

27 September 2004

By hand and by e-mail

The Hon Elsie Leung, GBM, JP
Secretary for Justice
Department of Justice
The Government of the Hong Kong SAR
4th Floor, High Block
Queensway Government Offices
66 Queensway
Hong Kong

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Dear Madam Secretary

**Proposed New Functional Constituency
for Legislative Council Elections in 2008**

The Salaries Taxpayers Functional Constituency

Thank you very much for spending time listening to my view last week. I found our discussion most interesting and stimulating.

I wish to reiterate my strong recommendation that the Government of the Hong Kong Special Administrative Region consider establishing a functional constituency for all salaries taxpayers, returning a very small number of new Legislative Council seats, in 2008. The voting right for each elector in the proposed "Salaries Taxpayers" functional constituency is to be proportionate to the actual aggregate salaries tax payments made by the elector during the first ten years of the existence of the Hong Kong Special Administration Region – that is the period from 1 July 1997 to 30 June 2007 ("Ten-Year Qualifying Period").

Enclosed for your ease of reference is an extra copy of a formal 18-page submission ("Original Submission") setting out details of my proposal ("Proposal"), the original copy of which was sent to the Constitutional Development Task Force on 8 June 2004. This letter is supplemental to, and should be read in conjunction with, the Original Submission. Definitions used in the Original Submission apply in this letter.

The rationale for implementing the Proposal in 2008 is compelling, and may be summarised as follows.

Giving the middle class fair representation on the legislature

The middle class in Hong Kong, bearing some 80% of Hong Kong's salaries tax burden, are key contributors to public sector finance and backbone of the economy. Their under-representation on the Legislative Council, increasingly dominated by populist politicians appealing only the grass-root, constitutes a gross injustice and is potentially socially and fiscally destabilising. Implementation of the Proposal will represent a small but significant first step in the process of correcting this inequity. Not only will this move bring a degree of fairness to our existing electoral system badly skewed against our middle class (the great majority of whom do not belong to any one of the recognised professions and therefore are not represented in any functional constituencies), the resultant increase in political representation will also over time enhance the commitment on the part of these wealth producers to Hong Kong.

I am very confident that the Proposal, if properly presented as an exercise promoting fair treatment for our middle class who increasingly demand proper representation of their views and interests, will have widespread support in the local community and in the print media.

Superior form of democratic capitalism institutionalising fiscal prudence

The principal flaw of the primitive one-man-one-vote electoral system commonly seen in parliaments or legislatures in developed Western democracies is that in most policy matters their members instinctively focus on representing the electorate only as consumers of public sector resources, subconsciously and sometimes even deliberately ignoring the

many ordinary people whose tax payments finance the operation of government – people who are in effect contributors of public sector resources. Politicians and government agencies in the West are not well known for cost-efficiency or for securing good value for money for the taxpayers. The result of this flaw is an almost institutionalised lack of fiscal discipline, under-funded pension schemes, uncontrollable recurrent public expenditure and excessive and unsustainable levels of government debt, as evidenced in many Western countries. These problems tend to recur and, unless curbed in a timely manner, almost invariably lead to drastic and painful economic adjustments and occasionally even threaten financial, social and political stability. In the course of the twenty-first century, many sizeable developed economies in the West will be severely troubled again by these problems, some of which may be crippling. For a tiny open economy like Hong Kong's, such problems could prove ruinous.

A legislature comprising members representing both contributors and consumers of public sector resources would achieve a much better balance, and would clearly be a more logical and fiscally prudent form of government than one deriving its mandate only from one-man-one-vote elections. If one were to design a system of democratic government completely from scratch today with a specific view to complement and support a modern capitalist society, a balanced legislature would surely be the result.

Gradual and orderly progress

It is recognised that the small number of Legislative Councillors representing the proposed new Salaries Taxpayers functional constituency from 2008 onwards envisaged under the Proposal will, in themselves, be insufficient in number to achieve the ultimate and worthy objective of balanced participation by different sectors of society (均衡參與). The introduction of the new Salaries Taxpayers functional constituency will nonetheless be a start. Irrespective of the merits of any new electoral system, a gradual phased approach is preferred because the Hong Kong Special Administrative Region, and perhaps even the People's Republic of China, can ill afford to take unnecessary risks in the maintenance of stability, which must be the overriding paramount political objective at this stage of development of our respective political and economic systems. Observing the important principle of “gradual and orderly progress (循序漸進)” and adopting a step-by-step approach to constitutional development is surely the right thing to do both for Hong

Kong and for our country. Gradually over the next decade or two, I hope that the existing Legislative Council seats returned by current functional constituencies based narrowly on selected professions, trade unions and business groups will be largely replaced by seats returned by the Salaries Taxpayers functional constituency.

Sound and fair basis for voting right determination

Under the Proposal, virtually all salaries taxpayers in Hong Kong will qualify as electors in the Salaries Taxpayers functional constituency. That means most families in Hong Kong will have at least one family member who qualifies to vote as a functional constituency elector in 2008. Details of the Proposal are set out in the Original Submission. In summary, under a proposed "Unit Voting System", every \$10,000 (or part thereof) per annum of average salaries tax paid during the Ten-Year Qualifying Period will entitle an elector to one voting unit. The number of voting units for each elector is capped at 100 to avoid a small number of very well paid heavy taxpayers having undue influence on election outcomes.

Actual historical tax payments are a matter of fact and official record rarely in dispute. While not perfect (as people do contribute to the society in many different ways, and not just in terms of money), it is nonetheless a very sound, simple, fair and practical basis for estimating a person's economic contribution to the society and for voting right determination.

Also, the "rolling ten-year qualifying period" envisaged for future Salaries Taxpayers functional constituency elections (described in detail in the Original Submission) will enable younger generations of emerging middle class people to replace retiring generations over time, ensuring political influence for the most economically active Hong Kong residents at all times and injecting a youthful dynamism into our political system, without in any way putting at risk stability and institutional continuity.

A fair system for all

Notwithstanding my anticipation for strong public support for the Proposal, it will perhaps inevitably be subject to attack by some populist politicians as an unfair system further disadvantaging the economically challenged members of our community. Nothing could be further from the truth.

One of the most attractive features of Hong Kong's capitalist system is significant social mobility. Many of our business and community leaders today came from humble background. Hong Kong is a city where talents, incessant hard work, and sometimes a little good fortune, will reap handsome rewards. So long as this system of social mobility survives and everybody, particularly each of our young men and women, has a fair chance of attaining economic success irrespective of family background, I can see nothing unfair inherent in an electoral system based on taxation or economic contribution.

The above having said, however, there will always be the less fortunate in our community and those with little or no income for various reasons (for example, retirement or long term illness or even plain idleness), who still have every right to be heard. In spite of the clear theoretical and practical superiority of a salaries tax-based electoral regime, I am not advocating the complete replacement of the traditional one-man-one-vote direct election system based on geographical constituencies by the salaries tax-based Unit Voting System. The proposed Salaries Taxpayer functional constituency is intended to replace only Hong Kong's existing functional constituencies based narrowly on selected professions, trade unions and business sectors. Complete replacement of the one-man-one-vote system based on geographical constituencies would deprive the most disadvantaged social groups in the community of proper representation within the political hierarchy, which would clearly be unjust and immoral; it would also be destabilising and, therefore, foolish. That is not the proposition here. Instead, I am advocating a healthy and dynamic political system where a traditional one-man-one-vote regime based on geographical constituencies exists side-by-side, in parallel with and in complement to, a salaries tax-based electoral system.

What might actually be considered "unfair" is in fact the existing narrowly-based functional constituency arrangement which, while certainly pragmatically useful in the past, is somewhat arbitrary and deficient in theoretical justification. This system is also increasingly regarded by the general public as elitist, opaque, subjective and unrepresentative. An eventual replacement of these profession-, trade union- and business-based functional constituencies by the Salary Taxpayers functional constituency will correct this flaw in our existing political system.

Use of latest technology

In the Original Submission made in June, I envisaged the use of latest information and optical technologies to facilitate fast and accurate counting of voting units under the Unit Voting System. Events surrounding the Legislative Council elections on 12 September 2004 made the investments in and use of these technologies all the more necessary and urgent.

I must emphasise that I am not referring to state-of-the-art untried emerging technologies. The technical capabilities for accomplishing the tasks have been in wide commercial existence for more than a decade and are tried and tested in numerous elections in overseas countries as well as in business applications in the banking, security and gaming industries (including but not limited to the Hong Kong Jockey Club). These technologies and their implementation programmes are commercially available and may be purchased. Elections of flawless integrity and the perception thereof are vital for legitimacy. The Government must start making the necessary investment immediately and have the system repeatedly tried and heavily and comprehensively stress-tested ahead of 2008.

As with many things in life (including disputed elections in other countries), what lets down perfectly conceived ideas and carefully formulated rules is often the quality of execution at the operational level on the ground. Elections in general and for the Salaries Taxpayers functional constituency in particular, because of its slightly more complicated voting arrangement, must be managed by directorate civil servants with a reputation for and proven track record of demanding perfection from themselves and also from all who work with them. I believe there must be quite a number of such capable senior civil servants

in Hong Kong. The Government must make full use of these execution talents within the Civil Service in 2008.

Perfect political complement to Hong Kong's unique brand of pure capitalism under a simple regime of low taxation

One of the key elements underpinning Hong Kong's prosperity over the past decades is its unique brand of capitalism in its freest and purest form known to mankind, which is supported by a robust legal system and financed by a simple regime of low taxation with minimal abuse. These advantages must be preserved and enhanced going forward if Hong Kong is to stand a chance of winning in an increasingly competitive world. Legislators deriving their mandates from and only from the taxpayers are unlikely to be sympathetic to any attempts from a future Administration or populist politicians to increase taxes, raise social welfare payment levels or expand the public sector. Implementation of the Proposal will therefore contribute towards keeping government small and taxes low, which conditions history has repeatedly shown to favour sustainable long term economic growth for the benefit of all segments of society – not just the middle class and the elite. A system of balanced legislative representation is therefore ideal for the Hong Kong Special Administrative Region.

Making History

We, the people of Hong Kong, now have in front of us a historic opportunity to develop a political system which is not only tailor-made for ourselves and complementary to the economic and social development in the Mainland, but which more importantly also advances democratic capitalism for mankind.

We could do so by retaining our capitalist system and way of life, as stipulated by the Basic Law, and by taking care to avoid a major flaw in the one-man-one-vote type democratic system as generally practiced in the West. We must develop Hong Kong's own political institutions to support and safeguard our capitalist way of life in the long term by ensuring and institutionalising a proper balance in representation between the consumers and contributors of public sector resources.

Implementation of the Proposal in 2008 – even with no more than one new Legislative Council seat returned by 1.2 million taxpayers in the newly-established Salaries Taxpayers functional constituency – will be a crucial first step in this process.

In attempting to develop its own superior model of democratic capitalism while maintaining internal stability, Hong Kong is blessed with the dual advantages of (a) the support of an increasingly prosperous and powerful People's Republic of China, and (b) provisions in the Basic Law specifically allowing for a gradual metamorphosis of our political institutions over time. Those who advocate an immediate advance towards a simplistic one-man-one-vote system for our entire legislature therefore err in at least two respects: they want Hong Kong to copy blindly from the West a flawed, out-of-date political model increasingly haunting the West itself; they also in their inexplicable foolish haste wish to give up the luxury of growing our political institutions gradually over time to fit our evolving economic system as provided for under the Basic Law.

Instead of copying from the West, we in Hong Kong are fortunate in that we have a real opportunity of developing over the coming decades our own superior, modern form of democratic capitalism, with institutionalised fiscal prudence and fair political balance between consumers and contributors of public sector resources. I am of the view that this improved model of democratic capitalism of ours could in time become the envy of the middle class and businessmen in all capitalist economies around the world. For ourselves and our children, we must seize this unique opportunity in front of us.

Implementation of the Proposal in 2008, on however small a scale, is of critical importance to this endeavour.

I may be reached during office hours on _____ should you require any further clarifications of the content in this letter or ideas set out in my Original Submission.

Yours truly,

(Signed)

Chester Kwok

Enclosure : Copy of the 18-page Original Submission

cc The Hon Donald Tsang, GBM, JP
 Chief Secretary for Administration
 The Government of the Hong Kong SAR

Ms Julina Chan
Principal Assistant Secretary for Constitutional Affairs
The Government of the Hong Kong SAR
(without enclosure)