

13 June 2011

The Honourable Donald Tsang  
Chief Executive  
Hong Kong Special Administrative Region  
Government House  
Central  
Hong Kong

Dear CE

**Chamber Submission on Policy Address 2011/2012**

As we are preparing the fifth and the last submission for your annual policy address before your five-year term ends, we are harbouring some contrasting thoughts and feelings. Perhaps not unlike many others, we have the thought of expecting a year of consolidation, not drastic policies or actions but more like tying up loose ends and finishing whatever unfinished businesses there might be. But we also have another mind, which is agitating to think big, in spite of – or even because of – the fact that this is your administration's final year in government.

We see that the year in front of us can be a time for instigating some real and fundamental changes that will benefit Hong Kong enormously, and take us all to a higher plane. Perhaps our post-1997 politics has been moving too quickly over the past 10 years or so, and we seldom stop to properly consider what lasting impact our leaders have brought to the economy and society. Your five-year-term is set to be only the second full CE term the HKSAR will have witnessed. This time next year, we will be in a position to consider your legacy, and we believe it will be a very respectable one if the Government works with its stakeholders and builds further on the results it has already achieved and lays down a strategic plan of actions for the future.

**Blue Sky**

Chief Executive, we all recall Action Blue Sky launched by the government in 2006. It's all in the name. What Hong Kong people have been yearning for since then is to see the return of the blue sky, so that we might wrestle back the place we used to know from smog's stranglehold.

We fully understand and have always advocated that it requires a regional solution to solve the overall air pollution problem. We applaud government efforts to work with regional authorities in this regard. But for residents going about their daily lives and people working in much of the urban areas, it is road-side pollution that brings tears to our eyes. In recent years the Chamber has been consistently urging for swift and decisive actions to

replace the old buses and trucks still running on the road. When we consult members on what they would like to see in your last Policy Address, we ask what is uppermost on their mind, and what they would choose if only one wish could be fulfilled. The resounding response is clean air. Same as last year, it is still clean air.

Some have estimated that it might cost up to HK\$5 billion to replace the 2,000 old buses in the existing fleet. The simple arithmetic might be slightly misleading but the attention caught by it does put things in perspective: stakeholders are keen to grasp a figure and make a decision on it. It also underlines yet again that the community is urging faster progress. And, we have the money in our reserves, money that Premier Wen Jiabao himself has urged be actively employed for the betterment of Hong Kong people's lives. The two-year trial scheme involving six hybrid buses along busy corridors falls far short of the sort of progress that the vast majority of our community has been hoping to see.

Chief Executive, you must lean on the clean air issue and display your leadership in hastening the delivery of a solution. The polluted air drives away businesses and harms the health of those who stay. It is the area in which substantial spending will be supported, because the benefits would be exponentially bigger. And probably we would not be looking at a spending proposal that the community and legislators find unaffordable or unreasonable. So please act now.

### Recognizing Social Tension

During your term, the stability that we have had – despite the turmoil of the global financial crisis, which you handled with an admirably firm and tactful hand – has enabled us to continue to thrive economically. But it is also a time when there are signs of rising social tension, over wealth disparity and its allied issue of affordable housing.

Our very open economy, where the financial industry looms large, under the strong currents of globalization and Mainland China's breakneck growth, is particularly prone to the impact such dramatic developments bring to bear on different economic players, especially between the skilled and unskilled, the knowledge economy's "haves" and the "have-nots". The rise of social tension, to put it mildly, is almost to be expected. Also somewhat expected are the calls for strong government intervention to help those who fall behind. What we are seeing in Hong Kong is not unique to us, but appears to be a world wide phenomenon.

The Chamber does believe that the government has to play a stronger role in promoting social harmony. But our idea of possible government roles is not to stem the tide of globalization, because we cannot. It simply would not work and doing so would also be very "un-Hong Kong". We remain convinced that the government's key role at a challenging time like this is to equip those who fall behind to catch up, and to make sure that their children do not suffer a lack of opportunities simply because they themselves are struggling.

### Jobs Creation and SMEs

Has our government done enough? There must be room for improvement, as those who are always keen on quoting received wisdom would remind us. On the part of the government, officials can point to the spending on education, vocational training (and re-training), schemes that help school leavers, etc, and say there is no lack of assistance. But from the business community's point of views, we would hasten to add, as shared by many workers, is that it is jobs that count in the end. Their education and training would only bring real

benefits when it helps land a job. The government must adhere to the policy that it should facilitate businesses to create jobs, not hindering it, especially for the SMEs. We are very concerned that some recent initiatives launched by the government are running in the opposite direction.

The minimum wage is now a given in our labour relations and business operations. The government should steadfastly adhere to the declared policy that the minimum wage serves as a wage floor in Hong Kong. It is a tool, according to the government's own statement, to prevent wages from being "too low". It is not a tool for income redistribution as such. The government will be under pressure to revise the minimum wage rate upwards to "redistribute" income, but officials should resist such pressure. The review of the minimum wage rate should be conducted methodically with detailed data and thorough assessment of the impact on jobs – which takes time to measure – as we have always called for.

The government's preference to leave the matter of meal breaks and rest days to employers and employees, and the failure to provide clear guidance to either side had been most disappointing, and undermine one important factor for Hong Kong's success over the years: certainty in our business environment. Rather than being calculatedly exploitative from the outset, many employers were simply caught off-guard by the unexpected expectation to pay for meal breaks and rest days on an hourly basis (as opposed to covering them in the monthly salary, as in the past). The effective rate of minimum wage is now believe to be well above the statutory rate of \$28/hr, and by some calculations as high as \$40 an hour. The long-term impact on jobs and business operations can only be assessed over time, but initial adverse impact can be felt, especially by our SME members.

The controversy about meal breaks and rest days was most unfortunate. It has likely affected the creation of jobs as employers seek to cope with the changes. Thankfully the economy has been doing well, which helps cushion against some of the impact. But no doubt many will become more cautious in expanding and taking on more staff.

It would help restore confidence if you could clearly reassert the objective of the minimum wage in your Policy Address and pledge to help to provide a clearer statement from the government on the issues of rest days and meal breaks, as well as other issues about the minimum wage (such as the deductible hours formula, which is related to the rest days/meal breaks issue). The ultimate goal of doing so would be to preserve the vibrancy in the private sector, and to encourage SMEs to expand their businesses and create jobs.

### SME Tax Rate and Profits Tax

We have been calling for a lower tax rate for SMEs for over a decade. We believe we have a well-argued case for it, but the government has not responded. We feel as if we are hitting a stone wall. There seemed to be no government effort to engage on this proposal. We certainly do not agree that giving SMEs a preferential tax rate for a defined amount will irreparably damage our tax system by complicating it. The government owes the SMEs a proper response on this matter.

Another much needed initiative related to tax competitiveness is the headline profits tax rate. We respectfully reiterate that we remain hopeful that you would fulfil the pledge in your election platform: to return the profits tax rate to 15% when circumstances allow. We do believe that the conditions are favourable now, when the momentum of economic growth is strong and government consistently records huge annual surpluses, adding to the

dangerously large fiscal reserves. At the same time, our tax competitiveness has been eroded as our competitors aggressively reduce their tax rates.

### Competition Law

SMEs' concerns about the Competition Bill are real and should not be brushed aside or taken lightly.

All along officials are effectively asking SMEs to trust in the future Competition Commission and the detailed enforcement guidelines it would issue for consultation, and the Tribunal, which, according to officials, may refer to a wealth of case law in the EU, UK or Singapore. It is obvious that these purported assurances have failed to allay the concerns of the SMEs.

The reason is actually quite straightforward: SMEs are worried that they might have to rely on unclear guidelines published in the future to determine whether their conduct complies with the law. (The controversy over meal breaks and rest days dealt with by the government on minimum wage has damaged their confidence in "guidelines".) Other enterprises have very similar concerns but more so the SMEs because most of them lack the expertise and the resources to ensure compliance. This is what we often refer to as the lack of legal certainty in the Bill. It is patronizing to suggest that SMEs only need more education to understand the competition law, and that they should trust the future authorities. The government should stop adopting the attitude of "we know best" and "our policies are all for you benefits".

The long standing position of the Chamber is that the competition policy should focus on regulating hard core anti-competitive conduct, clearly defined: price fixing, bid rigging, market sharing, and the like. We have proposed an administrative review model for *non-hardcore conduct that is difficult to define in advance*, which probably comprises the vast majority of business conduct.

Under such a system, regulatory authorities will retain the full power to stop anti-competitive conduct by requesting businesses to "cease and desist". Only when businesses refuse to comply with the order will a case be contested in court; and if their conduct is ruled to have infringed the competition law, they will be compelled by the judgment to stop the anti-competitive behaviour or face penalties. We believe such a system will go a long way towards helping SMEs and other businesses as they would be able to stop their conduct in question without having to worry about complying with ill-defined regulations carrying stiff penalties.

Our advocacy of such a model for non-hardcore conduct is supported by many organisations. But yet again government officials are unwilling to engage. We are frustrated that officials keep insisting that the present Bill represents the best model for Hong Kong, without a convincing case.

Chief Executive, we understand that enacting a competition law is a major item in your election platform. We at the Chamber are keen to work with the government to improve the Bill. But if officials refuse to engage and adopt a "take it or leave it" approach, it would be very difficult for us, and many other organisations, to support to the Bill, much as we hope to see a good competition law in place. We prefer to believe that it is only a matter of time when officials would begin a meaningful dialogue with stakeholders, and that such dialogue will help ensure that the Bill be passed into law before the current Legislative Council

session ends in July 2012. Time is of essence here. The Bill is a complicated one and we would need as much time as possible to agree on the broad directions and work on the detail.

### Regulatory Impact Assessment

The policy making exercises of the minimum wage and the competition law brought home a clear message about the need for mandatory, and publicly disclosed Regulatory Impact Assessment (RIA) for any proposed new regulatory measure.

The Provisional Minimum Wage Commission tried to arrive at some estimates of the potential job loss at different levels of the then proposed hourly rates for the minimum wage. This is arguably a particular form of RIA. The Chamber had been one of the key advocates for such an impact assessment. But the results of the assessment seemed to have lost relevance in the subsequent discussion, especially during the debate about meal breaks and rest days.

The introduction of a competition law begs a more comprehensive RIA but it seems to be lacking. Officials and supporters of the present Bill seem to take the potential impact on businesses very lightly. The compliance cost in the case of competition law is not only about penalty. One major cost would come from the need to get hired expertise (lawyers, economists, etc) for predicting the possible (future) impact of a company's conduct on competition, in addition to the need to hire experts for conducting the complicated economic analysis when conduct is called in questions or under trial. This does not seem to be understood by officials.

The Chamber would urge that RIA be incorporated as a mandatory procedure in policy-making, so that the economic impact of government actions – specifically, the cost to business and other parts of society – could be ascertained, much like the Environmental Impact Assessment (EIA) requirement for infrastructure or development projects. Any proposed new regulatory intervention must be demonstrated to have a net-benefit (i.e., a regulatory act's total benefit less the costs incurred).

Unintended consequences, a common feature of poorly thought-out actions, may be minimized through a detailed analysis of the costs and benefits of proposed new or amended legislation. Under a mandatory RIA regime, the potential side-effects of government action may be understood and deliberately accepted – or avoided. Ideally, the RIA helps interested parties better understand the consequences of proposed regulation by weighing the overall costs and benefits of all reasonable options, before the policy decision stage. The RIA provides specific evidence with which to evaluate the positive and negative effects of various options, and as such, directs attention and support toward those with the greatest chance of success.

Hong Kong exists in a highly competitive environment, perhaps one of the most challenging in the world. Companies face not only the challenge of competing with lower operating costs across the border, but also with rapidly changing regulatory conditions in places such as London, New York or Singapore.

As public aspirations for more government intervention to solve various social and economic problems continue to rise, it is important that the government should start studying how instituting RIA into policy-making may help manage rising aspirations.

It should be emphasized that RIA will not only help improve policy-making, but also governance. If a consensus could be built among stakeholders and the public in respect of the parameters and framework for determining when the government should intervene in the market, and when it should not, government decisions would be better understood, and likely receive support.

While making RIA mandatory may not be a decision that could be made in the last year of your term, it would be a strong legacy if you could initiate the process of studying how RIA should be incorporated into the policy-making process.

### Hong Kong in the 12<sup>th</sup> Five Year Plan

The business community is much excited by the chapter in the 12th Five-Year Plan dedicated to Hong Kong and Macao. The chapter elaborates on the significant functions and positioning of Hong Kong in the development strategy of the country. This is indeed a significant breakthrough in Hong Kong's efforts to complement the national development strategy.

As pointed out in your statement, the dedicated chapter signifies the Central Authorities' strong support for maintaining our long-term prosperity and stability, enabling Hong Kong to map out our development directions to complement the overall national development strategies.

We notice that the dedicated chapter emphasizes the Central Authorities' support for consolidating and enhancing Hong Kong's position as an international financial, trade and shipping centre, and support for Hong Kong's development into an offshore RMB business centre and an international asset management centre.

### *RMB Business*

It is important that we must not take the RMB business opportunity for granted, but seize this historic opportunity with both hands. We must fulfil our unique roles as a "firewall" and "testing ground," assisting the country in capitalizing on the Hong Kong financial market as a platform for promoting the "go out strategy".

We applaud the Government's efforts to further enhance the RMB settlement platform, attract more enterprises to use Hong Kong's settlement services, and encourage overseas and Mainland enterprises to issue RMB bonds in Hong Kong. One important step, also identified by the Government, is to diversify RMB financial products and services.

As we have been arguing consistently in the past, in order to facilitate more innovative products, the Government must strike an appropriate balance between regulatory requirements and product creativity. The need for a mandatory RIA for new financial regulations is all the more clear in this context. We would also hasten to add that, facing a potential risk of infringing the competition law and incurring heavy penalty up to 10% of group worldwide turnover, some financial institutions might well consider launching new financial products in other markets.

### *Integration with the PRD*

The dedicated chapter emphasizes the Central Authorities' support for deepening the economic co-operation between the Mainland and Hong Kong. We agree with you that the

relevant statements have clearly defined the core functions and positioning of Hong Kong in the development of the Pearl River Delta, and provided clear directions for Hong Kong in furthering regional co-operation with Guangdong and other provinces. As a community, we should indeed waste no more time debating whether Hong Kong would be marginalized by Mainland cities. The positioning of Hong Kong in the national development strategy is well defined and we should focus on taking advantage of the opportunity. What we need is not more soul searching, but actions. We hope the government would take a strong lead in this development and engage different stakeholders in promoting this cause, so that the entire community may move forward together.

### The Third Runway

The Chamber strongly believes that a third runway at the Hong Kong International Airport (HKIA) is crucial to the growth and long term sustainability of the Hong Kong economy, and the strengthening of Hong Kong's position as a regional logistics hub, as envisioned in the 12<sup>th</sup> Five Year Plan.

HKIA is one of the world's most successful aviation hubs – certainly the premier hub in Asia. As the world's number one international cargo hub, and ranked third in terms of international passenger traffic, HKIA is a key driver of the Hong Kong economy.

Aviation is vital to our economy. A study by CUHK shows that the aviation industry contributed 8.2% of Hong Kong's GDP in 2007 and supports some 220,000 direct, indirect and induced jobs, equivalent to 6% of our total employment. But HKIA is facing increasing capacity constraints which have already placed barriers to airlines seeking arrival and departure slots. At present the HKIA is operating at 93% of permitted runway capacity and, at present growth rates, it will be slot-constrained in 2018. That would mean driving away flights - and along with them, tourists, business opportunities and jobs for the Hong Kong community. Other hubs in the region, in particular Singapore, Taipei, Seoul and Guangzhou are making huge investments in airport infrastructure. They are fiercely competitive with our own hub.

We believe investment in a third runway is therefore an urgent requirement if HKIA is to retain its pre-eminent hub status and Hong Kong's logistics hub position. Any project of this scale will no doubt need to address issues such as cost benefit and the environment. It is only right that these issues should be thoroughly addressed and debated by our community.

Nonetheless, all factors considered, we strongly believe that there is an overwhelming case for building a third runway at HKIA. We are confident that mitigation measures will be put in place so that the potential environmental impact of the project can be reduced to a minimum and to the general satisfaction of the public.

### International Education and Vocational Training

#### *International Education*

We are encouraged by a recent government statement reaffirming that some 5,000 more international school places will be created in the next few years to meet the demands of international families. The Chamber and many international chambers have consistently emphasized that the lack of international school places has been one of the key factors discouraging international executives from bringing their families to Hong Kong (the other being the poor air quality). The importance of international school places for Hong Kong's

position as a financial cannot be understated.

Although 5,000 places sound like a lot, the real challenge is to meet the long term need as Hong Kong continues to develop itself into an international centre for finance, logistics and trade. We are concerned about the apparent lack of long term planning.

The Education Bureau has mentioned what they called a three-pronged approach to promoting the development of international schools: allocating vacant school premises, providing greenfield sites for the development of international schools, and facilitating *in situ* expansion of existing schools. But the three-pronged approach does look more like short term relief than long term strategy. As a first step for mapping out a strategy, the government must try its best to find out and forecast the demand for international education over mid-to-long term, and work with providers to fulfil such a need with a clear timetable. Such a conscious initiative on the part of the government will assure the international business community that Hong Kong is keen to maintain its attractiveness for global businesses.

#### *A popular policy for the middle class*

For too long international education has been seen, quite wrongly, as separate from the education system for Hong Kong. The English Schools Foundation (ESF), which receives some government subsidy, is seen as a relic from the pre-1997 era. One stream of public opinion has it that the international school sector should be completely privately-run, and those who opt for international education should just pay for their own choice.

We take a different view on this. International education is a strong preference for many parents, with the vast majority of them being taxpayers and committed members of community. There is a strong case for the government to respond to the aspirations of a significant segment of the community. On the other hand, international education also produces students that strengthen Hong Kong's capability to connect with the global marketplace, thus making an economic case as well for government support.

The ESF has evolved over years from being an organisation mainly catering to school children of British people in Hong Kong, to one that provides international education to students from a broad range of ethnic and family backgrounds. We believe that if the government decides to abolish the subsidy to the ESF, it would send a very misleading message to the community. Non-Chinese residents would feel the government is alienating them from a place they call home. Chinese families aspiring to provide international education to their children-will feel that as the minority in the community they are being ignored or even discriminated against. The international business community will form an impression that the government is not just turning a deaf ear to their plea, but also adding to their difficulties in enticing people to come to Hong Kong to work and live.

According to the student enrolment survey quoted by government officials, as at September last year, about 32,000 students were enrolled at international schools in Hong Kong. Of these, 13% are local students and 87% from elsewhere. There is no strong evidence to suggest that the locals have been making it hard for expatriates to get places for their children. Everyone actually finds it hard to get a school place. Expanding international education will answer the needs of both international businesses and aspiring parents. It will be a popular policy among the international businesses and the middle class families.



### *Technical Vocational Training*

As Hong Kong moves to a new 3-3-4 education system that may see more students receiving longer grammar school-type of general education, preparing them for all- round further learning at the post-secondary level, we should not lose sight of the needs of our businesses for good technical people. In a global survey on manpower shortages published in March 2011, “technicians” ranked third in the table of “10 Hardest Jobs to Fill” for Hong Kong, after “sales representatives” (ranked 1<sup>st</sup>) and “managers/executives”. This finding is echoed in some of the anecdotal evidence we gathered. It is important that Hong Kong’s manpower training programmes be able to cater to business needs and put students onto pathways that will equip them with skills required by 21<sup>st</sup> century employers.

A comprehensive survey of Hong Kong’s manpower needs, coupled with a mapping exercise for the needs of vocational training programmes a task of high importance and urgency.

### Going Forward

In the concluding year of your five-year-term, we continue to pledge our support to your governance by sharing with you our ideas and pledging to work with you to further enhance the business environment through effective policy-making. We understand how challenging it can be to cater to different needs of society, but we also see the great opportunities in front of us. We are confident that together we will lay a firm foundation for Hong Kong to move forward in a challenging time.

Yours sincerely,

Anthony Wu  
Chairman