

# REGULATING POLITICAL PARTIES IN HONG KONG

Richard Cullen

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# **REGULATING POLITICAL PARTIES IN HONG KONG**

BY

**Richard Cullen<sup>1</sup>**

FOR THE

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MEETING ON

***THE ROLE AND DEVELOPMENT OF POLITICAL PARTIES***

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<sup>1</sup> Richard Cullen is a Professor at Monash University in Melbourne, Australia. He has spent around 10 years working in Hong Kong, primarily in the School of Law at the City University of Hong Kong. He has been a Research Associate with Civic Exchange, since 2002. This paper is based on a detailed report entitled Political Party Development in Hong Kong prepared, in 2004, for Civic Exchange. Email: [rcullen@attglobal.net](mailto:rcullen@attglobal.net).

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## PART 1: OVERVIEW

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### Introduction

Since they emerged in the 1980s, Hong Kong political parties have struggled to develop and establish themselves. They were discouraged by the British for most of the period when they ran Hong Kong. To this day, political parties confront a range of obstacles to healthy growth, including the denial of any governmental role to parties based on electoral popularity, limited public support, the limited law-making role allowed Legco, the negative impact of the functional constituency system, a self-chosen preference for politics based primarily on opposition rather than policy development and the watchful anxiety (especially in relation to pro-democracy parties) of Beijing.

Limitations within the electoral-political-infrastructure (EPI) comprise one further inhibiting factor. EPI reform is really a “stand-alone” issue, however. That is, it can be looked at separately from the inhibiting factors noted above. It can also be considered outside of the rather highly-charged debate about the pace of democratization in the HKSAR. Hong Kong needs mature, stable, policy-focussed political parties. EPI reform can help lay better foundations for the long-term development of all parties in Hong Kong.

My view, based on a recent research report completed for Civic Exchange (Political Party Development in Hong Kong (PPDEVHK Report))<sup>2</sup> is that a new Political Party Ordinance is not needed in Hong Kong to effect EPI reform. I believe we already have a basically sound – though incomplete - EPI governing the conduct of elections (and, indirectly, the operation of political parties) in the HKSAR. The way forward is to build on these essentially positive foundations using a series of legislative and related initiatives.

The PPDEVHK Report – which forms the basis for this submission - includes a detailed, comparative review of the Australian experience with regulating elections and political parties. The basic regulatory system in Australia is now over 100 years old. It has been steadily improved over time and, unlike in the US, for example, it is widely regarded by participants from all sides of politics as working well. This makes it, comparatively, one of the most durable and successful, electoral-regulatory systems in the world.

### The Current Legal Status of Political Parties in Hong Kong

A key feature of the present legal regime governing political parties in Hong Kong is the way in which the law barely notices that they exist, as such. This approach is

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<sup>2</sup> The full report can be found at [www.civic-exchange.org](http://www.civic-exchange.org) under “Publications: 2004 August”. The Table of Contents of this report is set out in Appendix 1.

legacy of the tradition established in the UK and followed in Australia – and Hong Kong. As modern political parties developed the Common Law came to regard them as voluntary, non-profit, “unincorporated associations”. That is, they were bodies having (unlike a company or corporation) no legal personality distinct from their members. This was to be expected. The Common Law has long had a narrow view of what constitutes separate legal identity.<sup>3</sup>

The Common Law does draw a distinction between “not-for-profit”, unincorporated associations and their “for-profit” counterparts. Where a group of persons comes together with a common business or profit making purpose, then the Common Law will regard that group of persons as a “partnership” rather than as a (non-profit) unincorporated association.<sup>4</sup> Partnership Law is quite separate (and more complex) in many respects from the law applying to non-profit, unincorporated associations.<sup>5</sup>

In certain cases, the courts have allowed legal actions by and against non-profit, unincorporated associations, where the committee of management could sue or be sued in their capacity as (a collective of legally recognized) individuals. For example, where an unincorporated club in Australia ran a public event (a horse race meeting) some years ago and a group of spectators were injured, relevant committee members found themselves in court and held liable.<sup>6</sup>

The courts’ attitude towards political parties, however, has generally been never to recognize them (including their management committees) as being capable of suing or being sued. The High Court of Australia put it this way in 1934:

*[A political party] is a political machine designed to secure social and political changes. It furnishes its members with no civil right or proprietary interest suitable for protection by injunction. Further, such a case is not one for declaration of a right. The basis of an ascertainable and enforceable legal right is lacking. The policy of the law is against interference in the affairs of voluntary associations which do not confer upon the members civil rights susceptible of private enjoyment.<sup>7</sup>*

As it happened this Common Law approach of consigning political parties to a sort of legal “never never land” where they existed – but could not be recognized legally – suited political parties rather nicely. Perhaps more than most human collective entities, political parties are prone to encountering heated squabbles amongst their members. The view taken by the courts meant that, even when tussles with

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<sup>3</sup> See, for example, *Leahy v Attorney General of New South Wales* (1959) 101 Commonwealth Law Reports 611, per Viscount Simonds (in the Privy Council) at 619. See, also, Sievers, A. S., *Associations and Clubs Law in Australia and New Zealand* (2<sup>nd</sup> ed.) (Federation Press, Sydney, 1996) 5. For certain exceptions to the general rule, see Sievers, 7-8.

<sup>4</sup> See, further, Sievers, *ibid.*, 1.

<sup>5</sup> There are cases when a “pure” non-profit, unincorporated association may transform itself into a partnership as a result its business-related activities becoming dominant. It would appear no unincorporated political parties have ever encountered this hazard, however.

<sup>6</sup> See, *Smith v Yarnold* [1969] 2 New South Wales Reports, 410.

<sup>7</sup> *Cameron v Hogan* (1934) 51 Commonwealth Law Reports, 358, 378 (per Rich, Dixon, Evatt and McTiernan JJ.). See, also, for more recent commentary on the legal status of unincorporated political parties in the UK, *Conservative and Unionist Central Office v Burrell* [1980] 3 All England Reports 42.

members became seriously nasty, management committees knew they were normally safe from any sort of judicial intervention.<sup>8</sup>

Hong Kong, unlike the UK and Australia, has a Societies Ordinance (SO). The SO, in Section 2, defines a society very widely to include “any...association of persons, whatever the nature or purpose.” This definition clearly catches political parties. Thus, political parties in the HKSAR do not have the option, enjoyed by political parties in the UK and Australia, of existing in a “legal grey-zone”,. They must register under the SO – unless they come within one of the limited exceptions to SO registration. One of the few exceptions listed is any company registered under the Companies Ordinance. It is not surprising, therefore, to find that, with a few exceptions, most political parties or associations in Hong Kong have chosen to incorporate as companies limited by guarantee.

The result is, that, unlike most of their counterparts in Australia, political parties in Hong Kong normally have a full (corporate) legal personality. Although they are recognized by the law (as companies), they are not, however, generally otherwise recognized legally in the HKSAR. Very brief references are made to political parties (or political bodies) in several Ordinances including: the Electoral Affairs Commission Ordinance (EACO); the Chief Executive Election Ordinance (CEEO); and the SO. But these are passing references arising out of other considerations (for example, the CEEO provides that the Chief Executive of the HKSAR should not be a member of a political party). In general, as previously noted, political parties, as such, are treated, legally, as being barely visible in Hong Kong.

Political parties already play an important role in the political life of Hong Kong. It would be in the best interests of Hong Kong to see their role in this regard grow. The lack of proper recognition of political parties within our political-legal infrastructure is one of the factors impeding the development of a strong, constructive and mature HKSAR political system.

## Rethinking the Electoral-Political Infrastructure

I see a number of key ways to improve the present EPI in Hong Kong. In summary, we should work towards establishing:

- A new, comprehensive (voluntary) political party registration system;
- An improved public funding regime;
- Much enhanced funding transparency; and
- A Government-Legco Joint Standing Committee on Electoral Matters (GLJSCM) to review the future operation of Hong Kong’s EPI.

Let me explain, a little further, how these EPI improvements could work. First, we should make the recently introduced public funding system much more straight-

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<sup>8</sup> State legislation in Australia nowadays permits unincorporated associations to incorporate using a more simple and less costly process than that involved in being incorporated as a company (see, Sievers, Chapter 4). Some State branches of political parties in Australia have incorporated in order, for example, to strengthen their financial position. See, further, PPDEVHK Report, Part 4.5.

forward in its operation so that funds are paid, post elections, purely on the basis of votes received – above a fixed threshold of, say, 5% of total votes cast. Next, to obtain full public funding, political parties would need (voluntarily) to register with a revamped, Electoral Affairs Commission (EAC), under the new registration regime. Parties so registered would be eligible to claim public funding – on condition that they: agree to publish, regularly, a full and accurate, EAC auditable, statement of all party income and expenditure in hard copy and on the web; submit an approved party constitution; and possess a (low) minimum number of members. Donations to registered parties up to a certain level might usefully (and with appropriate safeguards) also be made tax deductible.

These measures, taken collectively, would help political parties to establish stronger foundations. They would also help institute a level playing field for all parties. Plus they address the current peculiarity of these key players in our political life being barely recognized within Hong Kong's formal political structure.

With all this information on the public record, we would achieve much greater funding transparency. Moreover, the system should be largely self-enforcing – as each party could be relied upon to scrutinize the public accounts of all rivals carefully and draw any alleged irregularities to the attention of the EAC and the media. Parties would know they were each being treated in the same way – and they would have access to secure basic funding – provided they retained a level of public confidence at relevant polls.

Parties (or individuals) could continue to operate without being registered, if they wished. But they would, in this case, receive nil or markedly reduced public funding and no tax breaks.

As noted above, political parties in Hong Kong have usually incorporated under the CO. This provides individual parties with a separate legal personality. It also exempts them from registering under the SO. Complying with all the requirements of the CO can be difficult for parties. The proposed registration system would provide a sound basis to further assist parties by relieving them of certain CO obligations. It makes sense, I believe, for parties to continue to use the CO to establish their legal identity. This enhances the security of each party by separating the matter of legal personality from registered status: no single government bureau is in control of both.

I see a need for a thorough review of the way in which EAC currently regulates aspects of electioneering. For example, we seem to encounter too literal an interpretation of certain electioneering rules on occasions. I believe the best body to undertake such a review would be the recommended, new, GLJSCM.

I do not think that we should remove the current ban on broadcast election advertising. It inhibits the growth of “money-politics in Hong Kong – which is a good thing.<sup>9</sup> That said, some Australian case law emanating from the High Court in the

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<sup>9</sup> It is estimated that the campaign cost of the 2004 Presidential and congressional elections will be around over HK\$30 billion (US\$ 3.9 billion). This represents a 30% increase on spending in 2000. Very large sums have been spent on electronic/broadcast advertising. See, Agence France-Presse, *Democracy with a US\$4b price tag*, South China Morning Post, October 23, 2004, A11.



1990s raises some doubts as to whether the current ban may be inconsistent with the HKSAR Basic Law, freedom of speech guarantees.<sup>10</sup>

This is not a fix-it-and-forget it problem: the task of improving our EPI is an ongoing one. This realization is behind the recommendation to establish the GLJSCEM. This committee would be tasked with undertaking a initial public review of our EPI and further reviews after each election. The recommendations of those persons and parties most directly affected by the regulatory system would be presented, via this joint committee, as proposals for EPI reform.

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<sup>10</sup> See: *Australian Capital Television v Commonwealth* (1992) 177 Commonwealth Law Reports, 106; and discussion in PPDEVHK Report Part 4.6, *Electioneering and Election Advertising*.



## PART 2: CONCLUSIONS AND RECOMMENDATIONS

In the course of discussions about political party development in Hong Kong, the possibility of enacting a Political Party Ordinance has been advocated from time to time in the belief that it would provide greater efficiency and transparency in the operation of parties. Such a law may not be a particularly desirable reform.<sup>11</sup> Though the current electoral and political party regulatory regime in the HKSAR suffers from inadequacies which inhibit the development of political parties, the fundamental regulatory structures and practices are reasonably sound. Therefore, there is not a great need for root and branch reform. The best way forward may be to look at how the current infrastructure can be developed and improved. The key reform issues to be addressed include:

- The formal recognition (and registration) of political parties;
- The legal status of political parties;
- Election advertising and general electioneering;
- Fund raising and public funding of political parties; and
- Funding transparency.

### *The Formal Recognition of Political Parties*

It seems clear that the current position where political parties have almost no formal engagement with the electoral regulatory system is not sensible. Political parties exist and play a very important role in the political life of the HKSAR. They have done so now for over a decade. The regulatory system should formally recognise political parties — especially now that a public funding system for electioneering (discussed further below) has been introduced.

Hong Kong should seriously consider creating a proper political party registration system, modelled on that used in Australia. This system could be enacted under the EACO and administered a revamped EAC. The essential elements of such a system would include the following.

All political parties seeking registration would need:

- To submit a written party constitution — containing certain mandatory provisions (see further below);
- To have a minimum number of members (appropriate to the HKSAR);
- To submit an annual return with respect to the party and also with respect to all defined, associated entities which would detail in full, all income, expenditure and debts plus any other matters deemed necessary for the reporting period;
- To submit to regular registration-related, performance audits by the EAC;

<sup>11</sup>

A series of important questions arise whenever a jurisdiction contemplates any new comprehensive law. These include: to what extent is that area already regulated: is the existing regulatory regime fundamentally inadequate: how long will it take to “bed down” any such new law: are the unforeseen — but almost always inevitable — adverse consequences arising from any such new comprehensive law worth enduring: and what clear additional benefits can be shown which would make this approach superior to targeted reform of the existing regime.

- To agree to all the annually reported information being placed on the public record (on the Web) so that it can be scrutinised by the public and by rival political parties;
- To nominate certain officers of the political party as the responsible contact points for EAC regulatory purposes

Hong Kong could learn from the Australian experience by providing a model political party constitution, which could be either generally adopted in full or modified (within set limits). Such a model constitution would aim to be clear and fairly simple but would likely contain provisions setting down membership and management rights and obligations in some detail together with rules for choosing and endorsing election candidates. This would avoid the situation in Australia where parties can register using very thin constitutions which may not be fair to members and others. Parties seeking registration in the HKSAR would thus need to have constitutions which conformed to certain minimum standards designed to protect the interests of members and others (such as applicants for membership or ex-members) interacting with the party.

Upon the introduction of any new registration system, the EAC should be given a power to de-register a political party but only when it can be shown that a given political party is in serious breach of clearly and carefully spelled-out requirements. The exercise of any de-registering power would need to be made subject to full judicial review on the motion of any affected political party.

For reasons explained below, it is *not* recommended that the political party registration system be used, also, as a basis for providing legal status to political parties. It is best to leave the matter of political party legal status as a separate issue — one which normally would be addressed, as it is now, by incorporation under the CO. It may be necessary to enact certain cross-over provisions with the CO to ensure compatibility between the new EACO political registration regime with reporting and meeting requirements under the CO.

As in Australia, certain benefits ought be made available to parties which register, in order to encourage registration. Incentives could include:

- Allowing registered political parties to access enhanced public funding in their own right;
- Providing detailed electoral roll and related data to registered parties without charge; and
- Allowing certain tax benefits to registered political parties (see below).

It should *not* be mandatory to register — parties could continue to operate without registering. But in that case, the benefits above would not apply. Public funding might remain available to individual candidates (and thus, indirectly to unregistered political parties) but at a lower rate than in the case of registered political parties.

In Australia, a further incentive to register is provided by the arrangement to allow registered political parties to have the name of each party shown beside the candidate's name on each ballot paper. This sensible idea has just been introduced in Hong Kong so that all LegCo candidates may now apply to the EAC to have

certain particulars shown beside their names on each LegCo ballot paper in order to help voters identify the candidates' affiliations.<sup>12</sup>

### *The Legal Status of Political Parties*

The current practice common in the HKSAR, where parties are usually incorporated as companies limited by guarantee, is somewhat awkward and places a certain burden on political parties. On balance, however, it seems acceptable. First, there is no prospect of the SO being repealed or drastically revised. So, unlike in Australia, there is no option available for political parties to be non-legal entities which are, by various devices, recognised for certain legal purposes and interactions. Moreover, this aspect of the Australian political party regulatory system has its drawbacks. Indeed, it appears to have played a part in allowing the serious legal problems with respect to the operation of the One Nation political group to arise. That experience suggests that it is preferable for political parties to be required to have some sort of clear, identifiable legal structure.

In the HKSAR now, a party can decide against incorporation, although then they will need to register under the SO. One improvement which should be considered is to allow non-incorporated political parties to register as such with the EAC under a new, EAC-administered, political party registration scheme. The Schedule to the SO could then be amended so that unincorporated political parties registered with the EAC are specifically exempt from registration under the SO.

Another improvement which should be considered is to exempt registered, incorporated political parties from the operation of certain provisions in the CO which are not appropriately applied to a political party.

A key reason for retaining the current practice is that it is prudent to avoid having both the registration and legal status of political parties subject to a single government regulator. If a political party registration system is introduced as recommended above, the EAC would have the ultimate power to deregister political parties (subject to judicial review). It would be better that the EAC not also have the power to wind up the legal entity which is the political party. Political parties and the government are always in a rather special relationship with each other, one where tensions are common. In these circumstances, it is best to divide the controlling powers of government rather than have them concentrated in a single regulator.

### *Election Advertising and General Electioneering*

The existing regime based on the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) should be retained — subject to certain modifications being made after a full review of this regime. The provisions which make it problematic to offer food and entertainment at any political function clearly need revising, for example.<sup>13</sup>

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<sup>12</sup> See, **Particulars Relating to Candidates on Ballot Papers** (Legislative Council) Regulation L.N. 263 of 2003. See, also, [www.info.gov.hk/eac/en/legco/2004](http://www.info.gov.hk/eac/en/legco/2004), Legislative Council Elections.

<sup>13</sup> The EAC has interpreted the ban on using “entertainment” to induce desired voting behaviour quite narrowly in the past. See, “Rally hangover after drink and song ban”, *The Standard*, November 13, 2003.

Based on the Australian experience, it would also be sensible to introduce a requirement for all widely defined election advertising to be *authorised* by a clearly identified, readily locatable individual (either party-based or otherwise). It is probably best not to try and create any sort of “truth in political advertising” regulation. It has been shown in Australia that such provisions are genuinely difficult to implement and enforce.

On balance, the ban on broadcast-electronic election advertising should remain, (although, as noted above, it could be argued that this ban is contrary to the Basic Law). The retention of this ban provides a means to put a hold on the growth of money politics in Hong Kong.

### *Fund raising*

It may be worthwhile to consider allowing registered political parties tax-exempt status. Such a provision would relieve registered parties of a compliance burden. Any such change would need to be carefully implemented, however, to prevent its use for tax avoidance purposes.<sup>14</sup> Properly implemented, such a measure should have a negligible effect on revenue.

It is also worth considering allowing at least a partial deduction for donations to registered political parties. Once again, the implementation of any such measure would need to be carefully considered to ensure it would not be exploited for tax avoidance purposes.

The implementation of these possible tax concessions should, in my view, only proceed in tandem with a formal political party registration system as outlined above. The detailed reporting and audit requirements under the registration system would help to ensure that these tax concessions would not be subject to abuse.

It would be best not to allow deductions to candidates for campaign expenses. Policing any such deduction regime would be difficult. It would also raise issues about taxing any public funding received (see below).

### *Public Funding of Political Parties*

The new public funding provisions introduced for LegCo election candidates by the HKSAR government are a step in the right direction. The formula for calculating to whom payments are to be made (attracting at least 5% of total valid votes cast) is reasonable. The formula for calculating how much is to be paid is less so. It is rather complex and it looks set to favour some candidates who already are financially well off. In Australia, public funding reimbursement was tied to election costs incurred until 1995. In that year this linkage was abandoned. Registered political parties no longer

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<sup>14</sup> This would include ensuring that tax evasion, also, cannot occur. Tax “avoidance” is the term normally used for tax planning which, whilst not strictly illegal, exploits any and every “loophole” in tax law. Tax evasion is the term normally used to describe outright tax fraud, for example where income is omitted or false deductions are claimed on a tax return.

need to submit detailed claims. There is significantly less paperwork all round and funds are paid over more swiftly.<sup>15</sup>

Let us assume that a political party registration system is introduced as outlined above. In that case, the public funding provisions should be amended so that the fixed sum (currently \$10 per valid vote cast above the threshold) is simply paid — but with the total sum being paid directly to the registered political party. Individual candidates, whether or not they are member of an unregistered party could apply for support under a more limited funding formula (but one less complex than the current three-tier funding formula).

This reform would provide a boost to registered political parties both in terms funding assistance and also in terms of encouraging persons seeking election to join registered political parties.

In Australia, there have been instances where publicly funded, registered political parties have refused to pass on public funds to cover costs incurred privately by endorsed party candidates.<sup>16</sup> To avoid this outcome, the (model) registered party constitution referred to above would need to contain mandatory provisions requiring parties to be financially answerable to their endorsed candidates.

In the event the political party registration is not introduced, the three-tier funding formula for candidates should be repealed and replaced with a simple payment of \$10 per valid vote cast, above the relevant threshold.<sup>17</sup>

The public funding system advocated in this paper need not involve any significant increase in public expenditure. Public funding utilizing a reformed Hong Kong system based on the more straight-forward (well regulated) and more generous Australian model should not cost more than \$HK10 million on an annualized basis — or less than .0001% of Hong Kong's GDP per year. Such funding is both modest and has significant potential to advance the overall public good in Hong Kong.

Funds paid out under any public funding scheme could be earmarked as not being subject to any tax, but if this rule applied, campaign expenses should not be treated as deductible.

### *Funding Transparency*

A key aspect of the proposed political party registration system is to introduce a public-record reporting system for registered political parties. This system would be self-regulating to a significant degree because each political party would have access to the public financial records of the other parties, while the EAC would be also be conducting regular audits of registered political parties.

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<sup>15</sup> See Chau, Pak Kwan and Lam, Kitty, *Public Subsidies for Parliamentary Election Expenses in Canada, Germany and Australia*: LegCo Information Note 09/02-03, para. 4.5 at [www.legco.gov.hk/english/index](http://www.legco.gov.hk/english/index).

<sup>16</sup> See, *Sharples v O'Shea and Another* [1999] Queensland Supreme Court, 190.

<sup>17</sup> For a useful discussion of public funding schemes operating in Canada, Germany and Australia, see Chau, and Lam, op. cit. note 15.

This is an intrusive regime, it is true. But, participation would remain voluntary. Almost all parties should volunteer, however, because of the benefits which would flow from registration including enhanced, direct public funding of political parties, improved electoral information access, and possible taxation-related benefits.

Also, this revelation of information is in the general public interest. The more clear we are about who pays what to whom, politically, the better informed the average voter will be.

The Australian experience tells us that no anonymous donations (beyond a low, and policed, threshold) should be allowed either to parties *or* to any associated entities.

Whether or not a political party registration system is introduced, the most obvious loophole in the current candidate reporting requirements under Section 37 of the ECICO needs to be closed. Candidates should have to reveal the substantive person behind any donation rather than be able simply to report a donation from Political Party A, as is currently the case.

The statutory limits on candidate expenditure under the ECICO are, in principle, sensible. It might make sense to consider limits, in due course, on “general issue” campaign spending by political parties, as such spending can be used to circumvent individual spending rules. Whilst the HKSAR maintains its ban on broadcast electoral advertising, however, the general issue spending problem should remain contained. It is through use of the electronic media that money politics creates its greatest impact — and greatest distortions.<sup>18</sup>

#### *Oversight of the Electoral Infrastructure*

For some years in Australia the Joint Standing Committee on Electoral Matters (JSCEM) has had a useful oversight role with respect to all matters pertaining to federal elections. Thus, the JSCEM routinely conducts an enquiry into the conduct of each federal election. The Australian Electoral Commission and other parties make submissions and the JSCEM makes recommendations for infrastructure improvement, many of which have been implemented.

It is sensible to consider the establishment of an appropriate, on-going, oversight body to undertake a similar role in Hong Kong. A core component in any such body should come from LegCo but, as the HKSAR government is not formed in LegCo, this committee likely would need to draw on government membership from outside of LegCo. This body - possibly called the Government LegCo Joint Standing Committee on Electoral Matters (GLJSCEM) - could, like the JSCEM, build up expertise in the area of electoral management which would be very valuable in maintaining constructive oversight of the electoral system. Also, it would be an excellent forum for building consensus on what can often be contentious issues. Such a body might conduct useful, ongoing reviews on a range of matters including the implementation of a political party registration scheme, advertising and electioneering regulation, funding limits on candidates, and public funding of election expenses.

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<sup>18</sup> Hong Kong, unlike Australia, does impose expenditure limits on candidates. See, further, Chau and Lam, *op. cit.* note 15.



A further advantage of establishing a GLJCEM is that it would provide a strongly focussed, ongoing institutional forum where the HKSAR Government and LegCo would be engaged on common project. There has been much discussion about how the Government and LegCo need to learn to work together. A GLJCEM could provide an excellent regular round-table where greater trust might be built up, over time, between the Government and LegCo.

There is a risk that a GLJCEM could be used to pursue certain, shared, narrow interests of the major political parties.<sup>19</sup> There is no denying this risk. My own view is that, in a developed society such as Hong Kong, with a history, now, of strong media scrutiny of most all political activity, this risk is manageable, however. Moreover, a GLJCEM should only have powers of recommendation – not implementation. A further sensible safeguard might be to put a five or ten year “sunset clause” into the GLJCEM establishment framework. This would ensure that the operation of the GLJCEM would be subject to a thorough review prior to it being established on any indefinite basis.

My recommendation is that a GLJCEM be established as soon as is reasonably possible. Its first task would be to review the current regulatory infrastructure governing all elections (and indirectly, political parties) in the HKSAR with a view to making concrete renovation recommendations for implementation in good time for the 2007, Chief Executive election and, especially, for the 2008 LegCo elections. Thereafter it should meet: (a) after each LegCo election to review what may be learned from that experience; (b) when appropriate after each Chief Executive election; and (c) otherwise as appropriate.

The suggestions made here require further development before final implementation. They are, however, considered recommendations which draw on the practical experience of a mature political party regulatory system in a country with a similar legal heritage to the HKSAR.

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<sup>19</sup>

I am grateful to Profess Yash Ghai for pointing out this risk.



APPENDIX 1

**POLITICAL PARTY DEVELOPMENT**

**IN HONG KONG**

**IMPROVING THE REGULATORY INFRASTRUCTURE**

by

**Richard Cullen**

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APPENDIX 2

**GLOSSARY OF ABBREVIATIONS  
USED IN CIVIC EXCHANGE REPORT**

AEC	Australian Electoral Commission
AEO	Australian Electoral Office
ALP	Australian Labor Party
Basic Law	Basic Law of the HKSAR
BORO	Bill of Rights Ordinance
BSA	Broadcasting Services Act
CEEEO	Chief Executive Election Ordinance
CO	Companies Ordinance
Constitution	Australian Constitution Act
CRC	Cooperative Resources Centre
DAB	Democratic Alliance for the Betterment of Hong Kong
DP	Democratic Party (of the HKSAR)
EA	Electoral Act
EAC	Electoral Affairs Commission
EACO	Electoral Affairs Commission Ordinance
EAdvert	Election Advertisement
EAQ	Electoral Act (Queensland)
ECICO	Elections (Corrupt and Illegal Conduct) Ordinance
EPRC	Electoral Process Review Committee (HKSAR)
FPTP	First-Past-The-Post (Voting System)
GLJSCEM	Gov't LegCo Joint Standing Committee on Electoral Matters
HKSAR	Hong Kong Special Administrative Region

HTV	How To Vote (Cards)
IRO	Inland Revenue Ordinance
JSCEM	Joint Standing Committee on Electoral Matters
LCO	Legislative Council Ordinance
LEAT	Lawyers Environmental Action Team
LegCo	Legislative Council of the HKSAR)
Lower House	House of Representatives (Australia)
LP	Liberal Party (Australia)
MP	Meeting Point
NP	National Party (Australia)
ONPP	One Nation Political Party (Australia)
PR	Proportional Representation
PRC	People's Republic of China
PV	Preferential Voting
QSEO	Queensland State Electoral Commissioner
SA Branch	South Australian Branch of the ALP
SNTV	Single Non-Transferable Vote
SO	Societies Ordinance
UDHK	United Democrats of Hong Kong
UK	United Kingdom
Upper House	Senate (Australia)
US	United States