

**Salient points in the Law Society submission on the
Consultation Document for selecting the Chief Executive in 2017 and
for forming the Legislative Council in 2016**

Overriding principle

1. With respect to the legality of any proposals relating to
 - (a) the Nominating Committee;
 - (b) voting arrangements for electing CE by universal suffrage; and
 - (c) method of forming the Legislative Council, including Functional Constituencies,

the overriding principle is that it must be consistent with the Basic Law because as set out in the Preamble of the Basic Law, the Basic Law prescribes the systems by which the Central Government's policies in Hong Kong are to be implemented.

2. Article 11 of the Basic Law clearly states that no law enacted by the Hong Kong legislature shall contravene the Basic Law.

Nominating Committee

3. Article 45 of the Basic Law sets out the elements to consider when deciding the methods for selecting the CE:

- (a) "In the light of the actual situation"

"In the light of the actual situation" is a factual, and not a legal, issue, but the factors of maintaining "balanced participation of all sectors and groups of the society" and "long term prosperity and stability of Hong Kong" are relevant.

- (b) "In accordance with the principle of gradual and orderly progress"

The phrase "gradual and orderly progress" does not necessarily mandate a slow movement towards universal suffrage. The current rate of "progress" towards universal suffrage is too slow.

A majority of members who responded to the Law Society survey expressed that they would be dissatisfied if the electoral reform were to "fail" and the next election had to continue to adopt the current system.

- (c) "Nomination by a broadly representative nominating committee in accordance with democratic procedures"

The Law Society is in support of enhancing the "broadly representative" element in the composition of the nominating committee by, for example,

- (i) increasing the size of the nominating committee;
- (ii) widening the degree of participation by members of the public provided that it is not inconsistent with the Basic Law and no one is unreasonably or unlawfully included, excluded or pre-screened in the nomination process.

The Law Society also agrees that the nominating committee may be formed with reference to the existing Election Committee, but there should not be any mandatory obligation to strictly adopt the same provisions.

(d) Role and function of the nominating committee

The Law Society acknowledges that the nominating committee as a constitutional body is vested with substantive and not nominal authority to nominate candidates for the CE election in 2017.

Proposals that water down or usurp the constitutional role of the nomination committee, such as civil nomination or nomination by political parties, are inconsistent with the Basic Law.

Voting arrangement for electing CE

- 4. The right and the freedom to vote are fundamental, but restrictions can be lawfully imposed if they are prescribed by law and does not contravene Article 21 of the Hong Kong Bill of Rights as being an unreasonable restriction.
- 5. With respect to the candidacy for CE, the Basic Law provides that the CE must be a person of integrity, dedicated to his or her duties. The CE shall be accountable to the Central People's Government and Hong Kong SAR. Some circumstances requiring resignation are also prescribed including the loss of ability to discharge duties as a result of serious illness or other reasons.

Method of forming Legislative Council including Functional Constituencies

- 6. The Law Society repeats its comments in paragraph 3(a) and (b) above in relation to "in light of actual situation" and "in accordance with the principle of gradual and orderly progress" as they apply to the method of forming Legislative Council.
- 7. Any reform of the functional constituencies should be consistent with the goal of their eventual abolition.
- 8. In the transition period, there should be an increase in the number of geographical seats by removing the 50:50 ratio for the 2016 elections.

The Law Society of Hong Kong
5 May 2014