



Business and Professionals
Federation of Hong Kong
香港工商專業聯會

25 July, 2006

The Hon Stephen S L Lam, JP
Secretary for Constitutional Affairs
Constitutional Affairs Bureau
Government of the HKSAR

Dear Mr Lam,

With apologies for the delay in sending in our views, I am pleased to submit the paper "2012 - Nomination and Election of the Chief Executive" for the consideration of the SAR Government and the Commission on Strategic Development. The paper contains BPF's proposals for achieving universal suffrage for the election of the Chief Executive in 2012.

Once again our sincere apologies. Should you require further information, please do not hesitate to contact me (tel: 2110-8780; fax: 2810-6661; email: connie@bpf.org.hk).

Yours sincerely,

Connie Hui
Secretary General



2012
Nomination and Election of the Chief Executive

Preamble

Any approach to the question of constitutional change and reform in the SAR has to take account of the fact that any change which is in conflict with and involves changes to the Basic Law may open up a demand for further changes to be made not necessarily related to constitutional issues.

In addition, changes which are within the scope of the Basic Law require the support of two thirds of the members of the Legislative Council and this level of support may be difficult to obtain.

These restrictions suggest that changes proposed should try to avoid these problems

The following paragraphs relate to the nomination and election of the CE after 2007.

Qualifications

Residence

- 1 Article 44 of the Basic Law requires the CE to have "ordinarily resided in Hong Kong for a continuous period of not less than 20 years". A person who formerly resided here for 20 years, then went away and subsequently returned, could be eligible. This means that many eminent Chinese nationals who were former residents of Hong Kong and are now residing overseas could stand for election; however, those who had or have had a shorter period of stay in the SAR than 20 years are excluded. Clearly any change to this 20-year provision needs to be carefully circumscribed but it should be said that if the 20-year residence requirement were relaxed the pool of qualified candidates for the highly responsible office of CE might be enhanced. The residence requirement could be reduced, say, to 10 or 15 years but the number of years residence immediately before election takes place should be prescribed.

Party Membership

- 2 Under the election rules promulgated by the HKSAR, but not found in the Basic Law, candidates for the post of Chief Executive cannot be affiliated to a political party.



Although political parties have not yet developed so fully as to attract a mass base in Hong Kong, doubtless they will further develop in that direction in the years between now and 2012. It has often been said that the Chief Executive lacks support in the Legislative Council and that as a result many proposals of the Executive are simply not put to the Council. If, however, the Chief Executive had his roots in a political party and had the support of that party in the Legislative Council, it would make his life much easier and would strengthen the executive power of the CE and his government.

3. With this in mind it is proposed that candidates for nomination to the post of CE should be able to have party affiliation. Following election the winning candidate could be required to sever membership from his or her party.

Nomination

4. The final choice among the short-listed candidates for election to the office of CE, in accordance with the objectives in Article 45 of the Basic Law, should be by some form of universal suffrage. This objective is the prime focus of much of present political agitation and has even attracted the formation of an Article 45 Concern Group. A response to this concern could be achieved in the year 2012 if the Election Committee, which now elects the Chief Executive, became in effect a Nomination Committee, its objective being to put forward a short-list of candidates for election by all registered voters for the final choice of CE, following which appointment by the Central People's Government would take place.

Composition of the Future Nomination Committee

5. The Election Committee which currently elects the Chief Executive consists of four sectors each comprising 200 delegates. These 200 delegates are themselves elected or chosen by either the individual members or presumably by the elected committee of the relevant organisation. The members of these organisations who have registered to vote is 220,000 while the total membership of the organisations will of course be very much larger and represent a sizeable proportion of the eligible population. In other words, the Committee is grounded on a very broad base.



6. The First, Second and Third Sectors of the Committee elect or select their representatives some by the votes of individual members, e.g. the teaching profession, and some chosen by the committee of the organisation, e.g. trade unions. In order to make sure the representatives do indeed represent the general membership of the constituent organisation there should be an effort to systematise the method of selection and to endeavour to involve the general membership on these organisations in the election of their representatives.
7. The Government proposed reforms in 2006 to expand the Committee to 1,600. The proposal was included in a package of measures and was defeated by the Legislative Council. While an enlargement may seem better in appearance and more representative, the current Committee of 800 it should be said could in fact be relied upon to elect a candidate with broad support.
8. The Fourth Sector comprises the individual members of representative bodies having a largely political role. To enhance the authority of this sector a number of new seats were proposed to be elected by an electoral college of all the District Councillors. Changes in the District Councils are currently being examined and the role of the appointed members will no doubt be discussed during the course of this review. Thus the inclusion or not of District Councillors should wait until this review is complete.

The Nomination Procedure

9. At present nominations of the Chief Executive are by open nomination. However most parliamentary systems have adopted systems of secret ballot taking the view that it should not become common knowledge whether particular persons did or did not support a particular candidate. The revelation of these personal details puts unnecessary and undesirable pressure on the individual. Nomination should be based on a closed-ballot to minimise political interference and to raise the credibility of the entire process.
10. Each candidate should secure the support of at least 12.5% of members in the Nomination Committee to be nominated this would mean nomination by at least 100 members out of a Nomination Committee of 800. This level of support required for a



nomination to succeed would discourage abuse of the system by frivolous candidates and inhibit the intrusion of interest groups whose focus was a single issue and instead would encourage participation in the process of only those candidates with a wide body of support.

11. Other means, too, can ensure that candidates enjoy a broad body of support. To be successfully nominated a candidate might be required to secure at least 20 nominations from each of the four sectors named in Annex 1 of the Basic Law and each candidate in addition should have among his nominators the support of at least 15 of the 60 members of Legislative Council. This requirement would limit the number of candidates to four to enter the final election process.
12. Hong Kong has a quasi presidential system. Studies have shown that multiple parties and factions tend to destabilise and create indecisive government, exacerbate executive-legislative tensions and deepen social cleavages. The various measures suggested in preceding paragraphs would facilitate development of coalitions between legislators with common interests into three, or ideally two, groups to give support to particular candidates.

(Please refer to Appendix 1 for an illustration of the above nomination requirements recommended by the BPF.)

Choice of the final candidate

13. These foregoing paragraphs aim at improving the nomination process. In 2012 after the completion of nomination, the final choice between the competing candidates should be put to all registered voters finally to elect the CE through a one man one vote process. This would amount to universal suffrage for the election of the CE and the ultimate goal stated in the Basic Law (Article 45) would have been achieved. The Chief Executive at the end of the day could legitimately claim that he had wide public support.
14. In the event of the final election taking place between more than two candidates in which no candidate obtains a majority of the votes, the merit of a two-round run-off



between the two candidates with the highest number of votes needs evaluation. In theory it should produce a majority winner, while a weakness of the one-round first-past-the-post voting method is that it may produce a winner with less than 50% of the total voting support. However, the possibility of a run-off discourages the coalition of opposing forces during the run up to the first round election in the hope of winning a second round runoff. Political elites making the decision to run their own candidates can have as their goal either to finish in the top two in the first round or to demonstrate an electoral following that can be delivered in the runoff election to one of the top two finishers in exchange for benefits in the future. Studies have shown the percentage of votes received by two leading parties in these circumstances tend to be smaller than those in one-round elections. Moreover, the run-off system encourages the development of political factions rather than major coalitions.

15. For these reasons it is proposed that for the CE election, the one-round first-past-the-post voting method is the preferred option. In such a system, the candidate with the largest number of votes wins the election. Political forces hence tend to form a broad coalition behind the "front-runner" and the opposition also tends to coalesce behind one "principal" challenger to gather as many votes as possible. This would contribute to the formation of two or three major groups of legislators and decrease the possibility of a number of small factional groups springing up. This is efficient, simple, low cost and more likely to lead to an acceptable outcome.

July 2006



An illustration of requirements recommended by the BPF
for successful nomination of the Chief Executive in 2012

Premises:

- Nomination Committee = 800 members (made up of four sectors of 200)
- Legislative Council (LegCo) = 60 members
- LegCo members are to remain in the Fourth Sector of the Nomination Committee

Requirements recommended by BPF

- Threshold for successful nomination	(12.5% of 800)	=	100
- Minimum support from each of the 4 sectors	(10% of 200)	=	20
- Minimum support from LegCo	(25% of 60)	=	15

Based on the above, the following is the composition of the minimum requirement for successful nomination:

First, Second & Third Sectors:	20@ x 3 sectors	=	60
Fourth Sector	15 LegCo + 5	=	20
From any of the four sectors		=	20
Total nominations			<u>100</u>