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Dear Secretariat, Constitutional Development Task Force,

I would like to submit my proposal. Please kindly consider it for the sake of the future of our home city Hong Kong and the people.

May God richly bless your work, our home city Hong Kong and the people.

Best regards, Renwill Yang

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A Proposal

for Selecting the Chief Executive in 2007

and for Forming the Legislative Council in 2008

Ву

Renwill Yang [·

]

September 2004

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EXECUTIVE SUMMARY

This paper recommends the following changes.

A Chief Executive Candidate Nomination

Each Election Committee member may nominate at most two candidates. A Chief Executive candidate must get at least 100 or 12.5% but not 200 or 25% of the Election Committee (whichever is less) nominations. To ensure sufficient representation in the nomination, the Chief Executive must also get at least 20 nominations or 2.5% of the Election Committee from each of the four sectors whichever is less.

This is to prevent an influential candidate from exploiting the open ballot nature of the nomination to prevent other candidates from being nominated.

B Choosing the Chief Executive

A voting committee would be formed. It consists of both the Election Committee members and 15,200 registered voters randomly from the registered voter list. This voting committee would select the Chief Executive on a one-vote-one-member. The candidate receiving the most votes will be elected.

This is to ensure the representative-ness of the voting committee. The randomly selected voters will represent the 95% in society that the Election Committee cannot effectively represent (19 times 800 equals to 15,200).

C Central Policy Unit

There will be sections under the Central Policy Unit whereby legislators may join to get funding and resource in performing policy research. This encourages more public policy research, improves the maturity of political groups and improves the complementary relationship between the executive authorities and the legislators.

D Relaxing the Political Affiliation Restriction of the Chief Executive

A Chief Executive candidate may be affiliated with a political party. The original restriction is arbitrary as our country's president is also affiliated with the Communist Party.

E Provisions Regarding Nationality of Legislators

Both geographical and functional constituencies are allowed to have legislators with permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries. The total number of such legislators

will not exceed 20% abiding by Article 67 of Basic Law. Where there is a potential violation of the article 67, the voters are allowed to rank their preference of these "international permanent resident (PR) candidates". Those international PR candidates (exceeding the 20% rule) who would otherwise be elected would be eliminated and substituted. No adjustments will have to be made if the total number of elected international PR legislators is less than 20%.

If both geographical and functional constituencies have more than 10% of international PR candidates who would otherwise be elected, a quota of 10% is assigned to the geographical constituencies and a quota of 10% will likewise be assigned to the functional constituencies. If the geographical constituencies has x% of international PR candidates elected where x is less than 10, the quota of international PR candidates for functional constituencies is set to be (20-x)%. Similar arrangement would be made if the functional constituencies has x% of international PR candidates elected where x is less than 10.

The non-international PR candidate that is next-in-tier in the number of votes obtained will substitute the eliminated international PR candidate.

This eliminates the artificial constraint that only 12 functional constituencies may have legislators with permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries.

F Changing Election Mechanism of the Legislative Council

There will be a new constituency called "Others". The number of the "Others" electors would be the same as the sum of all normal geographical constituencies. They will be randomly selected from the registered voter list. The electors for each functional constituency will nominate up to two candidates for their constituency with the exception of "Labour" and "Others". The electors of Labour may nominate up to six candidates which those of "Others" may nominate up to ten candidates. Each elector of functional constituencies may cast up to five votes. Those 30 nominated functional constituency candidates out of up to 70 nominations who get the most votes would be elected with the potential nationality adjustment specified by (E) above.

This change prevents automatic election of a candidate if there is only one candidate under a functional constituency. Moreover, it improves the representative-ness of the functional constituencies and more fully enforces the "balanced participation" principle.

One more suggestion (that may not be realistic) is to change Article 71 on the restriction that the Chief Executive must be at least 40 years of age. There seems to be an age discrimination element in this restriction.

1 INTRODUCTION

1.1 Objectives for the Reform

The HKSAR political structure is important for Hong Kong people as it establishes what type of society we have now and the future social structure that will evolve for our future generations. This generation carries the undeniable responsibility to provide a sound HKSAR system for future generations of Hong Kong and our home country.

The questions that we have to ask are as follows:

- 1. What type of society that we want and despise?
- 2. What is the value system that we may base on to develop our society?
- 3. What heritage we want to leave for our future generations?

We want an open and transparent society that encourages progress and development, that accepts criticisms and that celebrates innovations and exchanges of ideas. We want a decent society that each person may develop, contribute and receive the fair portion of rewards for the contributions. We want a fair society where the rule of law works for the people and is upheld without discrimination. We despise all kinds of corruptions, selfishness and hypocrisy expressed via obvious and hidden ways by individuals, special-interest groups and corporations.

We believe that all persons are created <u>equal</u> and should be respected as individuals. No one is an island and each person must be a keeper of his neighbours and carries <u>social</u> <u>responsibilities</u>. The HKSAR political structure must allow each person to equally and fully exercise one's rights and fulfilling one's responsibilities in this regards. Thus, each Hong Kong citizen must be equally well informed, able to voice out, be heard, and given the equal opportunities to participate in the formation of the political and social systems of HKSAR.

We want to leave an open, fair and caring society as our heritage to future generations.

1.2 Incentives of the Reform

The existing system leaves much to be desired. Staying within the narrow perspectives of the current consultation, the following incentives for reform are apparent.

1.2.1. Elected by 800 members representing only 13,323 bodies and 149,922 individuals, the Chief Executive cannot claim that he represents the majority of Hong Kong people. According to the Census Department's statistics [1], there are at least 288,912 establishments in Hong Kong and at least 2,265,036 individuals participating in the various in various industries. The Chief Executive may claim to represent no more than 4.7% establishments and 6.6% working individuals. The main problem may not be on the percentage but that many different types of

- corporations/professionals/industries (and emerging ones) are excluded, introducing severe bias. This violates Article 43 of the Basic Law in spirit if not in form (the Chief Executive ... shall represent the Region).
- 1.2.2. While each of the four sectors may select 200 election committee members, the representative-ness and the number of the voters under each sector vary considerably. For example, the sector of "labour, social services, religious and other sectors" has only 9338 voters while the professions sector has 132961 voters. The principle of "balanced participation" as stipulated in Section 3.05 of The Second Report of the Constitutional Development Task Force is blatantly violated. Moreover, the rigidity of the arrangement will rapidly obsolete in face of social structural changes and economic developments.
- 1.2.3. There is a loophole in the Chief Executive nomination process that violates the spirit of secret ballot. The objective of secret ballot is to allow the Election Committee member to freely vote/nominate without fear from "punishments" for not voting/nominating a particular candidate. The nomination is open and there is no upper bound in the number of nominations. Moreover, one Election Committee member may only nominate one candidate under the Chief Executive Election Ordinance. Thus, an influential candidate may "force" more than 700 Election Committee members to nominate him in subtle ways, effectively preventing other candidates from participating during the voting stage.
- 1.2.4. The current system neither provides any substantial mechanisms for the promotion of political talents nor encourages public policy research. We believe that a reformed screening mechanism for the Chief Executive candidates may kill two birds with one stone.
- 1.2.5. The current Executive-led arrangements provide no incentives or venue for political groups to mature as "they lack an overall governing manifesto and an overview in policy research in different areas" [Section 3.23 of The Second Report of the Constitutional Development Task Force]. We believe there are rooms under Article 55 of Basic Law in the Executive Council appointment system to provide incentives for political groups to mature in the mentioned areas without violating the "Executive-led" principle.
- 1.2.6. There is an element of "age discrimination" in the eligibility to be a Chief Executive in Article 71 of the Basic Law. There is no justification why someone must be at least at the age of 40 years old before s/he is qualified to be a Chief Executive.
- 1.2.7. The current electoral system of functional constituency allows a legislator to be automatically elected if s/he is the only candidate. This arrangement aggravates the problems of governance as mentioned in Section 3.22 of *The Second Report of the Constitutional Development Task Force*. To improve the quality of governance, the system has to be changed to prevent automatically elected

legislators.

- 1.2.8. The current electoral system of functional constituencies is not representative of the business community. The 13036 electoral bodies and 147,266 electoral individuals represent less than 4.5% of corporations and 6.5% of the working population. The main problem may not be on the percentage but that many different types of corporations/professionals/industries (and emerging ones) are excluded, introducing severe bias.
- 1.2.9. The composition of the functional constituencies is very rigid and does not dynamically accommodate emergent social groups or changes in the relative significance of each group to the Hong Kong society.
- 1.2.10. The current electoral system of functional constituencies also violates the principle of "balanced participation". For example, there is one legislator position for the 141 Heung Yee Kuk individual electors. However, the Education sector with 62,546 individual electors may also elect only one single legislator. Each vote of the Heung Yee Kuk elector carries much more weight than the vote of the Education sector.
- 1.2.11. The current mechanism introduced by the Legislative Council Ordinance to satisfy Article 67 on the nationality of the legislator is overly restrictive and discriminate against those who want to be legislators other than the 12 functional constituencies. Moreover, this mechanism cannot easily be extended to accommodate the future all 60 seats are elected by universal suffrage specified in Article 68.
- 1.2.12. Currently, the Chief Executive cannot belong to any political party. This restriction may be overly restrictive as even our country's President belongs to the Communist Party.

1.3 Guiding Principles

It is clear that any proposal must be in line with the principles laid out in the Second Report of the Task Force and the NPCSC Decision [2].

(i) the Central Authorities have constitutional powers and responsibilities to oversee and determine constitutional development in the HKSAR, in order to ensure the implementation of the basic policies of the State regarding Hong Kong. The HKSAR, in examining the direction and pace of its constitutional development, must pay heed to the views of the Central Authorities, and must also confirm with the NPCSC first as to the need for change. In any case, according to the Basic Law, any amendments can only be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the NPCSC for approval or for the record;

- (ii) any proposed amendments must comply with the provisions of the Basic Law. Amendments to the design and principle of the political structure prescribed in the Basic Law must not be lightly contemplated;
- (iii) the appointment of the Chief Executive by the Central Authorities is substantive. No proposed amendments shall affect the substantive power of appointment of the Central Authorities;
- (iv) any proposed amendments must aim at consolidating the executive-led system headed by the Chief Executive and must not deviate from this principle of design. They should aim at perfecting the executive-led system, and should not lead to a deterioration of the co-ordination problem of the current relationship between the executive authorities and the legislature;
- (v) development towards the ultimate aim of universal suffrage must progress in a gradual and orderly manner step by step. The pace should not be too fast. The progress should accord with the actual situation in the HKSAR, in order to preserve its prosperity and stability;
- (vi) when considering the actual situation, public opinions, as well as other factors, including the legal status of the HKSAR, the present stage of constitutional development, economic development, social conditions, the understanding on the part of the public of "One Country, Two Systems" and the Basic Law, public awareness on political participation, the maturity of political talent and political groups, as well as the relationship between the executive authorities and the legislature, must be taken into account;
- (vii) any proposed amendments must enable different sectors of society to be represented in the political structure, and to participate in politics through various channels;
- (viii) any proposed amendments should ensure that consideration would continue to be given to the interests of different sectors of society; and
- (ix) any proposed amendments must not bring about adverse effect on the systems of economy, monetary affairs, public finance and others as prescribed in the Basic Law.
- (x) The election of the third Chief Executive of the HKSAR to be held in the year 2007 shall not be by means of universal suffrage. The election of the Legislative Council of the HKSAR in the fourth term in the year 2008 shall not be by means of an election of all the members by universal suffrage.
- (xi) The ratio between members returned by functional constituencies and members returned by geographical constituencies through direct elections, who shall respectively occupy half of the seats, is to remain unchanged.

- (xii) The procedures for voting on bills and motions in the Legislative Council are to remain unchanged.
- (xiii) Subject to (x), (xi) & (xii) not being contravened, appropriate amendments that conform to the principle of gradual and orderly progress may be made to the specific method for selecting the third Chief Executive of the HKSAR in the year 2007 and the specific method for forming the Legislative Council of the HKSAR in the fourth term in the year 2008 according to the provisions of Articles 45 and 68 of the Hong Kong Basic Law and the provisions of Article 7 of Annex I and Article III of Annex II to the Hong Kong Basic Law.

2 ANALYSIS ON AMENDMENT ALTERNATIVES

2.1 Amendment Options in Selecting the Chief Executive

2.1.1 Nominating (or screening) the Chief Executive Candidates

The following two options aim to close the loophole described in Section 1.2.3.

Option 1

Each Election Committee member may nominate at most two candidates. (Section 16 Part 4 of CHIEF EXECUTIVE ELECTION ORDINANCE should be amended.) A Chief Executive candidate must get 100 nominations or 12.5% of the Election Committee, whichever is less. However, he MUST NOT solicit more nominations once s/he has got 200 or 25% of the Election Committee, whichever is less) nominations.

To ensure sufficient representation in the nomination, the Chief Executive must also get at least 20 nominations or 2.5% of the Election Committee from each of the four sectors whichever is less.

Option 2

The Election Committee would select one topic on an issue that Hong Kong is facing. Each candidate must present his view/policy on the Election Committee topic as well as a self-selected topic. Each Election Committee member will give a rating on the presented topic in secret ballot. The average rating must be greater than 60% before the candidate is nominated.

Pros and Cons

Option 1 is simpler than option 2. However, option 2 encourages policy research and guarantees a certain level of quality of the Chief Executive candidates.

2.1.2 Choosing the Chief Executive – Voting Committee

The following two options deal with the representative-ness issues described in Section 1.2.1 and 1.2.2. Under both options, there would be a separate Voting Committee for selecting the Chief Executive from the candidates. The Voting

Committee would include both the Election Committee and a number of registered voters randomly from the registered voter list.

Option 1

The number of randomly selected voters is 19 times the Election Committee. For an 800-person Election Committee, the number of randomly selected voters is 15,200. They are meant to represent the more than 95% population that cannot be represented by the Election Committee.

Option 2

This option is in line with Option 1 in spirit but would try to contain the cost by limiting the number of randomly selected voters to equal to the Election Committee (i.e., 800 currently). Each vote of the Election Committee member will be multiplied by a weight of 5 which each vote of the randomly selected voter is multiplied by a weight of 95.

Pros and Cons

Option 1 is conceptually simpler while option 2 may be cheaper in implementation.

2.1.3 Organization of the Central Policy Unit

To deal with the issue raised in Section 1.2.4 and 1.2.5 of political talents and policy research, there will be sections under the Central Policy Unit whereby Legco members may join to get funding and resource in performing policy research. As CPU is a consultative organization under Execo, this would not violate the Executive-led premise and would improve the Execo/Legco cooperation.

2.1.4 Eliminating Age Discrimination in Chief Executive Eligibility

It would be nice if Basic Law Article 44 may be amended to eliminate such age discrimination. If this is not possible, we have no choice but to live with it.

2.1.5 Changing the Chief Executive Political Affiliation Restriction

The following options deal with the issue outlined in Section 1.2.12.

Option 1

One suggestion is to simply abandon such restriction.

Option 2

The other suggestion is that a Chief Executive candidate may retain as an affiliated member of a political party but must not be or continue to be the head of a political party once s/he is elected.

Pros and Cons

Option 1 is simpler than option 2. Option 1 seems to be the common practice of some states.

2.2 Amendment Options in Forming the Legislative Council

2.2.1 Provisions Regarding Nationality of Legislators

This change is proposed to deal with the issue mentioned in Section 1.2.11 where more than 20% of the would-be elected candidates are permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries. The following paragraphs will refer such candidates as international PR candidates (where PR stands for permanent resident). There are three cases. The principle behind the proposed change is to respect the choice of the electors as much as possible without violating Article 67 in Basic Law.

To deal with this issue, special handling would only be invoked if there are more than 20% of international PR candidates "with permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries are elected". If there is a possibility that more than 10% functional or more than 10% geographical constituency seats occupied by such persons, each voter for the corresponding functional or geographical constituencies will indicate in his/her ballot which of such international PR candidates s/he prefers. There are three cases.

Case I. Without any special handling, both the geographic constituencies and the functional constituencies may have more than 10% seats allocated to the international PR candidates.

In such a case, both functional and geographical constituencies would allow a maximum of 10% seats to be occupied by the international PR candidates. Only the most popular 10% in the functional/geographical would retain his/her seat. The others are eliminated and substituted by the next-in-tier who is/are not international PR. If one or constituencies are deprived of any seats as a consequence, the seats are distributed in a round robin fashion in the order of the number of voters to other constituencies with remaining non-international PR candidates.

Example for Case I

There are seven geographical constituency international PR candidates and eight functional constituency international PR candidates for a 60-seat legislative council. All geographical voters will choose which six (i.e., 10% of 60) out of the four international PR candidates that they like most. Similarly, all functional voters will choose which six (i.e., 10% of 60) out of the five international PR candidates that they like most.

If all seven geographical constituency international PR candidates win the election in their respective constituency without the special rule, the special rule would kick in and eliminate the least popular geographical constituency international PR candidate. The runner-up who is not an international PR candidate in that geographical constituency would take the seat instead. The runner-up would preferably be the next-in-tier in the same list for geographical election. If there is no next-in-tier substitution in the same list, the next popular list according to the Largest Remainder formula would be used. If all candidates in the geographical constituency are not qualified, the seat will be taken away and be given to the geographical constituency with qualified candidates having the largest number of registered voters.

If all eight functional constituency international PR candidates win the election in their respective constituency without the special rule, the special rule would again be activated. The two least popular international PR candidates would be eliminated.

If Section 2.2.2 option 2 is adopted, they will be replaced by the two next most popular non-international PR functional candidates.

If Section 2.2.2 option 1 is adopted, they will be substituted with the non-international PR runners-up in their respective constituencies. If both substitutions cannot be carried out (e.g., because of lack of qualified candidates), one seat will be given to the functional constituency with available qualified

candidates having the largest number of registered voters while the other seat to the functional constituency with available qualified candidates having the next largest number of registered voters.

Case II. The geographic constituencies has x%, which is less than 10% seats, that would be allocated to the would-be elected candidates of permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries under the normal election rules. Only the most popular (20-x)% seats would be allocated to the most popular permanent-resident functional constituency candidates of the Region who are not of Chinese nationality or who have the right of abode in foreign countries. The others are eliminated and substituted by the next-in-tier for their seats.

Example for Case II

If there is only one geographical international PR candidate, there may be as many as eleven functional international PR candidates, given there are 60 legislative council seats. If more than eleven functional international PR candidates would win without special handling, the special handling rule would be activated. The least popular functional international PR candidates in excess of 11 (i.e., the 12th popular one, the 13th one, etc) will be eliminated. They are substituted in the same way as illustrated in Case I.

Case III. The functional constituencies has x%, which is less than 10% seats, that would be allocated to the would-be elected candidates of permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries under the normal election rules. Only the most popular (20-x)% seats would be allocated to the most popular permanent-resident geographical constituency candidates of the Region who are not of Chinese nationality or who have the right of abode in foreign countries. The others are eliminated and substituted by the next-in-tier for their seats.

Example for Case III

If there are only five functional international PR candidates, there may be as many as seven geographical international PR candidates, given there are 60 legislative council seats. If more than seven geographical international PR candidates would win without special handling, the special handling rule would be activated. The least popular geographical international PR candidates in excess of 7 would be eliminated. They are substituted in the same way as illustrated in Case I.

2.2.2 Changing Election Mechanism of the Legislative Council

The following options deal with the problems stated in Section 1.2.7 to Section 1.2.11. The changes in Option 1 should be considered as a whole. Similarly, Option 2 should also be considered as a whole.

Option 1

This option would change the election framework to avoid some practical difficulties in Proposed Change 2A. (Comment: it is expected that it is unlikely to gain any consensus for Proposed Change 2A.) However, for this option, the change proposed in Section 2.2.1 may be necessary unless there are other suggestions that fit with this scheme.

Proposed Change 1A

This change is proposed to deal with the problem of automatically election of the only one candidate in a functional constituency mentioned in Section 1.2.7. Each elector for the functional constituency will be allowed to vote for up to five candidates of all functional constituencies. (In other words, an elector of one functional constituency may vote for the candidates in other constituencies including his own constituency.) The 30 candidates that get the most votes will be elected subject to the special handling for the nationalities mentioned in Section 2.2.1. The ballot of a functional constituency voter is considered void if s/he votes for more than five candidates.

Proposed Change 1B

This change is proposed to deal with the issues mentioned in Section 1.2.8, 1.2.9 and 1.2.10 of composition rigidity, representative-ness and the violation of "balanced participation". A new functional constituency called "Others" is added. The electors of "Others" are randomly chosen from the registered elector list of the geographical constituencies. The number of the "Others" electors would be the same as the sum of all normal geographical constituencies. (This would have been 160302 according to the 2003 Final Register.) The electors of each functional constituency may nominate up to two candidates with the exception of "Labour" and "Others". The electors of the "Labour" constituency may nominate up to six candidates and the electors of the "Others" constituency may nominate up to 10 candidates. If there are more candidates for a functional constituency than the allocated quota, the electors of the functional constituency will conduct a nomination voting first to reduce the nominated candidates to the allocated quota.

The two changes together mean that the functional constituency electors will choose 30 out of at most 70 candidates. Each elector may choose up to five

candidates. The top 30 candidates will be elected subject to the adjustment according to Section 2.2.1.

Option 2

This option basically extends the existing election framework.

Proposed Change 2A

The number of functional constituencies is increased to cover those functional ones not covered. The numbers of seats allocated to the functional constituencies are adjusted appropriately. The above design is to deal with the problems of representative-ness and violation of balanced participation specified in Section 1.2.8 and Section 1.2.10.

Proposed Change 2B

To prevent the rigidity of the composition of the functional constituencies as mentioned in Section 1.2.9, three seats are added to a new functional constituency called "Others". The number of electors of this new function constituency will be equal to the average size of the other functional constituencies. This would have been 5725 for the 2003 Final Register. These electors would be selected randomly from the total registered voter list. Since the number of seats for functional constituencies is increased, the number of seats for geographical constituencies has to be increased by three as well.

Proposed Change 2C

To prevent the problem of automatic election when there is only one candidate as specified in Section 1.2.7, the candidate must get a minimal threshold of 38% (which is derived from the Golden section magic number) of votes before he is elected. The electors of that constituency have to make two choices: (a) whether to accept or reject this candidate; (b) which functional constituency with more than one candidate would it give its seat to if the candidate falls short of the 38% threshold. If two or more functional constituencies want to give their seats to the same functional constituency FC#1, FC#1 will get the seat from the one with the bigger percentage of votes. The functional constituency that loses out would give its seat to its second choice on its votes.

Pros and Cons

Option 2 tries to adjust the current framework of election to deal with the issues but it is unlikely that any consensus will be reached in the Proposed Change 1A. It is more likely for Legco to reach a consensus for Option 1 as the election committee is basically unchanged with the addition of an "Others" committee. Option 1 would extend the voting rights to many more people enhancing the representative-ness of the elected legislators.

2.3 Evaluation Criteria of Different Options

The presented options would be evaluated using the following criteria:

- a) conceptual simplicity
- b) implementation simplicity
- c) benefits brought to selection mechanisms

3 RECOMMENDED CHANGES

Based on the criteria listed in 2.2, we would like to make the recommendation for option 1 under all sections where there are more than one options.

REFERENCES

- [1] Census Department's Number of Establishments, Persons Engaged and Vacancies (Other than Those in the Civil Service) Analyzed by Industry Sector, http://www.info.gov.hk/censtatd/eng/hkstat/fas/labour/employment/labour4_index.html
- [2] The Third Report of the Constitutional Development Task Force: Areas Which May Be Considered In Respect Of the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008, May 2004.

¹ Census Department acknowledges that the survey was incomplete due to the following omissions: hawkers and retail pitches, taxis, public light buses, goods vehicles, barges, lighters and stevedoring services, public administration, religious organisations, authors and other independent artists, domestic helpers, and miscellaneous recreational and personal services, and Civil Service.