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January 27, 2004

The Honourable Donald Tsang Yam-kuen, GBM, JP
Chief Secretary for Administration
Hong Kong Special Administrative Region

Dear Mr. Tsang,

**What Next in Constitutional Reform?
Enhancing Representation and Ensuring Effective Governance**

Established in February 2002, SynergyNet is a civil society-based policy think-tank, devoted to the formulation of medium to long-term strategies and policy proposals for the Hong Kong Special Administrative Region, so as to enhance the quality of governance and promote economic and social progress.

SynergyNet plans to make contribution towards generating new policy ideas for the next government in 2007. It will identify a number of key policy areas and invite experts to prepare policy paper on each area. These policy papers will be published as part of the *"Thinking About 2007" Policy Paper Series*.

The first policy paper, *What Next in Constitutional Reform?* has been released. We enclose with this letter a complimentary copy of the full paper for your interest. Your comments are most welcome.

We look forward to your continuous support to SynergyNet.

Yours sincerely,

(Signed)

Dr. Alex Wo Shun Chan
Secretary
SynergyNet

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Synergy for Re-inventing Hong Kong



**What Next in Constitutional Reform?
Enhancing Representation and Ensuring
Effective Governance**

**Thinking About 2007:
Policy Paper Series No. 1**

**What Next in Constitutional Reform?
Enhancing Representation and Ensuring
Effective Governance**

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About SynergyNet

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"Thinking About 2007" Policy Paper Series

Think-tanks overseas are used to publishing policy papers to influence new governments. For example, the Fabian Society in Britain published a "*Second Term Thinking*" series in the run-up to the 2002 general election, aimed at making a significant contribution to the development of innovative policy options across a range of areas, and stimulating debate both on the key strategic and philosophical directions of the post-election government and the policies that would manifest them.

As a policy think-tank, SynergyNet plans to make contribution towards generating new policy ideas for the next government in 2007. It will identify a number of key policy areas and invite experts (whether members or non-members) to prepare at least one policy paper on each area. These policy papers will be published as part of the "*Thinking About 2007*" Policy Paper Series, and released over a period of some 30 months from early 2004 onwards. By mid-2006 all will have been published, in time before the next Chief Executive election takes place.

About the author

The author of this paper is Anthony B. L. Cheung, Professor of the Department of Public and Social Administration, City University of Hong Kong. He writes extensively on privatization, public sector reforms, Hong Kong politics and Asian administrative reforms. His latest book is *Governance and Public Sector Reform in Asia: Paradigm Shift or Business As Usual?* (RoutledgeCurzon, 2003). Professor Cheung is active in public service. He has served on the Legislative Council, Housing Authority and various civil service pay advisory bodies, and now sits on the Standing Commission on Civil Service Salaries and Conditions of Service and the Consumer Council. He is currently chairman of SynergyNet.

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Executive Summary

This paper discussed constitutional reform in Hong Kong, at a time when there is much public discontent about government failure and increasing consensus in society that the existing political system no longer works. On top of a looming legitimacy crisis, the SAR Government also faces the problems of weakening policy and administrative capacities and the inability to work with the Legislative Council (Legco) so as to ensure stable and effective government. Without a stable system of governance and public support, it is highly difficult, if not impossible, for the government to steer society forward in the crucial tasks of social development and economic restructuring which are essential to take Hong Kong out of the existing doldrums.

Enhancing the government's representation (hence strengthening its mandate) and improving its capacity to run an effective administration and lead the community should be the primary objectives of the Constitutional Reform.

Some major recommendations are made:

On executive-legislative relations:

- To consolidate a system of separation-of-powers and check-and-balance, there is the need to strengthen concurrently the political legitimacy and constitutional powers of the executive and legislative institutions by:
 - Electing both the Chief Executive and all seats of Legco on the basis of universal franchise;
 - Removing the constitutional restrictions on moving private member's bills by legislators so that Legco can play a more active and constructive role in policy-making.

On the election of the Chief Executive:

- Starting with the 3rd term (2007-2012), the Chief Executive will be popularly elected subject to such nomination procedures as prescribed by the Basic Law. In future, as the system of universal suffrage gains experience and becomes consolidated, the Nomination Committee should be dispensed with.
- Where the Nomination Committee exists as the official nomination mechanism, there should still be opportunities for 'preliminary nomination' by ordinary citizens:
 - Any 500 registered voters (or a larger threshold) can together make a preliminary nomination of a candidate for the Chief Executive post.
 - Preliminary nominees will be scrutinized by the Nomination Committee. Only those preliminary nominees who obtain the endorsement of a minimum of 100 members of the Nomination Committee will be put forward for the final-stage election by universal suffrage.
- The current legislative restriction on the Chief Executive being member of a political party should be lifted.
- Members of all sectors constituting this Committee should be elected on the basis of one-person-one-vote within the sector. The Nomination Committee, with membership from 800 to 1200, will cover broadly four sectors – business, the middle class, the grassroots, and the political sector.

On the election of the Legislative Council:

- The membership of Legco should be enlarged to a total of 90 seats. They should all be elected by universal suffrage through 3 different ways so as to achieve balanced representation:
 - 30 members to be directly elected on the *single-seat geographical constituency*.
 - 30 members to be directly elected on a *regional single-list system*.

- 30 members to come from *defined functional sectors* (similar to existing functional constituencies), *but* to be elected by universal suffrage. However, there are still both problems of principle and practicalities surrounding the provision of such seats.
- The new Legco should function fully as a unicameral chamber. The existing requirement for 'split-voting' on motions, bills and amendments to bills moved by legislators should be abolished.

On strengthening the Executive Council:

- The new constitutional nature of the Executive Council (Exco) as government cabinet should be further institutionalized so as to strengthen executive leadership and coordination.
- Exco should set up major policy committees. Some of them should be chaired by the Chief Secretary for Administration and some by the Financial Secretary.
- The Chief Executive's Office (CEO) should be strengthened in its role as Cabinet Secretariat. The Director of CEO should be taken up by the most senior member of the civil service, who concurrently serves as Head of the Civil Service as well as Cabinet Secretary.

On strengthening policy coordination and legislative liaison:

- The role of the Chief Secretary should be strengthened:
 - As the 'minister' in charge of civil service policy;
 - As the 'coordinating minister' for domestic policies; and
 - As the government's chief liaison with the Legco on the day-to-day basis and to be in charge of the government's legislative programme.

On the clear delineation of the ministerial and civil service responsibilities:

- The existing post of Secretary for the Civil Service should be dispensed with.
- All politically-appointed principal officials should be supported by a similarly appointed Deputy Secretary and, where appropriate, a number of Under-Secretaries.

On the further development of political parties:

- The evolution of the SAR's system of government must be conducive to the further development of political parties and the formation of governing coalition between Legco parties and the Chief Executive so as to stabilize executive-legislative relations and to ensure effective government.
- A proper Political Parties Ordinance should be enacted.
- Some public funds should be appropriated to parties to support their lawful activities according to their share of electoral votes.

Other equally critical issues relating to governance reform – such as the future of the Administrative Class and Directorate system, and the role and functions of Statutory and Advisory Bodies – will be addressed by other Papers to be issued under the 'Thinking About 2007 Policy Paper' series.

The political impasse

1. The political impasse created by Hong Kong's post-1997 constitutional design has long been recognized by local political scientists and politicians alike.¹ In January 2000, the former chairman of the Democratic Alliance for the Betterment of Hong Kong (DAB), Tsang Yok-sing, made open comments to the effect that Hong Kong's system of governance was in danger of losing its political and administrative talent, so much so that the Special Administrative Region (SAR) might eventually be governed by mediocre people.² His argument was based on the observations that without any votes in the Legislative Council (Legco), top government officials had to spend too much precious time simply on 'begging votes' from legislators in order to pass legislations and finance bills, while legislators on the other hand lamented about having only votes and yet no active part to play in policy-making. Both sides thus became highly frustrated; in the long-run, talent would not stay in the top echelons of the civil service, nor could political parties attract talent to run for legislative office.
2. In April 2002, prior to the commencement of his second term in July, Chief Executive Tung Chee-hwa introduced a new ministerial system known as 'Principal Officials Accountability System' (POAS)³, accompanied by a reorganization of his Executive Council (Exco), turning it into a cabinet of ministers (i.e. politically-appointed principal officials) and leaders of major party groups in Legco (namely the DAB, Liberal Party and the Hong Kong Federation of Trade Unions). Tung's political reforms in effect negated the assumptions of the Basic Law drafters that (a) the post-1997 government be led by career civil servants (essentially members of the elite Administrative Class) as principal officials under a Beijing-appointed Chief Executive and that (b) the government be largely free of party-political influence so as to preserve the so-called tradition of executive-led government.
3. In a way Tung was forced by circumstances to go into this route, despite Beijing's previous reservations about 'politicizing' the SAR government. In his first term of office, he could not get along with the senior civil service team headed by former Chief Secretary for Administration Anson Chan. He blamed his lackluster performance and the failure in government on the bureaucrats whom he regarded as not supporting his agenda enthusiastically, if not in effect sabotaging it. He needed to put his own men and women in charge of key portfolios to ensure his policy agenda is implemented. He also thought that by canvassing the support of DAB, the Liberals and FTU through co-optation into Exco, he could forge some kind of governing coalition with pro-government Legco party groups and muster enough

¹ I. Scott (2000) "The Disarticulation of Hong Kong's Post-Handover Political System", *The China Journal*, No. 43, January, pp. 29-53. Also A. B. L. Cheung (2002) "The Changing Political System: Executive-led Government or 'Disabled' Governance?", in S. K. Lau (ed) *The First Tung Chee-hwa Administration: the First Five Years of the Hong Kong Special Administrative Region*, Hong Kong: The Chinese University Press, pp. 41-68.

² Y. S. Tsang (2000) "Letter to Hong Kong", 2 January, Hong Kong: Radio Television Hong Kong.

³ C. H. Tung (2002) speech at Legislative Council, 17 April.

legislative votes to ensure the smooth passage of government bills and finance requests.

The growing vulnerability of the SAR government

4. By the end of 2003, Tung's master plan has failed totally. His new ministerial team did not work as a united and cohesive political executive, while civil service morale has been fast deteriorating. Two of his trusted ministers left in disgrace in July 2003⁴, and several other ministers were seriously harmed by policy and political controversies⁵. Ministers coming from civil service background seem to fare better, but Secretary for the Civil Service Joseph Wong has been squeezed between civil service unions and public opinion over pay cut issues, and the former head of the civil service, Chief Secretary for Administration Donald Tsang, is widely perceived to have been sidelined by Tung. Intra-cabinet rivalries are now an open secret⁶.
5. Not only has Tung been unable to keep his ministers in line. His political weakness (seen by some as a liability) led to the resignation of Liberal Party chairman James Tien from Exco on 7 July 2003 following the massive protests against the controversial national security bill (which was subsequently shelved) and the announcement by the new chairman of DAB, Ma Lik, following his party's debacle in the district council election on 23 November 2003, that there was no such thing as a governing coalition and that the DAB would not now feel obliged to support the government.
6. Once again, Tung's government is in a political impasse. Without firm support from a legislative majority, he will face greater political difficulties in the remainder of his term. Already commentators are speculating that he would become a non-performing head of government as he tries not to embark on any major policy initiatives for fear of antagonizing various interests which, after the massive protests of 1 July 2003 against the national security legislation, are now prepared to fight the government at any time. The 1 July protests are a dividing line which marked the political demise of Tung, so much so that his administration is now without either the legitimacy or capacity to lead and mobilize support. Senior civil servants no longer respect their political masters. Meanwhile, following its landslide victory in the district council election, the pro-democracy camp is gearing for another such victory in the forthcoming Legco election in September 2004. Most political commentators expect the 'democrats' to emerge as the most powerful camp after that election even if they are short of a clear legislative majority.

⁴ Former Financial Secretary Antony Leung and former Secretary for Security Regina Ip.

⁵ Namely Secretary for Financial Services & the Treasury Frederick Ma (over the penny stocks affair), Secretary for Health, Welfare & Food Yeoh Eng-kiang (over the SARS outbreak), Secretary for Home Affairs Patrick Ho (over the Equal Opportunities Commission scandal), and Secretary for Education & Manpower Arthur Li (over the cutting of university funding).

⁶ As revealed, for example, in leaked allegations in March 2003 surrounding Antony Leung's failure to declare interest in his pre-Budget car purchase, which subsequently brought about his downfall and resignation, and open exchanges in November and December 2003 between new Financial Secretary Henry Tang and the education secretary over education budget cuts.

7. The disarticulation between the executive and legislative branches reflects a deeper malfunctioning of the SAR system of government. On top of the legitimacy crisis, the government also faces the problems of weakening policy and administrative capacities and the inability to work with the legislature so as to ensure stable and effective government. Without a stable system of governance and public support, it is highly difficult, if not impossible, for the government to steer society forward in the crucial tasks of social development and economic restructuring which are essential to take Hong Kong out of the existing doldrums.

Why has the Basic Law design failed to work

8. The SAR's constitutional impasse has largely resulted from a Basic Law which essentially provides for a modified extension of a system in use under British colonial rule. The colonial system had three main features:
 - An executive-led system, with powers highly centralized in the Administration, so much so that Legco played only the role of disposing the Executive's proposals;
 - An Administration dominated by the civil servants, with all top posts filled by civil servants who in effect acted as 'ministers'⁷; and
 - An amateurish Exco that constitutionally only advised and assisted the Governor in policy-making, though politically regarded as the latter's inner cabinet.
9. Until the transitional period following the signing of the Sino-British Joint Declaration in 1984, this system worked because all non-official Exco and Legco members were appointed by the Governor on the advice of senior civil servants. They shared a high degree of political consensus and trust, and usually followed the government line. With the introduction of elected seats in Legco, especially after the 1991 direct election, Legco was no longer at the service of the Administration. It has since evolved into a watchdog over the government, causing some Exco members and senior officials to wonder if it had in effect become an 'opposition' body. Because Legco could not constructively share the powers of policy-making and law-initiation (being hindered by Article 74 of the Basic Law), but could only exercise its political muscle through the extreme measures of vetoing government bills, funding requests or even the budget, it had been forced to take an increasingly confrontational stance vis-à-vis the Administration.
10. On the other hand, with the government dominated by civil servants, the career opportunity for politicians was limited. Party politicians could at most aspire to become legislators, but with only a small number of Legco seats available for direct election (24 in 2000 and 30 in 2004), competition is fierce, creating intra-party tensions (as witnessed in the open conflicts between the so-called mainstream and Young Turks factions of the Democratic Party from 1999 to 2002). Political parties'

⁷ On the rare occasions where 'outsiders' were brought in to fill the top posts, they were appointed on civil service contracts.

influence is confined to Legco, but with Legco prevented from sharing power with the Chief Executive, all parties could only aim at becoming a more effective watchdog over the government (in effect an opposition) rather than aspire to running the government one day. The Chief Executive Election legislation introduced by Tung in July 2000, which ironically was passed with the support of DAB and Liberal Party, required anyone elected to the top post to be politically non-affiliated, thereby making links with Legco parties all the more uncertain and problematic.

Tung Chee-hwa's half-baked reform of the Executive

11. A comprehensive review of the SAR's constitutional arrangements is long overdue. As Singapore's elder statesman Lee Kuan-yew said in his public lecture in Hong Kong on 25 October 1999, any constitutional document cannot remain unchanged forever otherwise it would become a straitjacket that hindered progress and development. Indeed, the Constitution of the People's Republic of China has been revised several times since its promulgation in the 1950s. Without seeking to amend the Basic Law, Tung Chee-hwa had actually went against its spirit when he introduced the new system of government in 2002 to kick off his second term of office. In essence he has given up government by civil servants and attempted to form a governing coalition with pro-government parties in Legco
12. On the face of it, Tung's introduction of a new ministerial system of political appointments and his co-optation of pro-government parties into Exco in July 2002 seemed geared to solving the problems of grooming political talent and forging closer relations with some Legco parties. In reality, however, he had only aimed to dis-empower the Administrative Class of the civil service and to politically subdue the Legco, hence ensuring his own version of an executive-led system dubbed by some as the 'presidentialization' of the Chief Executive office. Instead of opening up institutional channels for identifying and grooming political talent, he only sought to select a few so-called private sector persons for ministerial appointment. These people, with no previous political experience and little linkage to political parties, have proved to lack the *capacity* to either promote policies or build political alliance with elected politicians. Not only that, they are not provided with political deputies or assistants, but have to continue to rely on permanent secretaries and other senior civil servants for policy support and the defence of policies, hence making it impossible for the senior civil service to settle into political neutrality.
13. Leaders of pro-government groups co-opted by Tung into Exco continued to be viewed as appointed '*ad personam*', following the previous colonial ethos even though the very purpose of securing their participation in government was to win over their party votes in Legco. Since no clear constitutional principle of party involvement in Exco was set out, it became possible for the Liberal Party to desert the government at the last minute over the national security legislation, but still manage to subsequently secure the appointment of its vice-chairman Selina Chow to Exco in place of James Tien who had resigned, and for DAB's new chairman Ma Lik to declare his party outside any governing coalition despite its former chairman

Tsang Yok-sing keeping his Exco seat. There is no coherent principle governing the appointment of non-officials to Exco as the body becomes increasingly seen as the government cabinet.

14. By changing the system of government in July 2002, Tung has *de facto* declared the constitutional arrangements inherited from colonial times and in a sense legitimized by the Basic Law dead. The organic link with the Administrative Class has been severed as the door is now fully opened for politically-appointed principal officials. The support of the senior civil service has in future to be won through institutional partnership and mutual acceptance rather than through placing bureaucrats to fill the top ministerial posts. New venues for identifying, training and grooming political talent have to be found. Political parties have to be given a more constructive role to play in the system of government. Executive-legislative relations have to be properly institutionalized. There is no way to go back to the old regime. Neither is the old system sustainable in the post-1997 political environment when elected elements have become more and more significant.

Fundamental questions of governance

15. The SAR Government under Tung Chee-hwa has failed because of three main reasons:
 - Institutional defects arising from the Basic Law's political system design;
 - Lack of political support due to its weak political mandate; and
 - Unstable executive-legislative relations because of poor articulation with political parties.

These together have created serious problems of representation, leadership and mobilization for the government, which need to be addressed through a more fundamental review of the SAR's constitutional arrangements.

16. It would be useful to take the debate on governance reform within the context of the 'capacity triangle', which entails three important levels:
 - **State capacity** – the ability to mobilize social and economic power to achieve a wide variety of goals;
 - **Policy capacity** – the ability to marshal information and decision making power to make intelligent choices and to set strategic policy directions; and
 - **Administrative capacity** – the efficient management of resources in the various administrative processes required for delivering the outputs of government, such as public services, enforcement of regulations and so on.
17. The vital ingredient in *state capacity* is "the ability of the regime to foster participation and co-optation".⁸ *Policy capacity* entails "the manner in which

⁸ The notion of capacity triangle is borrowed from that used by the March 2001 Report of the 'Building Institutional Capacity in Asia' project, commissioned by the Japanese Ministry of Finance and undertaken by the Research Institute for Asia and the Pacific, University of Sydney. See pp. 14-17 of report

⁹ *Ibid.*, p. 15.

relations between the executive and legislature are handled, the manner in which cabinet and other executive decision making systems are organized, serviced and supported, and the ways in which central executive decision makers make use of expert knowledge and analysis.”¹⁰ It aims at achieving coordination and effectiveness within decision structures, to respond better to public demands and aspirations. By strengthening policy capacity, state capacity can also be enhanced. *Administrative capacity* entails implementation structures and managerial competence, to ensure efficiency and responsibility in the course of policy and service delivery. The three levels of capacity are mutually supportive and form a building block for effective governance.

18. In the case of present-day Hong Kong, building *state capacity* requires wholesale political reform that can result in a democratically-elected Chief Executive and Legco, the improvement of executive-legislative interaction, ~~the integration~~ of political parties (and various political elites) within the policy making process, and a politically ‘inclusive’ governance style that facilitates the fostering of active consent and support from the citizenry. The greater its popular mandate, the larger the government’s capacity will be in terms of political mobilization and integration. **Enhancing the government’s representation (hence strengthening its mandate) and improving its capacity to run an effective administration and lead the community should be the primary objectives of the Constitutional Reform.** The following recommendations are made with an eye on achieving such objectives.

Reforms and recommendations

Executive-legislative relations

19. The Basic Law has already placed the SAR’s political system firmly on the basis of the separation of executive and legislative powers, in that -
- the Chief Executive and Legco are independently elected and constituted;
 - legislators cannot be appointed as principal officials even though some of them can be invited by the Chief Executive to sit on Exco; and
 - under Articles 50 and 51, if Legco refuses to pass the budget or any other important government bill or the Chief Executive refuses to sign into law any bill passed the second time by Legco, and if consensus still cannot be reached after consultations, the Chief Executive is obliged to dissolve Legco and call new elections; but should the re-elected Legco still refuse to pass the government bill or budget in dispute, or if he still refuses to assent to a Legco bill in dispute, the Chief Executive has to resign.
20. While the Legco’s powers to check and balance the Executive is arguably constrained by Article 74 of the Basic Law (in that legislators are not allowed to move bills relating to public expenditure, the political structure or the operation of government and that bills relating to public policy can only be moved by legislators with the written consent of the Chief Executive), the doctrine of separation of

¹⁰ Ibid, p. 16.

powers and check-and-power has been clearly built into the Basic Law. The question is how such doctrine will be practiced by the executive and legislative institutions through interaction within the context of day-to-day politics.

21. To consolidate such a system, there is the need to strengthen concurrently the **political legitimacy and constitutional powers of the two institutions** by:
 - *Electing both the Chief Executive and all seats of Legco on the basis of universal franchise* so that there is a clear conferment of mandate to exercise governing and legislative powers from the SAR population in line with the principle of 'Hong Kong people governing Hong Kong' as enshrined in the Basic Law,
 - *Removing the constitutional restrictions on moving private member's bills by legislators* so that Legco can play a more active and constructive role in policy-making, instead of being simply a 'questioning' and 'criticizing' chamber. Before Article 74 of the Basic Law is amended, the Chief Executive should make it a point to give general consent to bills on public policy moved by legislators.

22. There might be worries from some quarters that such a full-fledged separation-of-power arrangement would make it impossible to practise an executive-led government. However, such worries are largely academic. If we look at the world around us, both the British Westminster model (whereby government is formed by the majority within Parliament) and the US-style presidential system (whereby the executive is constituted separately from the legislature) feature a strong executive government. The key to a strong government rests with a stable party system as well as electoral arrangements that can lead the formation of a strongly mandated Chief Executive and/or a clear parliamentary majority.

Chief Executive: Election and nomination

23. Under Article 45 of the Basic Law, the Chief Executive has to be ultimately elected on the basis of universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures. Annex I of the Basic Law allows this to take place "for the terms subsequent to the year 2007". This can be interpreted as applicable to the term commencing in 2007, i.e. the third term from 2007 to 2012. However, any amendment to the existing arrangements to accommodate the move towards universal suffrage is subject to the endorsement of a two-thirds majority of all members of Legco and the consent of the Chief Executive, as well as the approval of the Standing Committee of the National People's Congress.

24. In view of the overwhelming public sentiments in favour of electing the Chief Executive on universal suffrage so as to ensure political accountability, it is proposed that starting with the 3rd term (2007-2012), the Chief Executive should be popularly elected subject to such nomination procedures as prescribed by the Basic Law. In future, as the system of universal suffrage gains experience and

becomes consolidated, we should consider dispensing with the Nomination Committee.

25. Where the Nomination Committee exists as the official nomination mechanism, there should still be opportunities for '*preliminary nomination*' by ordinary citizens as follows:
 - Any 500 registered voters (or a larger threshold) can together make a preliminary nomination of a candidate for the Chief Executive post. No registered voter can make more than one such nomination.
 - Preliminary nominees will be scrutinized by the Nomination Committee. Only those preliminary nominees who obtain the endorsement of a minimum of 100 members of the Nomination Committee will be put forward for the final-stage election by universal suffrage. This can be in the form of either open nomination by at least 100 members of the Nomination Committee (no member can nominate more than one person) or secret ballot by the Nomination Committee whereby each Committee member can vote for only one preliminary candidate and only those candidates securing at least 100 votes would be declared endorsed. In practice this means a maximum of 8 preliminary candidates to be 'screened in' by the Nomination Committee for popular election.
26. The current legislative restriction on the Chief Executive being member of a political party should be lifted. Political parties should not be prohibited from fielding their candidates for the Chief Executive post. Party affiliation may actually help to facilitate linkage with Legco parties.
27. While the existing Election Committee comprising 200 members from each of four broad sectors (Annex I of Basic Law) may be regarded by some as a possible model for the future Nomination Committee, in order to ensure that the Nomination Committee is 'broadly representative' (Article 45 of Basic Law), members of all sectors constituting this Committee should be elected on the basis of one-person-one-vote within the sector.
28. The 4 sectors may be as follows:
 - Industrial, commercial and financial sectors (broadly representing 'business');
 - The professions (broadly representing the 'middle class');
 - Labour, residents and grassroots organizations (broadly representing the grassroots); and
 - The *elected* political sectors (members of Legco and District Councils, and Hong Kong deputies to the National People's Congress).
29. The total membership of the Nomination Committee can be 800 (as for the Election Committee) or an enlarged number such as 1000 to 1200.

Legislative Council: Mixed direct elections

30. The reason why the present SAR government finds Legco so threatening and disturbing is that it is led by a Chief Executive who is not democratically elected vis-à-vis a partially directly-elected legislature. If the Chief Executive is elected by universal suffrage as proposed above, s/he will possess even greater political legitimacy than a fully directly-elected Legco. **Once both the executive and the legislature are democratically elected, Legco can properly settle into the role of a legislative organ with broad representation, to check and balance the executive.** Legco panels should hold public hearings on public policies and call public officials to account. Legco members should also be able to introduce bills if necessary in competition with the executive, but legislative time and priority should still be reserved for government business and bills.
31. **In formulating recommendations on the composition of Legco, there are three important points of consideration:**
- All seats should be elected by universal suffrage.
 - The total membership should be expanded so as to generate larger legislative capacity.
 - As far as practicable, means should be found to encourage the participation of business and professional people in Legco.
32. The membership of Legco should be enlarged to a total of 90 seats, so as to create more opportunities to groom elected politicians and to provide enough legislative capacity for the increasing volume of lawmaking and policy scrutiny work undertaken by Legco. More members will be available to serve various Legco panels and bills committees.
33. It is proposed that the 90 Legco members be all elected by universal suffrage, but through 3 different ways so as to achieve balanced representation:
- 30 members to be directly elected on the *single-seat geographical constituency*, using the 'first past the post' principle. There will therefore be 30 constituencies each with a population of around 200,000 to 250,000. This will produce legislators who are more oriented towards the local constituency interests.
 - 30 members to be directly elected on a *regional single-list system*. There will be three regions – namely Hong Kong Island, Kowloon and the New Territories. Depending on the percentage of votes received by each list, the available seats of each region (which varies according to population size) will be apportioned accordingly. This is similar to the existing proportional representation system. The advantage of such method of election is that (a) it produces legislators more attentive to regional and territory-wide interests, and (b) it is conducive to the development of political parties who are encouraged to put forward single lists of candidates for election.
 - 30 members to come from *defined functional sectors* (similar to existing functional constituencies), but to be elected by universal suffrage in the

same way as the other two types of membership. This method of election can address the concern of those business and professional sectors that worry that direct election may not attract enough professional and functional talent to join the legislature. However, there are both problems of principle and practicalities surrounding the provision of such seats, which will be discussed in greater depth in the following paragraphs:

34. Ideally all members of a democratic Legco should be openly nominated and elected by universal suffrage. There are those who, however, still doubt if this would attract enough business and professional people to take part in the election. If the intention is to preserve functional representation, the easiest way to do it is to keep the existing 30 'functional constituency' seats. This arguably would be most reassuring to established 'functional' organizations like business and commerce chambers and banks, but would contravene the principle of universal suffrage. If it is proposed to keep existing functional constituency seats only as a transitional arrangement, to be abolished within a specified period of time, the question remains as to how functional representation can still be ensured when such functional seats are finally given up – in other words, what would be the triggering point for making the transition to a legislature fully elected by universal suffrage? Hence I have ruled retaining existing 'functional constituencies' out as an acceptable option.
35. A compromise solution that can enable business and professional people to join Legco is to provide for a category whereby nomination is made by defined functional sectors while election is by universal suffrage. This can be done in two ways.
 - *Either* to turn all functional constituencies into 'occupational constituencies' so that every citizen belongs to one of these constituencies and can take part in the election of their functional/occupational representative - This would be similar to the 'new functional constituencies' adopted for the 1995 Legco election. The problem with such kind of election is that it may be regarded as just another form of direct election that does not really help to elect business and professional people into Legco;
 - *Or* to confine nomination of candidates by recognized bodies within defined functional sectors (such as business and commerce chambers, trade unions and professional societies), but to open the election to universal suffrage. This option is similar to a suggestion made by The Hon. Andrew Wong, Legco member, a few years ago. It has the advantage of making it mandatory for candidates to come from business and professional backgrounds while not compromising the principle of election by universal suffrage.
36. Even if we go along this latter route, one major technical problem has to be solved. If we require all registered voters within the population to pick 30 candidates out of a much longer list of candidates during an election, this might be taxing their knowledge of candidates and capacity to choose too much. In practice, candidates standing for election will have to campaign throughout the territory and may find it difficult to cope with the election logistics. One alternative is to adopt a single-list

system so that business and professional candidates form into single-lists for competition, and voters choose the 'list' rather than individual candidate, and depending on the share of votes among the various contending 'lists', the 30 seats will be distributed accordingly. A downside of this approach is that it allows business and professional people to stay in politics without joining parties, which may be unfavourable to the development of political parties.

37. The new Legco should function fully as a unicameral chamber. The existing requirement for 'split-voting' on motions, bills and amendments to bills moved by legislators (i.e. functional constituency legislators and the rest of the membership to vote in separate categories and any motion/bill/amendment can only be carried if it receives a concurrent majority in both categories of legislators) should be abolished. Unless such restriction is lifted, the executive-legislative relations will continue to be skewed.

Executive Council: Further institutionalization of the executive branch

38. With the introduction of the new ministerial system in July 2002, the Exco has become in effect a government cabinet, not just the Chief Executive's top advisory body as described in the Basic Law to extend the previous colonial setup. **The new constitutional nature of Exco as cabinet should be further institutionalized so as to strengthen executive leadership and coordination:**
- As at present, all principal officials in charge of policy portfolios should serve on Exco.
 - Leaders or representatives of Legco party groups should join Exco on the premise of a governing coalition *only if* their parties officially take up coalition responsibilities. As councilors-without-portfolio, these members should have an important role to play in policymaking, and not just as 'non-official members' in the traditional sense. They should be allowed to chair important Exco committees. Their party colleagues can be appointed as principal officials.
 - Exco should set up major policy committees (not just one Policy Committee as at present). Some of these policy committees should be chaired by the Chief Secretary for Administration and some by the Financial Secretary as senior members of Exco on behalf of the Chief Executive. Another arrangement is to for the Chief Secretary to chair a Domestic Policies Committee and the Financial Secretary to chair an Economic and Finance Policies Committee.
 - The Chief Executive's Office (CEO) should be strengthened in its role as Cabinet Secretariat. The Director of CEO should be taken up by the most senior member of the civil service, who in that capacity concurrently serves as Head of the Civil Service, permanent secretary to the Chief Executive (and even the Chief Secretary for Administration), as well as Cabinet Secretary. This will ensure a closer working relationship between Exco and the Civil Service. The Director of CEO should hold regular meetings with permanent secretaries of various bureaus.

Chief Secretary for Administration: Strengthening policy coordination and legislative liaison

39. As the second most important office after the Chief Executive, the Chief Secretary for Administration should be properly recognized as deputy to the Chief Executive and be served by either the Director of CEO as well, or a separate permanent secretary of the Chief Secretary's Office. The role of the Chief Secretary should be three-fold:
- As the 'minister' in charge of civil service policy;
 - As the 'coordinating minister' for domestic policies and in that capacity to chair the Exco's Domestic Policies Committee as suggested above;
 - As the government's chief liaison with the Legco on the day-to-day basis, to be in charge of the government's legislative programme and to hold weekly meetings with leaders of major party groups in Legco to iron out policy issues and to receive ideas towards the legislative agenda.

Clear delineation of ministerial and civil service responsibilities

40. For the institutional neutrality and integrity of the civil service, we must not allow its upper echelons to be over-politicized. To be loyal to the government of the day does not mean that the principle of neutrality should be compromised. To that extent, the present practice of requiring permanent secretaries and other senior civil servants to openly *defend* policy decisions and engage in lobbying politics carries a lot of risk to the institution. They should only offer anonymous policy advice to principal officials who have to be publicly and fully responsible for whatever decisions taken.
41. The existing post of Secretary for the Civil Service should be dispensed with. The Chief Secretary for Administration should take up the political role as 'minister' for the civil service on behalf of the Chief Executive. The Director of CEO, as head of the civil service, should work closely with the Chief Secretary for Administration on civil service matters.
42. All politically-appointed principal officials should be supported by a similarly appointed Deputy Secretary and, where appropriate, a number of Under-Secretaries who, together with the Secretary's personal assistants and press secretary, constitute the 'ministerial team'. This in effect serves as the principal official's *political wing* vis-a-vis the *civil service wing* headed by the permanent secretary. Public defence of policy decisions and legislative and political lobbying should be the responsibility of the principal official and his/her ministerial team.
43. The further development of the ministerial layer will certainly have a great impact on the current Administrative Class and Directorate system, which needs to be reformed quite thoroughly in terms of the roles, responsibilities and numbers of administrative officers. Otherwise, there could be 'too many' policy-makers in each policy bureau thus hindering the decision-making process. [A separate Policy Paper

on the Future of the Administrative Class will be issued by SynergyNet in due course.]

Political parties: Basis for proper institutionalization

44. Political parties are not highly relevant to the existing political order which is built on an executive-led system previously suppressing the growth of representative government. As Hong Kong moves ultimately into a full-fledged democracy, parties must feature more prominently in such a system, either giving rise to a majority party or a majority coalition of parties within Legco, which can work (and thus sharing power) with the Chief Executive, or enabling a Chief Executive with party-political background to be popularly elected.
45. The evolution of the SAR's system of government must be conducive to the further development of political parties and the formation of governing coalition between Legco parties and the Chief Executive so as to stabilize executive-legislative relations and to ensure effective government.
46. In the absence of any relevant legislative framework, existing political parties in Hong Kong are registered as either societies under the Societies Ordinance or limited companies under the Companies Ordinance. Neither of such registration is geared towards the nature of activities of parties. A proper Political Parties Ordinance should be enacted to facilitate political party development and to regulate the registration and operation of political parties (including party finance) so as to ensure transparency.¹¹
47. Some public funds should be appropriated to parties to support their lawful activities according to their share of electoral votes. This of course should only constitute one source of income for parties. The more diverse the source of party income, the less likely it is for parties to be subject to the control or undue influence of one principal donor or a few big donors.

Statutory and advisory bodies

48. No discussion of improving Hong Kong's system of government is complete without reforming statutory and advisory bodies – in terms of appointment, roles, functions and powers. The advisory system had played an important part in the colonial period when the British administration recognized its lack of mandate and tried to use non-officials co-opted into statutory and advisory bodies to give government policies a sense of public legitimacy. However, such administrative absorption has all along been criticized as too much biased towards business and professional people in the appointment of members. After the introduction of the new ministerial system in 2002, the politically-appointed principal officials are

¹¹ For a discussion of Political Party Law, please see R. Yep (2003) "Political Reform and Political Parties", in C. Leoh and Civil Exchange (eds) *Building Democracy: Creating Good Government for Hong Kong*, Hong Kong: Hong Kong University Press, pp. 61-70.

centralizing policy powers, rendering advisory bodies increasingly peripheral to the policy-making process. It is time to have a full review of statutory and advisory bodies and to undertake a major reform in line with those reforms proposed for the executive and legislative institutions. *[A further Policy Paper on Statutory and Advisory Bodies will be issued by SynergyNet.]*

Concerns about constitutional reform

49. The above recommendations are made with the view that Hong Kong should install a democratic system of government based on universal suffrage. We recognize that there are reservations about constitutional reform on the part of the Central Government in Beijing and among some sectors in Hong Kong, notably the business sector. Their concerns are largely as follows:
- Electing both the Chief Executive and Legco by universal suffrage might allow the executive and legislative institutions to be captured by populist politics that ignore long-term economic and social interests in favour of short-term distributive and redistributive measures.
 - The business sector particularly worries that a popularly-elected government might go for 'free-lunch' welfare policies that impose greater tax burden on business and that more party-political infighting would make Hong Kong's environment more turbulent and less favourable for business investment.
 - The Central Government is concerned that political forces hostile to the national government might manage to capture the Chief Executive post or a majority of Legco seats through popular elections, hence leading to unstable or even acrimonious central-SAR relations.
 - The Central Government is also concerned that popular elections might not create an outcome that could broadly be representative of major interests in Hong Kong.
 - Taking into consideration the erratic quality of elected politicians and political parties in Hong Kong, as well as the low degree of institutionalization of parties, some worry that moving into a system of government that depends solely on electoral politics and parties might adversely affect the quality of government.
50. Whether or not a popularly-elected Chief Executive, together with a fully directly-elected legislature, may opt for "free lunch" welfare policies depends more on the future policy preference of the SAR population. There is no direct correlation between democracy and welfare. We have seen many Western democracies rolling back the frontier of the welfare state over the past two decades mainly because of electoral reversal. The Hong Kong population is not particularly known for favouring big government or unlimited welfare expenditure. I would argue that with greater democratic participation, it helps to reduce rather than increase the risk of policy-making appeasing narrow vested interests. If we look at the SAR government today, the fact that it is not democratically elected and that it is politically weak has in effect rendered it more easily captured by various sectoral interests and not in a position to take some necessary bold steps.

51. Neither is there necessarily negative correlation between democracy and economic development. There are no doubt examples of new democracies, mainly in under-developed countries, mis-managing their economies. But at the same time, all advanced nations are democracies. Given Hong Kong's current level of socio-economic development and the high level of educational attainment of its population, there is no reason to believe that its sophisticated electorate will elect a Chief Executive who lacks the capacity to manage the economy.
52. The Central Government in Beijing should not be wary of popular election producing an "anti-central government" Chief Executive. Most Hong Kong people treasure stable Central-SAR relations and would expect any Chief Executive to be capable of communicating and cooperating effectively with the Central Government. Indeed, a candidate who is widely seen as lacking such capability is unlikely to get elected.
53. Finally, one should not see the profiles of elected politicians and parties as static. Should the constitutional arrangements be changed, I am sure politicians and parties will undergo transformation and realignment, and new talent from all walks of life will join the political scene as well, hence creating more and better choices for the electorate. In the process parties will grow in a more constructive manner.
54. In any case one should not discard too casually various concerns and doubts about election by universal suffrage if the Constitutional Review is to achieve the purpose of consensus-building on how best to take governance reform forward. Pro-democracy parties, groups and advocates have to address them most seriously and to enter into active dialogues with those who are hostile to or skeptical of change, using reason and sound analysis instead of simply demands and rhetoric to present the case why the quality of government would not deteriorate and how broad sectoral representation can be ensured in a democratic political system based on the principles of universal suffrage and majoritarian rule.
55. The Constitutional Review is not just about whether or not to elect the Chief Executive and all members of Legco by universal suffrage. It should also generate political reform measures that promote the proper institutionalization of elected politicians and political parties. Existing parties should demonstrate that they have or can develop the capacity to take broad public interest into account in their political and policy positions and to take up the responsibilities of government. The more parties are capable of attracting talent and support from a broad spectrum of society, the better they are able to reassure the Central Government and the business sector that they can make full democracy in the SAR work. The Review is therefore as much a process to improve the political software as to install better hardware for Hong Kong. All stakeholders should put their heads and hearts together to make it succeed.

面向二零零七：

憲制改革的下一步？
加強代表性，保證有效管治

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政治困局

1. 目前特區面對的政治困局源於九七回歸之後的憲制安排；行政立法關係出現矛盾，尤其是焦點所在。政府有權而無票，而立法會卻有票而無權，以至行政機關和立法機關的政治能量互相抵消，最終出現一個政治的超級悶局。
2. 二零零二年四月，特首董建華建議實行主要官員問責制，將行政會議改組為執政內閣，由主要官員和政黨領袖組成。
3. 到二零零三年底，特首的政治改革已經徹底失敗。前任財政司司長梁錦松和前任保安局局長葉劉淑儀宣告辭職，自由黨主席田北俊退出行政會議，民建聯新任主席馬力公開表示不會加入行政會議，否定執政聯盟的存在，並且表明民建聯不一定在立法會內支持政府的法案。
4. 七一遊行更是特首董建華政治衰落的分水嶺。目前政府既沒有管治合法性，也缺乏管治能力。一般相信，今年九月立法會選舉之後，反對政府的勢力將進一步擴大，加深政府所面對的管治危機。
5. 行政立法機關各走各路，反映了特區政制的深層缺陷。沒有穩定的管治和公眾支持，政府根本沒有能力去處理社會的進一步發展和經濟轉型，令香港走出目前的悶局。
6. 特區憲制上的困局，源於基本法決定將殖民地時代的政治制度保留下來。殖民地時代的政治制度有三個特徵：
 - 行政主導，立法只扮演一個被動的，回應的角色；
 - 行政系統以公務員為主體，由高級公務員擔任部長；
 - 行政會議扮演一個提供意見和輔助總督施政的角色。
7. 由於所有的行政會議和立法會的議員來自總督的委任，彼此存在高度的共識和信任，所以這套制度行之有效。不過，在一九九一年立法會部份議席實行直選之後，立法會已不再必然地支持政府，反而開始扮演監察政府的角色。
8. 另一方面，由於政府官員以公務員為主，令有志從政的人的發展機會受到限制。他們專業的頂峰就是晉身立法會，但是由於議席有限，導至競爭激烈，引發參選的政黨內訌。另一方面，由於目前的制度令立法會不能分享權力，令立法會議員扮演消極的反對派角色。在 2000 年 7 月通過行政長官選舉條例明確規定，行政長官不能有任何政黨背景，令行政立法關係缺乏制度聯繫，充滿不確定性。

董建華主導的行政機關的改革破漏百出

9. 在缺乏修改基本法的配合之下，董建華在 2002 年實行主要官員問責制，實際上

已經違背了基本法的原意。他放棄了公務員主導政府的傳統，改而嘗試與立法會部份政黨領袖組成管治聯盟，作為他施政的基礎。

10. 董建華實行主要官員問責制，目的是要從公務員手中收回行政權力，但是卻未有解決政府缺乏政治人才的問題。他所委任的主要官員（又稱部長），不少來自商界，但是卻缺乏政治能力，亦缺乏與政黨的聯繫。此外，他們只是一人上任，未有自己的副手分擔工作，仍需繼續依賴黨任秘書長和其他公務員，去給予政策支持和辯解，令資深公務員不可能實行政治中立的原則。
11. 雖然董建華委任部份政黨領袖進入行政會議，是為建立管治聯盟，但是這些政黨領袖仍被視為以個人身份加入。由於在憲制上沒有清楚說明政黨參與行政機關的可能性，所以在通過國家安全條例草案的關鍵時刻，自由黨主席田北俊突然退出行政會議，而民建聯新任主席馬力公開表明不會加入行政會議，亦否定管治聯盟的存在。

管治的根本問題

12. 特區政府管治失敗的原因有三點：

- 基本法所規定的政制安排在設計上出現缺陷；
- 政治授權不足，導至政治支持度的不足；
- 由於排斥政黨制度而導至行政立法關係的不穩。

結果，政府在代表性、領導能力和動員能力方面出現嚴重問題。要從根本上解決問題，就必須進行憲制檢討。

13. 管治改革的辯論應圍繞三方面來進行：

- 整體的施政能力 – 在達至一系列施政目標的過程中，所需要的社會與經濟方面的動員能力；
- 政策能力 – 在選擇和確定施政方向的過程中，所需要的收集資料和決策的能力；
- 行政能力 – 在落實政策和提供服務的行政過程中，能否有效率地進行資源管理的能力。

14. 整體施政能力的關鍵，是市民的參與和民意的吸納。政策能力是指最高的行政決策者如何處理行政和立法關係，組織、協助和支援內閣和其他行政決策系統，及怎樣使用專家的知識和分析，以確保決策過程的協調和有效性，及回應公眾的要求和期望。如果政策能力得到加強，整體的施政能力也會加強。行政能力是指在落實政策的能力方面，是否有效率和負責任。

15. 以目前香港的情況而言，要增加整體的施政能力，就要進行整套的政治改革，普選特首和立法會，改善行政立法關係，在政策製訂的過程中整合政黨和其他政治精英，及確立一種兼容並包的管治風格，以爭取市民的接受和支持。民意授權的程度愈高，政府進行政治動員和整合的能力也愈強。所以，憲制改革的首要目標，就

是要提高政府的代表性和民意授權，同時加強政府的行政和領導社會的能力。以下為達至目標的建議：

改革和建議

一、行政立法關係

16. 基本法已經確立了行政權力和立法權力分立的基本原則：
- 行政長官和立法會的選舉和組成彼此獨立；
 - 立法會議員不可能被委任為主要官員，而只可以被行政長官邀請進入行政會議；
 - 基本法五十條及五十一條規定，如果立法會否決財政預算案或其他重要的政府法案，或行政長官拒絕通過簽署將立法會所通過的法案變成法律，並且在與立法會諮詢之後仍然未能取得共識，行政長官有權解散立法會，並重新進行選舉。不過，如果選舉之後重組的立法會仍然否決財政預算案或政府法案，而行政長官堅拒簽署的話，行政長官需要辭職。

17. 雖然在一定程度上，立法會制衡行政長官的權力受到基本法七十四條限制（立法會議員不能通過牽涉公共財政、政制或政府運作的議案；同時，只有得到行政長官的書面同意，立法會有關公共政策的議案才能成為動議），但是權力分立和制衡的原則已經被清楚寫入基本法，問題不過是在行政立法機關的互動過程中，這些原則將會怎樣實踐。

18. 為鞏固這套制度，行政和立法兩者的政治認受性和憲制權力都有必要加強：
- 普選行政長官和所有立法會議員，以確立在管治和立法方面的民意授權，落實基本法所規定的港人治港的原則；
 - 解除立法會議員提出私人草案的憲制上的限制，使立法會能在政策製訂的過程中扮演更積極和具有建設性的角色，而非只是質詢和批評的角色。在基本法七十四條仍未修改之前，行政長官應表明，樂於同意讓立法會議員提出有關公共政策的草案。

19. 在權力分立的政治安排全面落實之後，個別人士可能會對特區政府是否能夠繼續行政主導感到憂慮。但是，這些憂慮並不實際。環顧其他國家，不論是英式的議會制，還是美式的總統制，它們的政府都是有實力的。關鍵是建立穩定的政黨政治，及良好的選舉安排，令行政長官和議會的多數派得到充分的民意授權。

二、行政長官：選舉與提名

20. 基本法四十五條規定，行政長官應經由一個有廣泛代表性的提名委員會提名，經民主程序，最終由普選產生。基本法附件一列明，普選特首可以在二零零七年之後的新一屆政府開始。這可以被理解為是從二零零七年開始，也就是從二零零七年

到二零一二年的第三屆政府。但是，對於現行政制的修改，必須同時得到立法會三分之二的議員通過，特首的同意，和全國人民代表大會常務委員會的通過。

21. 有鑑於目前民意強烈要求普選行政長官，以增加政治問責性，我建議從特區第三屆政府（2007-2012年）開始，特首經過基本法所規定的提名程序之後，再普選產生。將來，在普選的經驗逐漸累積，運作成熟之後，可以考慮撤銷提名委員會。

22. 目前，提名委員會為官方提名機制。但是，市民應該被容許透過初步提名的程序參與特首選舉：

- 只要得到 500 名已登記選民的支持，任何一位候選人就可以被初步提名為行政長官候選人。任何已登記選民只能提名一人；
- 被初步提名的候選人再由提名委員會審查，在取得提名委員會內最少一百名成員的認可之後，才能進入最後的競選階段。認可提名的程序可以是公開的，也可以經由提名委員會委員進行不記名投票之後產生。關鍵是每個提名委員會委員只能認可一個候選人的提名。換言之，在八百人的提名委員會內，最多可以有八名候選人經過認可提名之後進行普選。

23. 目前對行政長官必須沒有政黨背景的限制應被撤銷。政黨亦不應被禁止推舉黨員成為行政長官候選人。行政長官的政黨背景可能令他更能夠加強與立法會的聯繫。

24. 目前選舉委員會由四個不同界別，合共八百人的組成。雖然有人或會認為，這種安排可以作為以後的提名委員會的組成模式，但是為了確保提名委員會具有廣泛代表性，來自所有界別的提名委員會委員都應在其所屬界別內經由一人一票產生。

25. 這四個界別分別是：

- 工業、商業和金融界別；
- 專業界別；
- 勞工、居民及基層組織；
- 經由選舉產生的政界（立法會及區議會議員，港區人大代表）。

26. 提名委員會的人數可以是八百人（即與選舉委員會一樣），也可以增加至界乎一千至一千二百人。

三、立法會：混合直接選舉

27. 現屆特區政府對立法會感到不安和受到威脅，原因是行政長官並非民選，而立法會卻起碼是部份由民選議員組成。如果行政長官由普選產生，它的認受性將比一個經由全體普選議員組成的立法會更高。一旦行政立法機關都經由普選產生，立法會作為一個擁有廣泛代表性的，能夠監督和制衡行政機關的角色將可以確立。立法會專責小組可以就公共政策舉行公開聽證會，傳召政府官員解釋。如有需要，立法

會也可以提出草案，跟行政機關進行競爭。當然，優先次序應該賦予政府所提出的草案。

28. 在有關立法會的組成方面：

- 所有議席應由普選產生；
- 議席數目應該擴大，以增強立法會的工作能力；
- 可行的話，應尋找方法以鼓勵商界及專業人士參與。

29. 立法會的議席應擴大至 90 席，從而增加培育政治人才的機會，及提高立法會應付繁重的立法工作和審議政策的能力。這樣的話，參與立法會事務委員會和條例草案委員會的議員數目將可以增加。

30. 90 名經由普選產生的議員將來自 3 個不同途徑，以確保廣泛的代表性：

- 30 名議員由分區單議席單票制，依從簡單多數制原則產生。換言之，全港將分為 30 個選區，每一區的人口界乎 20 萬至 25 萬。經由這種途徑產生的議員將更能專注於反映地方選區的利益；
- 30 名議員由大選區單一名單制產生。全港將分為港島、九龍和新界三個大選區。議席分配將視乎每一張參與名單所得的選票比例而定，而議席數目則視乎某一大選區的人口數目而定。這種安排與現時的比例代表制相似。大選區單一名單制的優點是：（1）經由這種途徑產生的議員將更專注於全港的，或跨選區的利益，（2）這種安排可鼓勵政黨的發展，以提出參選名單；
- 30 名議員來自指定的功能界別（跟目前的功能組別相似），但是與分區單議席單票制和大選區單一名單制一樣，經全港一人一票選舉產生。這種安排將能夠照顧商界和專業團體的想法，因為它們憂慮直接選舉未必能吸引商界和專業人士參選。不過，這種安排存在原則上和操作上的問題。在以下幾節，我將較詳細討論。

31. 當然，一個民選的立法會最好經由公開提名，然後經由普選產生。但是，有人或會擔心，這將難以吸引商界和專業人士參選。如果目前政制要確保功能組別代表，最簡單的做法就是保留 30 個功能議席。這當然可以令現存的功能團體，包括商會和銀行放心，但是卻違反一人一票選舉的原則。如果將目前的功能團體選舉視為過渡性質，然後在一段時間之後廢除，將來的政制能否確保功能組別代表，仍然是一個問題。這樣，在邁向最終的普選制度的路途上，我們就連走出第一步的動力也不能被確定。所以，我認為不應該保留目前的功能團體選舉。

32. 為了確保商界和專業人士能夠參與未來的立法會，一個折衷的方案是建立一條途徑，讓功能團體有權提名候選人，但是選舉仍是一人一票的直接選舉。具體方式可以有兩種：

- 將所有功能組別變為職業組別，讓每一名市民都有一個所屬的組別，及參與他所屬的功能或職業組別的選舉。這跟 1995 年立法局選舉所採納的新功能組別相似。這種選舉安排的問題在於，它可能被視為一種變相的直接

選舉，未必能確保商界和專業人士能夠進入未來的立法會；

- 由指定的功能組別（例如商會、工會和專業團體）所屬團體提名候選人，然後經一人一票選舉立法會議員。這與幾年前立法會議員黃宏發的建議相似，好處是候選人必然來自商界和專業背景，但又不會與普選原則相違背。

33. 就算我們選擇第二種方式，仍然存在一個技術性問題。如果我們要求選民從一個更長的名單之中選擇 30 名候選人進入立法會，選民可能會感到缺乏資料，亦不容易作出決定。在實際過程之中，候選人亦可能為競選活動期間的後勤安排感到頭痛。另一個選擇是採用名單制，讓來自商界和專業界別的候選人組成單一名單參選。換言之，選民將選擇參選名單，而非個別候選人。30 個議席將按照每張名單的選票比例分配。這種安排不足之處在於，商界及專業人士毋須加入政黨，亦可以參與政治。這對於政黨的發​​展沒有好處。

34. 未來的立法會將會以單議會制運作。所以，目前以分組點票方式通過立法會議員提出的動議、草案和草案修訂案的做法應被廢除。否則，行政立法關係將仍是不平衡的。

四、行政會議：行政機關的進一步制度化

35. 自 2002 年 7 月實行主要官員問責制之後，行政會議實際上已不單是好像基本法所指的特首的智囊，而是政府的內閣。這個新的角色應該進一步制度化，以加強政府的領導和協調：

- 正如目前的安排一樣，問責官員應繼續成為行政會議成員；
- 立法會內所有願意加入管治聯盟的政黨的黨魁或代表，應該加入行政會議，同時確保他們兼負管治聯盟的責任。雖然這些政黨背景的成員不需要負責處理任何政策範疇，但應擔任重要的政策制訂的角色，而不只是傳統意義的非官守成員的身份。他們應被容許出任行政會議之內的重要委員會的主席一職，而所屬政黨的黨員則可以出任問責官員；
- 行政會議不應該只有一個政策委員會，而應設立不同的政策委員會。某些委員會應由政務司司長擔任主席，另一些則應由財政司司長出任主席。另一個可能的安排是由政務司司長出任內務政策委員會主席，而財政司司長出任經濟及財務委員會主席；
- 特首辦公室應該強化為內閣秘書處。特首辦公室主任應由最資深的公務員出任。同時，他不應單是內閣秘書，亦應該成為公務員之首，行政長官和政務司司長之下的常任秘書長。這種安排能加強行政會議與公務員的聯繫。特首辦公室主任應該經常與各政策局的常任秘書長舉行會議。

五、政務司司長：強化政策協調及與立法會的聯繫

36. 作為行政長官之下的最重要官員，政務司司長應被認可為他的副手，並得到特首辦公室主任的輔助，或指派另一位常任秘書長擔任政務司司長辦公室主任。政務司司長的角色有三方面：

- 處理公務員政策的部長；
- 負責協調特區內務政策的部長，並擔任內務政策委員會的主席；
- 作為行政機關與立法會的主要和經常的聯繫，負責政府的立法議程，同時與立法會內主要政黨舉行每周例會，以商討及解決政策問題，同時收集對政府立法工作的意見。

六、清楚界定部長與公務員之間的不同責任

37. 為了維護公務員系統的中立性和完整性，高級公務員的工作不應過份政治化。今時今日，公務員效忠政府，不等於犧牲政治中立的原則。所以，要求常任秘書長和其他高級公務員為政策決定公開辯解和進行政治遊說的做法，已經對公務員系統構成不少風險。他們只應以不具名方式對問責官員提供政策上意見。

38. 公務員事務局局長的職位應被廢除。政務司司長應該成為處理公務員事務的部長。特首辦公室主任作為公務員之首，應該與政務司司長緊密合作。

39. 除了以政治方式任命問責官員（部長）之餘，應同時任命一位副部長和一定數目的助理部長，再加上部長的私人助理和新聞秘書，以組成問責官員的工作團隊。這個工作團隊應與常任秘書長及其屬下的公務員隊伍區分開來。為政策決定公開辯解和進行政治遊說的工作，應屬於部長及其工作團隊的職責範圍。

40. 部長及其工作團隊的進一步發展，一定會影響政務主任階層和首長級公務員系統。所以，政務主任階層和首長級公務員系統有必要進行更徹底的改革，特別是他們的角色、責任和人數。否則，可能會在每一個政策局內出現太多政策制訂者的角色，從而影響決策過程。

七、政黨：進一步制度化的基礎

41. 由於目前的政制屬於行政主導，所以政黨的角色可說是無關宏旨。當香港實行全面的民主之後，政黨應扮演更重要的角色，例如成為執政黨或執政聯盟的一份子，與行政長官分享權力和一起工作，或派出其黨員參與競選行政長官職位。

42. 特區政制的發展，應有利於政黨的進一步發展，和執政聯盟的組成，確保行政立法關係的穩定，和有效管治。

43. 由於缺乏適用的法例，目前香港的政黨不是以社團條例之下的社團身份登記，就是以公司條例之下的公司身份登記。應該通過適當的政黨法，能夠幫助政黨的發展，和規管政黨的登記及運作（包括政黨的財政來源），以增加透明度。

44. 政黨應按照它們所得的選票比例，得到政府的公費資助，以支持它們的活動。這當然只是指政黨一部份的經費。政黨的經費愈多元化，就愈容易避免受到個別贊助人的控制或過分的影響。

八、法定及諮詢組織

45. 任何有關改革香港政制的討論，都不可能不提到法定及諮詢組織，特別是成員的委任、組織的角色、功能和權力。在殖民地時代，由於英國政府承認自己缺乏民意授權，所以法定及諮詢組織扮演重要的角色，特別是利用它們的非官守委員的身份去提高管治合法性。但是，長久以來，這種政治吸納被批評為傾向委任商界和專業人士。2002年實行主要官員問責制之後，政治任命的主要官員不斷收權，令法定及諮詢組織在政策制訂方面的權力進一步被邊緣化。現在是時候全面檢討法定及諮詢組織，同時進行與行政機關和立法機關相配合的改革。

關於憲制改革

46. 上述建議是基於香港應透過普選建立民主政府而作出的。我們明白中央政府和特區內某些界別，特別是商界對於憲制改革的顧慮。

47. 商界擔心一個經由普選產生的政府會為了爭取選票而大派免費午餐，結果要加稅，令商界負擔更加。不過，在民主與福利之間並不存在必然的關係。近二十年，西方民主國家不少都因為選民改變意向而削減福利。港人從來對大政府或沒有限制的福利開支沒有好感。另一方面，一個經由民選產生，具有強大民意基礎的政府，才不會因為要討好個別利益團體而大派免費午餐。

48. 有人亦擔心民主會令民粹主義抬頭，結果為了解決短期問題而犧牲了長遠的經濟發展。但是，所有發達國家都是實行民主的。此外，亦沒有理由相信政治上成熟的港人會選擇一個沒有能力搞好經濟的人出任行政長官。

49. 憲制改革不只是一要不要普選行政長官和所有立法會議員。它也是一個有關怎樣使參與選舉的政治人物和政黨活動的制度化的問題。政黨應該證明它們有能力提出一套能夠回應公眾利益的政綱和政策，並且組織一個負責任的政府。政黨愈能夠吸引人才和社會廣泛的支持，就愈能夠令中央政府和商界對民主的可行性放心。

— 完 —