



**Submission of the Law Society of Hong Kong
Arrangements regarding the Methods for Selecting the Chief Executive and
for Forming the Legislative Council in 2012**

1. The Law Society has reviewed the Constitutional and Mainland Affairs Bureau's paper dated October 2010 outlining the proposed arrangements regarding the Methods for selecting the Chief Executive ("CE") and for forming the Legislative Council ("LegCo"), which will be prescribed in local legislation. The Law Society has the following observations.

I. Guiding Principles of Universal Suffrage

2. The Basic Law

Article 45

"The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government.

The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

The specific method for selecting the Chief Executive is prescribed in Annex I: "Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region".

Article 68

“The Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election.

The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.

The specific method for forming the Legislative Council and its procedures for voting on bills and motions are prescribed in Annex II: "Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures".

Article 39

“The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.”

Principles enunciated in Annex I paragraph 3:

“3. The delimitation of the various sectors, the organizations in each sector eligible to return Election Committee members and the number of such members returned by each of these organizations shall be prescribed by an electoral law enacted by the Hong Kong Special Administrative Region in accordance with the principles of democracy and openness.”

3. ICCPR

Article 25

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely

chosen representatives;

- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*
- (c) To have access, on general terms of equality, to public service in his country.”*

4. Universal Declaration on Human Rights

Article 21

“(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

- 5. The current proposals are not adequately progressive. It is unclear how they will help Hong Kong get closer to the goal of universal suffrage for the CE in 2017 and the LegCo in 2020. We reiterate the concerns expressed in our submission dated 2 February 2010:

“If universal suffrage for the election of the CE and LegCo are to take place in 2017 and 2020 respectively, more progressive changes should be made in 2012 so as to avoid drastic changes to the political system which will be required during the run-up from 2012 to 2017 for the CE elections, and from 2017 to 2020 for the LegCo elections.”¹

II. Method for Selecting the Chief Executive

Election Committee (EC) -- Allocation of Seats in the Fourth Sector

- 6. In our submissions dated 27 September 2004, we made the following suggestion to develop democratic representation on the EC:

“The Law Society recommended the size of the EC should be increased by 400 additional members thus increasing the total number of “Electors” to 1,200.

¹ Law Society’s submissions, 2 February 2010, p. 2

Hong Kong is currently divided into 400 District Council constituencies under 18 Districts, with each constituency returning one directly elected Member to the District Council. Each District Council constituency has a population of approximately 17,000 people.

The additional members to the EC could be directly elected via the existing District Council constituencies thus widening public participation in the selection of the CE.

This proposal should be easy for the public to understand as voters are already familiar with the District Council elections. The existing boundaries of the District Council constituencies should be adopted as this will enhance the ties between the voters and the candidates.

Under this proposal, directly elected members will account for one third of the EC's membership. It will be a gradual but significant step towards the ultimate aim of universal suffrage as stated in the Basic Law. The direct election of one third of the members of the EC will assist with the development of democracy at the grassroots level by enabling greater participation by members of the public."

7. The Administration's current proposal barely widens public participation in the selection of the CE. The members of the four sectors of the EC will be increased by the same proportion (namely the number of seats for each sector will be increased from 300 to 400). The proposal to allocate only 75 of the 400 new seats to elected District Council ("DC") members is a very limited step to increase public participation in the election of the CE. In our opinion this proposal fails to comply with the provisions of BL45.
8. The Law Society's proposals would result in adding 50% directly elected EC members to the existing 800-member Election Committee, whereas the Administration's current proposals would result in a mere 50% increase in the number of EC members without a corresponding increase in the number of the EC members being returned through direct election. There has been an opportunity to widen public participation but these proposals fail to achieve this. The Administration should provide a detailed explanation how these proposals comply with the Basic Law.

Allocation of new seats in the Fourth Sector

9. According to the Administration's proposals, under the fourth sector of the EC, 75 of the 100 new seats will be allocated to directly elected DC members. As for the remaining 25 new seats, aside from the 10 seats to be allocated to LegCo members, 10 seats will be allocated to members of the Chinese People's Political Consultative Conference ("CPPCC") and five to Heung Yee Kuk ("HYK").
10. The Administration has not provided any rationale on the allocation of the 15 seats to the CPPCC and the HYK. How does this allocation comply with the stated goal of gradual and orderly progress towards universal suffrage?

Electoral Arrangement of the District Council subsector of the EC

11. The Administration plans to retain the current bloc vote system to return the 117 seats in the DC subsector, so that each voter of the EC subsector election can vote for as many as 117 DC members in the subsector election. It is noted this may result in candidates from a single political party winning all the seats; DC members from minority groups or small political parties may not get a proportional share of the votes cast. This will significantly undermine the diversity of members of different political views in the future EC. The Administration should explain why it is adopting the bloc vote system rather than proportional representation in the DC subsector election which is the existing election method for LegCo elections, as this would increase the opportunities for candidates with different political views to participate in the next CE election.

III. Method for Forming the LegCo

New DC FC

12. In our submissions dated 2 February 2010, we expressed the following views:

“The attempt to ‘broaden the electorate base of the FCs’ is an attempt to introduce another small circle election which breaches the principle in Article 25 of the ICCPR of ‘freely chosen representatives’ as only elected District Councillors are eligible to stand as candidates i.e. eligibility is based on their office and not as a member of the general community.”

13. Under the Administration's current proposals, candidates for the new DC FC must themselves be elected DC members. It rejected proposals for electors

with a “substantial connection” with the new DC FC (such as ex-elected DC members, ex-LegCo members and formerly elected DC members) to stand for the new DC FC elections. This proposal is another “small circle election” and fails to increase the representativeness of these new seats. The Administration should explain how these proposals comply with the principle of “gradual and orderly progress” in BL68.

**The Law Society of Hong Kong
Constitutional Affairs Committee**

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