economy has grown in the past decade or so in terms of size and sophistication; together with this are the rising expectations of its population including awareness of the relative role individuals play in Society. Further, the United Nations Global Compact stresses labour standards, human rights and the environment in corporate social responsibility. The United Nations' Millennium Declaration outlines a consensus "road map" for proceeding towards the Millennium Development Goals, with a stronger focus on human rights, good governance and democracy. Hence, while any change in political structure may facilitate the development of the capitalist economy, such development must have regard to global trends if Hong Kong is to continue to be taken as a leading international city. Moreover in that role, Hong Kong can contribute better in the economic development of the Mainland.

While acknowledging the capitalistic nature of the Hong Kong economy, one must not overlook that its development has to be part of the overall social picture. For example, prosperity has to be in the context of economic sustainability. To go further, the Chief Executive in March 2003 appointed the Council for Sustainable Development under the chairmanship of the Chief Secretary for Administration, seeking to ensure the sustainable



viability of Society for the benefit of future generations. At the United Nations Sustainable Development Leadership Forum in February this year, the Chief Executive said the government sought gradually to make "sustainable development" an underlying principle in the formulation of new policies and programmes. Hence facilitating the development of the capitalist economy must be consistent to the principle of sustainable development.

Question B1. What is the most appropriate legislative procedure for amending the methods for selecting the CE and forming the LegCo set out in Annexes I and II:

- (a) amendments to Annexes I and II and local legislation; or
- (b) local legislation only?

Response As pointed out in our letter under reference the provisions of the relevant Articles of the Basic Law together with the Annexes are adequate. We do not see the need for amending Annexes I and II, but we believe corresponding local legislation may be necessary.

Question B2. Do we need to follow the procedures set out in Article 159 of the Basic Law, if we amend the methods for selecting the CE or forming the LegCo as specified in Annexes I and II of the Basic Law?

Response Our letter under reference has already dealt with this point.

Question B3. How should any amendment relating to the methods for selecting the CE and for forming the LegCo be initiated?

Response The initiation of the amendment of the local bill can be taken by the Administration as any other local bill. In this particularly case however



such initiative must rely on very thorough, scientific and objective research in public knowledge and aspirations.

Question B4. Whether the method for formation of the third term LegCo could be used for the fourth term LegCo, if no consensus were reached on whether to amend the method for forming the LegCo after 2007?

Response The relevant provisions in the Basic Law should suggest that the existing method will continue until a new method is established.

Question B5. Whether the phrase "subsequent to the year 2007" should be understood to include 2007?

Response The term of the Chief Executive will expire by the end of June 2007. Therefore, the text of the Basic Law should mean that any amendment to the method for selecting the Chief Executive can take effect from the term following, and in the case at issue, i.e. July 2007.

- End -



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26 February 2004

The Hon. Donald Tsang, GBM, JP  
Chief Secretary for Administration  
12/F, West Wing,  
Central Government Offices,  
Lower Albert Road, Central,  
Hong Kong

*Dear Donald,*

Thank you for your letter January 9 inviting our views on developments within Hong Kong's political structure.

As I said at the International Business Committee on January 7, the Task Force has a very important role to play in securing the understanding for both the Central Government and the Hong Kong public. The Task Force is not only an honest broker, but also we hope a facilitator to move Hong Kong on the road to democratisation.

Our views on the subject matter are in the enclosure for your consideration. We look forward to learning more about the process, its content and how we may meaningfully take part.

With warm regards,

Yours sincerely,

Signed

J. P. Lee  
Chairman

Enc.

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1. A review of changes to Hong Kong's political institutions now is consistent to the Basic Law and meets public aspirations.
2. Any review should be in accordance with the provisions of the Basic Law and the spirit of the "One Country, Two Systems" arrangement.
3. The concern of the Central Government should be addressed and explained to the public.
4. The expressed aspirations of the public should be explained to the Central Government.
5. Enhancing mutual trust is very important to a positive outcome of the discussions.
6. The scope of review should be clearly defined.
7. Hong Kong is already a developed and relatively mature society. The social conditions are such that moving now towards universal suffrage in the election of the Chief Executive or Members of the Legislature does not necessarily affect adversely the stability or the economic sustainability of Hong Kong.
8. Change of the arrangement to elect the Chief Executive does not seem to involve invoking Article 159. Provisions of Annex 1 will be adequate.
9. The same may be said of changing the arrangement to elect the Members of the Legislature. Annex 2 already provides for the necessary process.



10. The phrases "in the light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress" in Articles 45 and 68 respectively should convey the ordinary meaning of those phrases.
11. Annex 1 would convey that election of the Chief Executive for the term commencing 2007 may proceed on new arrangements, having regard to the provisions of Article 45.
12. Annex 2 provides for changing the election method and the voting process of the Legislature after 2007, having regard to Article 68. A review of the current system should be undertaken now to avoid uncertainty towards 2008.
13. A timetable be worked out for review, consultation, local enactment and implementation so that a common goal may be perceived and the way forward is understood by the public.
14. The Council would be pleased to meet the Task Force if necessary.