

Legislative Council Panel on Constitutional Affairs

The Fifth Report of the Constitutional Development Task Force :

Package of Proposals for the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008

Introduction

This paper briefs Members on the Fifth Report of the Constitutional Development Task Force (“the Task Force”), published on 19 October 2005. (Copies of the Report were distributed to all Legislative Council (“LegCo”) Members on the day.) The Fifth Report puts forth a package of proposals on the methods for selecting the Chief Executive (“CE”) in 2007 and for forming LegCo in 2008 with a view to taking forward Hong Kong’s constitutional development.

Background

The Fourth Report of the Task Force

2. Since its establishment in January 2004, the Task Force has published four reports to collect views from the general public and different sectors of the community on constitutional development. The Task Force issued its Fourth Report on 15 December 2004, and immediately proceeded to collect public views as a basis for formulating a package which stands the best chance of achieving consensus among the various parties as regards how the methods for selecting the CE in 2007 and for forming the LegCo in 2008 may be amended. The consultation started on 15 December 2004 and ended on 31 May 2005, covering five and a half months.

Consultation

3. The Task Force has used a wide variety of open channels to collect views from different sectors of the community openly and widely. During the consultation period of the Fourth Report, more than 450 written submissions from various organisations and individuals were received. Further, the Task Force commissioned the Central Policy Unit and Home Affairs Department to organize a number of open forums and

regional forums to facilitate discussion by different sectors of the community on the issues set out in the Fourth Report. Attendance at these forums was around 750 in total. The Secretary for Constitutional Affairs and his representatives also attended three public hearing sessions of the LegCo Panel on Constitutional Affairs as well as meetings of all the 18 District Councils. Details of the consultation arrangements are set out in Chapter 2 of the Fifth Report.

4. Chapters 3 and 4 of the Fifth Report give an account of the views and their justifications mentioned more frequently by members of the public. With the exception of written submissions which requested confidentiality, all views received by the Task Force are included in Appendices I and II to the Report for public reference. A summary of public views received during the consultation period for the Fourth Report is at **Annex** for reference.

***Package of Proposals for the Two Electoral Methods in 2007/2008:
Underlying Principles***

5. In formulating the proposed package, the Task Force has had regard to the following principles:

- (i) it must be consistent with the Basic Law and the Decision of the Standing Committee of the National People's Congress ("NPCSC") of 26 April 2004.
- (ii) it can provide more room and opportunities for the public to participate in the elections of the CE and the LegCo and broaden the representativeness of the two electoral methods;
- (iii) it can take into account views received from different sectors of the community during the consultation period, and respond to the aspiration of the community on constitutional development;
- (iv) it can move substantively towards the ultimate aim of universal suffrage; and
- (v) it can be acceptable to the Central Authorities, the CE, the LegCo and different sectors of the community.

6. The proposed package of the Task Force on the two electoral methods in 2007 and 2008 is summarized below:

Method for Selecting the CE in 2007	Proposals										
Size of the Election Committee	The number of members of the Election Committee to be increased from 800 to 1 600.										
Composition of the Election Committee	<p>The number of Election Committee members to be allocated to the four sectors be as follows:</p> <table data-bbox="794 770 1450 1541"> <tr> <td data-bbox="794 770 1353 853">(i) Industrial, commercial and financial sectors</td> <td data-bbox="1353 770 1450 853">300</td> </tr> <tr> <td data-bbox="794 875 1353 920">(ii) The professions</td> <td data-bbox="1353 875 1450 920">300</td> </tr> <tr> <td data-bbox="794 943 1353 1025">(iii) Labour, social services, religious and other sectors</td> <td data-bbox="1353 943 1450 1025">300</td> </tr> <tr> <td data-bbox="794 1048 1353 1473">(iv) Members of the LegCo, members of the District Councils, representatives of the Heung Yee Kuk, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference</td> <td data-bbox="1353 1048 1450 1473">700</td> </tr> <tr> <td data-bbox="794 1496 1353 1541">Total</td> <td data-bbox="1353 1496 1450 1541">1 600</td> </tr> </table> <p>In the Fourth Sector, all members of the District Councils to be included.</p>	(i) Industrial, commercial and financial sectors	300	(ii) The professions	300	(iii) Labour, social services, religious and other sectors	300	(iv) Members of the LegCo, members of the District Councils, representatives of the Heung Yee Kuk, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference	700	Total	1 600
(i) Industrial, commercial and financial sectors	300										
(ii) The professions	300										
(iii) Labour, social services, religious and other sectors	300										
(iv) Members of the LegCo, members of the District Councils, representatives of the Heung Yee Kuk, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference	700										
Total	1 600										
Nomination Mechanism	The threshold required for nominating a CE candidate to be maintained at one-eighth of the total membership of the Election Committee. (As the number of Election Committee members will be increased to 1 600, the number of subscribers required will be not less than 200.)										

Method for Selecting the CE in 2007	Proposals
	No upper limit on the number of subscribers.
Political Affiliation of the CE	The existing requirement that the CE should not have any political affiliation to be maintained.
Uncontested Election	To amend the CE Election Ordinance to establish a mechanism whereby election proceedings shall continue even if there is only one validly nominated candidate.

Method for Forming the LegCo in 2008	Proposals
Number of LegCo seats	The number of LegCo seats to be increased from 60 to 70.
Number of seats returned by geographical constituencies (“GC”) through direct elections	The number of GC seats to be increased from 30 to 35.
Number of seats returned by functional constituencies (“FC”)	The number of FC seats to be increased from 30 to 35. All the five newly added functional constituency seats to be returned through election by District Council members from among themselves (i.e. District Council Functional Constituency seats to be increased from one to six).
Nationality Requirement	The existing provision that individuals who are not of Chinese nationality or who have the right of abode in foreign countries may occupy up to 12 seats to be maintained.

Details of the proposals are set out in paragraphs 7 – 14 below.

Method for Selecting the CE in 2007

Composition of the Election Committee

7. The Task Force proposes that the number of members of the Election Committee be increased from 800 at present to 1 600. There will be a respective increase of 50% in the number of members allocated to the First, Second and Third Sectors. This will provide more opportunities for members of the industrial, commercial, financial, professional, labour, social services, religious and other sectors to participate in politics. As to the allocation of seats among the subsectors under these three sectors, the Task Force considers that, in principle, there could be proportional increase in the seats in accordance with the existing allocation of seats to the subsectors. However, detailed arrangements could be firmed up in the context of the CE Election (Amendment) Bill, which we intend to submit to this Council for approval in January 2006 before introduction into the LegCo.

8. The Task Force further proposes that the number of Election Committee members in the Fourth Sector be increased from 200 to 700, and that all District Council members be included in the sector. District Council members themselves come from different strata of the community. They are in a position to understand and reflect the views of the general public on day-to-day livelihood issues. Further, more than 80% of District Council members are elected. The Councils have a public mandate and a relatively high level of “democratic representation”. By enhancing the level of participation of District Council members in the Election Committee, the views at district level can be fully reflected, and the representativeness of the Election Committee further enhanced.

Requirement for Nominating CE Candidates

9. To ensure that candidates for the office of the CE have a certain level of support, the Task Force proposes that the threshold for nominating candidates be maintained at one-eighth of the total membership of the Election Committee. If the number of members of the Election Committee is increased to 1 600, the number of subscribers required shall be not less than 200.

Requirement that the CE should not have any Political Affiliation

10. As there is no clear mainstream view in the community on the issue, the Task Force proposes maintaining the existing requirement that the CE should not have any political affiliation.

Uncontested Election

11. In order to enable members of the Election Committee to fully exercise their voting right, the Task Force proposes establishing an appropriate mechanism so that election proceedings shall continue even if there is only one validly nominated candidate. The detailed arrangements will be determined in the context of the CE Election (Amendment) Bill.

Method for Forming the LegCo in 2008

Composition of LegCo

12. The Task Force proposes that the number of LegCo seats be increased from 60 to 70 so as to provide more opportunities for members of the community to participate in politics. Pursuant to the Decision of the NPCSC of April 2004, the number of seats returned by geographical constituencies through direct elections and that returned by functional constituencies will respectively be increased from 30 to 35. The Task Force proposes that all the newly added functional constituency seats be returned through election by District Council members from among themselves, having regard to the important role played by District Councils in district administration, and the fact that District Council members themselves come from different strata of the community and have a public mandate. This will enhance the democratic element in the formation of LegCo and broaden the electorate base of LegCo.

13. Accordingly, the number of seats returned by the District Council Functional Constituency will be increased from one to six. As regards the electoral method to be adopted (for example, a block vote system or a proportional representation system), this can be dealt with in the context of the LegCo (Amendment) Bill according to Annex II to the Basic Law.

Nationality Requirement

14. Having regard to the community's preference for the status quo, the Task Force proposes maintaining the existing arrangement that up to 12 LegCo Members may be permanent residents who are not of Chinese nationality or who have the right of abode in foreign countries.

Legal Issues Arising from the Term of the CE

15. The CE Election (Amendment) (Term of Office of the CE) Bill was introduced into LegCo on 6 April and passed on 25 May 2005. The Ordinance provides that the term of office of a new CE selected pursuant to paragraph 2 of Article 53 of the Basic Law shall be the remainder of the term of the preceding CE. During the scrutiny of the Bill by LegCo this April, the Administration undertook to study the following issues:

- (a) the number of consecutive terms a new CE elected in a situation under paragraph 2 of Article 53 of the Basic Law may serve;
- (b) whether a new CE elected in a BL 53(2) situation may, pursuant to paragraph 2 of Article 50 of the Basic Law, dissolve LegCo once during the remainder term if the preceding CE has already dissolved LegCo once during his term of office; and
- (c) whether it is necessary to elect a new CE in accordance with BL53(2) if the vacancy arises within a few months before the expiry of the five year term of office of the preceding CE.

16. The Task Force has thoroughly examined these issues and has exchanged views with the relevant departments of the Central Authorities. The views of the Task Force on the issues are as follows.

- (a) The legislative intent of Article 46 of the Basic Law is that the CE may only serve for not more than two consecutive terms and may not serve for more than 10 years. A new CE elected under a BL 53(2) situation may only serve for one further term after the expiry of the remainder term, and the remainder term is counted as "a term".

- (b) A new CE elected in a BL53(2) situation has the power to dissolve the LegCo once during the remainder term, whether or not the outgoing CE had already exercised such power during his term of office. This is to uphold the integrity of the powers vested in the new CE under the Basic Law.
- (c) It is not inconsistent with BL 53(2) not to hold a by-election if a vacancy arises within six months before the expiry of the term of the CE. Furthermore, the Task Force recommends that the CE Election Ordinance to be amended to provide for the following arrangements from 2007:
 - (i) if an election for a new term (5-year) CE will be held within six months after a vacancy in the office of the CE has arisen, it will not be necessary to hold a by-election; and
 - (ii) before the new term (5-year) CE takes up his office, the Acting CE will continue to assume the duties of the CE.

Detailed considerations are set out at Annex A to the Fifth Report.

Draft Motions to be put to LegCo Concerning the Amendments to the Methods for Selecting the CE and for Forming the LegCo

17. On the basis of the set of proposals set out above, the Task Force has formulated the draft Motions to be put to LegCo concerning the amendments to the methods for the selection of the CE and for the formation of the LegCo. The draft Motions are at Annexes B and C to the Fifth Report. The Amendments shall have effect only after they have had the endorsement of a two-thirds majority of all the Members of LegCo, the consent of the CE, and after they have been reported to the NPCSC for approval or record in the respective cases of the amendments to Annex I and Annex II to the Basic Law.

Legislative Timetable

18. The plan of the Task Force is that, not later than December 2005, it will formally present the two motions to LegCo. If the relevant proposals receive the endorsement of a two-thirds majority of all the Members of LegCo, obtain the consent of the CE, and after they have been reported to the NPCSC for approval/record, we envisage introducing the CE Election (Amendment) Bill (which is a piece of local legislation) into LegCo in January 2006 to prescribe the detailed arrangements regarding the method for selecting the CE. We will strive to have it passed by LegCo by early May 2006 at the latest, so that relevant subsidiary legislation could be amended respectively by the Executive Council and the Electoral Affairs Commission thereafter, and for relevant work to be completed by mid-July 2006.

19. We plan to form a new term Election Committee in the second half of 2006, to elect a new term CE in March 2007, and to amend the LegCo Ordinance in 2007 to provide for the detailed arrangements for forming the LegCo in 2008.

20. The key steps in the legislative timetable in the coming months will be :

Key Steps	Date
The Administration to move the motions for endorsement by LegCo	December 2005
CE to give consent to the (Draft) Amendments and to report to the NPCSC	December 2005
The NPCSC to approve/record the Amendments	December 2005
The Administration to introduce the CE Election (Amendment) Bill into LegCo	January 2006
LegCo to resume 2 nd Reading Debate and Third Reading of the Bill	May 2006
LegCo to vet the subsidiary legislation	mid-May to July 2006

Further details on the legislative timetable is at Annex D to the Fifth Report.

Conclusion

21. We would welcome Members to give their views on the package of proposals set out in the Fifth Report, the draft motions and issues relating to the local legislation.

22. The Task Force believes that the package of proposals has struck the right balance amidst the various views submitted by different sectors of the community and has responded to the aspirations of the community on constitutional development. It can provide more room and opportunities for the public to participate in the elections of the CE and LegCo, can broaden the representativeness of the two electoral methods, can take forward Hong Kong's constitutional development substantively towards the ultimate aim of universal suffrage, and is consistent with the Basic Law and the Decision of NPCSC made on 26 April 2004.

23. The Administration sincerely hopes that the proposed package will have the support of Members so that Hong Kong's constitutional development can move forward. The relevant legislative work has to be undertaken back-to-back within a tight timeframe. To this end, the Administration endeavour to work closely with the Council to jointly accomplish this historic task, so that Hong Kong's democratic development can move forward.

Constitutional Affairs Bureau
20 October 2005

**A Summary of Public Views on the Methods for
Selecting the Chief Executive in 2007 and for
Forming Legislative Council in 2008^{Note}**

(I) Method for selecting the Chief Executive in 2007

Areas which may be Considered for Amendment	Summary of Public Views
The Number of Members of the Election Committee	To increase the number of the Election Committee members to allow wider public participation in the election of the Chief Executive (“CE”). Many views are for increasing the number to 1 200 or 1 600. Relatively more views support 1 600.
The Composition of the Election Committee	To adjust suitably the composition of the subsectors of the Election Committee with a view to further enhancing its representativeness. There are many views that more members of the District Councils should be included into the Election Committee. Quite a number of views suggest that all District Council members be included.
The Number of Members of the Election Committee Required for Nominating Candidates for the Office of CE	There are many views that the existing requirement of no fewer than 100 subscribers be maintained. But there are also views that the number of subscribers required should be maintained at the ratio of one-eighth of total membership.

^{Note} Details are set out in Chapters 3 and 4 of the Fifth Report

Areas which may be Considered for Amendment	Summary of Public Views
	<p>There are quite a number of views which support setting an upper limit on the number of subscribers. Views are diverse on whether candidates should be required to obtain a certain number of nominations from each of the four sectors.</p>
<p>The Delineation and Size of the Electorate of the Election Committee</p>	<p>There are many views that the size and coverage of the Election Committee electorate should be broadened.</p> <p>There are quite a number of views that corporate voting should be replaced by individual voting; but few submitted concrete proposals on how this could be implemented.</p>
<p>Other Issues</p>	<p><u>Political Affiliation of the CE:</u> views remain divided as to whether to maintain the existing requirement that the CE should not have any political affiliation.</p> <p><u>Timetable for Universal Suffrage:</u> there are many views that a timetable should be set for attaining universal suffrage. But there are also quite a number of views that this is unnecessary and impractical.</p>

(II) Method for forming the Legislative Council in 2008

Areas which may be Considered for Amendment	Summary of Public Views
The Number of Seats in the Legislative Council (“LegCo”)	<p>There are many views that the number of LegCo seats should be increased. Among these, many suggest an increase to 70.</p> <p>Although there are also many views that the number of LegCo seats should remain at 60, the quantity of such view is significantly less than that in support of an increase.</p>
The Number of Seats Returned by Geographical Constituencies through Direct Elections	There are many views supporting an increase in the number of seats returned by geographical constituencies through direct elections to 35.
The Number of Seats Returned by Functional Constituencies	There are many views that the seats returned by the functional constituencies should be increased to 35.
The Delineation and Size of the Electorate of Functional Constituencies	<p>There are many views that the electorate base of functional constituencies should be broadened. There are views that the number of seats allocated to the District Councils should be increased. There are also many views that inclusion of new functional constituencies should be considered, and that certain constituencies should be reorganized, split or merged. But the specific proposals are diversified.</p> <p>There are quite a number of views that corporate voting should be replaced by individual voting.</p>

Areas which may be Considered for Amendment	Summary of Public Views
Provisions Regarding Nationality of LegCo Members	There are quite a number of views which support maintaining the existing arrangement that up to 12 LegCo Members may be permanent residents who are not of Chinese nationality or who have the right of abode in foreign countries. But there are also views that the number of such Members should be gradually reduced and eventually eliminated.
Other Issues	<p><u>Timetable for Universal Suffrage:</u> there are many views that a timetable should be set for attaining universal suffrage. But there are also quite a number of views that this is unnecessary and impractical.</p> <p><u>Future of the Functional Constituencies:</u> there are many views that functional constituencies should be maintained in the long run. But there are also views that functional constituencies should be phased out. There are views that a bicameral system should be examined.</p>