

International Chamber of Commerce - Hong Kong, China 國際商會 - 中國香港區會

The world business organization

By Email : scmaoffice@cmab.gov.hk and By Hand

19 February 2010

The Secretary for Constitutional and Mainland Affairs
3/F., Main and East Wing
Central Government Offices,
Hong Kong

Dear Sir,

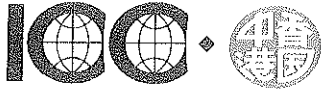
Consultation Document on
Methods for Selecting the Chief Executive and
for Forming the Legislative Council in 2012

Please refer to your circular letter of November 18, 2009 inviting comments on the above. We regret that for a matter of such significance, the community is only given three months to study the Document, particularly when it was released towards the end of 2009 with Christmas and New Year holidays and Chinese New Year in early 2010 hard upon us.

2. We are disappointed by the contents of the Document because
 - a) the changes proposed are too little and too slow in terms of the time frame of universal suffrage to take place for CE in 2017, and for LegCo in 2020. Given these target dates, it is only reasonable that by 2012, Hong Kong should have been better placed for universal suffrage on those dates through having taken more positive steps forward; and

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b) since 2012 is a transition stage to those target dates, the proposals in the Document should be steps forward moving the election process closer to direct election. However, as the Document retains the current functional constituency and their working methods, the Administration does not seem to see the contradiction between functional constituency and universal suffrage. Worse, the Document proposes to add 5 more functional constituency LegCo seats. This is a retrogressive step and is contrary to the way forward to universal suffrage. Furthermore, the Document suggests that these additional 5 seats be allocated to the District Council functional constituency, and this further conflicts with Article 97 of the Basic Law, by converting the District Council to be an organ of political power. Article 97 reads

“ District organizations which are not organs of political power may be established in the Hong Kong Special Administrative Region, to be consulted by the government of the Region on district administration and other affairs, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation.”

3. You would recall that as a good corporate citizen, ICC-HK has responded to the government's call for views on constitutional development. In particular, in October 2007 we offered views including transitional arrangements for 2012 with selection of the CE and the election of LegCo. In November 2009, we presented views having regard to the Central Government's pronouncement that poll arrangements in 2012 would be the steps towards universal suffrage, that the CE might be elected through direct election in 2017, and that the LegCo by 2020. A copy each of those representations are enclosed for your further attention.

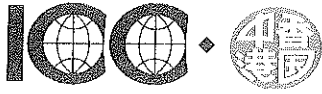


4. A key issue in our representations is the modification of functional constituency through the transition years, and its abolition by 2020 for LegCo. We also pointed out the defective and hybrid nature of functional consistency, (especially where corporate voting was provided), and how it might play its departing role in the transition. If our proposals are adopted, the “complicated” “process” or fear for not reaching “community consensus” would not occur (para. 4.17 and 5.12 of the Document).

5. On the composition of the Election or Nominating Committee, we propose to broaden the electorate. Only by having a different and wider franchise can the selection of the CE be more representative and closer to being directly elected. Thus, increasing the membership of the Committee to 1,200 in 2012 (as the Document proposes) but not broadening the electorate is not sufficient to prepare Hong Kong for the direct election of the CE in 2007. Equally, “balanced participation” should not be taken arithmetically, as the Document seems to suggest (para. 4.13). Overall, the composition should be reconstituted as we proposed in our representations.

6. As regards the points raised in the Document not covered by our representations, we should like to say that

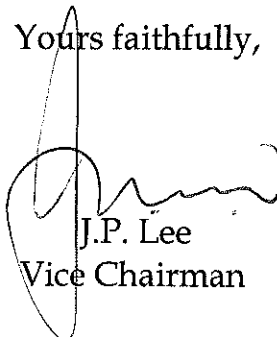
- a) on setting an upper limit of subscribers (para. 22): an Election Committee member may only subscribe to one candidate;
- b) on maintaining current arrangements for the political affiliation of the CE (para. 4.23) : no comment; and



- c) on the existing arrangement that LegCo seats may be returned by Hong Kong permanent residents who are not of Chinese nationality or who have the right of abode in foreign countries (para. 5.15 and 5.16): we agree this be maintained.

7. In conclusion, we should like to ask the Administration to consider seriously that if 2012 is the half-way house for direct election in 2017 for CE and 2020 for LegCo, then the 2012 election methods should be such as to provide sufficiently measured arrangements so that by the time direct election is to take place in those relevant years, the gap in selection and election arrangements between 2012 and then may not be too far apart as not to be consistent with the idea of "gradual and orderly progress". Otherwise, to suggest direct election to take place in 2017 and 2020 respectively would be a mere illusion for Hong Kong people now. Moreover, as we pointed out on previous occasions, Hong Kong is well ready for direct election and it is but a political decision and not a practical impracticability. The proposals in the Document are deficient and insufficient, and we urge the government to reconsider and to take a longer term and progressive view.

Yours faithfully,



J.P. Lee
Vice Chairman

Enc.



International Chamber of Commerce - Hong Kong, China 國際商會 - 中國香港區會

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By email (scmaoffice@cmab.gov.hk) & By Hand

2 November 2009

Secretary for Constitutional and Mainland Affairs
3rd floor, Main and East Wing,
Central Government Offices,
11 Ice House Street,
Central, Hong Kong

Dear Sir,

Constitutional Development

We submitted our views in October 2007 in response to the Administration's invitation. At the end of Dec 2007, it became known that the Central Government took the position that amendment for poll arrangements in 2012 would be the step towards universal suffrage, that the Chief Executive (CE) might be elected through direct election in 2017 and that LegCo members by 2020.

2. We are deeply disappointed that universal suffrage for both the CE and LegCo members may not take place in 2012. As we pointed out before, Hong Kong is ready for it, having already suffered an earlier delay in 2007.
3. On the other hand, Hong Kong now at least is given a timetable towards universal suffrage, namely for CE in 2017 and for LegCo members, in 2020. On this basis, we urge the government to draw up a plan over time towards full practice of universal suffrage.
4. ICC-HK has anticipated that interim arrangements might be imposed, and has already provided views on such for 2012 in our submission under reference.
5. Having reviewed the issues again in the light of this new development, we believe our proposals for the election of CE in the interim are still valid, (para. 7 of our submission), but where universal suffrage takes place in 2017 for the CE, para. 7 a) i) and ii) should no longer apply by definition.
6. As for election of LegCo members, we have taken into account there will be 2 elections in the interim, ie, 2012 and 2016. Hence, we now propose further refinement to enhance the spirit of progressivity. Thus,

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- a. in the 2012 election, the interim election arrangements will be as those contained in our submission under reference, and
- b. in the 2016 election, individuals eligible to register as votes in a functional constituency may also vote in a geographical constituency, i.e. have 2 votes, unless functional constituencies are abolished in the 2016 election. In other words, para. 10 b. ii) and iii) should no longer apply.

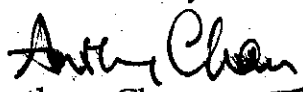
Moreover, para. 10 g) will apply during the LegCo members election in 2012, but the number of functional constituencies should be further reduced, unless functional constituencies are abolished in the 2016 election. By 2020, there should be no functional constituency in the election arrangements.

7. Finally, we should like to stress once again the fundamental principles in drawing up electoral arrangements set out in para. 5 of our previous submission, namely:
 - a) they are constructed in line with international instruments on human rights viz the International Covenant in Civil and Political Rights, and the Universal Declaration of Human Rights;
 - b) they provide the electorate the maximum and equal opportunity to participate;
 - c) the freedom of choice of the electorate should not be unreasonably or unduly prescribed; and
 - d) for transitional arrangements, they should be steps forward moving the electoral process closer to universal suffrage - the ultimate goal, rather than placing restrictions contrary to a) , b) and c) above.

Thus, creating additional functional constituencies, involving appointed District Council members or enlarging the nomination committee for electing the CE or the LegCo on a basis deviating from these principles will in effect be a retrogressive step towards universal suffrage and democracy.

8. A copy of our earlier submission is enclosed.

Yours faithfully,


Anthony Chan
Chairman

Enc.



International Chamber of Commerce - Hong Kong, China 國際商會 - 中國香港區會

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By Hand

- 8 OCT 2007

Secretary for Constitutional and
Mainland Affairs
3rd Floor, Main Wing,
Central Government Offices,
Lower Albert Road, Central,
Hong Kong

Dear Sir,

Green Paper on Constitutional Development

In response to your invitation for comment on the Green Paper and proposals for constitutional development, we enclose herewith our updated paper on the subject to replace the one sent to you on 2 October for your consideration.

Yours faithfully,


Mary Thomson
Secretary

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Response from International Chamber of Commerce - Hong Kong, China on
The Green Paper on Constitutional Development, 2007

International Chamber of Commerce - Hong Kong, China (ICC-HK) has been invited to express views on the Green Paper on Constitutional Development issued in July 2007. The Paper deals with the application of universal suffrage to the election of the Chief Executive (CE) and the Legislative Council (LegCo), raising questions on the model, roadmap and timetable to be adopted.

2. ICC-HK believes that any model, roadmap and timetable are interrelated issues, and they would have to be considered as a whole, and the respective components of any issue cannot be treated in isolation. Similarly the return of sovereignty of Hong Kong to China through the Joint Declaration between China and UK, registered with the United Nations with the subsequent Basic Law have an international perspective such that the terminology used should have a common and international meaning and understanding eg. universal suffrage means one natural person one vote and an equal right of voting for all voters.
3. There is no dispute that ultimately the election of CE or LegCo is by universal suffrage (which implies equal suffrage, too). There is also no dispute to the overriding authority of the Central Government.
4. At the same time, Hong Kong is not short of election experience in the last few decades, and indeed more opportunities are available in more recent years. Election of LegCo began in 1985. According to the Green Paper, in the 2004 LegCo election, the number of registered voters of geographical constituencies increased to 3.21 M, and the turn out rate increased to 55.6%.



The level of education of Hong Kong residents is steadily rising. The spirit of charity, mutual help and volunteering is well and alive, and provides a strong basis for civil society in Hong Kong. There is no evidence that universal suffrage will frustrate or impede the development of a capitalist economy. The rule of law in Hong Kong ranks higher than any other Asian country. As it is reported in the press, the Secretary for Constitutional and Mainland Affairs said that Hong Kong had the fundamental components for universal suffrage. From these perspectives, universal suffrage for both CE and LegCo should be implemented in 2012. The only obstacle, if any, is political not legal, social or economic.

5. If, however, the political ruling is not to introduce universal suffrage yet, interim arrangements will be unavoidable. Irrespective of any eventual political ruling, the following fundamental principles should be the basis of drawing electoral arrangements:

- a) they are constructed in line with international instruments on human rights viz the International Covenant in Civil and Political Rights, and the Universal Declaration of Human Rights;
- b) they provide the electorate the maximum and equal opportunity to participate;
- c) the freedom of choice of the electorate should not be unreasonably or unduly prescribed; and

d) for transitional arrangements, they should be steps forward moving the electoral process closer to universal suffrage - the ultimate goal, rather than placing restrictions contrary to a) , b) and c) above.

6. Assuming that interim arrangements have to be implemented, ICC-HK would like to make the following proposals:

Arrangement for Election of CE

7. According to Article 45 of the Basic Law, there will be a broadly representative nominating committee which will nominate the CE candidate(s) in accordance with democratic procedures. To this end, it is proposed that

- a) the nominating committee should consist of the following :
 - i. 800 committee members elected by the electorate of LegCo of the relevant time according to the geographical delineation of District Councils and in proportion to the population of the different Districts;
 - ii. the Hong Kong delegates of the National People's Congress of the relevant time; and
 - iii. the members of LegCo of the relevant time;



- b) A registered voter may put forward his name to the nominating committee to stand as a candidate and the nominating committee will nominate any voter to be a candidate for election to the position of Chief Executive who has obtained 12.5% or more of the committee membership as subscribers;
- c) a committee member may only subscribe to one candidate;
- d) the electorate will vote on the nominated candidates to elect CE by a simple majority;
- e) if there is only one candidate, election will still proceed.

Arrangements for Election of LegCo

8. According to Article 68 of the Basic Law, ultimately LegCo should be elected by universal suffrage. Currently LegCo members are returned by district based or functional constituency based direct election. By definition, ultimately election based on functional constituency should cease. The question is whether this can be achieved immediately, ie by the next election in 2012, or through transitional arrangements over time, leading to the ultimate goal. If there has to be a transition to universal suffrage, set out below is an interim method of electing LegCo, but a step forward to universal suffrage compared with the current system.

9. The current structure of the functional constituency is defective and hybrid. Broadly speaking, functional constituencies may be grouped into those with

- a) individual members of bodies voting in their personal capacity;

- b) individuals voting in the capacity of representing an organization which is a member of a body specified in the Ordinance;
- c) individual District Council members returning a certain number of District Council members to LegCo ; and
- d) both individuals and organizational representatives as voters in the same functional constituency.

10. To be closer to the principle of universal suffrage and to remove the anomalies of many functional constituencies, it is proposed that

- a) to retain those functional constituencies the voters of which are individuals, eg. professionals like doctors and lawyers; for details, see Annex II of the Green Paper;
- b) to extend the right to vote to all entities which possess a valid business registration or which are registered under the Societies Ordinance or other relevant ordinances such that
 - i. they have to provide 6 months before the relevant election day proof of having filed a valid tax return, or such valid annual filing as is required under the relevant ordinance in respect of the immediate past year;
 - ii. the voters will be individuals who are proprietors, partners or directors of board of incorporated businesses or the governing committee/ council of non-profit and/or charity organizations; and
 - iii. these entities elect themselves to any functional constituency with which they have the most substantial connection;

- c) to retain the functional constituency of District Council in respect of all the elected members, ie, by either excluding those members appointed by the Administration, or abolishing appointed membership;
- d) to retain the Heung Yee Kuk functional constituency;
- e) those individuals who are eligible to register as voters of functional constituency may choose either to register as voters of functional constituency or foresake such registration, and instead register as voters in geographical constituency;
- f) each individual voter may vote at only one functional constituency; and
- g) to group functional constituencies akin in nature with one another into a number of multi-seat functional constituencies with no functional constituency within each multi-seat constituency being guaranteed their own seat and keeping the total number of LegCo functional constituency seats unchanged after the grouping.

Introduction of the Proposal Arrangements for CE and LegCo

11. According to the Basic Law, universal suffrage is the ultimate goal in the election of CE and LegCo. Having regard to para. 4 above, universal suffrage for both should be introduced together particularly since election for CE and LegCo will take place in 2012. If however universal suffrage is not to be introduced in 2012, it is considered that the proposal transitional arrangements should be put in place for conducting these elections in 2012.



12. The foregoing paragraphs try to answer all the questions raised in the Green Paper within the provisions of the Basic Law, and the understanding of it by the Central Government publicly known so far. It is hoped that the proposals in this paper will provide a viable solution to facilitate Hong Kong's development forward in its constitutional arrangements for universal suffrage to lay the foundation for future progress of Hong Kong.

- End -

October 2007