

## HONG KONG GENERAL CHAMBER OF COMMERCE

# Views on the Constitutional Development Process

February 2004

The Hong Kong General Chamber of Commerce welcomes this opportunity to share our views on the constitutional development process in the SAR. As requested, this submission is restricted to the process, not on the end result of constitutional development. We believe that getting the process right will deliver the desired results which will maintain community unity, stability, and prosperity. But at this point, the Chamber has not yet developed a consensus as to what changes would be best for Hong Kong. When the time comes to weigh various options, we will certainly provide our views on them.

This submission takes as its starting point the January 14, 2004, Legislative Council Panel on Constitutional Affairs "Task Force on Constitutional Development" paper, and its appended "Issues on Legislative Process and related Legal Issues concerning Constitutional Development in the Basic Law".

### 1. Overview

To the Chamber, "getting the process right" means taking care of the following concerns:

- That both the process and whatever outcome arises from it maintain the prosperity and stability of Hong Kong;
- That political differences of opinion during the process not distract us from the urgent need to rebalance our public finances;
- That the process of consultation be given adequate time, be open to different ideas and be handled with great care;
- That Hong Kong people be knowledgeable of Beijing's own sensitivities and the legal boundaries of the Basic Law and whether amendments are necessary;
- That as broad as possible a consensus be built before formal options are presented in a government consultation paper; and
- That the entire process be conducted with dignity and transparency and puts Beijing, the SAR government, and the community in a good light.

The consultation will be difficult, at best. After the confrontations arising out of the Blue Bill on national security legislation, it is vital that we make every effort to educate the community, consult broadly, and respect the views of all sides of the political spectrum. In short, we need to be inclusive, something that was missing during the Article 23 consultations. We need to do all we can to avoid polarizing the community on this issue, even though we admit that "managing the process" is nearly impossible and that a diversity of opinion reflects Hong Kong's strength rather than its weakness.

Successful constitutional development can be a win-win situation, for all concerned: the executive and legislative branches, political parties, the business community, national interests and society as a whole. It is not an exaggeration to say that constitutional development, handled well, can ensure Hong Kong's future prosperity and stability. Showing doubters that we can find common ground, particularly after the July 1st (and subsequent) demonstrations; will go a long way toward setting at ease foreign investors and our own entrepreneurs. Therefore, we believe the Task Force on Constitutional Development is a welcome first step, and one that sets the consultation process off on the right foot.

Equally, it is very important for all sides to realize the dangerous consequences of getting it wrong. Constitutional development should not be a political football manipulated for the advantage of one side "against" another. It is far too important to be used to win political points. And, all sides must avoid extreme, infeasible positions, and come to a compromise for the good of Hong Kong. If not handled properly, our evolution risks being used as a pawn in a larger geopolitical game by other world powers vis-à-vis China, causing confrontation and a hardening of positions.

## 2. The Process

The HKGCC understands and supports the Task Force's efforts to come to an agreement with the Central People's Government on the exact meaning of specific language in the Basic Law and its Annexes. At the same time, we are fully supportive of an early beginning to broader consultation within the community. Throughout the process, the Government needs to be seen to be listening to the concerns and aspirations of the people.

The preamble to the Basic Law states the Central People's Government's commitment to "maintaining the prosperity and stability of Hong Kong". We believe this is best achieved via specific, visible and concrete steps toward constitutional development. Moreover, while we should not rush changes for the sake of change in accordance to an artificial timetable, we also believe that a prolonged lack of progress would directly threaten stability in Hong Kong.

While the consultation process needs to be thorough, it would be counter-productive for it to drag on for several years. We do not think it is useful to set a cut-off date for consultations at this time, although there should be clear signs of substantial progress before speculation on the 2007 nominations for Chief Executive begin in earnest.

Moreover, we would view with concern a process that has to be repeated every few years. Hong Kong needs a gradual and steady process that lays out the roadmap for constitutional development well beyond the next two elections.

The first step, collecting views in Beijing and Hong Kong prior to issuing a consultation paper, is entirely necessary, and we would encourage similar steps in other major policy initiatives. By involving interested parties in the earliest stages, the process of consensus building begins with a firm foundation. Moreover, the open-minded approach evident in the Task Force's first few meetings gives us the very positive impression that no "solution" has been predetermined.

### 3. Legal Issues

The Chamber's understanding of the Basic Law and its Annexes leads us to conclude that any change to the method of electing officials in Hong Kong must involve consultation with the Central People's Government. While there are likely some changes that might be considered which would not necessarily require amending the Basic Law or its Annexes, any significant modification of the means by which leaders are chosen has to be enacted with Beijing's blessing.

Among the areas needing greater analysis and, particularly, a meeting of the minds with the Central People's Government, are the definition of terms such as "gradual and orderly" and the "actual situation". Our Legal Committee is currently working on these and other technical issues, and may submit an opinion in future.

### 4. The Need for Change

Many of our members hold the view that the current political system is dysfunctional and has contributed to the problems we have seen in the past few years. Therefore, a determination to examine the political system and consider changes is necessary. This perspective is reflected in the over 75 percent response among our members, who in our recent Business Prospects Survey expressed support for early consultation.

Further, we believe that a majority of the people of Hong Kong expect progress on constitutional development to begin soon, and that delays will polarize society and undermine our cherished stability and prosperity. This growing expectation within our community that change will occur sooner, not later, does not yet have what one would call a consensus on a specific change. The Chamber is, however, troubled that the discussion thus far has been focused far too much on dates rather than actual conditions of political development in Hong Kong. Nevertheless, we do believe that some progress must be seen to be made this year. In this we find no contradiction to the need to maintain Hong Kong's political system "in line with its legal status and actual situation".

However, what ultimately matters is the quality and effectiveness of government. In the past year, we've witnessed heightened confrontation between the government and those dissatisfied with its performance. In judging the need for change, and exactly what that change should be, we should think about how to change the political system to improve it.

### 5. Considerations of Stability

We believe Hong Kong is stable and sophisticated, and, given sufficient sensitivity to the constitutional development issue, will remain so into the foreseeable future. We recognize that popular satisfaction with the government is very low but caution against this being misinterpreted as a sign of instability. To avoid further dissatisfaction, which might lead to instability, should be one of the primary objectives of the constitutional development consultation exercise.

Maintaining stability will require steady, timely and visible progress toward implementation of constitutional development. To further postpone visible progress beyond the 2007 and 2008 election would not be in keeping with the need for "gradual and orderly" progress, and would entail unnecessary risks.

At this time, we make no judgment as to what, if any, change should be implemented for the 2007 and 2008 elections, but wish to stress the need for progress to be *seen* to be made before then. As demonstrated in the past year, highly sensitive issues will bring people out onto the streets of the SAR. While we are heartened by the peaceful and orderly manner in which such protests have been organized, we believe it prudent not to test public tolerance unnecessarily and repeatedly.

Hence, in the process of constitutional development here in Hong Kong, we see two risks to stability. The first is if the community believes constitutional development will be postponed too far into the future. The second is if we force changes despite the lack of institutional developments – further discussed below. The latter case has been amply illustrated in formerly communist countries, and counter-indicated in places like Korea, where political parties and similar institutions were already well developed prior to improved representation.

## **6. Ensuring Prosperity**

Business is watching carefully how government handles community demands for greater representation. Managing the consultation process well will go a long way towards reassuring investors and employers that Hong Kong remains one of the best business and financial centers in the world. If it is not managed well, and the confrontation not only paralyzes our governance but spills over to larger geo-political disputes between China and others, then investor sentiment in this region and in Hong Kong will be affected.

Some have said that greater representation in government will lead to spendthrift budgeting, higher tax rates or so-called populist policies. Yet, the current political structure has played a major role in creating Hong Kong's dangerously imbalanced public finances. Perhaps there may be a temporary surge in demand for government largess as popularly elected officials become the majority in the legislature, but others might argue that this tendency should wane as voters become taxpayers. In the end, it is impossible to determine if a modified means of selecting leaders will necessarily further irresponsible fiscal policies.

We do note that, with very few exceptions, societies around the world that have our level of incomes also have much more representative governments. Yet, in these mature democracies both government outlays and tax rates have declined in the past decade. Further, there is no sign that investors have fled these countries because of their high levels of public participation in selecting leaders. It is therefore difficult to assume that greater representation, in and of itself, threatens prosperity.

There is, however, evidence that democracy and prosperity go hand in hand. Analyses such as the UN Human Development Index, the Heritage Foundation's Economic Freedom Index or the Fraser Institute's Human Progress Index group prosperous economies at the top and poorer one

at the bottom. Deeper examination of the underlying data shows that economies which improve their levels of political representation also tend to move up the scale, while those who suffer setbacks in governance inevitably fall in prosperity as well. Moreover, among countries with less-than-full democracy, many of those experiencing a decline in prosperity are ones that failed to improve their democratic credentials over the past 15 years.

Another major discrepancy between Hong Kong and other wealthy societies is in the scope of taxation. In comparing the tax paid at an income level equal to GDP per capita, we note that the SAR taxpayer pays less than 15 percent as much tax as the average paid in the OECD. One reason is that we have no broad-based consumption tax; another is that Hong Kong's ratio of personal allowance, in comparison to incomes, is nearly double what it is in those other economies.

The lack of personal involvement in paying for government services only supports those segments of the political spectrum seeking greater social benefits than our tax base can support. This is an important reason why cutting costs, which should be the first step to any balancing of the budget, has been so difficult for the government now. If we are to maintain a low tax environment and rebalance our government finances, the community must financially experience the link between revenues and expenditure.

In order to evolve toward a more representative government, we need a direct link between policies and personal pocket books. People who pay taxes have a vested interest in who represents them, how government performs, and most particularly in how it spends money. When our community better understands that each dollar spent represents a dollar collected from society, revenue and expenditure priorities will return to balance. Thus, we find a strong link between our deep concern over the extraordinarily narrow tax base and popular expectations of a greater say in future policy. The reverse is also true, as evidenced by the link, over the past decade, between declining voter turnout rates – an expression of personal interest in public affairs – and the shrinking tax base.

By broadening the tax base we will take a major step toward ensuring that future leaders act responsibly in determining spending priorities. As we have seen elsewhere, taxpayers demand that elected representatives make the best possible use of public funds, and call to account those who do not. We now have the prospect of developing more politically – and fiscally – responsible citizens. Although we wish to make it clear that we would welcome a more equitable sharing of the burden, with or without constitutional development, from a philosophical and tactical perspective, the two issues go hand in hand. Just as selecting leaders is a community responsibility, so too is paying for public services.

Hong Kong's prosperity has been battered in recent years by numerous events outside of our control. As the most international city in the world, we can only moderate the effects of external conditions, not avoid them. The process of rebuilding good relations between the government and the governed, of which constitutional development is an important part, can be a tool with which to show potential investors that they need not fear the rise of a fiscally irresponsible leadership. A broader, more equitable tax base will reassure investors that they need not expect steadily rising tax rates to pay for widely consumed public services. Further burden on the

present narrow tax base risks investor flight. That is why it is so important that we have the fiscal resources and governmental structures that will enable us to respond in a flexible and timely manner, to counter uncertainties and capitalize on opportunities.

## 7. Establishing Strong Political Institutions

On July 1st and again at the beginning of this year, we saw ample evidence that the people of Hong Kong are quite capable of organizing and expressing opinions within the rules of society. Such peaceful demonstrations denote a high degree of political maturity, a maturity that is very rare in Asia. While a more representative leadership might have been able to defuse the situation earlier, one cannot say that Hong Kong people are politically immature.

We are, however, *institutionally* immature. Hong Kong lags far behind other economies with similar standards of living in the development of political parties and supporting institutions. More mature democracies tend to have well-developed non-governmental or university based public policy research institutes that are able to provide the intellectual background to complex issues. While some may be affiliated with specific political parties (e.g., the Heritage Foundation or Brookings Institute in the US), others are neutral or issue-specific. In the end, politicians – both in and out of office – may draw on a range of serious thought that is both broad and deep. Developing such think tanks in Hong Kong should be a priority as we move toward more participatory governance.

We also believe the process of constitutional development will require a strong element of support for party politics, and in this area the SAR is not well developed. In the past few years political parties have received greater recognition from government, as in the case of appointments to the Executive and District Councils. Voters, too, are beginning to recognize the differences among parties, rather than just identifying with individual politicians. This is an evolution we support, and one we suggest should be broadened and facilitated.

Political parties allow leaders to present themselves to voters as representing a specific set of policy choices. They also create a base of support for policy positions, thus contributing to working relations between the legislative and executive branches. Over time, we need to develop a system that will allow the rise of a party, or coalition of parties, that could successfully take up the reins of power. The lack of such cohesion today curtails our ability to grow politically, and it is a shortcoming that we need to address if we are to move toward greater direct election of our leaders. The ultimate result might be the development of a loyal opposition or shadow cabinet.

As the Task Force arrives at a clearer understanding of the parameters of constitutional development, and prepares a consultation paper, we would strongly encourage a parallel effort toward institution building. The fixation on 2007 or any other date is meaningless if the entire system is not ready. Dragging our feet in getting the system ready would be irresponsible. Institution building must start at the same time as the broader debate.

## 8. Concluding Thoughts

Last year's confrontation over national security legislation offers a reminder of just how important it is to get it right the first time. Getting it wrong—by dividing the community, by underestimating China's critical role and thinking of the limitations of the Basic Law, or otherwise failing to build a consensus—is the single greatest danger we face in this endeavor. Certainly, the CE's deliberate plan to work through the basics before preparing policy choices for broader consultation may frustrate those who believe they already know what is best for Hong Kong. But, constitutional reform is a very delicate matter and we need to ensure that considerable time is given to getting it right and that the community has ample opportunity to understand the issues, consider alternatives and build a consensus.

As opposed to some in the community, we are optimistic in the eventual outcome being good for Hong Kong and for the Central Government, but getting from here to there takes us along a road filled with significant bumps and twists and turns. Only the best cooperative efforts of the SAR Government, the Central Government, and the community, including the business sector, can assure us we do not run off this road.

\*

\*

\*