

Constitutional Development – the Way Ahead
Submission by the Hong Kong General Chamber of Commerce

August 2004

Introduction

1. This submission sets out the views of the Hong Kong General Chamber of Commerce on the way ahead for constitutional development in Hong Kong. The submission is divided into two parts.

- *Part I* details our response to the Third Report of the Constitutional Development Task Force on the nine areas of possible amendments in respect of the Methods for Selecting the Chief Executive in 2007 and for forming the Legislative Council in 2008.
- *Part II* represents our views on a number of issues underlying the development of the political structure. We believe that these issues are of fundamental importance for Hong Kong's constitutional development, even though they are not directly addressed in the Third Report.

Part I
The 2007 and 2008 Elections

Election of the Chief Executive in 2007

2. The Chamber agrees with the prevailing sentiment of the community that the present 800-member Election Committee is too restrictive. Besides the "grassroots" not feeling represented, even many elite members of society are excluded from any role in the Election Committee. We agree with the view that the Election Committee should be expanded, both in membership and representation.

3. In putting forward our recommended model for the Election Committee, we have been guided by the following two principles.

- The general public should have a bigger role in the Election Committee.
- The principle of balanced representation should be maintained in the re-constituted Election Committee.

Bigger role for the general public

4. Our recommendation is that the representation of District Council in the Election Committee should be increased substantially. This will strengthen the geographical component to the Election Committee, as the great majority of DC members are returned through direct election by the general public. Including more DC members in the Election Committee would also encourage political party development and hence support institution building.

Balanced representation

5. In our view, we should be guided by the principle of balanced representation when considering the structure of the Election Committee, the composition, and the delineation of the electorate.

(a) Structure of the Election Committee

6. Conceptually, District Council members belong to the fourth sector under the current Election Committee structure. Adding more DC members will mean a dilution of the influence of other sectors currently on the Election Committee. To maintain the balance of representation, we recommend that the number of seats of the other sectors be increased by a comparable proportion.
7. In the Fourth Sector, the composition of the current 200 seats are as follows:
 - 60 (all) LegCo members
 - 21 representatives from HK and Kowloon District Councils
 - 21 representatives from New Territories District Councils
 - 21 representatives from Heung Yee Kuk
 - 36 (all) NPC deputies
 - 41 representatives of CPPCC members
8. If more DC members are to become members of the Election Committee, the number of members of the Fourth Sector of the Election Committee will be increased. We propose that the total number of the Fourth Sector should be doubled, from 200 currently to 400, with the new members being District Councillors.
9. As a result, the new composition for the Fourth Sector will be as follows:
 - 60 LegCo members
 - 242 District Councillors
 - 21 representatives from Heung Yee Kuk
 - 36 NPC deputies
 - 41 representatives of CPPCC members
10. The 242 DC members on the Election Committee should be returned from the entire pool of District Councillors (currently 529) through an election using the principle of proportional representation.
11. In line with the principle of balanced representation, the number of the other three sectors should be increased, likewise, to 400 seats, i.e.
 - 400 from industrial, commercial and financial sectors
 - 400 from the professions
 - 400 from the labour, social services, religious and other sectors

(b) Composition of sub-sectors

12. The increase in the total number of seats could mean new sub-sectors being created. However, we consider that the status quo should be maintained as far as possible. In our view, the possibility of opening up new sub-sectors will encourage jockeying among various sectors and is divisive to society. Hence we do not see a need for revamping the basic structure of the Election Committee, other than the structural changes proposed for the Fourth Sector.

(c) Size and delineation of electorate

13. We have considered the merits of increasing the number of voters returned from constituencies based on corporate bodies, for instance, doubling the number of voters for each registered corporation. In our view, however, the benefits will not be substantial – a doubling of corporate votes will only contribute a small increase in the total number of the electorate. On the other hand, it may complicate the administration of the electorate unnecessarily – not all corporate bodies will be able to return the same multiple number of voters; it may encourage some abuse which is difficult to regulate (e.g. voters from the same company being controlled by the same person); and it may upset the balance of representation in some sectors which comprises both individual and corporate voters (e.g. the import/export sector). Our conclusion is therefore that the status quo should be maintained with regard to corporate votes.

14. Under the current system, the same individual may have more than one vote in returning members to the Election Committee, as an individual voter in one sub-sector and an authorised representative of a corporate voter in another sub-sector. We consider that each individual within the electorate should be entitled to only one vote. In other words, in the overall electoral register for the Election Committee, no individual's name should appear in more than one sub-sector.

Number required for nomination

15. Currently, candidates for Chief Executive must be nominated by not less than 100 members of the Election Committee. Each member may nominate only one candidate. The relatively large proportion of members required for a nomination (12.5%) means that the number of nominees is necessarily restricted.

16. To encourage more candidates to come forward, the nomination criteria should be relaxed. This can be achieved in two ways, namely, to reduce the proportion of members needed for nomination, or to lift the one-member-one-nomination restriction. On the other hand, maintaining a relatively large number for members needed for nomination will encourage better team-building for aspiring Chief Executives.

17. We are in favour of an Election Committee member being allowed to nominate more than one candidate. This will make it possible for more candidates to be nominated. To encourage team-building and enhance representation of the candidates, we recommend that the minimum proportion required should remain at 12.5%. For an Election Committee of 1,600 members, this would mean 200 would be required for a valid nomination.

18. It has been suggested that a cap should be placed on the maximum number of nominators, to prevent one candidate from dominating the election by obtaining overwhelming support. With the two provisions proposed above, however, we consider that the cap is not necessary, as it will be unlikely for one candidate to be able to dominate the election.

19. Currently, if only one candidate is nominated, the candidate will be confirmed as Chief Executive automatically. It has been pointed out that this could raise some concern, as the Chief Executive would be returned without undergoing an election process. One way to enhance the representation of the office of the Chief Executive would be to require the single candidate to undergo the election process, and confirm the candidate as Chief Executive only if he or she obtains a majority of the votes cast.

Response to Task Force questions

20. With the above considerations, the Chamber's response to the four questions posed in the Task Force's Third Report on election of the Chief Executive in 2007, is as follows.

<i>Issue raised in Third Report</i>	<i>Chamber Response</i>
(i) The number of members of the Election Committee	Increase to 1,600
(ii) The composition of the Election Committee	Four sectors as follows. <ul style="list-style-type: none"> • 400 from industrial, commercial and financial sectors • 400 from the professions • 400 from the labour, social services, religious and other sectors • 400 from LegCo, district councils, Heung Yee Kok, NPC deputies and CPPCC members.
(iii) The number of members of the Election Committee required for nominating candidates for the Office of Chief Executive	<ul style="list-style-type: none"> • Minimum 12.5% of the Election Committee • Each member may nominate more than one candidate
(iv) The delineation and size of the electorate of the Election Committee	<ul style="list-style-type: none"> • Except for the Fourth Sector, no change to the arrangement for the electorate. • Each individual within the electorate should be entitled to only one vote.

Legislative Council elections in 2008

Number of seats

21. A key question is whether the number of seats in LegCo should be expanded. There is a view that LegCo resources are already stretched, especially at the level of committees and panels. More members will help improve the working of LegCo.

22. On the other hand, there are strong reasons for not increasing the number of seats:

- Many people who have had experience with LegCo are of the opinion that LegCo is not efficient as an organisation, and to increase the number of members will make it too complicated to be effective. LegCo's efficiency and productivity can be improved by giving it more staff and resources, not by having more members.

- The National People's Congress Standing Committee has decided that the number of seats returned by geographical and functional constituencies must be equal for 2008. This means that additional seats will have to be equally split between geographical and functional constituencies. Given the Basic Law's stipulation for universal suffrage – and by implication, the eventual abolition of functional constituencies – any newly created FC seats will at best be temporary.
- The opening up of new functional constituencies may encourage competition and further division among various sectors. This may not be conducive to constitutional development, given the eventual aim of full democracy by universal suffrage.

23. Having considered the issue at length, we have come to the conclusion that the number of seats should remain unchanged at 60, but LegCo members should be given more staff and resources to help make the Legislature more effective.

Composition

24. Even if the number of seats remain unchanged, the boundary of the geographical constituencies can still be varied, e.g. re-configuring the geographical boundaries. However, in line with the principle of "equal participation of sectors", the Chamber supports maintaining the proportional representation system, i.e. larger multi-seat geographical constituencies.

25. If the number of directly elected seats is changed, the number of functional constituency seats must also be changed at the same time, so as to meet the requirement that these two categories of seats shall be equal in number.

26. In the case of the functional constituencies, in addition to maintaining the number at 30, we support the status quo composition. Although the current composition is not perfect, e.g. it does not truly reflect the importance of some major business sectors, a re-vamp of the 30 seats may give rise to further divisions among sectors, in return for a structure that is at best temporary.

Delineation and size of electorate of Functional Constituencies

27. The considerations are similar to that of the delineation and size of the electorate of the Election Committee, and we came to the same conclusions, namely:

- In terms of corporate vote, there is no compelling logic in increasing the number of voters from each corporate body. It might also create problems for sectors with mixed electors (both individual and corporate voters), but the outcome would be unlikely to increase the voter base by much. Hence we do not recommend any change.
- On the other hand, each individual within the functional constituency electorate should be entitled to only one vote. In other words, in the overall electoral register for the functional constituencies, no individual's name should appear in more than one functional constituency.

Nationality of Legislative Council Members

28. The Basic Law allows foreign passport holders ("permanent residents...who are not of Chinese nationality or who have the right of abode in foreign countries", Article 67) to hold not more than 20% of the seats in LegCo. These 20% of seats are specified in the Legislative Council Ordinance and cover 12 functional constituencies (mainly commercial and professional FCs). This is one of several provisions designed to reflect, and to some extent safeguard, Hong Kong's international character. Other provisions to the same effect can be found in Article 89 (allowing non-local judges to be appointed to the Court of Final Appeal), Article 116 (making Hong Kong a separate customs territory), etc. These articles, as an integral part of HKSAR's mini-constitution, together provide the important legal and constitutional basis for Hong Kong to maintain and strengthen its character as an international city of China.

29. The Chamber is aware that there have been some voices calling for this to be changed so that all LegCo members should be of Chinese nationality. We strongly object to that. We believe the Basic Law's provision should be respected and the 20% of seats open to foreign passport holders should be upheld, so as to maintain Hong Kong's international character as well as safeguard the SAR's international image.

Response to Task Force questions

30. With the above considerations, the Chamber's response to the five questions posed in the Task Force's Third Report on the 2008 Legislative Council election is as follows.

<i>Issue raised in Third Report</i>	<i>Chamber Response</i>
(i) The number of seats in LegCo	<ul style="list-style-type: none"> • Maintain at 60 • Provide more staff and resources for LegCo members
(ii) The number of seats returned by geographical constituencies through direct elections	<ul style="list-style-type: none"> • Maintain at 30 • Maintain proportional representation system
(iii) The number of seats returned by functional constituencies	<ul style="list-style-type: none"> • Maintain at 30 • No change to the composition of FC's
(iv) The delineation and size of LegCo functional constituencies	<ul style="list-style-type: none"> • No change to the arrangement for the electorate • Each individual within the electorate should be entitled to only one vote
(v) Provisions regarding nationality of LegCo members	<ul style="list-style-type: none"> • Maintain current system with 12 FC seats (20%) being open for foreign passport holders

Part II

Beyond the 2007/2008 Elections: Development of the Political Structure

The wider issue: strengthening the political structure

31. The Third Report of the government Constitutional Development Task Force only deals with the election methods for the Chief Executive in 2007 and the Legislative Council in 2008. But constitutional development is much more than just election methods and involves many other issues. Some of these have been highlighted in Chapter 3 of the Task Force's Second Report, namely, "political talent", "the maturity of political groups", "public policy research" and "the Executive-led system and the relationship between the Executive Authorities and the Legislature". Constitutional development would, therefore, require that progress be made in other areas besides the 07/08 elections.

32. Another reason for addressing issues outside of the Third Report is the need to "get the process right" and to focus the community's attention to a constructive discussion of the substantive issues of this process. When it first started, the consultative process was tortuous, divisive, and at times acrimonious. After the Standing Committee of the National People's Congress handed down its "Interpretation" and "Decision" on the 6th and 26th of April respectively, the parameters for constitutional development have become much clearer. It has also become clear, however, that the involvement of the National People's Congress should be minimized and in fact avoided if at all possible. To avoid a repeat of the same heated acrimonious debate every few years would require that we identify the underlying issues and tackle them in a timely and orderly manner.

33. While the Chamber would not be drawn into the debate over the date for universal suffrage, it appears that the demand in Hong Kong for early universal suffrage is growing daily, and 2012 may represent a target date in the mind of many. This political reality must be acknowledged, and it would be foolish for us not to begin at once to understand and tackle the full range of the issues related to universal suffrage.

34. Whatever the ultimate target date, there would be much merit in having a timetable towards full democracy, to focus minds and to chart the way forward more clearly.

Such a timetable should be available before 2007, the end of the term of the present Chief Executive.

35. From both the Chamber's earlier submission and the government Task Force's Second Report, the underlying theme in constitutional development is that of strengthening the political structure. This involves two major sets of issues, namely, institution building and effective governance. The issues are wide-ranging, with some of them being of a structural nature while others are more substantive. A simple conceptual framework of the issues is as follows:

Strengthening the political structure

	<i>Structural issues</i>	<i>Substantive issues</i>
<i>Institution building</i>	Political party development	Political culture, Mainland relationship
<i>Governance</i>	Executive-led government	Public finance, policy formulation

Institution building

36. As Asia's World City, Hong Kong appears to be ready for democracy, except that—upon closer examination—some important political institutions that are common to other functioning democracies are actually missing here. There should thus be an effort to build the institutional capacity for full democracy, especially as the popular movement in advocating early direct elections is likely to grow in strength. And if we have not prepared the system for universal suffrage when it comes, Hong Kong will be the loser.

Structural issues: political party development

37. A necessary component in any democracy around the world is the development of fully-fledged party politics. In the case of Hong Kong, political parties still take time to mature. Generally, they are too personality-based, some of them are not inclusive, others are "one issue" parties, and none has produced a credible manifesto to govern Hong Kong.

38. Political parties encourage like-minded people to exchange views, debate policies, compromise positions, and thrash out priority issues before these are articulated into policy proposals to be put forward to the wider community. Hence they are able to

cater to much broader interests than current functional constituencies can represent. Politicians will be able to present themselves to voters as representing a specific set of policy choices. By creating a base of support for policy positions, they contribute positively to a working relation between the legislative and executive branches.

39. Over time, we need to develop a system that will allow the rise of a party, or coalition of parties, that could successfully take up the reins of power, co-existing with a loyal opposition or shadow cabinet. The lack of such cohesion today curtails our ability to grow politically, and it is a shortcoming that we need to address if we are to move toward greater direct election of our leaders.

40. Besides political parties, the intellectual support system – non-governmental think-tanks or public policy research institutes – are no less important. These institutions provide politicians with intellectual breadth and depth to complex policy issues, thus helping the development of coherent government policies. Developing such think tanks in Hong Kong should be a priority as we move toward more participatory governance.

Substantive issues

41. Besides political parties and policy think-tanks, the political structure should be supported by “soft institutions” including a mature political culture and a positive and constructive constitutional relationship with the Sovereign.

42. In recent years the political culture was being nurtured, unintentionally, by the increasing number of public rallies and demonstrations. A more in-depth and positive way to reinforce civic education on political participation is now needed. In particular, much more work should be done on enhancing the understanding of the public, especially the younger population, on the concept of “One Country, Two Systems”. This concept appears fuzzy to many and could mean different things to different people. While we cherish the “Two Systems”, there is no doubt that how the Sovereign thinks in Beijing is of essential importance to every Hong Kong citizen.

43. Our understanding of the Basic Law and its Annexes has led us to conclude that the political system in Hong Kong must be developed in a way acceptable to the Central People’s Government, within the principle of “One Country, Two Systems”. This does not mean that the Central Government’s blessing has to be obtained every step of

the way, but better communication and mutual understanding with the Sovereign will surely make for a smoother passage towards full democracy. For example, one possible option that may be more comforting to Beijing could be the proposal to turn the Election Committee into a nomination committee for a few CE candidates to be directly elected by the entire population.

44. Moreover, we must recognise that Beijing has its own sensitivities and wider national considerations. Hence political development in Hong Kong should be developed in a way that reflects well on both the SAR and the nation – a “win-win” – rather than a contest of conflicting interests from both sides. The establishment of a good working relationship with the Mainland over constitutional development will thus be a priority that needs to be addressed. Towards that end, the official channel of communication between the two sides should be strengthened, as should communication between the Mainland and the Hong Kong public over political and constitutional issues. One way to facilitate that would be to create a non-governmental, multi-sectoral forum comprising politicians, the business sector and the community, to foster constant dialogue with our Mainland counterparts.

Governance

45. The ultimate aim of constitutional development is effective government. Besides universal suffrage in electing the Chief Executive and the Legislative Council, the Basic Law has mandated that the SAR be run by an “Executive-led” government. In developing our constitutional structure, therefore, the challenge is for us to establish a constructive working relationship between the Legislature and the Executive, so as to enable effective governance and administration of the affairs of government in the SAR.

Structural issue: LegCo and ExCo

46. There have been considerable misgivings about the SAR government’s performance in recent years, but the Legislative Council has also got its fair share of criticism. It is fair to say that the relationship between the two has been less than desirable, with the result that both have been getting poor ratings from the public, who are the ultimate losers.

47. A primary objective in constitutional development should thus be to reform the relationship between LegCo and the Executive branch. Instead of a confrontational

relationship, there must be more communication more frequently between the Administration and different political affiliations. The key is to create a constructive dialogue under a more cooperative atmosphere. There must be a genuine belief that more cooperation between LegCo and the Administration will produce better policies and hence improve governance.

48. Priority should be given to devising structures that will include LegCo members in key decision-making processes, giving them a sense of "ownership". While the appointment of politicians of major parties to the Executive Council should continue to be upheld, the workings of the Principal Officials Accountability System should be re-examined with a view to strengthening its relationship with LegCo. Involvement of political parties in other major advisory bodies should also be expanded in a more logical, coherent and inclusive manner.

49. The wider issue is that of the relationship of the Legislature to other institutions in the political and administrative structure, ExCo and the advisory bodies being two of them. One possible development, for instance, would be to retain the functional constituencies in the wider political structure, even as we move towards full direct elections for the Legislature. Thus it is conceivable to develop a bicameral model akin to the two Houses in the UK system, with the functional constituencies providing check-and-balance to LegCo which is returned through universal suffrage. This and other options will, obviously, need to be further studied.

Substantive issue: public finance

50. Many practical problems in governing Hong Kong have emerged during the course of the last few years, not least reflected in the massive July 1 demonstrations in 2003 and 2004. Each sector may have its own concerns, and for the business sector, one of the most pressing needs, in terms of effective governance, is to restore fiscal health and rebalance our public finances.

51. The Chamber is a long-time champion of the user-pay principle for public services. Translated in public finance terms, this means the community must financially experience the link between revenues and expenditure. This will help in the evolution towards a more representative government – people who pay taxes have a vested interest in who represents them, how government performs, and most particularly in how it spends money. When our community better understands that each dollar spent

represents a dollar collected from society, revenue and expenditure priorities will be put into sharper focus thus enabling a better balance to be achieved. Thus, we find a strong link between our deep concern over the extraordinarily narrow tax base and popular expectations of a greater say in future policy.

52. By broadening the tax base we will take a major step toward ensuring that future leaders act responsibly in determining spending priorities. As we have seen elsewhere, taxpayers demand that elected representatives make the best possible use of public funds, and call to account those who do not. We now have the prospect of developing more politically – and fiscally – responsible citizens. Just as selecting leaders is a community responsibility, so too is paying for public services.

53. As the constitutional development process takes its course, we ought to start work at the same time on broadening our tax base and on reinforcing the message of fiscal responsibility. To have too few people paying taxes is not conducive to a properly working democracy. This is why the Chamber supports the Financial Secretary's current study of the feasibility of a Goods and Services Tax as one way to broaden the tax base.

Conclusion

54. In the foregoing paragraphs, we have outlined a number of issues which should be considered in developing the HKSAR's new political structure. We have emphasized that besides the immediate task in deciding on the methods of electing the Chief Executive and the Legislature in 2007 and 2008, more basic work in strengthening the political structure and building political institutions must be undertaken as a matter of urgency. That would be a complex task involving many questions and issues for which we are not able to provide answers in this submission other than naming the pertinent factors for consideration. However, we do want to conclude with a few recommendations on the way forward.

55. *First*, the community's strong aspiration for full direct elections should be recognized as a political reality which must be contended with. What this means is that the SAR should move towards some form of full direct elections as soon as practicable after 2007/08. In this connection, the Chamber recommends that the Government make a commitment to conduct a serious study of the feasibility of introducing universal suffrage at an early date, and start erecting the underlying

structures to get ready. It should also begin work on preparing a timetable towards full democracy, which should be available by 2007.

56. *Secondly*, we support the idea of conducting a neutral, non-partisan academic study on political systems and options for constitutional development, drawing on the experience of jurisdictions with similarities to Hong Kong. This study should be undertaken as a joint venture between the Central Policy Unit and the community, including the business sector. Besides a desk study, the opportunity should be taken to gather views of different sectors of the community on various models for constitutional development. In particular, we would be interested in addressing issues of interest to the business sector, such as

- What the business sector would need to do to ensure that under universal suffrage, their interests will continue to be adequately represented in the Legislature—especially given the likelihood that there would no longer be any functional constituencies in LegCo under full direct elections;
- Experience of business sector involvement in politics in other jurisdictions, and the check-and-balance mechanisms of political systems elsewhere.

57. *Our third suggestion* is to propose that the government undertake a “road-map approach” in pursuing constitutional development beyond 2007/08. Hong Kong needs a gradual and steady process that lays out the key milestones for constitutional development well beyond the next two elections. Such a road-map is essential for establishing a timetable. The milestones should reflect important pre-requisites for democratic development, which should include the following:

- i. Maturity of political parties. Possible indications could include, in the 07/08 elections:
 - a. contested election in every constituency; and
 - b. the availability of well articulated political party manifestoes
- ii. A regulatory framework for political parties
- iii. Sufficient representation of the business sector in the political structure, to ensure balanced representation in the Legislature, following the removal of functional constituencies;
- iv. A network of thriving policy think tanks;

- v. Establishment of a joint-liaison mechanism on the Basic Law;
- vi. A system of appointment to advisory bodies that embraces balanced representation of political parties;
- vii. A solution to the systemic problem of balancing the Budget;
- viii. Emergence of an improved model of governance, e.g. evidence of a structural linkage between policy objectives of the Executive Branch and political manifestoes of major parties.

58. There is a lot of work for us to do, so the Chamber would call on the government, the business sector, political parties and the community to work positively and constructively on paving the road to early universal suffrage and a democratic political system that matches our world class economic system.

* * *