

DEVELOPMENT OF THE POLITICAL SYSTEM OF THE HKSAR

In a recent survey by the Law Society on the views of its members on the development of the political system of the HKSAR, 4,200 sets of questionnaires were issued of which 176 replies were received. The response rate was 4.2%.

The following are the questions in the survey circulated to members:

Part I The Chief Executive

1. *What do you think about the current pace of electoral reform towards selection of the Chief Executive by Universal Suffrage:*

	<i>Response</i>	<i>%</i>
<i>Survey results: too slow</i>	<i>144</i>	<i>82</i>
<i>about right</i>	<i>23</i>	<i>13</i>
<i>too fast</i>	<i>7</i>	<i>4</i>
<i>no comment</i>	<i>2</i>	<i>1</i>

Comments of Law Society's Constitutional Affairs Committee ("CAC"):

(1) The Basic Law ("BL")

BL45 stipulates that 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. It also provides that the method of selecting the Chief Executive shall be specified in the light of the actual situation of HKSAR and in accordance with the principle of gradual and orderly progress. Annex I prescribed the current method for electing the Chief Executive by the 800-member Election Committee.

Annex I (Paragraph 7) states:

"If there is a need to amend the method for selecting the Chief Executive for the terms subsequent to the year 2007, such amendments must be made with the endorsement of two thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval"

As a preliminary issue consensus should be reached on the interpretation of the provision:

"for the terms subsequent to the year 2007".

The term of office of the Chief Executive is five years and he may serve for not more than two consecutive terms.

At present it can be interpreted to mean a change to the current selection method can take place in 2007 after the second term of office of the Chief Executive ends or it cannot take place until 2012 after the third term.

(2) Universal Suffrage:

The International Commission of Jurists in its 1965 Declaration of Bangkok laid down the following principles in relation to Direct elections and the Rule of Law:

- I The Rule of Law can only reach its highest expression and fullest realisation under representative government.
- II By representative government is meant a government deriving its power and authority from the people, which power and authority are exercised through representatives freely chosen and responsible to them.
- III Free periodic elections are therefore important to representative government. Such elections should be based on universal adult suffrage and should be held by secret ballot and under such conditions that the right to vote is exercised without hindrance or pressure.
- IV No adult citizen should by reason of race, colour, sex, language, religion, political or other opinion, national or social origin, wealth, education, status or birth be deprived of the right to be a candidate at any election, to seek votes, or to cast his vote for any candidate.

(3) Social Context

It remains speculative of what the public opinion is on the current pace of electoral reform towards selection of the Chief Executive by universal suffrage. The survey result seems to give some indication that the current pace is considered to be too slow.

2. *The Year in which HKSAR should be ready to select the Chief Executive by Universal Suffrage?*

	Response	%
Survey results:		
in or before 2007	125	71
After 2007 but in or before 2012	9	5
After 2012 but in or before 2017	2	1
After 2017 but in or before 2022	5	3
After 2017 but in or before 2027	5	3
Not Sure	30	17

Comments of CAC:

Based upon the comments to Q1 above, it will be more realistic to expect that HKSAR should be ready to select the Chief Executive in 2012.

3. *How should the "Nominating Committee" as provided in BL 45 be constituted?*

	Response	%
Survey result:		
by "Universal Suffrage on geographical basis"	133	76
by an Election Committee in accordance with BL Annex I	125	14
by other methods	16	9
no comment	2	1

Comments of CAC:

The experience of Western democratic societies shows that candidates for the presidency usually have strong party backing. BL43 provides that the Chief Executive shall be accountable to the Central People's Government and the HKSAR. How and to what extent party politics would have a role in the election of the Chief Executive are issues that warrant in depth analysis.

It remains unclear whether election of the Nominating Committee by Universal Suffrage on geographical basis suits the social and political situation of the HKSAR without modifications.

4. *Do you think BL 45 regarding the selection method of the Chief Executive should be amended?*

	<i>Response</i>	<i>%</i>
Survey result:		
Yes	137	78
No	34	19
No comment	5	3

Comments of CAC:

The short answer is Yes. But how that should be done needs further study.

5. *If "Yes" how would the Chief Executive be selected?*

	Response	%
Survey result:		
by Universal Suffrage in a direct election	127	72
by LegCo members (as in the UK)	11	6
No comment and not applicable	38	22

Comments of CAC:

It seems to be premature to conclude what selection option should be chosen.

6. *If you consider that a Nominating Committee should select the Chief Executive, on what basis should that Committee itself be formed?*

	Response	%
Survey result:		
by Universal Suffrage on a geographical basis	38	22
by representatives of the geographical and functional constituencies (as now happens in relation to 10 members by LegCo)	19	11
by appointed representatives	4	2
no comment and not applicable	115	64

Comments of CAC:

It seems to be premature to conclude what selection option should be chosen.

Part II The Executive Authorities

7. *Should the present system of appointment of Principal officials of the Civil Service be continued?*

	<i>Response</i>	<i>%</i>
Survey result:		
Yes	62	35
No	109	62
No comment	5	3

Comments of CAC:

The Civil Service should remain neutral in order to implement policy. The current system will however need to be changed to introduce accountability for Government policies.

8. *If your answer to question 7 is "No" by what method should Principal officials be appointed?*

	<i>Response</i>	<i>%</i>
Survey results:		
By LegCo	19	11
By the Chief Executive <i>not</i> from the Civil Service	21	12
By appointment by the Chief Executive with approval by LegCo	67	38
By other method	7	2
Not applicable	62	35

Note: "Other method" suggested by those responding to the survey includes open application, ministerial system, and public nomination

Comments of CAC:

If policy makers are elected there will be enhanced accountability to the electorate and therefore there will have to be changes to the existing system in order to maintain the

neutrality of the Civil Service. There is obviously a need for further deliberation on the most appropriate system for Hong Kong.

9. *Should the present system of appointment of Exco members be continued? (BL55)*

	Response	%
Survey response:-		
No	99	56
Yes	77	42

Comments of CAC:

BL54 provides that the Executive Council shall be the organ for assisting the Chief Executive in policy-making. BL55 provides for the appointment of members of the Executive Council by the Chief Executive among the principal officials of the executive authorities, members of the LegCo and public figures. The existing system by appointment lacks accountability. A clear example of such failure is the Government's lack of co-ordination on its housing policy.

10. *If your answer to question 9 is "No" by what method should Executive Councillors be appointed?*

	Response	%
Survey results:		
By LegCo members	19	11
Appointment by the Chief Executive from political parties/LegCo	19	11
Appointment by the Chief Executive with approval of LegCo	55	31
By other methods	7	4
Not applicable and no comment	76	43

Note: "Other methods" suggested by those responding to the survey include as Election, Ministerial Cabinet system similar to that of UK, Abolition of Exco, and Universal Suffrage

Comments of CAC:

What method is most appropriate to the HKSAR would require more discussion and analysis.

Part III The Legislature

11. *What do you think about the current pace of electoral reform towards electing all LegCo members by Universal Suffrage*

	Response	%
Survey results:		
Too slow	128	73
About right	35	20
Too fast	7	4
No comment	6	3

Comments of CAC:

BL 68 provides that the ultimate aim is the election of all members of the Legislative Council by universal suffrage. Annex II stipulates that with regard to the method of forming the Legislative Council and its procedure for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for the record. Except for the first term of two years, the term of office of LegCo is four years.

The current pace is too slow and the Administration should prepare to implement election of all Legislative Councillors by Universal Suffrage in 2008.

12. *The Year in which all LegCo members should be elected by Universal Suffrage?*

	Response	%
Survey results:		
In or before 2007	121	69
After 2007 but before 2011	9	5
After 2011	14	8
Not sure	28	16
No comment	4	2

Comments of CAC:

The community is split on the pace of universal suffrage. It is clear however that Hong Kong voters are beginning to identify with their elected representative as the person who will look after their interests. The electors in Hong Kong should be considered sufficiently mature enough to elect all members of Legco by Universal Suffrage after 2008.

13. *How should the election of all Legco members by "Universal Suffrage" be done?*

	Response	%
Survey results:		
By direct election on geographical basis	74	42
By functional and geographical constituencies	46	26
By "first past the post" method	9	5
By proportional representation	18	10
By a combination of the above methods	25	14
By other method	4	2

(Note: 'Other method' suggested by those responding to the survey includes direct election on geographical combined with "first past the post", a combination of direct election on geographical basis combined with "first past the post" and proportional representation, a combination of direct election on geographical basis combined with proportional representation and a combination of election by functional and geographical constituencies combined with proportional representation)

Comments of CAC:

There needs to be further discussion on the method of election by "first past the post" or by proportional representation.

**Constitutional Affairs Committee
The Law Society of Hong Kong
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