

**Roundtable on Issues Relating to the 2017 Chief Executive Election**

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The government's consultation document expresses the aspiration that the new procedures for election of the Chief Executive should embody the principles of universal suffrage and "one person, one vote", "in accordance with democratic procedures". In addition, the procedures should conform to the design principles of the political structure of the HKSAR. That is, they should meet "the interests of different sectors of the society", facilitate "the development of the capitalist economy", promote "gradual and orderly progress"; and be "appropriate to the actual situation in the HKSAR".

The following comments highlight options that are available in relation to the election of the Chief Executive in Hong Kong and consider how they measure up against these various criteria. They are based on knowledge not of the specific situation in Hong Kong, but of the range of electoral institutions and the effects of those institutions around the democratic world in general. Thus, they do not deal with the final criterion, on the situation in the HKSAR.

I do not seek to make recommendations: it is for others, having developed a clear understanding of the implications of the various options for the various relevant criteria, to consider what would be best for Hong Kong.

**Panel 1: Nomination of Candidates to the Nomination Committee**

I cannot comment upon the compatibility of different options for the nomination of candidates to the Nomination Committee (NC) with the Basic Law. In general, however, there are two particular mechanisms of candidate nomination in existing democracies:

1. *deposits*: candidates must lodge a monetary deposit, which is returned to them if they win a certain share of the vote in the election;
2. *signatures*: candidates can gain a place on the ballot only if they secure a certain number of signatures from eligible electors within the district.

These are often combined: typically, the higher the deposit requirement, the lower the signature requirement, and vice versa. In addition, parties that have already achieved some electoral success may sometimes receive favourable treatment: their candidates may face a lower signature threshold, or parties that already hold office may be allowed automatically to nominate candidates.

Given that electoral success in a democracy comes, by definition, from the ability to win votes rather than the ability to pay money, a signature requirement is in general preferable to a deposit requirement. In addition, there is no clear reason why a party that has achieved success in a past election should receive an institutionally favoured position for nominating candidates in a future election: such parties are likely already to enjoy the advantages of greater name recognition and perhaps greater access to the media and means of finance, and there is much to be gained from allowing new entrants into the democratic process. In general, therefore, the most democratic nomination procedure is likely to be a simple signature requirement that applies equally to all would-be candidates.

There is no general rule as to what the appropriate level of signature requirement might be. Relevant considerations include the following:

1. How readily are voters likely to be willing to participate in the nomination process? The lower is turnout in elections and the more reluctant voters might be to make a public declaration of support for any particular candidate, the lower should be the signature threshold if a good range of candidates is to go forward.
2. Are there groups within society that should be included? If particular groups within society are unable not only to secure the election of their favoured candidates, but also to find their favoured candidates on the ballot paper, they may have just cause for grievance and they might choose to pursue their interests through non-democratic means. Inclusion is thus desirable for reasons of both democratic quality and systemic stability, and the level of a signature requirement should not be so high as to exclude significant groups.
3. How large is the electorate? Signature thresholds can be expressed in numbers of votes – many European countries, for example, require numbers of signatures for parliamentary elections ranging from around 100 to the low thousands – or as a percentage of the eligible electorate. In general, the larger the electorate, clearly, the easier it will be to secure a given number of signatures; equally, however, the harder is it likely to be to secure the signatures of any given percentage of the electorate, given the greater logistical burden of the signature-gathering process.

In addition, in the Hong Kong context, the particular question needs to be asked of whether the Nomination Committee is designed to filter the candidates that are nominated to it or merely ratify whether they have been correctly nominated. There is a case for a higher signature (or other nomination) threshold in the latter case than the former.

## **Panel 2: Composition of the Nomination Committee and Nomination of Candidates by the Nomination Committee**

Any deviation from the principle of one person, one vote in the composition of the NC is clearly a deviation from the principle of democracy. Such deviations might arise either from the weighting attached to the various subsectors represented within the NC or from the composition of the electorate within those subsectors. There is no evidence from international experience that could justify any deviation from the principle of democracy on the basis that such deviation would advance “the interests of different sectors of the society”, facilitate “the development of the capitalist economy”, or promote “gradual and orderly progress”. On the contrary, all the evidence suggests that, particularly for a country at as high a level of economic development as Hong Kong, a democratic system is best able to accommodate diverse interests and harness the creative potential of society. Any deviation from the democratic principle could therefore be justified only on the basis that such deviation would be “appropriate to the actual situation in the HKSAR”. As noted above, I am not qualified to comment upon this criterion.

With regard to the nomination procedure to be used by the NC, it would appear that two issues need to be considered: first, the degree to which the NC is intended to act as a filter or merely a ratifier; and second, if it is to act as a filter, how it should choose among the candidates proposed to it.

As the points above imply, to the extent that the composition of the Nomination Committee deviates from the principle of one person, one vote, then the deviation from democracy is greater

the more active is the Committee's role as a filter and the more any such role would require special justification.

Even if the Nomination Committee is itself democratically constituted, any strong filtering role would violate democracy and might engender instability. While indirect election of the Chief Executive by an elected body might appear analogous either to the indirect election of the prime minister by the legislature in parliamentary systems or to the election of the President of the United States by the Electoral College, in fact there are important differences. In a parliamentary system, voters can choose among a wide range of parliamentary candidates. They are never asked to vote on a ballot paper from which their favoured candidates may already have been excluded. Electoral College members, meanwhile, are now so tied to supporting a particular candidate that, in practice, the election result is virtually determined by the popular votes cast in the various states. In the Hong Kong context, by contrast, if voters were asked to vote on a ballot paper from which candidates with significant support had been excluded, this could delegitimize the whole process, thereby harming stability as well as democracy.

If the NC is intended to operate as an active filter, therefore, its nomination procedure should nevertheless be designed to ensure that candidates reflect a broad spectrum of opinion. There are several mechanisms that might be considered, some of which would do this more effectively than others:

- *Single Transferable Vote (STV)*. Looking from a comparative perspective, this is the most obvious choice of system: is the commonest electoral system for ensuring a spread of opinion is represented in a non-party context. (In the case of the NC, though there are parties, each party will presumably seek to put forward only one candidate, which makes this stage of the process analogous to one in a non-party context.) It is used, for example, in many business associations, trade unions, voluntary associations, and religious organizations. Voters rank candidates in order of preference and candidates are elected when they meet a certain threshold (I can provide more details of the process if that will be helpful). This has the advantage of producing a very fair result. The more candidates are to be nominated, the wider will be the representation on the ballot paper. It does, however, require that the number of candidates to be nominated be determined in advance, which may be thought artificial in this context.
- *Threshold support level*. The government's consultation document mentions the possibility that any candidate might be nominated who receives the support "of more than half or a certain number of NC members". Even if NC members are allowed to vote for more than one candidate, a threshold of half the NC would be highly undemocratic: it would allow a bare majority of the Committee to block any candidate they wished. A threshold closer to 10 per cent might be more appropriate. Such a system would be simple. Its main disadvantage relative to STV would be that NC members voting for a candidate (or candidates) who do not pass the threshold would not be able to influence the outcome.
- *Positive and negative voting*. The consultation document also suggests that members of the NC might be allowed to cast both positive and negative vote, the nominated candidates being those with the highest net scores. This could again lead to a very limited range of candidates, as large groups could outvote small groups.
- *Threshold support levels across sectors or subsectors*. A further suggestion might require candidates to obtain a certain level of support across a certain number of sectors and subsectors. Again, however, the danger is that candidates with significant support in some parts of the community might thereby be barred from standing.

### **Panel 3: Procedures for the Election of the Chief Executive and the Chief Executive's Political Affiliation**

Three principal electoral systems are widely used for the election of single officeholders such as chief executives:

- *Single-member plurality (SMP)*. Voters vote for one candidate and whichever candidate collects most votes wins. This system is simple, but its disadvantage is that the preference of the majority can be confounded if its votes are split between two similar candidates. That danger may be of particular concern if the nomination process is such that, even if only in theory, nominations could be manipulated to ensure that votes in one part of the political spectrum are divided across multiple candidates while those in another part are not.
- *Two-round systems*. Here, if no candidate wins in absolute majority of votes in the first round, a second round is held, in which (typically) only the top two candidates can participate. This reduces the dangers associated with SMP, though it is still possible for it to produce a result of questionable democratic legitimacy if the candidate with broadest support is not one of the two candidates who reach the second round. It also requires voters to turn out twice, which may be thought problematic if turnout is expected to be low.
- *Alternative Vote (AV)*. The AV system allows voters to rank candidates in order of preference. If no candidate wins a majority of first preferences, the last candidate is eliminated and votes are transferred to second-preference candidates. This continues until there is a clear winner. This system further reduces (though it does not eliminate) the danger of an anomalous result and allows all the voting to take place on one day. It is a little more complicated than the other systems, but nevertheless functions well in several polities.

With regard to the political affiliation of the Chief Executive, it is the case that the presidents of many countries are obliged to give up any partisan affiliation on entering office. At least in democratic countries, however, these are all largely ceremonial presidents whose principal function is to symbolize and speak for the nation as a whole. Where the president or other executive officeholder holds genuine executive power, it is not clear what democratic function a requirement to renounce political affiliation would serve: that person would have been elected on a political programme and, if democratic values are sought, out to be accountable for delivery on that programme.

### **Panel 4: Other Matters**

There are no further matters that I wish to highlight at this point, but I have no doubt that issues will arise in the course of the roundtable.