

2012

Nomination and Election
of the Chief Executive

行政長官的提名和選舉



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



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The BPF is a strategic lobbying group founded in 1990 as a successor to the Group of 89 members of the Basic Law Consultative and Drafting Committee. It conducts research into issues of critical importance and makes recommendations on the basis of betterment of the whole society. Recent recommendations of the BPF include the bicameral system, abolition of estate duty, points system for immigration and a number of papers on health reform.

We welcome views on this paper and our other work; please contact the BPF Secretariat (Tel: 2810-6611; Fax: 2810-6661; Email: info@bpf.org.hk). Further information on BPF could also be found on its website: www.bpf.org.hk.

工商專聯成立於1990年，致力政策研究及游說工作，創會會員為基本法諮詢及起草委員會中提出「八十九人方案」的委員。本會探討與香港息息相關的議題，並以社會整體利益為依歸，出謀獻策，近期的建議包括推行兩院制、撤銷遺產稅，實施優秀人才入境計分制等，並發表了一系列醫療改革文章。

我們歡迎各界對本文及工商專聯其他工作提出意見，請與秘書處聯絡（電話：2810-6611；傳真：2810-6661；電郵：info@bpf.org.hk）。如需更多本會資料，可瀏覽本會網站：www.bpf.org.hk。

Contents 目錄

2012 Nomination and Election of the Chief Executive	1
Appendix I An illustration of requirements recommended by the BPF for successful nomination of the Chief Executive in 2012	7
2012年行政長官的提名和選舉	9
附件一 工商專聯就2012年行政長官提名之建議摘要	14

2012
Nomination and Election of the Chief Executive

Preamble

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

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

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

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

Qualifications

Residence.

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

qualified candidates for the highly responsible office of CE might be enhanced. The residence requirement could be reduced, say, to 10 or 15 years but the number of years residence immediately before election takes place should be prescribed.

Party Membership

2. Under the election rules promulgated by the HKSAR, but not found in the Basic Law, candidates for the post of Chief Executive cannot be affiliated to a political party. Although political parties have not yet developed so fully as to attract a mass base in Hong Kong, doubtless they will further develop in that direction in the years between now and 2012. It has often been said that the Chief Executive lacks support in the Legislative Council and that as a result many proposals of the Executive are simply not put to the Council. If, however, the Chief Executive had his roots in a political party and had the support of that party in the Legislative Council, it would make his life much easier and would strengthen the executive power of the CE and his government.
3. With this in mind it is proposed that candidates for nomination to the post of CE should be able to have party affiliation. Following election the winning candidate could be required to sever membership from his or her party.

Nomination

4. The final choice among the short-listed candidates for election to the office of CE, in accordance with the objectives in Article 45 of the Basic Law, should be by some form of universal suffrage. This objective is the prime focus of much of present political agitation and has even attracted the formation of an Article 45 Concern Group. A response to this concern could be achieved in the year 2012 if the Election Committee, which now elects the Chief Executive, became in effect a Nominating

Committee, its objective being to put forward a short-list of candidates for election by all registered voters for the final choice of CE, following which appointment by the Central People's Government would take place.

Composition of the Future Nominating Committee

5. The Election Committee which currently elects the Chief Executive consists of four sectors each comprising 200 delegates. These 200 delegates are themselves elected or chosen by either the individual members or presumably by the elected committee of the relevant organisation. The members of these organisations who have registered to vote is 220,000 while the total membership of the organisations will of course be very much larger and represent a sizeable proportion of the eligible population. In other words, the Committee is grounded on a very broad base.
6. The First, Second and Third Sectors of the Committee elect or select their representatives some by the votes of individual members, e.g. the teaching profession, and some chosen by the committee of the organisation, e.g. trade unions. In order to make sure the representatives do indeed represent the general membership of the constituent organisation there should be an effort to systematise the method of selection and to endeavour to involve the general membership on these organisations in the election of their representatives.
7. The Government proposed reforms in 2006 to expand the Committee to 1,600. The proposal was included in a package of measures and was defeated by the Legislative Council. While an enlargement may seem better in appearance and more representative, the current Committee of 800 it should be said could in fact be relied upon to elect a candidate with broad support.
8. The Fourth Sector comprises the individual members of representative bodies having a largely political role.

To enhance the authority of this sector a number of new seats were proposed to be elected by an electoral college of all the District Councillors. Changes in the District Councils are currently being examined and the role of the appointed members will no doubt be discussed during the course of this review. Thus the inclusion or not of District Councillors should wait until this review is complete.

The Nomination Procedure

9. At present nominations of the Chief Executive are by open nomination. However most parliamentary systems have adopted systems of secret ballot taking the view that it should not become common knowledge whether particular persons did or did not support a particular candidate. The revelation of these personal details puts unnecessary and undesirable pressure on the individual. Nomination should be based on a closed-ballot to minimise political interference and to raise the credibility of the entire process.
10. Each candidate should secure the support of at least 12.5% of members in the Nominating Committee to be nominated this would mean nomination by at least 100 members out of a Nominating Committee of 800. This level of support required for a nomination to succeed would discourage abuse of the system by frivolous candidates and inhibit the intrusion of interest groups whose focus was a single issue and instead would encourage participation in the process of only those candidates with a wide body of support.
11. Other means, too, can ensure that candidates enjoy a broad body of support. To be successfully nominated a candidate might be required to secure at least 20 nominations from each of the four sectors named in Annex 1 of the Basic Law and each candidate in addition should have among his nominators the support of at least 15 of the 60 members of Legislative Council. This requirement would limit the number of candidates to four to enter the final election process.

12. Hong Kong has a quasi presidential system. Studies have shown that multiple parties and factions tend to destabilise and create indecisive government, exacerbate executive-legislative tensions and deepen social cleavages. The various measures suggested in preceding paragraphs would facilitate development of coalitions between legislators with common interests into three, or ideally two, groups to give support to particular candidates.

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

Choice of the final candidate

13. These foregoing paragraphs aim at improving the nomination process. In 2012 after the completion of nomination, the final choice between the competing candidates should be put to all registered voters finally to elect the CE through a one man one vote process. This would amount to universal suffrage for the election of the CE and the ultimate goal stated in the Basic Law (Article 45) would have been achieved. The Chief Executive at the end of the day could legitimately claim that he had wide public support.
14. In the event of the final election taking place between more than two candidates in which no candidate obtains a majority of the votes, the merit of a two-round run-off between the two candidates with the highest number of votes needs evaluation. In theory it should produce a majority winner, while a weakness of the one-round first-past-the-post voting method is that it may produce a winner with less than 50% of the total voting support. However, the possibility of a

run-off discourages the coalition of opposing forces during the run up to the first round election in the hope of winning a second round runoff. Political elites making the decision to run their own candidates can have as their goal either to finish in the top two in the first round or to demonstrate an electoral following that can be delivered in the runoff election to one of the top two finishers in exchange for benefits in the future. Studies have shown the percentage of votes received by two leading parties in these circumstances tend to be smaller than those in one-round elections. Moreover, the run-off system encourages the development of political factions rather than major coalitions.

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

July 2006

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

Premises:

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

Requirements recommended by BPF

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

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

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

2012年 行政長官的提名和選舉

前言

香港政制的任何改動都可能觸動基本法的條文，從而帶來眾多的修改基本法的要求。此外，任何政改方案亦需要得到三分之二立法會議員的支持，殊不容易。

在提出政改方案時，工商專聯認為應該盡量避免觸動基本法，並以能爭取大多數人支持為目標。

以下是工商專聯對2012年行政長官提名和選舉安排的建議。

資格

居港要求

1. 基本法第四十四條規定，行政長官由「在香港通常居住連續滿二十年並在外國無居留權的香港特別行政區永久性居民中的中國公民擔任。」根據這條例，任何曾連續居港二十年的中國公民，即使身處外地，都可以參選。即是說，很多移居外地的港人，都具備參選資格，但二十年這門檻亦把很多優秀人才拒諸門外。工商專聯認同特首候選人居港要求的重要性，對這條例作出任何改動都必須審慎行事。然而，我們仍認為值得考慮把連續居港的年期要求降至十五年或十年，令更多人才符合行政長官的參選資格，但參選條例應清楚規定候選人在臨參選前必須在香港住上一段時間。

政黨身份

2. 雖然基本法並沒有此規定，但是特區行政長官選舉條例第31條，則限制勝出的候選人不能隸屬於任何政黨。雖然，目前香港的政黨尚未擁有龐大的民眾基礎，但由現在到2012年，政黨應該會進一步發展。現時的行政長官在立法會內缺乏支持，使行政機關很多時不敢把建議提到立法會討論，以免受挫。假如未來的行政長官有政黨背景，在立法會有所屬政黨的支持，推行政策時便會較為容易，亦有助於提高行政長官及特區政府的施政能力。
3. 考慮到上述情況，工商專聯建議容許行政長官候選人是政黨成員。但在當選後，可以要求他們退黨。

提名

4. 根據基本法第四十五條，行政長官經提名委員會按民主程序提名後，最終由普選產生。如何達至行政長官由普選產生是當前香港社會一個主要的爭議，這爭議更催生了四十五條關注組。工商專聯提出的解決方法是把原來的「選舉委員會」改變為「提名委員會」，它的工作是從報名參加行政長官競選的人中，進行篩選並制定候選人名單。名單再交由市民以一人一票方式選出心目中的行政長官，最後報請中央人民政府任命。這建議可在2012年推行。

提名委員會的組成

5. 提名委員會（前選舉委員會）由來自四個界別共800名代表組成，每個界別各有200名代表。這些代表由所屬組織的成員選出，或由他們的理事會／董事會推選。現在共有220,000名登記選民來自這些組織，而實際上這些組織轄下的成員總數當遠不止於此，在香港合符選民資格的人口中，應佔相當多的比例。換而言之，這個提名委員會有著廣泛的選民基礎。
6. 提名委員會第一、第二及第三組別的委員經選舉或推選產生，其中有一些委員是經個人投票選出，比如教育界；一些則由團體機構或公司選出，比如商貿社團。爲了確保當選委員能真正代表所屬界別的廣大民意，選舉制度要優化，要更有系統，並能發動更多團體成員參與選舉活動。
7. 早前特區政府推出政改方案，其中一項建議是擴大選舉委員會至1600人，但整個改革方案遭到立法會否決。工商專聯認爲，增加選舉委員會人數表面上能加強其代表性，但如上文所言，目前的800人選舉委員會已具備廣泛的選民基礎，可賴以選出有廣泛支持的候選人。
8. 提名委員會的第四組別由政界人士組成。爲了提高這個組別的認受性，工商專聯建議增加由區議員互選產生的議席。有關區議會的功能和角色的檢討正在進行，應否保留委任議員是其中一項備受關注的議題。因此，我們認爲建議的詳情，可待區議會檢討完成後再作最後決定。

提名程序

9. 現在行政長官的提名是公開進行的。可是，大部份投票制度均採用不記名方式，主要是不希望公開投票人是否支持某候選人，以免有關資料對當事人造成不必要的壓力，從而影響選舉結果。工商專聯認為行政長官的提名同樣應以不記名方式進行。不公開提名委員會成員對候選人的取向，有助把政治滋擾減至最低，保護提名人的私隱，並能提升市民對整個提名過程的信心。
10. 在800位成員中，每位候選人至少要得到100位委員的支持和提名。設定門檻要求可以確保參選人有一定的支持和競選基礎，防止參選制度被濫用，既對單一議題團體起一定的約束作用，也可鼓勵具廣泛民意支持的人士參選。
11. 要確保候選人具備廣泛的支持，還有一些其他方案可供考慮。工商專聯的建議包括規定在基本法附件一所訂明的四個組別中，候選人必須在每個組別最少得20人提名。同時，每位候選人的提名名單中，必須包括15位立法會議員，即全體60位的四分之一（候選人名單因而最多只有四人）。
12. 香港政制類近總統制。研究顯示，實行這個制度的國家或地區，若缺乏大政黨而只有小派別，會容易造成政局不穩定、政府左搖右擺、行政立法關係緊張等情況，更會加劇社會分歧。而前文所述建議則有助促成理念接近的立法會議員合作支持一名候選人，最終合併為兩至三個黨派（最理想為兩個）。

（上述2012年特首提名要求建議之摘要，請參閱附件一。）

最終人選

13. 若能根據前文建議完成提名程序，2012年的行政長官最終應如何產生？工商專聯認為應通過一人一票方式，這不但達到了基本法第四十五條行政長官由普選產生的目標，也讓行政長官可以更名正言順地宣稱自己得到廣大選民的支持。
14. 倘若投票後，所有候選人均無法取得大多數選民支持，處理方法之一是進行第二回合競選，即票數最低者出局，選民對餘下的候選人再次投票，如是者直至其中一人得到過半數支持。可是，這選舉方法的利弊要認真衡量。理論上最理想的情況是，政治領袖在取得大多數支持下上台執政，而「得票最高者當選制」的不足之處，就是勝出者不一定能得到過半數的選票。但「多回合選舉制」的問題是，很多時候一些政治人物明知無法取得過半數支持，卻仍積極參選，拒絕與其他黨派組合，目的是製造第二輪或三輪選舉，以便利用機會進行政治交易，爭取政治籌碼。這種制度不利於大黨的出現。此外，研究顯示，最大兩黨於「多回合選舉制」下的得票率，往往低於「得票最高者當選制」，可以說「多回合選舉制」不利於政治整合，更會促使小黨派出現。
15. 綜合以上因素，行政長官選舉採用單回合得票最高者當選制較為理想。在這制度下，得票多者贏得競選。為了爭取票源，各種不同的政治力量勢必重新整合，聯手推出一個支持度最高的候選人，以增勝算。這有助立法會整合為幾個主要的黨派，減少小黨派、小集團出現的機會。因此，雖如前文所述，「得票最高者當選制」有其不足之處，但它簡單可行，效率高，成本低，並有利香港整體政治的穩定發展。

2006年7月

附件一

工商專聯就2012年行政長官提名之建議摘要

前提：

- 提名委員會 = 800 名代表 (分別來自四個組別，每個組別各有200名代表)
- 立法會 = 60 名議員
- 立法會議員保留在提名委員會中第四個組別

工商專聯之建議

- 候選人所需最少提名數目 (800名委員的12.5%) = 100
- 從各組別最少獲得提名數目 (每個組別，即200名代表的10%) = 20
- 從立法會最少獲得提名數目 (60名議員的25%) = 15

根據以上條件，獲提名之候選人必須符合如下最低要求：

第一、第二及第三組別	:	20@ x 3 個組別	= 60
第四組別	:	15 (立法會) + 5	= 20
任何組別	:		= <u>20</u>
合共獲提名數目			<u>100</u>