



HONG KONG BAR ASSOCIATION

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22 August 2005

Ms. Julina Chan
 Secretary
 Constitutional Development Task Force
 Constitutional Affairs Bureau
 Government Secretariat
 3/F Main Wing
 Central Government Offices
 Lower Albert Road
 Hong Kong

Dear Ms. Chan,

Re: The Fourth Report of the Constitutional Development Task Force

I refer to our letter of 18 March 2005 and your reply of 22 March 2005.

I am pleased to enclose herewith a copy of the supplementary views of the Hong Kong Bar Association on the Consultation Paper on the Fourth Report of the Constitutional Development Task Force which was endorsed at its Bar Council Meeting held on 18 August 2005, for your consideration.

Yours sincerely,

(Signed)

Philip Dykes SC
 Chairman

/rc
 Encl.

香港大律師公會

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The Fourth Report of the Constitutional Development Task Force

Supplementary Views of the Hong Kong Bar Association

1. The Hong Kong Bar Association (“the Bar”) submitted in February 2005 its views on the Fourth Report of the Constitutional Development Task Force (“the Task Force”) on the Views and Proposals of Members of the Community on the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008 (“the Fourth Report”).
2. The Bar is the view that there has arisen one constitutionally important issue that the Task Force should seriously consider in its deliberations for the drafting of its fifth report and submits its further views on this issue.
3. The issue is whether the Election Committee that is to elect the candidate for appointment of the office of the Chief Executive in 2007 should have a term of office and if so, the length of that term of office.
4. This issue assumes importance as a result of the Interpretation of the Standing Committee of the National People’s Congress dated 27th April 2005 on Article 53(2) of the Basic Law of the HKSAR (“the NPCSC Interpretation of

27th April 2005”), which relied on clauses 1, 2 and 7 of Annex I of the Basic Law of the HKSAR to state that these provisions –

“make it clear that prior to the year 2007, when the Chief Executive is selected by the Election Committee *with a five-year term of office*, in the event that the office of Chief Executive becomes vacant as he (she) fails to serve the full term of office of five years as prescribed by Article 46 of the Basic Law, the term of office of the new Chief Executive shall be the remainder of the previous Chief Executive; and that after 2007, the above-mentioned method for selecting the Chief Executive could be amended, and should the office of the Chief Executive then become vacant, the term of office of the new Chief Executive shall be determined in accordance with the *amended* method for the selection of the Chief Executive” (emphasis supplied).

5. The Bar is of the view that the method for the selection of the Chief Executive under Annex I of the Basic Law of the HKSAR should be amended so that the Election Committee that is to elect the candidate for appointment of the office of Chief Executive in 2007 shall have no term of office and shall exist only for the duration necessary to achieve its purpose of the occasion, namely the electing the candidate for appointment of the office of Chief

Executive to fill the vacancy that has arisen in that office, including a renewed or resumed election in the event that the election process is declared to have failed or terminated under electoral laws or that the person declared to have been elected is held not to have been duly elected by the Court of First Instance in determination of an election petition.

6. The Bar considers that there is no practical impediment over the formation of the Election Committee to require it to be a standing institution with a term of office. The Chief Executive Election Ordinance (Cap 569) provides in section 10 a practicable time frame of at most 120 days within which an election to return a candidate for appointment of the office of Chief Executive. The 120 days time frame (which is prescribed in respect of the occasion in which a vacancy in the office of the Chief Executive has arisen other than the occasion of expiry of term of office of the holder of that office) has included within it provision of time for the conduct of sub-sector by-elections to fill vacancies in the Election Committee that are expected to exist. Although more time may have to be made available to conduct a full blown sub-sector election to constitute the Election Committee from time to time, the extended time frame is still comfortably within the six months time frame under the Basic Law of the HKSAR, within which a candidate for appointment as the new Chief Executive must be elected.

7. The Bar also considers that it is neither necessary nor desirable for the Election Committee to have a term of office that corresponds with the term of office of the Chief Executive that it elects. Under normal circumstances, it is very unlikely that the subsector electorates of the Election Committee would suffer a sea change in composition or preference in a few and in any event less than five years to return members of the Election Committee expressing a different voice than those of the previous Election Committee. If indeed there is such a sea change, it is imperative that the voters, rather than their disfavoured representatives, be heard.

8. The Bar indicated in the views it submitted in February 2005 that:

“A generous interpretation of Art 26 of the Basic Law of the HKSAR is to provide for the fullest and most meaningful extent of protection of the right to vote of HKSAR permanent residents within the framework set out in the Basic Law (including interpretations to its provisions by the NPCSC under Article 158 thereof) for elections held for the selection of the Chief Executive. This is in addition to the minimum guarantee provided under Art 25(b) of the International Covenant on Civil and Political Rights as applied to Hong Kong.”

9. Accordingly, the Bar considers that prescribing that the Election Committee for the Chief Executive to have no term of office but rather to be constituted as and when a vacancy arises is to provide for the relevant electorates the fullest and most meaningful extent of protection and guarantee of their right to vote to participate in the most important political process of the HKSAR, namely the selection of the Chief Executive.

Dated : 22 August 2005

Hong Kong Bar Association