



16 September 2004

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

Dear Donald,

We enclose herewith a BPF submission which consists of the following papers in response to the Third Report of the Constitutional Development Task Force:

- (i) The Election of the Chief Executive – a point-by-point answer to the questions posted in the Report; and
- (ii) The Legislative Council – a general paper on various elements of the Legislative Council.

We would welcome the opportunity to meet and explain our proposals with the Task Force. In the meantime, should you require further information, please do not hesitate to contact me or Ms Connie Hui, Secretary General of BPF (tel: ; fax: ; email: ).

Yours sincerely,

(Signed)

David Akers-Jones  
 President

(Signed)

Peter H Y Wong  
 Chairman



**BPF Response**

**The Third Report of Constitutional Development Task Force**

**The Election of the Chief Executive**

**Introduction**

The following paragraphs provide BPF's response to the questions asked in the Third Report (the Report) of the Constitutional Development Task Force.

**Areas which may be considered for amendment for the election of the Chief Executive:**

*para 2.12* Annex I of the Basic Law provides that the Election Committee shall be composed of 800 members drawn from four sectors of 200 each.

It is probably true that

- if by their votes the 800 members fully represent the subsectors which are intended to include comprehensively the whole of the community and
- if the election rules are fair, open and democratic

then the 800 strong Election Committee can be relied upon to elect a candidate for the post of Chief Executive who properly represents the majority view of the Committee and the subsectors they in turn represent.

However, there is a public perception that a larger electoral college would be more likely to produce a candidate who would more fully represent a popular choice. And if a cap could be put on the nominations each candidate may receive, which this response will discuss in more detail in para 2.15, it would enable more candidates to come forward. For this reason it is difficult to sustain an argument for not increasing the size of the Election Committee to 1,200 or even 1,600.

*para 2.14a* The existing four sectors of the Election Committee are a comprehensive description of the entire Hong Kong community and the BPF would see no need to change, either to increase, decrease or alter the number of sectors. The BPF suspects that few commentators have bothered to acquaint themselves with the facts.



- para 2.14b* The BPF would also see no merit in judging whether one particular sector should be given more weighting than any other and supports the retention of four equal sectors of 200 or equal shares of an increased total number.
- para 2.14c* With regard to the representativeness of particular sectors, the BPF would support a careful reexamination of the subsectoral components of each sector to reveal whether each component, for example shipping, aviation and operation of the port, should be more fully represented than at present. Thus a careful and thorough scrutiny of the representativeness of each sector could identify improvements to be made.
- para 2.14d* With regard to the allocation of members to each subsector, it is noted that in the Religious subsector, Muslims and Taoists were given less weighting than the other religious beliefs. It would be possible to apply this sort of correction to other subsectors but there would seem no particular reason for this fine tuning which would be based inevitably on empiricism and personal preference and dislikes unless there are glaring inequalities. However, if additional subsectors are introduced, then the allocation of the number of votes to each subsector will need to change appropriately.
- para 2.15* To improve the fairness of the nomination process and to eliminate frivolous candidates, BPF believes that if the size of the Election Committee is retained there should be a minimum as well as a cap on the number of nominations each candidate may receive at 25% of all nominations. This will help generate a healthy competition in the election process.
- If the Election Committee is enlarged, the percentage on the number of nominations to be received by each candidate should be reviewed.
- para 2.17* Careful consideration needs to be given to enhancing the representativeness of the Election Committee. It seems strange that there is such wide variance in the number of registered voters in the various subsectors, e.g. Education with 58,000 voters but Labour



represented by unions through merely 454 eligible registered voters. While not suggesting that each individual worker should be given the vote, the number of unions registered is small and the number of votes for each union could be enlarged.

Presumably when devised allocations were based upon research but it would be no difficult task to improve voter participation in various subsectors and, by providing greater participation, for the Election Committee to be seen to be more fully representative and credible. Nevertheless to embark upon this task would involve access to information as to how the present numbers were arrived at which is not yet available.

Another area for careful thought is why there has been such wide variation in the number of eligible voters who have voted in the elections representing various constituencies and how eligible voters could be encouraged to come forward and exercise their right and responsibility.

~ End ~

(9 September, 2004)



**BPF Response**

**The Third Report of Constitutional Development Task Force**

**Legislative Council**

**I. Work Load**

1. The Legislative Council (LegCo) of the HKSAR had 60 Members, with 24 Members returned by geographical constituencies (GCs) through direct elections, 30 by functional constituencies (FCs), and 6 by an Election Committee (EC) comprising 800 elected representatives of the community. This composition will evolve into 30 Members by GCs and 30 by FCs, starting September 2004.
2. LegCo, being a major component of the governance of Hong Kong, exercises a range of functions and powers. Through a system of committees, Members of LegCo perform the important functions of scrutinizing bills, controlling public expenditure and monitoring Government's performance. There are three standing committees under the Council, namely Finance Committee, Public Accounts Committee and the Committee on Members' Interests. Bills Committees are formed, by the House Committee, as the need arises, to study legislative proposals. Besides there are also 18 Panels under the Council which receive regular briefings from Government officials and examine the effectiveness of Government policies and measures.
3. Recent statistics have shown that on average each Member sat on a number of Panels, some on as many as 8 Panels. In addition, most Members are also serving a number of advisory bodies and statutory institutions which also perform an important function of public duties, sharing part of the role of public administration in Hong Kong. These public institutions range from some sizable organizations with full executive power such as the Hong Kong Housing Authority and the Hong Kong Trade Development Council, which has executive functions of promoting trade and industry, to smaller sized committees advising Government on respective policies.
4. There is no statutory requirement for Members of LegCo to serve the Council on a full-time career basis. Though some have chosen to do so, there is no clear preference



for that path by the majority. Most serve on a part-time basis: some consider their role in the Council as an honorary position and a service to the community rather than a career or an occupation. This is more obvious amongst the FC Members who are elected from within their own trades or professions and by the members of their organizations and associations. And, rightly so, to be able to represent the interests of their respective constituencies, these FC Members should have good knowledge of the development of their professions. They are elected largely due to their track record and specialist expertise in their respective industries rather than political or ideological inclination. Therefore, it is not uncommon that many of the FC Members are politically independent without direct party affiliation and are professionals by practice with low interest in ideological issues.

5. This group of FC representatives is typical of Hong Kong's middle-class which accounts for a significant portion of Hong Kong's workforce and should not be ignored. Their representation in the Council not only reflects the diverse interests of the wide variety of professions, trades and businesses in Hong Kong but also serves to some extent to balance political voices in the Council. Their participation in public governance is of importance for the general well-being of the political development of Hong Kong. Despite this, it is said that some functional councillors do not always take an interest in the work of the Council outside their professional interests. The system therefore has its imperfections.
6. Putting these considerations on one side, there is a general question as to whether the amount of work to be undertaken by Members is excessive. Members are involved in a number of Panels of the Council. The increasing number of select committees arising from the needs for investigation into particular issues of public interest adds pressure on Members' time and attention through lengthy and intensive process. The pressure is exacerbated by the additional number of public services and Government advisory committees undertaken outside the Council. The participation of the middle-class and professionals in public affairs in as wide a spectrum as possible, is to be encouraged but it raises the practical issue as to whether the level of personal and professional attention Members can put in the Council matters is sufficient and the quality of their input is good or not. Many have said in public that their time and



attention has been stretched too thin and too wide: this puts the efficiency of public administration at stake.

7. Meanwhile public involvement and debates of policy issues is a trend and will continue to rise in intensity and frequency in an open society; and the increasing number of public discussions on bills and policies puts an additional demand not only on Government but the Members as well.
8. From the foregoing, it is clear that there is one fundamental problem, namely, the workload of the Council Member has increased in response to the rising public demand for higher transparency and performance of the public governance and raises the important question of the size of the Council.

## II. Proposed Improvements

9. To improve the workload situation and ensure quality performance by Members, the following proposals should be considered seriously and looked at in entirety:
  - (i) Increase the size of the Council from 60 Members to 80 with balanced representation of both FC and GC Members. This would help not only to ensure adequate attention to Council matters but also will enhance the professional contribution and performance of each Member.
  - (ii) While GC Members are directly elected by constituencies based on geographic and population distribution, the FCs who represent professional and business interests should have their representation more clearly defined by the sectors of professions and business. Many FCs represent a number of professions, the interests of which are not necessarily generically similar or related. Occasionally, they are conflicting. A case in point is the present "recreational" constituency which represents sport, performing arts, culture and publication. This constituency can be split to advantage into two or even three representatives.



- (iii) Members could also be artificially restrained in the number of panels undertaken in the Council and participation in public bodies outside the Council but this could be arbitrary and unworkable.
- (iv) Ideally all Council Members should be elected to serve on a full-time basis so as to ensure full attention to matters that are brought before them. Such, a full-time commitment would also warrant adequate remuneration, which at the moment is lagging behind the market for the same kind of talent with the same amount of leadership and specialist expertise. Whether Members become full time or not, to encourage senior and high quality professionals to serve the Council, the question of an improved remuneration to provide additional incentive must be reviewed.

10. These changes should be looked at in entirety with a view to improving the quality of public governance and balanced participation in the long-term interest. They cannot be achieved without a general support of the populace, the HKSAR Government and the Central Government. Annex II of the Basic Law, stipulates "with regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two-thirds majority of all the Members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for the record." These necessary statutory procedures must be undertaken before the Basic Law can be amended to increase the size of the Council.

### III. Questions for Consideration

11. Since an increase in the number of Members of the Legislative Council from the present 60 stipulated in the Basic Law will require a government motion passed on a two thirds majority of the Legislative Council, it should be noted that a two thirds majority may be difficult to achieve.





12. The Basic Law states that it is the intention that the whole Council shall be elected by universal suffrage. If therefore FCs are to be phased out then it would seem somewhat contradictory to increase their number and to improve their representativeness at a time when political figures of various political persuasions are advocating their removal as early as 2012. Nevertheless the need to make improvements is paramount.
13. Criticisms have been made that FC Members are not always interested in the broader issues before the Council and as a result may not be in attendance when other important issues are being discussed.
14. The question of the size of the Legislative Council raises therefore conflicting and sometimes contradictory issues.

#### IV. The BPF View

15. The BPF holds strongly to the view that the functional representatives which create a useful check and balance and stable element in the system should remain as an essential component for the present until such time as a political party has been formed that will represent more specifically the economic and social interests in the community. In the meanwhile the necessary changes should be put in hand to increase the size of the Council and to improve the representativeness of individual FC Members by a careful review of the means by which they are elected and so forth.

#### The directly elected half

16. The Consultation Document makes no mention of reviewing the functioning of the present system of election for the directly elected components of the Legislature, and yet this is perhaps the most important area requiring review and has an important bearing on the foregoing whose aim is to improve governance and representativeness. There is no prohibition on the inclusion of this question.
17. When the List System was introduced there were numerous objections to it. There can be no doubt from the way the candidates have manoeuvred within the system in 2004 that the List System leaves much to be desired. The public has become confused as to how the system is working for their benefit and there is a growing feeling that



members of the community wish to elect a representative with whom they can identify and to whom they could take their troubles and representations. The BPF believes that a return to single or two member constituencies would serve Hong Kong better and that the electoral system should be revisited.

18. The BPF does not accept the view that having decided on the present List System when political change and development was in an embryonic stage should preclude reconsideration of this vital question in the light of experience in the previous and present elections. Far from improving balanced representation in the directly elected seats on the Legislative Council, the List System has shown how it can operate to exclude and prevent the election of candidates whose clear merit to be included in the election process has been eliminated.

~ End ~

(9 September, 2004)