

**Thinking About 2007:
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**What Next in Constitutional Reform?
Enhancing Representation and Ensuring
Effective Governance**

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About SynergyNet

SynergyNet, established in February 2002, is a policy network 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.

“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

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The views and recommendations contained in this Paper are those of the individual author, and do not necessarily represent the official position 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-kiong (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:⁸
 - **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".⁹ *Policy capacity* entails "the manner in which relations between the executive and legislature are handled, the manner in which cabinet and other executive decision making systems are organized, serviced and

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.

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 powers and check-and-power has been clearly built into the Basic Law. The question

¹⁰ Ibid, p. 16.

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 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.]*

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

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.