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Sirs,

Attached please find the soft copy of my submission to the Constitutional Development Task Force, the hard copy of which was posted to you last week.

I may be reached on _____ during office hours if you require any elaboration of the proposal set out in my submission.

With regards,
Chester Kwok

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17 February 2005

By post and by e-mail

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

Dear Sir,

**Five New Salaries Taxpayers
Functional Constituencies
for Legislative Council Elections in 2008**

An Improved Proposal

I am writing in response to the Fourth Report of the Constitutional Development Task Force. Set out in this letter is a detailed, improved proposal (“Improved Proposal”) for the establishment of new “Salaries Taxpayers Functional Constituencies”. It has been formulated having taken into account responses to publicity relating to my original proposal (“Original Proposal”) set out in two submissions to the Task Force (assigned serial numbers F65 and F258 in Appendix I of the Fourth Report) last year.

Guarding against the insanity of having a Legislative Council (“LegCo”) returned in entirety by the “one-man-one-vote” method, and maintaining a degree of balance on our LegCo to avoid the scourge of profligate populism, must remain our primary objectives. We must however at the same time also be cognizant of the obvious deficiencies inherent in the existing functional constituency arrangement – not least its low level of legitimacy in the eyes of the people – in spite of its apparent success to date in the maintenance of a delicate political balance in LegCo. In short, the *status quo* is clearly untenable. An alternative, improved means of achieving ongoing political balance is necessary for the long term stability of the Hong Kong SAR.

Hong Kong is now at a crossroad in the matter of constitutional development. We have in front of us a unique opportunity in 2008 to start building a framework which not only perfectly supports our capitalist way of life, but also leads the capitalist world in the way modern sophisticated economies are to be democratically governed.

Masterly inaction, which might appear politically expedient in the short term, is not in the long term interest of Hong Kong. This is a time for clear demonstration of political leadership, and for doing the right thing for our city and for our country. A bold proposal setting out a sensible and safe way forward is called for. Set out in this submission is one such proposal for your consideration.

Simpler Features for Easy Implementation

Among the many generally supportive messages I have received on the Original Proposal were also some constructive criticisms, in particular that the proposed "unit voting system", under which different weightings are attached to different taxpayers' votes depending to the amount of tax paid, would not be a practicable solution in 2008 due to the considerable computing and logistic demands it would place on the election administrative system. There is simply insufficient time for all the necessary preparation to be properly made over the next three years. Specifically addressing this concern, I have greatly simplified the Original Proposal to make implementation easier and more realistic in 2008.

My Improved Proposal still focuses on allowing our middle class taxpayers some assured, meaningful and direct representation on LegCo.

The aforementioned "unit voting system" has been completely abandoned. Instead, all qualified salaries taxpayers in the Hong Kong SAR will, in accordance with the actual amount of tax paid, be eligible for registration as electors in five separate functional constituencies, each of which returning one LegCo member. The vote of every elector within each of the five Salaries Taxpayers Functional Constituencies will be equal: there will be no weighting of votes.

The five proposed Salaries Taxpayers Functional Constituencies are not completely dissimilar to some of the existing functional constituencies (such as the two Commercial Functional Constituencies and the two Industrial Constituencies). The Improved Proposal will be logistically and operationally easier and much more suitable for early implementation than the Original Proposal.

Key Aspects of the Improved Proposal

Details of the Improved Proposal for the LegCo elections in 2008 are as follows.

- Increasing the number of seats to be returned by the geographical constituencies by five, i.e., from 30 LegCo members at present to 35 in 2008.
- Increasing the number of seats to be returned by the functional constituencies also by five, i.e., also from 30 to 35, resulting in an aggregate 70-member LegCo.
- Retaining all 28 existing functional constituencies and their existing 30 LegCo seats as well as their respective elector eligibility criteria and voting method.
- All five new functional constituencies are to be "Salaries Taxpayers Functional Constituencies" dedicated to representation for different categories of salaries taxpayers (see below).

- The actual aggregate amount of salaries tax paid by each salaries taxpayer in the first ten years after the establishment of the Hong Kong SAR, i.e., from 1 July 1997 to 30 June 2007 (“Qualifying Period”), and **the average annual amount of actual salaries tax paid by each taxpayer** during this Qualifying Period, is to be calculated in confidence by the Inland Revenue Department.
- Each qualified Hong Kong permanent resident
 - who is a geographical constituency elector, and
 - who has paid any salaries tax (irrespective of amount) to the Government of the Hong Kong SAR during the ten-year Qualifying Period

will be eligible for registration as an elector in one of the five newly-established Salaries Taxpayers Functional Constituencies.

- Each taxpayer will be eligible for confidential registration as an elector for only one of the five Salaries Taxpayers Functional Constituencies, depending on the average annual amount of actual salaries tax paid during the Qualifying Period, in accordance with the following schedule-

| <i>Average annual amount of actual salaries tax paid (HK\$)</i> | <i>Corresponding functional constituency</i> |
|--|---|
| 0.01 to 10,000.00 | Salaries Taxpayers (First) Functional Constituency |
| 10,000.01 to 50,000.00 | Salaries Taxpayers (Second) Functional Constituency |
| 50,000.01 to 100,000.00 | Salaries Taxpayers (Third) Functional Constituency |
| 100,000.01 to 200,000.00 | Salaries Taxpayers (Fourth) Functional Constituency |
| 200,000.01 and above | Salaries Taxpayers (Fifth) Functional Constituency |

- All electors within each Salaries Taxpayers Functional Constituency have equal votes.
- Each Salaries Taxpayers Functional Constituency will return one LegCo member, who will be elected through a simple first-past-the-post voting system.

- Each person may be registered with one functional constituency only. An elector registered with one of the existing 28 functional constituencies may either choose to stay with his or her present functional constituency or, alternatively, to register with one of the five Salaries Taxpayers Functional Constituencies if he or she so qualifies.

Logic of Classification

In formulating the Improved Proposal, I have endeavoured to be fair in the sense of allowing the five Salaries Taxpayers Functional Constituencies to represent five categories of taxpayers bearing salaries tax burdens in roughly equal measures. On this basis each Salaries Taxpayers Functional Constituency should ideally account for approximately 20% of the Government's salaries tax receipts. I have also been mindful of using sensible, easy-to-remember round number boundaries in an effort to make the system as user-friendly as practicable.

On the basis of public information derived from an analysis of salaries taxation assessments by income group for the fiscal year ending March 2002 (available from the web site / annual report of the Inland Revenue Department), it is estimated that elector distribution among the five proposed Salaries Taxation Functional Constituencies may broadly follow the pattern below.

| <i>Salaries Taxation Functional Constituency</i> | <i>Income bracket</i> | <i>Accounting for percentage of total salaries tax paid to Government</i> | <i>Approx. no. of potential electors</i> | <i>Representing percentage of salaries taxpayers</i> |
|--|-----------------------|---|--|--|
| First | Low to medium | 15% | 890,000 | 74% |
| Second | Medium | 22% | 200,000 | 17% |
| Third | Medium | 16% | 57,000 | 5% |
| Fourth | Medium to high | 24% | 43,000 | 4% |
| Fifth | High | 23% | 13,000 | 1% |
| | | 100% | 1,203,000 | 100% |

I must emphasize again that the analysis above are very rough indications only. The numerical model used is necessarily crude. The Inland Revenue Department, with detailed, accurate raw data, will be able to provide the Task Force with much more precise analyses. In any case the numbers may well vary somewhat after taking averages for the ten-year Qualifying Period.

Advantages of the Improved Proposal

In addition to the aforementioned ease of implementation from a logistic and operational viewpoint, the Improved Proposal holds a number of other key advantages.

Institutionalizing representation for the middle class

First and foremost, the Improved Proposal institutionalizes representation on LegCo for the tax-paying middle class in Hong Kong who, despite being the backbone of our economy, are severely under-represented politically and consequently feel increasingly aggrieved and exploited. Detailed rationale for providing these key contributors of public resources with proper constitutional representation was set out in my earlier submissions (see items F65 and F258 in Appendix I of the Fourth Report) and will not be repeated here. The only point to add in this respect is that discontent among our middle class has been rising rapidly. Unless checked in a timely manner, this worrying trend might ultimately result in a brain and wealth drain which would further aggravate our local economic structural problems.

“Soft” actions intending to appease the middle class, such as appointing a few more people on the Government’s consultative committees or establishing chat-rooms on the Internet for them, are blatantly inadequate, bordering on the farcical. What the middle class demand is proper and fair representation in the political hierarchy. Nothing less is acceptable now, particularly given the unfortunate emergence of fiscally irresponsible populism in our city subsequent to the LegCo elections last year.

Maintenance of political balance

Secondly, the Improved Proposal helps maintain a healthy political balance between taxpayers, as contributors of public resources, and non-taxpayers, as net consumers of public resources. Its implementation will thus help our community maintain long term social stability and equity, and will strengthen our defence against the possible emergence of extremist politics in the future.

Special care has been taken to ensure that the low to medium income taxpayers, who are collectively important and useful contributors to our society, are not overwhelmed by the higher-income taxpayers. I would expect the LegCo member representing the Salaries Taxpayers (First) Functional Constituency, all electors of which pay on average less than \$10,000 in salaries tax per annum, to defend the interests of these taxpayers in LegCo.

Fairness

Thirdly, the Improved Proposal is fair. No other groups of Hong Kong residents are more deserving of dedicated LegCo representation than our taxpayers. Indeed, one could very convincingly argue that electors in any one of the five Salaries Taxpayers Functional Constituencies are more deserving than most of the existing functional constituency electors.

For instance, the almost 900,000 taxpayers bearing 15% of our city's salaries tax burden (in the proposed Salaries Taxpayers (First) Functional Constituency) are surely at least as deserving of LegCo representation than, say, the 77,000 teachers or the 10,000 welfare services workers currently enjoying their own dedicated representation. Likewise, the 13,000 high income-earners carrying 23% of the city's salaries tax burden (in the proposed Salaries Taxpayers (Fifth) Functional Constituency) cannot possibly be considered less important or less deserving than the industrialists and businessmen who collectively enjoy four LegCo seats, or the 17,000 accountants or the 5,000 lawyers who are currently entitled to elect their own LegCo members.

Broadest possible electoral base expansion

Fourthly, the Improved Proposal is representative and democratic. Establishment of the five Salaries Taxpayers Functional Constituencies will broaden the electoral base of the functional constituencies by six to eight times. On its implementation, most families in Hong Kong will have at least one member as a functional constituency elector. Legitimacy of the functional constituency constitutional arrangement – so useful since 1997 as our defence against propagators of fiscal profligacy and inciters of communal discontent – will be significantly enhanced.

The Task Force correctly noted in the Fourth Report the Hong Kong public's strong and extensive support for a real expansion of the functional constituency electoral base. Compared to all other sensible proposals put forward to the Task Force, implementation of the Improved Proposal will surely result in the most significant, the most extensive, and the fairest mode of electoral base expansion. Settling for any lesser proposal would be a grave disappointment.

Objectivity

Fifthly, and most importantly, the Improved Proposal is objective. Qualification for elector registration is based purely on actual monetary contributions to the community according to official record. There will be no subjectivity involved. Qualification does not depend on whom a person knows, his "connections", what associations or clubs to which he happens to have been admitted, and what he does for a living etc. All that an individual has to show is that he or she has contributed as a taxpaying member of our society. Every member of our society will have a chance to become eligible.

Anything less objective will be regarded by an already suspicious public as biased and artificial, and will certainly further reduce the already depleted legitimacy of functional constituency constitutional arrangement.

2012 and Beyond

The qualifying period (and therefore the period of time relevant to determining the average annual amount of tax paid for each elector) for future elections should be on a “rolling” ten-year basis. In other words, the qualifying period for the 2012 LegCo elections should be 1 July 2001 to 30 June 2011; and for the LegCo elections scheduled for year 2016, the period from 1 July 2005 to 30 June 2015. This “rolling” scheme will ensure that, at any one time, the most economically active residents, and the most significant contributors of resources into the public sector, are duly represented by the Salaries Taxpayers Functional Constituencies.

Drafters of the Basic Law wisely envisaged constitutional development in the Hong Kong SAR to be a gradual and continual process. Assuming that the five LegCo Salaries Taxpayers Functional Constituencies contemplated under the Improved Proposal can be successfully established in 2008, I would recommend no further changes to the composition of LegCo in 2012 and 2016 in order to let the system settle. In the longer run – in the course of the decades after 2020 – it may make sense for the Salaries Taxpayers Functional Constituencies to be expanded gradually, eventually replacing at least some of the existing LegCo functional constituencies.

Mistakes to Avoid

Before we conclude it is worth reminding ourselves of a number of elements which should not appear as part of any sensible proposal for constitutional development in relation to the formation of LegCo in 2008. They include-

1. inaction. This may be tempting as an “easy way out”, enabling the Government to cite convenient excuses such as inability to reach consensus among the political parties or inconclusive result of public consultation. Political leadership involves doing the right thing for the people, sometimes by courageously taking a controversial stance first, and then skillfully and sincerely convincing the people of the merits of that stance. If the Task Force genuinely believe giving taxpayers a vote to be in the interest of the Hong Kong SAR, they must push ahead with a formal proposal and then endeavour to win over the public directly. The onus would then be on the politicians working against the interests and wishes of 1.2 million taxpayers to defend their indefensible position.
2. introduction of unrepresentative, random groups as new functional constituencies. The Fourth Report disappointingly mentioned the possibility of youth groups, women’s groups and more trade associations as possible new functional constituencies. Nothing could be sadder and

more pathetic than the Government abandoning more than 1.2 million of its own taxpaying citizens in favour of unelected groups of dubious representation with narrow memberships. I am hopeful that the Task Force will not seriously contemplate such a foolhardy act, as it could trigger a serious middle class backlash potentially capable of undermining the very fabric of stable government in the SAR.

3. having all LegCo seats elected by the "one-person-one-vote" method, which would be the beginning of the end of a capitalist and prosperous Hong Kong. Thanks to the wisdom displayed by the Standing Committee of the National People's Congress, such a disastrous scenario will not appear in 2008. We must however continue to guard against such a possibility in future years.

Conclusion

The logic in favour of the giving a vote to each of our salaries taxpayers is straightforward but compelling.

Everybody recognizes that increasing democracy is the way forward for the Hong Kong SAR. A constitutional arrangement based entirely on "one-person-one-vote" would however spell disaster for Hong Kong as fiscally irresponsible populism would take root and gain momentum; its damage could well be irreversible, as evidenced by the plight of desperate, debt-ridden western and Latin American governments. Hong Kong must find a way to counter-balance the influence of tax-and-spend politicians and political parties.

Hong Kong's short term solution to the conflict between raw democracy and economic efficiency is its functional constituency system, which has so far actually proved reasonably effective in the maintenance of political balance in LegCo. This arrangement however suffers increasingly from deficient legitimacy in the eyes of the general public, who tend to regard it as a hindering rather than facilitating or progressive force. Its effectiveness is thus somewhat compromised.

At the same time, the middle class in Hong Kong, who bear the bulk of our public sector financial burden, are increasingly disillusioned. They feel badly let down by poor government, the emergence of irrational populism, and the possible permanent abandonment of fiscal discipline on the part of the Government. They are gravely concerned about the long term economic future of the SAR and the prospects of substantial increases in direct and indirect taxation. They do not feel adequately, or even at all, represented in the political hierarchy.

The answer, surely, is giving our middle class, as taxpayers, dedicated and direct representation on LegCo. Implementation of the Improved Proposal set out in this submission will create a good platform for addressing many of problems and concerns described above. In time, representation for taxpayers may be gradually broadened.

Institutionalizing representation for salaries taxpayers is indisputably good for Hong Kong. It will impose more fiscal discipline on the public sector and will complement our treasured capitalist way of life. I am convinced there will be extensive support among the general public, particularly the middle class, for constitutional reform in this direction.

I strongly urge you to propose the establishment of the Salaries Taxpayers Functional Constituencies in the next report of the Task Force.

If you wish to have any further elaboration on the Improved Proposal set forth herein, please feel free to contact me on _____ during office hours.

Yours truly,

Chester Kwok (郭淳浩)

cc

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