



HONG KONG  
SHADOW PARLIAMENT

香港影子議會

**A public consultation on**

**The Hong Kong Shadow Parliament**

Secretariat of Hong Kong Shadow Parliament

December 2020

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## Introduction

In view of the rapid and deep erosion of the rights and freedoms of the Hong Kong people, there is a pressing need for a deliberative mechanism which genuinely manifests the will of the Hong Kong people. The proposed Hong Kong Shadow Parliament (SP) serves as a **transparent, inclusive and accountable** platform on which the democratically elected representatives can freely speak on behalf of the Hong Kong people internationally. The SP seeks to allow Hongkongers to elect their representatives in a free and fair manner but is not positioned as a government-in-exile. It is not poised to imitate the functions of a state which would regulate and settle matters relating to Hong Kong and between the Hong Kong people.

This consultation paper explains the concept of the SP and tries to enumerate options for the SP in view of forming a consensus amongst the Hong Kong people rather than promotes a specific option. The questions in this paper, which are crucial in the process of drafting the Constitution of the SP, are open to discussions. The public is welcome to provide their input.

## About the Secretariat

The Secretariat of the Hong Kong Shadow Parliament is formed in December 2020. At this stage, the Secretariat is a preparatory working group that aims to impartially study and carry out the plan for the establishment of the SP. After the first term of the SP is born, the Secretariat will serve as the permanent Secretariat of the SP. The Secretary-General of the Secretariat pledges to uphold impartially and not to stand as a candidate in the elections to the SP.

# Keys questions

The electoral system and the eligibility of voters and candidates will determine the structure and the legitimacy of the SP. This paper invites members of the public to provide answers to the following questions. A feedback form may be found in the last part of this paper.

## Part A: Eligibility of voters and candidates

### Question A-1: References to the Hong Kong people

There exist multiple references to the Hong Kong people. The SP should adopt the most widely accepted terminology and definition for the people which the SP is poised to represent. The options are as follows.

#### Hong Kong Resident

The concept of "Hong Kong Resident" is defined in Article 24 of the Basic Law (BL) as follows.

- ( 1 ) Chinese citizens born in Hong Kong [...];*
- ( 2 ) Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years [...];*
- ( 3 ) Persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2);*
- ( 4 ) Persons not of Chinese nationality who have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence [...];*
- ( 5 ) Persons under 21 years of age born in Hong Kong of those residents listed in category (4) [...]; and*
- ( 6 ) Persons other than those residents listed in categories (1) to (5), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only.*

*The above-mentioned residents shall have the right of abode in the Hong Kong Special Administrative Region and shall be qualified to obtain [...] permanent identity cards which state their right of abode."*

Borrowing the concept of "Hong Kong Resident" from the BL may be undesirable due to the repeated references to Chinese nationality. Also, the term "resident" might cause confusion. The BL assumes that those who have the "right of abode" are "residents". However, the notion of "resident" is often construed differently in the UK and Europe. In the UK context, British citizens whose permanent home (domicile) is outside the UK are not considered "UK

residents".<sup>1</sup> Similar rules go for EU countries. For the avoidance of confusion, this paper does not recommend the use of the term "Hong Kong Resident".

### **Hong Kong Citizen**

"Hong Kong citizen" does not exist in official discourse. "Citizenship" is closely tied to nationality.<sup>2</sup> Officially, the Hong Kong people who have Chinese nationality are referred to as "Chinese citizens".

"Hong Kong citizen" may be a good choice but raises a concern that the use of "citizen" might strengthen the misconception of SP being a government-in-exile.

### **Hongkonger or Hongkongese**

Demonym Hongkonger (or Hongkongese) is a concept without a rigid definition.<sup>3</sup> The Constitution of the SP may construct its own definition of Hongkonger for the purpose of taking part in the SP. Therefore, this paper suggests the adoption of the term "Hongkongers" for the purpose of the SP.

## **Question A-2: Definition of the Hong Kong people and proof of identity**

The question on the definition of the Hong Kong people should be considered in conjunction with the capability of the Secretariat to verify an individual's identity for the purpose of taking part in the SP. In the very beginning, the SP should adopt a definition that is least disputed and easily verifiable. Therefore, this paper suggests that Hongkongers are those who have the right of abode in Hong Kong or were born in Hong Kong.

The ability to verify the eligibility of voters depends a lot on the technology available to the Secretariat. Official identity documents are an important means to admit voters and candidates. In other words, one's exercise of the right to vote and stand in elections is not absolute and will heavily be dependent on the Secretariat's technical capability to check identity documents at scale.

Moreover, this paper has to admit that in practice "the power" to determine the right of abode is in the hands of the Hong Kong authorities. Therefore, in one way or another, the definition of the Hong Kong people indirectly points to Article 24 of the BL. In the

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<sup>1</sup> <https://www.gov.uk/tax-foreign-income/residence>

<sup>2</sup> <https://www.britannica.com/topic/citizenship>

<sup>3</sup> <https://en.wikipedia.org/wiki/Hongkongers>

future, subject to the deliberation and approval of the SP, the definition may be revised as the online voting platform evolves to a state capable of accepting a greater variety of identity documents.

### **Question A-3: Age requirement**

For voting, eighteen (18) is widely accepted as the minimum voting age in most countries.<sup>4</sup> It is noteworthy that Scotland lowered the minimum voting age to 16 in 2013. Adults are assumed to be fully able to conclude contracts and be fully responsible for their acts. Therefore, this paper recommends setting the minimum voting age as 18.

For standing in elections, the age of candidacy varies from position to position and from country to country. The current Hong Kong law sets the age of candidacy as twenty-one (21). In Hong Kong, an attempt to challenge the higher age of candidacy for the Hong Kong Legislative Council was failed in 2016.<sup>5</sup> In light of international standards, there is little justification for differentiating one's exercise of the right to vote and the right to stand as a parliamentary candidate by age. Furthermore, the SP is not bound by the age of candidacy in force in Hong Kong. Thus, this paper recommends setting the minimum age of candidacy as eighteen (18).

## **Part B: Structure and electoral system**

### **Question B-1: Number of seats**

The number of seats in the SP is one of the key factors shaping the representativeness and the operational efficiency of the SP. This paper does not try to propose a number but invites input from the public. There are a few models for the relations between the voting population and the size of an assembly. However, these models are usually used to predict rather than determine the number of seats. The application of the existing models does

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<sup>4</sup> [https://en.wikipedia.org/wiki/Voting\\_age#Voting\\_ages\\_around\\_the\\_world](https://en.wikipedia.org/wiki/Voting_age#Voting_ages_around_the_world)

<sup>5</sup> <https://www.scmp.com/news/hong-kong/politics/article/1979291/activist-joshua-wong-19-fails-bid-lower-minimum-age-stand>

not produce a realistic number of seats for the purpose of SP. The "cube law" is a classical model under which the number of seats is close to the cube root of the voting population.<sup>6</sup> This paper finds it impractical to apply cube law or its variants to work out the optimal size of the SP because it is unrealistic<sup>7</sup> to use the number of registered voters in Hong Kong or is hard to predict the effective voting population at SP elections. For reference, two numbers of seats in the Hong Kong Legislative Council are noteworthy.

- 40 seats – the total number of members of the Hong Kong Legislative Council returned by direct election, comprising of 35 seats from the geographical constituencies and 5 seats from the "District Council (Second) functional constituency"; or
- 70 seats – the number of members of the Hong Kong Legislative Council.

### **Question B-2: Proportional representation versus First-past-the-post**

This paper recommends the adoption of a proportional representation system in the elections to the SP. Proportional representation (PR) and First-past-the-post (FPTP) are the two main types of electoral systems. PR allocates seats to candidates and political groups based on the share of the votes they receive. PR systems favour the representation of multiple political groups in an assembly. On the contrary, FPTP systems are widely used to elect a single member in a district. In an assembly, FPTP favours a contest for majority control between two major political parties. Since the SP is envisaged as an inclusive assembly of a deliberative nature rather than an arena of contest for political power, a PR system is more suitable.

As a side note, this paper acknowledges that the seat allocation method is also an indispensable part of an electoral system. However, the method is not in the scope of this public consultation due to the complexity involved. The Secretariat will leave this issue to a committee of academics. A proposal on

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<sup>6</sup> Taagepera, Rein. "Reformulating the cube law for proportional representation elections." *The American Political Science Review* (1986): 489-504.

<sup>7</sup> The cube law suggests  $\sqrt[3]{4,132,977} \approx 160$  seats based on the number of registered voters in Hong Kong in 2019 retrieved from <https://www.voterregistration.gov.hk/eng/statistic20191.html>.

the seat allocation method will be presented at the next round of public consultation.

### **Question B-3: Single constituency versus Multiple constituencies**

This paper recommends the adoption of the single constituency model to avoid the complexity in managing elections in multiple consistencies.

#### **Single constituency**

In a single constituency setting, all candidates run for the SP in the same constituency. There will be no drawing of geographical or sectoral boundaries. Voters will not have to submit proof of address to demonstrate their eligibility to vote in a particular constituency. This model simplifies the management of elections. A drawback is that this model looks less intuitive to the Hong Kong people. Efforts will be needed to explain the benefits of having only one constituency.

#### **Multiple constituencies**

In a multiple consistency setting, voters are assigned into a number of constituencies and candidates run in one of those constituencies. This model looks intuitive to the Hong Kong people but significantly complicates the management of elections, compared to the single constituency model. Managers of the elections have to find ways to verify the residential address of the voters. Also, there may be no ideal way to determine the constituencies for Hong Kong people overseas.

## Preliminary risk assessment

Officials of the Chinese government openly spoke against the SP when its idea first came into light in July 2020. In a speech by Chinese Ambassador Liu to the United Kingdom (UK), Liu warned the UK government over "permitting a parliament in exile".<sup>8</sup> In response to the accusation of the SP of being "anti-China" or aiming to achieve "Hong Kong independence", the Secretariat must reiterate that these presumptions are utterly unfounded. Furthermore, the Secretariat must clarify that organising the SP does not require the permission of any government nor will such permission be solicited. The Secretariat shall endeavour to ensure that its operations will be completely lawful in the host country and free from interference by the authorities in the host country.

Despite the SP's positioning as not a government-in-exile or a parliament-in-exile, the Chinese government might continue to frame it as so, in a concerted effort to silence the people of Hong Kong internationally. The Chinese and Hong Kong authorities, through their creative interpretation and application of the vaguely written National Security Law (NSL), might incriminate or threaten to incriminate those who engage in the affairs of the SP. The very nature of the SP falls within the freedom of expression and freedom of association enshrined in the International Covenant on Civil and Political Rights and the Basic Law. However, the Secretariat understands that these rights would not be respected under Hong Kong's circumstances.

The safety of the privacy of the people of Hong Kong will be paramount to the Secretariat of the SP. Taking these risks into account, the Secretariat the SP will take all necessary measures to protect the safety of the people engaging in the affairs of the SP.

For voting, the entire voting process will go online since running polling stations in Hong Kong would be too risky. The Secretariat is working with experts in the fields of remote voting and cybersecurity to build a secure voting platform. The people of Hong Kong will be encouraged to vote in SP elections through Virtual Private Network (VPN) connections.

For candidacy and representation, the Secretariat the SP acknowledges the reality that the candidates for the SP will less likely be able to work locally in Hong Kong. The candidates for the SP will be based in mostly likely overseas countries.

The Secretariat will continue to monitor and mitigate the risks facing Hong Kong people's participation in the SP.

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<sup>8</sup> <http://www.chinese-embassy.org.uk/eng/dshdjhh/t1798771.htm>

# Draft interim constitution

The following text is the draft of the interim constitution of the proposed Hong Kong Shadow Parliament with annotations. The interim constitution sketches the skeleton of the SP and the key procedures. It is not meant to exhaustively spell out every rule. The SP shall make its own rules to deal with the matters not addressed in the interim constitution. Some provisions are followed by annotations, preceded by "Note", which explain the rationale and the options available for the purpose of consultation.

## 1. Purpose, definitions and general principles

1.1. The Hong Kong Shadow Parliament is a deliberative assembly of representatives of Hongkongers elected by universal suffrage.

1.2. The Shadow Parliament is an transparent, inclusive and accountable platform on which Hongkongers elect representatives to express their views in a manner analogous to parliamentary democracy.

1.3. For the purpose of this Constitution, Hongkongers are as those

1.3.1. Who have the right of abode in Hong Kong; or

1.3.2. Who were born in Hong Kong.

*[Note: See the discussion in Question A-2.]*

1.4. No Hongkongers shall be directly or indirectly discriminated on the grounds of sex, race, colour, ethnic origin, religion, political belief, membership of a minority, property, birth, age, sexual orientation and gender identity, unless otherwise required by this Constitution.

*[Note: Article 1.4 establishes the principle of non-discrimination under which no candidates running for and no members of the Shadow Parliament may be disqualified on the basis of their political stance. This provision may be seen as a response to the waves of disqualification of the candidates for and the members of Hong Kong's Legislative Council started in 2016. So, in theory, pro-Beijing candidates should not be barred in any way from running for the Shadow Parliament.]*

1.5. The official languages of the Shadow Parliament are Cantonese and English.

*[Note: The designation of official languages has a political and practical significance. The Shadow Parliament will mainly be run by people living overseas. It is not hard to project a*

*phenomenon that most documents will be first written in English, as exemplified by this consultation paper. The dominance of the English language in the running of the Shadow Parliament may introduce a misconception of elitism. Such misconception is not conducive to the purpose of the Shadow Parliament. The Shadow Parliament and the Secretariat should try their best to maintain bilingualism in their official announcements and documents.]*

## 2. Composition

2.1. The Shadow Parliament shall consist of *[n]* Members.

*[Note: See the discussion in Question B-1.]*

2.2. The seats are assigned to the constituencies as follows.

*[Article 2.2 should not exist unless the public favours a multiple constituency model. If it is the case, the assignment of seats to constituencies should go here. See the discussion in Question B-3.]*

2.3. Members of the Shadow Parliament Shall elect amongst themselves a Speaker and two Deputy Speakers.

2.4. The Shadow Parliament automatically dissolves itself if more than half of all Members of the Shadow Parliament resign from the Shadow Parliament.

## 3. Election and dissolution

3.1. Elections to the Shadow Parliament shall be free and by secret ballot.

3.2. Members of the Shadow Parliament shall be elected using a proportional representation system.

*[Note: See the discussion in Question B-2.]*

3.3. Hongkongers aged 18 or above have the right to vote and stand as a candidate for Members of the Shadow Parliament, subject to the identity verification process determined by the Shadow Parliament or the Secretariat.

*[Note: The "subject to the identity verification process" caveat is indispensable in the practical implementation of elections. The Secretariat is not a government body and thus has neither the powers nor the resources to carry out identity checks for people in all circumstances. The robustness of identity checks depends on the capability of the online voting platform which is yet to be developed. One must possess an identity document accepted by the online voting platform to take part in the elections to the Shadow Parliament. See the discussion in Question A-2.]*

3.4. An election is called when

3.4.1. The term of the Shadow Parliament is ending in 6 months; or

3.4.2. The Shadow Parliament is dissolved.

3.5. The [...] method is adopted as the seat allocation method.

*[Note: See the discussion in Question B-2.]*

3.6. The term of each Shadow Parliament shall be four years.

#### 4. Meetings

##### 4.1. Calling a meeting

4.1.1. The Speaker has the power to call a meeting.

4.1.2. The two Deputy Speakers may co-sign a notice to call a meeting.

4.1.3. [n] Members of the Shadow Parliament may co-sign a notice to call a meeting.

*[Note: The number of members required to call a session depends on the number of Members of the Shadow Parliament.]*

4.1.4. Notice to call a meeting is invalid if not served to all Members of the Shadow Parliament and the Secretariat 48 hours in advance.

4.2. The quorum for the meeting of the Shadow Parliament shall be not less than one half of all its members.

4.3. A simple majority shall be at least half of the quorum.

4.4. By a simple majority vote, the Shadow Parliament may:

4.4.1. Make an open statement;

4.4.2. Hold a hearing;

4.4.3. Launch a public consultation;

4.4.4. Invite the public to provide information;

4.4.5. Hold a referendum;

4.4.6. Present a statement or a report to an external body;

4.4.7. Delegate a Member to represent the Shadow Parliament on a specified occasion;

4.4.8. Establish and dissolve committees;

4.4.9. Make an Administrative Resolution to decide an administrative matter for the Shadow Parliament;

*[Note: In light of the history of abuse of power by the President, the Commission and the Secretariat of the Hong Kong Legislative Council, in our design, the administrative power should not presumably fall into the hands of a few. Usually, the Speaker makes most of the administrative decisions with the help of the Secretariat on a day to day basis. The Shadow Parliament should delegate some administrative power to the Speaker and the Secretary-General pursuant to Article 4.6.1. Ultimately, a simple majority vote of the quorum may override the Speaker's decision and has the final say.]*

4.4.10. Make or amend an Administrative Regulation;

4.4.11. Appoint or dismiss the Secretary-General of the Secretariat; and

4.4.12. Propose an amendment to the Constitution, subject to the procedure set out in Article 6.

4.5. An absolute majority shall be not less than two-thirds of all of the members of the Shadow Parliament.

4.6. By an absolute majority vote, the Shadow Parliament may:

4.6.1. Make or amend its own Rules of Procedure;

4.6.2. Approve an amendment to this Constitution, subject to the procedure set out in Article 6; and

4.6.3. Decide to dissolve itself.

4.7. The voting results of all motions of the Shadow Parliament shall be publicly accessible.

4.8. All sessions of the Shadow Parliament are open to the public unless the otherwise is approved by a simple majority vote.

4.9. Every Member of the Shadow Parliament has the right to move and vote on a motion.

5. Secretariat of the Shadow Parliament

5.1. A worker of the Secretariat, no matter the position is paid or unpaid, shall not be:

5.1.1. A Member of the Shadow Parliament; or

5.1.2. A candidate in the ongoing election to the Shadow Parliament.

5.2. All workers of the Secretariat shall maintain impartially in all the affairs of the Shadow Parliament.

5.3. The Secretariat shall have a Secretary-General who is the head of the Secretariat.

5.4. The Secretary-General is responsible for:

5.4.1. Directing the Secretariat; and

5.4.2. Managing the human resources of the Secretariat.

*[Note: "Managing human resources" entails the recruitment, management and dismissal of the staff and volunteers.]*

5.5. The Secretariat is responsible for:

5.5.1. Executing Administrative Regulations and Administrative Resolutions;

5.5.2. Coordinating internal and external correspondence;

5.5.3. Assisting the Speaker and Deputy Speakers;

5.5.4. Supporting the work of the Members;

5.5.5. Running the elections to the Shadow Parliament;

*[Note: In light of the history of abuse of power by the returning officers in Hong Kong, the impartiality of the electoral process needs to be convincing, even in the unlikely event of a serious dispute. Ideally, elections to the Shadow Parliament should be run by an independent electoral affairs committee composed of widely respected individuals. In the very beginning of the Shadow Parliament, such a committee would be hard to be formed due to resource constraint and potential risks to prospective members. The Constitution may be amended in the future if the Shadow Parliament sees it fit to have the elections run by an independent electoral affairs committee.]*

5.5.6. Raising funds for the Shadow Parliament;

5.5.7. Making payments for the Shadow Parliament; and

5.5.8. Publishing the account books of the Shadow Parliament regularly.

## 6. Amendment to the Constitution

*[Note: To make the Shadow Parliament transparent and accountable to the public, any proposed changes to the Constitution should undergo a public consultation process. Public opinions are non-binding. But Members should in principle respect the opinions provided by the public to the Shadow Parliament in good faith. The amendment comes into effect if it gets the approval of the absolute majority in the second stage. The way to eliminate options generated by Article 6.2.1 shall be defined in the future Rules of Procedure.]*

6.1. First stage

6.1.1. A simple majority vote of quorum is required to present a proposed amendment to the Constitution.

6.1.2. The Shadow Parliament shall consult the public on the proposed amendment on its official publication channels for no less than 14 days.

6.1.3. The Secretariat shall consolidate public views regarding the proposal.

## 6.2. Second stage

6.2.1. After the public consultation ended, Members shall be given no less than 7 days to present motions to amend or reformulate the original proposal in view of the public opinions.

6.2.2. A proposed amendment to the Constitution is adopted if it is approved by an absolute majority vote.

# Feedback form

## Part A - Who are eligible to vote?

Question A-1: How to refer to the Hong Kong people in English and Cantonese, for the purpose of the Shadow Parliament?

A-1-a. Hong Kong resident 香港居民

A-1-b. Hong Kong citizen 香港公民

A-1-c. Hongkongers 香港人

A-1-d. Hongkongese 香港人

A-1-e. Other: \_\_\_\_\_

Question A-2: Who can vote and stand as candidates in elections to the Shadow Parliament?  
[Multiple choice]

A-2-a. Those who have the right of abode in Hong Kong

A-2-b. Those who were born in Hong Kong

A-2-c. Other: \_\_\_\_\_

Question A-3(1): What is the minimum age to vote in elections to the Shadow Parliament?

A-3(1)-a. 18

A-3(1)-b. 21

A-3(1)-c. Other: \_\_\_\_\_

Question A-3(2): What is the minimum age to stand in elections to the Shadow Parliament?

A-3(2)-a. 18

A-3(2)-b. 21

A-3(2)-c. Other: \_\_\_\_\_

## Part B - Composition and electoral system

Question B-1: What is the optimal number of seats in the Shadow Parliament?

Please provide a number: \_\_\_\_\_

Question B-2: Do you agree that Members of the Shadow Parliament are elected using a proportional representation (PR) system?

B-2-a. Yes, I agree with using a proportional representation system

B-2-b. No, I prefer a first-past-the-post system

B-2-c. Other: \_\_\_\_\_

Question B-3: Should all the voters be voting and all the candidates be running in a single constituency?

B-3-a. Yes, I agree with the single constituency model

B-3-b. No, I prefer the multiple constituency model

B-3-c. Other: \_\_\_\_\_

### **Part C – Any other issues**

Do you have any other comments on this consultation paper?

- No
- Yes: \_\_\_\_\_