The functional constituencies for all their perceived shortcomings are deeply embedded in the Hong Kong system of representative government. A proper understanding of them, their value and shortcomings is essential to examining how a broadly representative system of government is to be further developed. These chapters are a truly invaluable source of information and assistance to anyone formulating proposals for the next “gradual and orderly” steps towards the ultimate goal of universal suffrage, myself included.

Sir David Akers-Jones
FUNCTIONAL CONSTITUENCIES

A Unique Feature of the
Hong Kong Legislative Council
Civic Exchange believes it is possible to make decisions about public issues in an open and creative manner. The secret to successful participatory decision-making lies in establishing better communications between well-informed people. This is the objective of the Civic Exchange Guides. They are intended for any one seeking to participate in the dialogue on public affairs in Hong Kong or shape decision-making on a particular issue.

CIVIC EXCHANGE GUIDES


Functional Constituencies: A Unique Feature of the Hong Kong Legislative Council (2006)
FUNCTIONAL CONSTITUENCIES

A Unique Feature of the Hong Kong Legislative Council

Edited by Christine Loh and Civic Exchange
Civic Exchange dedicates this book to Peter and Nancy Thompson, who have been the most steadfast supporters of our work.
Civic Exchange

Civic Exchange is a Hong Kong–based public policy think tank that was established in October 2000. It is registered as a charity in Hong Kong. Its mission is to:

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- Undertake research on the development of economic, social and political policies and practices to help shape the breadth and depth of public policy debate and so to provide well-founded and reasoned argument on the issues identified above.

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Functional Constituency Research Project

Functional constituencies have long been a feature of Hong Kong’s political landscape. Now, with half the members of Legislative Council elected from functional constituencies, they play a large and controversial part in Hong Kong’s political system. Despite this, information about them is shamefully hard to find. This book is published as part of Civic Exchange’s Functional Constituency Research Project. The aim of the Project is to help the public understand more fully an important part of Hong Kong’s political and electoral systems.
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Civic Exchange embarked on a research project to study functional constituencies in 2004 with the aim of helping the public understand more fully an important part of Hong Kong’s political and electoral systems. Although functional constituencies were first created in 1985, we found they were seriously under-researched. We felt that it was time to make a concerted effort to look through the available data to assess how and to what extent the functional constituency election system has impacted Hong Kong political, economic and social developments over the years. Hong Kong is unique in the world in having half the legislature composed of members elected by functional constituencies.

While the Standing Committee of the National People’s Congress decided on 26 April 2004 that the functional constituency election system must remain for the 2008 Legislative Council election, the Basic Law provides that the ‘ultimate aim’ is ‘universal suffrage’. Therefore in the future, the functional constituencies will need to be replaced by geographical constituencies. Thus, there is a growing need to understand the value and impact of functional constituencies in considering how they should be replaced.

Since 2004, Civic Exchange has published a series of papers and reports related to our research project on functional constituencies. This book represents the culmination of our work to date. We are grateful to the Hong Kong University Press for giving us the opportunity to update all the research materials as well as to add new works for this book project. We hope to continue to research into other aspects of functional constituencies in the future.

This book project would not have been possible without Peter and Nancy Thompson having supported our research efforts for the past two years. It is to them that we dedicate this book in recognition of their encouragement. We are also grateful to the National Endowment for Democracy, USA, for having funded some parts of the functional constituencies research project. This book would not have been possible without the dedication of all the authors, some of whom have had to make substantial revisions to their initial papers to update them. We must also acknowledge the significant contribution of our project manager Yip Yan-yan, who tirelessly shepherded the project along from the beginning, Carine Lai for working closely with some of the authors to assist with updating and redrafting in some cases, and Ken Li for designing the cover for the book. The extensive appendices, which are contained in the accompanying CD to the book, represent the efforts of Simon Young of the University of Hong Kong, who is also one of the authors, with assistance from Yip Yan-yan and Carine Lai. It is an understatement to describe putting the appendices together as time-consuming. It was in fact a Herculean task. We are also grateful to David M.
Webb for providing additional information for some of the appendices. We also wish to thank Alan Sargent for his careful editing, and the indefatigable Colin Day of the Hong Kong University Press for his constant encouragement and patience to help us get this book published.

Christine Loh  
Chief Executive Officer, Civic Exchange
The Association of the Bar of the City of New York
The association is an independent, non-governmental organisation with a membership of more than 22,000 lawyers, judges, prosecutors, law professors and government officials, principally from New York City but also from throughout the United States and from at least 40 other countries. Founded in 1870 to combat corruption in the judiciary, the association has a long history of dedication to human rights, notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world.

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and academics, published hundreds of articles, book chapters, research papers and reports and four books, produced three PhDs and a number of MPhils, and conducted over 70 telephone and face-to-face surveys since 1991.

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Christine Loh
Christine Loh is chief executive officer of Civic Exchange, an independent public policy think tank based in Hong Kong. She holds a law degree from England and a Masters Degree in Chinese and Comparative Law from City University, Hong Kong. She also has been awarded the degree of Doctor of Law, honoris causa, from her alma mater, the University of Hull, England. In 1992, she was appointed to the Legislative Council. She gave up her business career in 1994 to become a full-time legislator and ran successfully in the 1995 and 1998 elections. She chose not to stand for re-election in 2000 to start Civic Exchange. Her work in public policy and promoting environmental protection and equal opportunity is well known. Today, Loh writes extensively for local and international
academic and popular publications and she is an internationally sought after presenter, facilitator and speaker on a variety of subjects.

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Simon N.M. Young is an associate professor in the University of Hong Kong’s Faculty of Law and deputy director of the Centre for Comparative and Public Law. He obtained his Bachelor of Laws from the University of Toronto and his Master of Laws from the University of Cambridge. Before coming to Hong Kong in 2001, Young was a prosecutor for the Ministry of the Attorney General for Ontario. His teaching and research interests are mostly in the areas of criminal law and procedure, constitutional law and the law of evidence. He is a member of the Hong Kong Law Reform Commission’s sub-committee on hearsay in criminal proceedings and a member of the Hong Kong Institute of Certified Public Accountants’ Investigation Panel A.
INTRODUCTION

Christine Loh

For a city as sophisticated as Hong Kong, to be discussing the merits of indirect elections and functional constituencies (FCs) as an alternative to universal suffrage seems absurd. No other community as prosperous and pluralistic as Hong Kong in today’s world is burdened with such a relic of 19th century imperialism as a substitute for a directly elected legislature. For Hong Kong’s post-colonial government to engage at Beijing’s behest in public consultations on reforming rather than abolishing FCs has all the intellectual attractions of a discussion of the merits of the abacus over the computer in modern banking.

Hong Kong people, unfortunately, cannot afford the luxury of simply dismissing the invitation from national and Hong Kong officials to review the workings of FCs. China’s leaders have postponed the introduction of full direct elections for either the legislature or the post of chief executive. Hong Kong’s former Secretary for Justice, Elsie Leung, and the Secretary for Constitutional Affairs, Stephen Lam, both declared in 2005 that they saw no conflict between retaining FCs — indefinitely apparently — and the commitment to introduce universal suffrage. Given these constraints, the real challenge is to examine how FCs can be reformed in order to serve the public wellbeing rather than the interests of dominant business groups.

The debate over political reform demands, therefore, a serious analysis of FCs concentrating on two questions: How can they be improved so as to minimise their more adverse and undemocratic features? How can the opponents of modern democratic institutions be brought to realise the flawed nature of FCs, both in terms of their colonial origins and the way they handicap effective governance of this advanced post-industrial community? The contributors to this book offer a compelling and authoritative analysis of both issues.

SCNPC Decision 2004

With the Standing Committee of the National People’s Congress (SCNPC) decision of April 2004 on political development for the Legislative Council (LegCo) election in 2008, FCs are destined to continue as a major feature of the Hong Kong Special Administration Region’s (HKSAR) political system. They will continue to exist at least up until the LegCo election in 2012. The SCNPC decision stipulated that the 50:50 ratio of geographical constituency (GC) and FC seats must be retained through 2008, although Hong Kong may consider changing the number of legislators and expanding the FCs’ franchise. Any proposed change will be subject to the SCNPC’s approval.
The HKSAR government’s Constitutional Development Task Force’s Fourth Report, published in December 2004, spelt out the limited options for a public consultation, which ended in May 2005. Proposals received ranged from ones that called for no change to those that called for splitting up some existing FCs to form new FCs, to ones that are much more radical in nature although staying within the parameters drawn by the SCNPC. The task force published its Fifth Report on 19 October 2005, in which it put forward the government’s preferred option, which also represented what Beijing was prepared to allow. The proposal increased the total number of legislators from 60 to 70 with the additional 10 seats given equally to GCs and FCs, however, all the FC seats would go to the District Council Functional Constituency, which meant this FC would return six seats in the 2008 election. This proposal did not receive the two-thirds majority it needed in LegCo and was voted down on 21 December 2005. A key reason for it not being acceptable to the legislators in the democratic camp was the government’s unwillingness to do away with corporate voting for the FCs.

Given that heated debate about political reform is unlikely to abate in Hong Kong, how the FCs will evolve can be expected to remain on the political agenda for the coming years. There is now a 20-year history of experience to reflect upon, making this a good time to study FCs seriously and thoroughly.

**Research challenge**

Prior to 2004, there had been relatively little scholarly work done to study the FCs even though there is a much larger body of work available on the geographical constituencies and the GC election system. The reasons for neglect of the FCs have become clearer to me after spending two years putting Civic Exchange’s Functional Constituency Research Project together. The prime hindrance to research is that the information about the electorates and the election process have been made deliberately non-transparent.

The primary information provided by the government about FC electors is a list of recognised umbrella organisations whose members are eligible to vote in an FC election, published in the Legislative Council Ordinance (Cap 542). As many eligible voters are corporate bodies and not individuals, this adds another layer of difficulty, as researchers (and even the candidates) have little, if any, way of knowing how these bodies decide whom to vote for, or even whether their designated voters vote as their organisations wish them to. Any attempt at polling FC voters would be an arduous task indeed. While members of the public are, since 2001, allowed to inspect the register of electors for the FCs at the government’s Registration and Electoral Office, they are prohibited from reproducing or disseminating the information. A person who ‘reproduces or permits another person to reproduce in any form’ an electoral register in full or in part for any purpose other than a purpose relating to an election commits an offence under the Electoral Affairs Commission Ordinance sections 22(3) and 42(3) (L.N. 2001), and can be punished by up to six months in prison. These...
laws make it much more difficult for members of the public to find out the names of the people who may vote in FCs. The rationale for such laws is unclear. The need to prevent electoral bribery is redundant in the cases of elections already past, and on its face seems to be negated by language in the legislation which permits people to obtain a copy of the register for a purpose ‘related to an election’. To research FCs, researchers must therefore employ more indirect means or throw their hands up in frustration and abandon the job altogether.

Another reason for research neglect of the FCs may well be because FCs have never been a popular part of the political system, whereas the GCs accord much more with popular preference. But whatever may be one’s emotional reaction to FCs, their importance cannot be disputed. It is for this reason that Civic Exchange embarked upon researching the FCs in a comprehensive and systematic way in 2004–2005. Hong Kong must understand the FCs more fully, how they function and how they have impacted the city’s economic, social and political developments in order to consider how the current political system could develop.

**FCs versus GCs**

The functional constituency election system is extraordinarily cumbersome and complicated, making the complex geographical constituency election system seem simple by comparison. Currently, 30 legislators are elected by universal franchise, proportionally from GCs using a list system, and 30 legislators are elected from 28 FCs using a mix of qualified individual voting and corporate voting. GCs were first introduced in 1991 for a small number of seats, rising to make up half the legislators in 2004. FCs have been a feature of Hong Kong politics since 1985 after the British and Chinese governments struck an agreement over the transfer of sovereignty. Up until then, the government appointed all the legislators. Nevertheless, the functional approach to making appointments has a very long history. The colonial administration had long favoured appointing members of the business and professional elites to LegCo, the Executive Council (ExCo), as well as the government’s extensive network of consultative and advisory bodies. The appointment system was created to generate a semblance of democracy when there was none. The functional constituency election system was created to enable the elites to be elected to LegCo through giving the franchise to narrowly defined interest groups. When new FCs were fashioned to make up the 30 seats that had been provided for in the Basic Law, which interest groups were given a seat in LegCo also reflected the British and Chinese governments’ preferences and their eventual negotiated compromise. After all, the FCs are there to provide a counterweight to the GCs.

Why was a counterweight seen to be necessary? Beijing thought direct election was too dangerous, as the people might elect legislators whom Beijing considered ‘anti-China’. Beijing’s pre-1997 framework for understanding Hong Kong reflected its longstanding distrust of ‘foreign forces’ interfering in China’s
internal affairs. Beijing worried that Hong Kong would be used as a base of subversion. It suspected that ‘foreign forces’ promoted democracy at the eleventh hour of British rule to make it harder for Beijing to deal with Hong Kong after the handover. While allowing elections was a necessary part of the bargain with Britain, so as to give Hong Kong people and the international community confidence in the post-1997 arrangements, the electoral systems were designed in such a way that the majority of legislators elected would be ‘patriotic’ and politically conservative.

‘Balanced’ or skewed participation?

Beijing’s pre-1997 strategy was to win over as many sectors of opinion in Hong Kong as possible through applying ‘united front’ tactics. Many of the business and professional elites, who had supported the colonial administration for decades, were won over to support Beijing’s positions versus Whitehall’s. On the issue of democratic reform and elections, the elites’ natural inclination was against opening up the entire legislature for direct election because they feared it would lead to expensive welfare policies and higher taxes. In their view, Hong Kong would become ‘business unfriendly’. The elites saw themselves as playing an important role in maintaining stability and prosperity, acting as a foil to popularly elected politicians. Thus, Beijing’s and the elites’ interests were perfectly aligned.

When the draft Basic Law was introduced at the National People’s Congress (NPC) meeting in 1990, it was noted that in providing for the post-1997 political structure, ‘consideration must be given to the interests of the different sectors of society and the structure must facilitate the development of the capitalist economy’. The FCs were seen to be crucial to ensuring that Hong Kong remained capitalist because presumably Beijing believed them to represent capitalists who understood how the system worked.

Beijing’s view about the FCs did not change post-1997. In 2002, it was noted by a senior official that ‘Hong Kong is a commercial city’ and that ‘functional constituency elections is an effective way to ensure that people from all walks of life can have balanced participation in political life’. However, after the massive demonstration on 1 July 2003 against the HKSAR government’s proposed Article 23 national security legislation, Beijing had to reassess its Hong Kong policy. While it felt it needed to pre-emptively rule out universal suffrage for the 2007 chief executive election and the 2008 LegCo election by means of the April 2004 SCNPC decision, Beijing did leave a window open for modest change.

It had been hoped the opening, albeit small, would provide an opportunity for Hong Kong and Beijing to review whether the FCs have indeed helped to maintain the capitalist system and to what extent they have contributed to the city’s ‘stability and prosperity’ in time to make changes for the 2008 election. Unfortunately, the opportunity appears to have closed with the task force’s Fifth Report merely saying: ‘The Task Force considers that the future of functional constituencies is an important issue that deserves future discussion by the
The discussion on how to reform LegCo’s electoral system for 2012 will hopefully have a qualitative difference than previous debates when Beijing looked at Hong Kong through the ‘anti-China’ filter. Today, it is clear that Hong Kong people are proud Chinese citizens and have no interest in seceding from the nation. However, Hong Kong people want good governance, which they felt they did not have during almost eight years with Tung Chee Hwa as chief executive (1997–2002 and 2002–2005). While the people will not be able to elect their head of government, they do look to Beijing to ensure the right person is given the job since Beijing is in full control of who becomes chief executive. Beijing’s new pragmatism can be seen with the endorsement of the chief secretary, Donald Tsang, to take over for the remaining two years after Tung resigned on 10 March 2005. Tsang was a former colonial administrator and knighted for services rendered to the British Crown. The more pragmatic attitude may also be due to Beijing’s growing confidence that it is in control over the affairs of the HKSAR and has little to fear from former civil servants. Tsang certainly made sure he gave the right assurances to Beijing. In his selection campaign materials for the Election Committee, he emphasised he would maintain and cultivate good relations with Beijing by respecting ‘the Central Government’s constitutional power, uphold national security, and safeguard China’s sovereignty and territorial integrity’.

Dispassionate assessment

It is now urgent for both Hong Kong and Beijing to examine the FCs dispassionately. What is the rationale for preserving FCs? The constant criticisms of FCs for their inherent unfairness and non-democratic nature should no longer be brushed aside. For the 2004 LegCo election, there were some 3.207 million registered voters in the GCs and 199,539 registered FC voters for the 28 FCs. Beijing’s declared belief that the FCs provide ‘balanced participation’ leading to ‘stability and prosperity’ needs to be critically examined. When the task force’s *Fifth Report* was published, the head of the task force, Chief Secretary Rafael Hui said:

The existing District Council members come from different strata and sectors of the community. Around one-fourth are from the industrial and commercial sectors, around one-fifth are from the professional and managerial ranks, whilst the others include personalities from the education, social work, sports and cultural sectors, representatives of trade unions, housewives, and representatives of rural communities. The background of District Council members can be said to be a microcosm of the community at large. It epitomises the spirit of ‘balanced participation’ and gives full effect to the principle of ‘looking after the interests of different sectors of the community’.
Does functional representation truly produce better balance than universal and equal suffrage? Why should small functional groups have additional representation over and above the individual representation in the GCs? Would not be better for social stability if there was universal and equal suffrage?

The Americans answered this question in the 18th century when their founding fathers debated what type of representative system they should have. They rejected the English system of the day because parliament was then elected by a handful of voters concentrated in small localities. The term ‘rotten boroughs’ was used to describe what was seen as narrow and partial elections. On top of small constituencies, the constitutional jurist and historian, Thomas Erskine May (1815–1886), described how commercial interests were allowed to corrupt the parliamentary system of his time:

One other form of parliamentary corruption yet remains to be noticed. Lucrative contracts for the public service, necessarily increased by the American war, were found a convenient mode of enriching political supporters. A contract to supply rum or beef for the navy was as great a prize for a member, as a share in a loan or lottery. This species of reward was particularly acceptable to the commercial members of the House. Nor were its attractions confined to the members who enjoyed the contracts. Constituents being allowed to participate in their profits were zealous in supporting government candidates. Here was another source of influence, for which again the people paid too dearly. Heavy as their burdens were becoming, they were increased by the costly and improvident contracts, which this system of parliamentary jobbing encouraged. The cost of bribery in this form was even greater and more indefinite than that of loans and lotteries. In the latter case, there were some limits to the premium on scrip, which was public and patent to all the world: but who could estimate the profits of a contract loosely and ignorantly — not to say corruptly — entered into, and executed without adequate securities for its proper fulfilment? These evils were notorious; and efforts were not wanting to correct them.

In 1779, Sir Philip Jennings Clerke obtained leave to bring in a bill to disqualify contractors from sitting in Parliament, except where they obtained contracts at a public bidding: but on the 11th of March, the commitment of the bill was negatived. Again, in February 1780, Sir Philip renewed his motion, and succeeded in passing his bill through the Commons, without opposition: but it was rejected by the Lords on the second reading. In 1781 it was brought forward a third time, but was then lost in the House of Commons.11

The Americans opted to give the vote to as many people as possible. The equality of representation was seen as forming the foundation of legitimacy to the political system as a whole.

While 21st century Hong Kong is not 18th century England, there is the problem of whether functional legislators play too much the role of lobbyists.
For example, Raymond Ho, the functional member for the engineering constituency, sent this out to his voters for the 2004 election:

I am pleased to report that as a result of my last couple of years’ efforts, the government has committed $29 billion on infrastructure works every year, about 10% more than previous years. However, the unemployment of the construction industry stands at 20% because of greatly reduced workload from the private sector and the Housing Department. We must take stronger actions to press the government to speed up the implementation of infrastructure projects and building works to resolve this serious situation. It was decided that, as I am the convenor of the Public Works Concern Group which I established three years ago to include 12 professional bodies, contractors’ associations and trade unions, I arranged a meeting with the Financial Secretary for 16 December to discuss the issue. If the government does not take any immediate actions to address the issue, a large-scale demonstration could be staged. The construction industry, with over 300,000 people including professionals, technicians and labour workers, must have united efforts to tackle the issue. I request all fellow Engineers to watch out for the development of this plan and ensure their active participation for the well-being of the profession.12

Transparency and corporate voting

Beyond the principle of equality and fairness of the functional constituency election system, it should also be asked whether and to what extent it has contributed to good governance. Important aspects of a good governance system are transparency and accountability. The functional constituency election system has neither. It has been noted earlier that researching the FCs is difficult because of the lack of transparency.

In this regard, there are two particular features about Hong Kong’s FCs that need emphasising. Firstly, nine out of the 28 FCs are returned wholly by corporate voting and another nine have mixed corporate and individual voters. Only 10 FCs are wholly returned by individual voters and these, except for the Heung Yee Kuk, are the ones with the larger voter numbers. In the cases where corporate bodies can vote, it effectively means the vote is given to non-human voters. The corporation has to designate a human to cast the vote. Some corporate voters have large numbers of members, such as the member companies of the Hong Kong General Chamber of Commerce, while others may have only the owner of a shelf company as the only real voter. The government has been happy to sub-contract a part of the electoral process to private bodies. Indeed, it has been no easy task figuring out who truly controlled the corporate votes. This is a principal cause for the non-transparency in the functional constituency election system. After all, these corporate entities do not have to be publicly accountable and indeed, there has been relatively little public pressure on them to account. The task force’s Fifth Report simply avoids the problems related to corporate
voting by saying: ‘the Task Force notes that there are not many concrete proposals on how to [replace corporate voting by individual voting] . . . The Task Force considers that we should continue to study the pros and cons of the issue’. But the proposal to give five new seats to the District Council Functional Constituency, where most of the members are directly elected, would not solve the problems of the functional system as a whole. Moreover, of the 529 district councillors, only 400 are directly elected, while 102 are appointed by the chief executive and 27 are, ex officio, representing rural interests that are not dissimilar to the Heung Yee Kuk Functional Constituency. The refusal to exclude the appointees was another key reason why the government’s proposal was voted down on 21 December 2005.

Secondly, Appendix 26 (see accompanying CDROM) shows the high incidence of uncontested seats for corporate voting FCs. For example, there were 11 uncontested FC seats at the 2004 LegCo elections. For the winners of the contested seats, they received a total of only 9,707 votes, which when contrasted with the number of GC votes a candidate needed to get elected, makes the FC electoral system a substantially more privileged one than the GC one. In other words, there is gross inequality between the relative voting power of the two.

**Accountable to whom?**

Furthermore, despite having sworn to serve the HKSAR as a whole upon taking office, examinations of the functional representatives’ LegCo records showed that on the whole they protected their sectors’ interests first and foremost. Indeed, some of the FC members hardly participated in LegCo’s general affairs. Thus, it may be said that the functional representatives feel accountable to their respective sectors but not necessarily to the public at large. It is therefore not surprising that FCs are seen as a form of government by special interests. Being embedded directly in the political structure, these interests feel it quite legitimate to press their cases to the government and resist what they perceive to be bad for them. The vested interests do not have to rely on paid lobbyists to speak for them. They are sitting in the legislature and can do it directly.

The research done for this book shows that creating an electoral system that overwhelmingly favours the business and professional elites has had a systemic impact on Hong Kong politics, as well as on policy. The elites’ preferences in many areas appear not to reflect those of the general citizenry. Indeed, it may be said that the FCs by and large represent the interests of the wealthy and the GCs represent the rest of society. A system designed to give significant influence to these interests over others is bound to cause friction among the various sectors of society.

**Preserving capitalism**

As to the belief that the FCs can best preserve Hong Kong’s capitalism, this notion is pure fiction. The business and professional elites on the whole act to
preserve the status quo that favours them. They also consistently seek to expand their influence. The FC legislators have a habit of protecting the interests of some capitalists, who already have large vested interests in the Hong Kong economy. Capitalists are not necessarily in favour of free and open market systems. FC legislators have opposed putting in place a competition regime and regulatory mechanism, leaving the city as the sole developed economy that does not have competition laws that apply across the board. The government’s policy of adopting what it calls a ‘sector by sector’ approach to competition regulation is intellectually feeble. Despite attempts by legislators to press for a competition law, the efforts came to naught as there is no real hope in putting forward a private bill to the floor of the house.

It is worthy of note that Donald Tsang signalled in his first policy address on 12 October 2005 that he was willing to review the government’s sector-by-sector approach to competition and stated explicitly that his administration has not closed its mind to introducing a comprehensive and cross-sector law on fair competition. Tsang emphasised he wanted to ‘actively protect market order and fair competition by preventing manipulative practices such as price fixing, bid rigging and market sharing’. By putting this part of his address in the section on achieving social harmony rather than in the economic section, Tsang presumably wanted to show his sensitivity to the discontent that grew under his predecessor’s watch that the government was seen to be in collusion with business interests. It will be interesting to observe how the FCs respond to the result of the review due out in mid-2006.

Design to thwart legislative initiative

Annex II of the Basic Law requires the passage of motions, bills or amendments to government bills introduced by legislators to pass by majority vote of those present for both the FC and the GC representatives voting as two blocs. However, motions, amendments to motions, bills and amendments to bills raised by the HKSAR government only need a simple majority vote of the members present to pass. The exception is for motions to amend the Basic Law, which requires a two-thirds majority of all members. On ordinary motions there have been many occasions where there had been majority support from those present but the vote failed because the split-voting mechanism in effect requires a ‘super majority’ vote to pass. Indeed, assuming all 60 members were present, even with 30 votes from all the GC members and 14 of the FC members, the vote will still fail. The split-voting mechanism therefore has several special effects:

- It serves to bolt the door twice to minimise the amount of legislation introduced by legislators. Article 74 of the Basic Law shows how determined the drafters of the constitutional were to thwart legislative initiative. The provision makes it very hard for legislators to raise a private members bill in the first place. Legislators may not introduce bills that relate to public expenditure,
political structure or the operation of government. The written consent of the chief executive is required before bills relating to government policies are introduced. Even if a private bill gets to the floor of the house, the split-voting mechanism requires the bill to have majority support from both the FC and GC members.

- There is still a strong padlock to make it challenging for legislators to raise amendments to government bills with the split-voting mechanism.

- This mechanism in effect means that 16 GC or FC members can veto any measure that requires a vote. The system pitches the FCs as one voting bloc against the GCs as another voting bloc. Since the FCs are special interests constituencies and the GCs represent the citizenry at large, the system is designed to cause social strife between them. The question that needs to be answered is whether the FCs promote social stability or ferment instability. A Marxist may well think the functional constituency election system perpetuates ‘class struggle’. It is doubtful that the architects of the Basic Law intended LegCo to be a class battleground but this is what it has become.

**Election Committee and its subsectors**

Not only is LegCo dominated by special interests, the election of the chief executive is similarly so. Tung Chee Hwa was selected in 1996 by a 400-member, Beijing appointed, Selection Committee. A large number of the members came from among Hong Kong’s tycoons and leading members of the business and professional elites. Beijing in effect adopted a functional approach to making the appointments by providing that 25% of the members came from the industrial, commercial and financial sectors, 25% from among professionals, 25% from labour, grassroots and religious sectors, which included people with long-time ‘leftist’ links, and the rest from among political figures, including Hong Kong deputies to the National People’s Congress and Chinese People’s Political Consultative Conference (CPPCC).

The Selection Committee effectively transformed into the Election Committee for the 1998 election for a two-year term (1998–2000), with an expanded membership of 800, selecting 10 legislators. The term was only for two instead of four years in order to get back as closely as possible to the original schedule that the first post-1997 LegCo election would take place in 1999. This was necessary because the ‘through train’ agreement between the British and Chinese governments for the 1995 elected LegCo to serve till 1999 was derailed because Beijing disagreed with the great expansion of FC electorates to include most working adults under Governor Chris Patten’s plan to increase representation. At the change of sovereignty in 1997, an appointed Provisional Legislature was put in place instead for a year. New electoral laws were passed for the 1998 election, where the FCs’ franchise was greatly trimmed back down.
A new and expanded Election Committee was chosen on 9 July 2000 for a five-year term in accordance with Annex I of the Basic Law to elect six legislators on 10 September that year and the chief executive in 2002. Since Tung Chee Hwa stood unopposed in 2002, the Election Committee did not have to be called to make a selection. The composition of the Election Committee was made up of various subsectors of 96 ex officio members including the 60 LegCo members and the 36 Hong Kong deputies of the National People’s Congress; 40 members nominated by six designated bodies in the religious sector; and 664 members from 35 other sub-sectors. Those entitled to vote in these other sub-sectors are almost the same as those for FCs. This body did not have to elect legislators for the 2004 LegCo election because, by then, the six Election Committee seats were given over to create new GCs. In 2005, after Tung’s resignation, Donald Tsang stood unopposed for the chief executive by-election so there was no need for the Election Committee to be called even though, in preparation for a selection, the Electoral Affairs Commission arranged elections on 1 May to fill a number of vacancies that had arisen since 2002. The term for the Election Committee chosen in 2000 ended on 13 July 2005 and a new body will be chosen for the 2007 chief executive election.

Researching the members and behaviour of the Election Committee and its subsectors is just as difficult as for the FCs. While members of the public can inspect the register of electors for the Election Committee and its subsectors at the Registration and Electoral Office, the law prohibits anyone from reproducing or disseminating the information, just as for the FCs as discussed above. Protecting the privacy of Election Committee members in particular is questionable when they have decided to run for, and hold, public office. Moreover, incomplete lists of Election Committee members’ names are available on government websites and the HKSAR Government Gazette publicising the results of the Election Committee subsector elections. This excludes variously (depending on year) the names of electors in uncontested subsectors, the religious and Chinese People’s Political Consultative Conference subsectors, and ex officio Hong Kong deputies to the National People’s Congress. The HKSAR government does not appear to think the lack of transparency and consistency to be problems.

In putting Appendix 28 (see accompanying CDROM) together, listing the members of the election committees that elected the 1998 and 2000 LegCo, as well as for the 2002 and 2005 chief executive selection, our researchers did not do so by inspecting the Election Committee electoral register to avoid offending the law. Instead, they relied on published government sources, such as government websites and press releases that announced the results of the various subsector elections. These sources provided approximately 80% of the names of the subsector election winners. Depending on the year, these sources variously excluded the results of uncontested subsectors, the nominated religious subsector, and the names of the members of the National People’s Congress and Chinese People’s Political Consultative Conference. Some of the missing
information was deduced from the candidate nomination lists, which were also available on government websites. Using an Internet search engine, our researchers verified the identities of most of the people from a variety of sources, including the websites and annual reports of companies and organisations, curricula vitae on personal websites, and press reports.24

The task force’s *Fifth Report* proposed to increase the membership of the Election Committee from 800 to 1,600. The new structure also includes all legislators, all NPC deputies, a number of CPPCC deputies, Heung Yee Kuk members and all district councillors:

- Industrial, commercial and financial sectors: increase from 200 to 300.
- Professionals: increase from 200 to 300.
- Labour, social services, religious and others: increase from 200 to 300.
- Political sectors: increase from 200 to 700.

The HKSAR government’s proposal to expand the Election Committee for the 2007 chief executive election did not receive the two-thirds majority vote it required and was voted down by LegCo on 21 December 2005. Therefore, the functional approach to identifying Election Committee members remains for the next election. However, with the 2012 elections in sight, and with the inevitable debate over the FCs, it may well have a spill over effect on to the method of election for the chief executive since their underlying philosophy is essentially the same.

**Chapter organisation**

This book presents the fruits of Civic Exchange’s FC research project over the last two years. Some of the chapters had been previously published but they have been fully updated for this edition, taking into account the results of the 2004 LegCo Election and relevant recent events. The large amount of data tables from the various previously published papers have been consolidated into the extensive appendices on the CDROM for convenient access.

It is tempting to say that this book tells you everything you need to know about Hong Kong’s functional constituencies and the FC election system; but there is still much more research needed to shine light on this peculiar aspect of Hong Kong politics. We hope scholars will be inspired to do further studies, as the constitutional structure and electoral systems evolve as they must for Hong Kong to achieve the ‘ultimate aim’ of universal suffrage envisioned in the Basic Law.
Chapters 1 and 2 provide the historical background to FCs stretching back to the early days of colonial rule. I recommend that they be read together as sister chapters.

Chapter 1, Business and government alliance: Hong Kong’s functional constituencies, which I wrote, argues that the ‘capitalism’ that operates in Hong Kong that is understood by Beijing to be ‘the original capitalist system’ that Beijing wants to maintain is the colonial model that evolved from the 19th century that reflected the interests and objectives of the colonialists at that time. That model involved the colonial administration forming an alliance with the business and professional elites to promote their respective interests. It was a self-serving alliance within a colonial context. It developed under a particular set of circumstances that produced a particular political economy, style of politics and set of policies that still very much influences the Hong Kong of today. Just how much can be seen from statements made by a number of Hong Kong tycoons and members of the business and professional elites in recent years over the issues of taxation and democracy. However, there are doubts that such a system is fit for the 21st century.

Chapter 2 by Leo F. Goodstadt, Business friendly and politically convenient – the historical role of functional constituencies, provides a useful chronology of how various colonial governors looked at the issue of representation and how they created justifications to deny the people of Hong Kong a true representative system of government. Goodstadt sees FCs at best as a token gesture of respect for the principle of representative government. He argues that since the system of indirect elections for FCs define their voters in terms of class or occupation, business and professional interests and other similar criteria the system ends up diluting the legislators’ right to speak on behalf of the whole community and encourages them to promote vested interests. His argument is supported by Chapters 7, 8 and 9 where the authors looked at FC legislators policy preferences in social and economic policies. His concern is that the FCs may continue indefinitely because they ensure that a significant number of seats in the legislature are in ‘safe’, pro-government hands.

Chapters 3 and 4 are also sister chapters. These two chapters are the ‘bible’ for understanding the intricacies of the FCs in their current form. The authors have sorted through a large amount of data and put them in a coherent form for analysis so that readers can have a clear picture of what are the major issues.

In Chapter 3, Privileged to vote: Inequalities and anomalies of the FC system, Simon N.M. Young and Anthony Law provide a thorough background to the development of the FCs since 1985. They take a critical look at which functions and sectors the government recognises, and question the manner of how the functions are put together into constituencies. The authors point out the unique feature of giving the vote to corporate entities rather than individuals in some of the FCs and the significant disparity in constituency sizes, which has significant impact on relative voting power. The authors observe that many of the features
of the functional constituency election system are arbitrary and sometimes illogically designed to limit the size of the electorate. Indeed, many of the processes for determining and qualifying electors are not stipulated in law. They are either the results of ad hoc bureaucratic decisions or of private bodies’ non-transparent decisions because the government has delegated a part of the electoral process to such bodies.

In Chapter 4, *Elected by the elite: Functional constituency legislators and elections*, Simon N.M. Young produces a tour de force in the examination of the FCs’ legislators and the privileged few who have been given an FC vote. The author examines the FC representatives’ backgrounds since 1985 and looks at how they functioned in LegCo. Readers can optimise the benefits from this chapter by also reading the relevant appendices and Chapters 7, 8 and 9. Young also notes the high incidence of uncontested seats at elections, and critically examines the elector registration system, as well as the voter turnout rates.

In Chapter 5, *The legal status of functional constituencies*, Gladys Li, S.C. and Nigel Kat note that the FCs as presently constituted are inconsistent with the provisions of the Basic Law which incorporate the provisions of the International Covenant on Civil and Political Rights into the post-1997 constitution. They argue both the HKSAR government and Beijing are duty bound to rectify the situation by legislating to provide for electoral rights on terms of broad equality to Hong Kong people. The authors are clear that the legislation must provide universal and equal suffrage, including substantially equal numerical voting weight and substantially equal effect in the composition of the legislature so elected. Without these reforms, the authors do not see how this aspect of Hong Kong’s political system could ever be regarded to have real legitimacy.

In Chapter 6, *Comparative profiles and attitudes of FC voters versus GC voters in the 2004 LegCo election campaign*, Michael DeGolyer bases his analysis on years of surveying public opinion through the work of the Hong Kong Transition Project, as well as the results of new surveys commissioned by Civic Exchange in 2004 during the time of the LegCo election and post-election.25 The surveys were specifically designed to tease out functional voters to poll their views and preferences and then to compare them with those of geographical voters. As far as we know, this is the first time that anyone has attempted to identify FCs’ voters to survey them and to compare the findings with those of geographical voters. Readers may well find some aspects of the surveys’ results surprising. Among the many interesting insights, the most glaring issue is that on average FC voters have a 16 times greater voting power than GC voters. Some FC voters have much greater voting power still because of the very small sizes of their constituencies.

In Chapter 7, *The dynamics of social policy making in Hong Kong: The role of functional representatives (1998–2004)*, Rowena Y.F. Kwok and Chow Chiu Tak examine the role of FC legislators in social policy making. This chapter is valuable for three other reasons: firstly, it explains how LegCo functions and how legislators can create an impact within the legislative structure; secondly, it
provides a rich source of empirical data on how FC legislators functioned; and thirdly, it uses the government’s school-based management framework, the Education (Amendment) Bill, and the Occupational Safety and Health (Display Screen Equipment) Regulation as observation tools to gain a deeper understanding of the FCs. The authors have painstakingly scrutinised the kinds of questions FC representatives asked at LegCo meetings, the nature of motions and amendments to motions they moved, their participation and behaviour in bills committees, as well as their voting patterns. Kwok and Chow identified the phenomenon of ‘role fixing’ among the FC legislators in that they were most conscientious when their functional sectors’ interests are involved. When their sectors’ interests were not involved, those with party affiliations would vote along party lines. Moreover, they showed an inclination to support the government when they voted in social policy issues when these did not conflict with their sectoral concerns or when they suffered from what the authors called ‘role confusion’.

In Chapter 8, *The contribution of the functional constituencies to economic policy in Hong Kong, 2000–2004*, Tony Latter examines the influence of the FCs members on key elements of economic policy during the 2000–2004 LegCo session, as evidenced by their stances taken in debates. On the whole, like Kwok and Chow, he found that they have pressed, first and foremost, their constituency interests, and secondarily, in the case of those who were members of political parties, their party’s line, and that only a third of FCs legislators expressed, to any significant degree, independent positions. He noted that the business and professional sectors have a dominant representation and the system tended to deliver, in its opinions and recommendations, a bias towards more government intervention in the economy than has been traditional in Hong Kong. To the extent that the Tung administration may be judged to have become somewhat more interventionist, Latter thinks the FC system may have contributed in that direction.

In Chapter 9, *Non-positive intervention: How functional constituencies distort the free market*, Jake van der Kamp and Carine Lai debunk the myth that FCs are good for capitalism. They show how FCs’ members support and indeed push for ‘corporate welfare’ unashamedly for themselves while at the same time argue against spending on public services. The authors illustrate their arguments with many examples that will resonate with Hong Kong readers, having provoked public questioning of the governance capability of the Tung Chee Hwa administration. Before his resignation, his last crisis was dealing with renewed criticism of his administration’s collusion with big business interests. The evidence in this chapter points to how the FCs helped to foster social disharmony in Hong Kong.

Chapter 10, ‘*One person, one vote*: The US electoral system and the functional constituencies’, is adapted from a paper written in 2004 by the Association of the Bar of the City of New York’s Committee on International Human Rights and Committee on Asian Affairs. The Association was stirred into action by comments made by the former colonial administrator, Sir David Akers-Jones; the Director of the Institute of Hong Kong and Macau Affairs, Zhu Yucheng; and
Executive Director of the One Country, Two Systems Research Institute, Siu Sin-por. They all used the American electoral experience to justify Hong Kong’s electoral system for the chief executive and the FCs. The Association felt it needed to set the record straight. Blow-by-blow, they deconstructed the assertions that the US experience lent credence to the systems in Hong Kong. This chapter provides an invigorating read and is particularly important to anyone interested in comparative studies of the issues.

I had the privilege to write the concluding chapter, *Functional constituencies: The way forward*. In this chapter, I examine some of the proposals put forward to the HKSAR government’s task force for the chief executive and FC election systems, including ones proposed by Civic Exchange. I also discuss the recent proposal for a bicameral system from the Business and Professionals Federation of Hong Kong, where Sir David Akers-Jones, who is attributed with initiating the FCs system in 1985, chairs its research on this matter. One assumes both Akers-Jones and the Federation think FCs are not working as well as they should. Perhaps they may even agree with some of the analysis in this book. In proposing a bicameral system as a possible ‘way out’, one hopes the proponents will not merely be transforming FCs into a formal second chamber in the legislature, when the current split-voting system effectively already provides for two chambers. The challenge will be to address all the problems with the FCs and the functional constituency election system, which will necessarily require a complete overhaul of Hong Kong’s political system.

As noted earlier, with Beijing feeling comfortable with Hong Kong’s loyalty to China, the challenge is to redesign the political process so that the HKSAR government can enjoy a popular mandate thereby completing the constitutional mission in the Basic Law of achieving the ‘ultimate aim’ of universal suffrage. It needs to be emphasised that Hong Kong is not alone in its attempt to design a political system that can cope with the diversity of views in society. Many other jurisdictions have had to struggle with how to ensure that their electoral systems can provide for popular support and at the same time expertise and cool heads when it comes to deliberating controversial issues. Arguably, the FCs in their current form cannot help Hong Kong to move forward economically, socially or politically. If anything, they have been a hindrance on many areas of progress due to vested interest lobbying.

What impact might the failed proposal to increase the role of the district councillors have on the FCs, chief executive election and politics in Hong Kong as a whole? The district councils were first established in 1982. They are the oldest bodies in Hong Kong that are elected by universal suffrage, and are thus the locus of the first experiences of Hong Kong people with voting, elections, electioneering, and of councillors with elected public office and constituency service. If the district councils would have a total of six seats in a 70-member LegCo, it would increase both the number and proportion of district representatives in the legislature who may well have an important impact campaigning for LegCo election, as well as legislative deliberation. Beyond these six seats, there
are in fact other legislators who are also concurrently district councillors. Furthermore, if district councillors were to become the largest single group within the Election Committee for the selection of the chief executive (529 out of 1,600), there would be bound to be an interesting impact on the district councillors’ attitudes towards the government and their voters, public perception towards and expectations of the district councils and the councillors, as well as relations of the district councils with LegCo and the chief executive. It would be hard to say exactly how these changes might alter politics in Hong Kong, but they would not alter the problems of the functional approach to the electoral system. In conclusion, it also needs to be pointed out that another key reason for the defeat of the government’s electoral proposals was its inability to give a timetable when universal and equal suffrage could be achieved in Hong Kong.
CHAPTER 1

Government and business alliance: Hong Kong’s functional constituencies

Christine Loh

Introduction

Since 1979, when China began its economic reform, Hong Kong has had a key role in the reintroduction of capitalism to the Mainland by providing investment and management. The ‘one country, two systems’ policy was devised to enable the post-1997 Hong Kong Special Administrative Region (HKSAR) to keep its ‘previous capitalist system and way of life’ for 50 years.1

The capitalist system that operates in Hong Kong, understood by the central authorities to be ‘the original capitalist system’ that must be maintained, is the colonial model which evolved from that reflecting the interests and objectives of the 19th century colonialists. That colonial model involved the administration forming an alliance with the business and professional elites to promote their respective interests. It developed under a set of circumstances that produced a particular political economy, style of politics and set of policies that still very much influence the Hong Kong of today. The colonial administration had portrayed itself as having created a capitalist meritocracy built on consensus politics that was superior to democracy. It was claimed that because of this, combined with laissez-faire economics, post-war Hong Kong was able to become a rich capitalist paradise. The functional constituency election system, created in 1985 under British rule, and the selection system for the post-1997 chief executive using an election committee both have roots extending back to the early colonial days and were influenced by the idea of the importance of the capitalist meritocracy in the economic success of the city.

However, the belief that Hong Kong can still be run under a non-democratic, executive-led, political system with the support of the business and professional elites has become increasingly untenable. With the rise of a large middle class whose interests are diverse and differ from those of the traditional, narrowly-based business and professional elites, the HKSAR government’s early years, under the leadership of its first chief executive, Tung Chee Hwa (1997–2002 and 2002–2005), faced a serious legitimacy crisis as his administration was perceived to favour big business over other sectors of society. The response from Tung after 1 July 2003, when over 500,000 people demonstrated against proposed Article
23 national security legislation, that the government would ‘stay close to the community’, have ‘a better grasp of public sentiment’, and ‘attach importance to the middle class’, signalled his effort to address his negative image. However, he failed to turn the tide despite frequent exhortations to establish ‘people-based governance’.

On 10 March 2005, Tung resigned ostensibly for health reasons with more than two years before the end of his second term of office. His departure provides an opportunity for Hong Kong to reflect on past policies. In thinking through constitutional development in the coming years, it is critical to understand the evolution of the government-business alliance and the political economy that it produced. The many questions that need to be asked and answered include whether the functional constituency and election committee election systems contribute positively to an environment for market capitalism to flourish in Hong Kong, or whether they create the conditions for social disharmony by giving disproportionate political influence to the business and professional elites.

This chapter provides a brief background of the relationship between government and business since the early days of British Hong Kong. Other chapters will examine how the functional constituencies (FCs) work within the HKSAR’s political system and the sort of policies their Legislative Council (LegCo) representatives advocate and lobby for.

Background

The post-1997 Hong Kong constitution, the Basic Law, declares universal suffrage to be the ‘ultimate aim’ in electing the chief executive as well as the legislature. On 6 April 2004, the Standing Committee of the National People’s Congress (SCNPC) made an interpretation of the Basic Law that the first possible occasions such elections could take place would be in 2007 and 2008 respectively. To kick-start the process for the SCNPC to determine whether there was a need for such reforms ‘in the light of the actual situation’ in Hong Kong and in accordance with the ‘principle of gradual and orderly progress’ as noted in various provisions in the Basic Law, the SCNPC decided that the chief executive should first prepare a report for it on the matter. On 15 April, Tung submitted his report, and on 26 April 2004 the SCNPC formally ruled out universal suffrage for 2007 and 2008. In that decision, the SCNPC also specifically provided that the 50:50 ratio between legislators returned by FCs and those returned by direct election to the geographical constituencies (GCs) should not be changed for the 2008 election to LegCo.

The colonial administration first introduced FCs in the 1985 election to LegCo with the agreement of Beijing. The FC system was accepted by Beijing as essential to maintaining stability and prosperity in Hong Kong. Thus, when the draft Basic Law was introduced for deliberation at the National People’s Congress meeting in 1990, it was noted that in providing for the post-1997
political structure, ‘consideration must be given to the interests of the different sectors of society and the structure must facilitate the development of the capitalist economy’. In Beijing’s view, a proper apportionment of political power ‘in the interest of all social strata’ required that the number of seats derived from functional elections be increased to half of the seats in LegCo, together with a number of legislators to be returned by an election committee whose electoral bases were similar to those of the FCs. While the Election Committee seats were to be phased out by the time of the third post-1997 LegCo, the functional and geographical constituency systems would each return half of the seats to the 60-member HKSAR legislature. Beijing’s belief that the functional constituency election system is conducive to safeguarding prosperity and stability was repeated in 2002 in the context that ‘Hong Kong is a commercial city’ and that holding ‘functional constituency elections is an effective way to ensure that people from all walks of life can have balanced participation in political life’. In explaining the SCNPC’s decision to retain the system for the 2008 LegCo election, thereby ruling out universal suffrage, it was emphasised that:

To maintain the original capitalist system, the political system in Hong Kong must cater to the interest of every social class, group and sector, including the interests of the working class as well as that of industry and commerce, balancing the participation of each group. Without the industrial and business sector, there would be no capitalism in Hong Kong. How then can we maintain the original capitalist system? If the interests of the industrial and business sector lost their constitutional protection, that would eventually threaten Hong Kong’s economic development.

The above perspective reflects the view of the central authorities, the HKSAR government has essentially adopted the same view. This justification for the functional constituency and election committee election systems are likely to be hotly debated in the coming years as Hong Kong’s political system evolves. While this book focuses on the FCs, if they are replaced in the future then it will likely have an impact also on the election committee election system, the rationale for which is not dissimilar to that of the FCs.

Complexity of colonial rule

Despite its economic success, Hong Kong’s political development over 155 years of colonial rule was extremely modest. It has been aptly observed that: ‘No other colonial territory has matched its economic achievements, and no other colonial community has been so deprived of access to democracy.’ With post-World War II decolonisation fervour throughout Asia, and with the victory of the Chinese Communist Revolution on the Mainland in 1949, it was remarkable that Hong Kong remained a colony up until 1997 when the lease on the New Territories, signed between the Qing and the British governments in 1898, expired. This
section summarises how Britain justified its rule in Hong Kong, created the political structure, shaped its governing philosophy, raised public finance, and cultivated an appointment system to sustain colonial rule.

**Early history**

The British took Hong Kong Island, Kowloon and the New Territories between 1841 and 1898 by means of a series of trade-related wars triggered by China’s confiscation of opium. Thus, Hong Kong was seized for diplomatic, military and trade purposes, not for the sake of territorial control. The new colony became a convenient place for Britain to park its military and naval base to engage China over the course of the protracted Opium Wars, and at the same time provided a foothold for Britain to look after the trading interests of British subjects. Hong Kong’s early history was as a depot for ‘two semi-monopolistic and still technically illegal enterprises: the importation of opium into China and the traffic in labourers out of China’.

The British and other European merchants began to relocate their trading and trade services activities, such as warehousing and shipping, from Canton (Guangzhou) to Hong Kong, where the British administration was much more amenable to their businesses than the Chinese authorities. When the British took physical possession in January 1841, Hong Kong was declared a free port to facilitate British commercial interests. The colony therefore provided a safe refuge for the merchants and their Chinese associates (the compradors) during unrest, uprisings and periods of renewed fighting between wars. The first 50 years of British rule was complicated by the fact that there was not much of a powerful local elite that the British could cultivate and negotiate with, as they did in other parts of the British Empire. The wars, mass migration, crime, mutual incomprehension and distrust made establishing cooperation difficult. It was not until the late 19th century that the sojourning Chinese merchant elite had settled in and solidified their influence in Hong Kong, where their and the British’s interests to operate in a safe haven had in fact converged as China continued to struggle with many problems that eventually led to the fall of the Qing dynasty in 1911.

**‘Executive-led’ government**

Having taken possession of Hong Kong, Britain needed to create a governing structure and support the colony. It is important to note that the political framework of the colony remained essentially unaltered until Hong Kong was handed back to China in 1997. In terms of the raising of public finance, the earliest days of the colony also laid the foundations of a low-tax regime.

Since the British were not much interested in playing a civilising role for the ‘natives’, the colonial political structure was designed not to give the people a real role in governing but to enable the sovereign power to exercise effective
control. In other words, the colony was an autocracy, not a democracy, despite Britain’s own parliamentary tradition. Constitutional power was focussed upon the governor, Britain’s designated representative in Hong Kong. The governor as representative of the Crown and chief executive of the colony, was given ‘full power and authority’ by the Letters Patents and Royal Instructions from the British sovereign. The various institutions of government could not be compared to those in Britain even though parts of them may resemble some aspects of the British political structure. The Executive Council (ExCo) was not the equivalent of a cabinet and the LegCo was not the same as a parliament. They were created to ‘advise’ the governor in the exercise of his authority and in legislation. In the early days, colonial officials appointed by the governor occupied these bodies. The power and authority of the governor were such that the definition of the colonial government could, in its narrowest sense, be taken to mean the governor, or the governor working in consultation with ExCo, generally referred to as the Governor-in-Council. This concentration of power was referred to as the ‘executive-led’ nature of colonial administration. In Hong Kong parlance, reference to ‘the government’ has always denoted the executive.

The colony had its first constitutional crisis within five years of its founding. In 1846, the expatriate merchants petitioned Parliament for an elected Hong Kong municipal council, where the members would be chosen from among themselves. The demand was firmly rejected. A body of elected representatives was considered ‘incompatible’ with the decisiveness that was seen necessary to govern the colony. In other words, having elections would dissipate the powers, and therefore the effectiveness, of control from Whitehall via the governor.

**Public expenditure, land policy and taxation**

Once Britain took possession of Hong Kong, the costs for maintaining it became the responsibility of the Treasury in London and therefore a charge on British taxpayers. It was not cheap to maintain the colony and to pay for trade expansion efforts in a far-flung corner of the empire. With the exception of 1855, 1860 and 1861, government expenditure exceeded revenue in every year up until 1876. Not surprisingly, the Treasury’s aim was that government expenses were kept to a minimum. Scholars have described the early days of the colony as a ‘minimal state’ where the state’s functions were reduced to merely the basic maintenance of society and not for social building.

In terms of raising local revenue, Hong Kong’s free-port status prevented the authorities from taxing external trade. The merchants wanted British protection but did not want their earnings, often unlawfully gained, to be taxed. They claimed it would be unfair to raise revenue from taxing them to pay for Britain’s larger imperial purpose. Indeed, relations between the merchants and the early governors were often strained over the issue of government expenditure and taxation, both of which the merchants wanted to be kept to an absolute minimum. The colonial government therefore had to rely on revenues generated
from charging land rent, property rates and taxing domestic trade and services. All land was declared Crown land. The control of land also became a frequent point of contention between the authorities and the merchants. To generate enough revenue to ensure that the colony was self-sustaining, the authorities needed to attract Chinese merchants to base their businesses in Hong Kong. Incentives included the granting of special land deals and monopolistic advantages as well as protecting the merchants’ property rights in the colony. With growing civil disorder on the Mainland in the 1860s, Chinese merchants found their way to Hong Kong in greater numbers as it provided a nearby safe refuge. It may be said that prior to the 1860s, the ‘pull factor’ of cheap or concessionary land was an attraction but, post-1860s, the ‘push factor’ of Mainland instability became the driver and that there was no real need to provide concessions any longer.

System of colonial appointments

The expatriate merchants wanted to see the government run in a way that favoured their own interests. They wanted control over finance and they mistrusted the liberal intentions of governors and colonial officials. As a response to the British merchants pressing their case, the colonial government began to allow the large hongs to nominate representatives to LegCo to advise the administration. The legislature then became a forum for the expression of mercantile interests. These members were referred to as ‘unofficial members’ of LegCo since the rest of the legislators were government officials. In 1864, the merchants opposed the introduction of stamp duty. In 1883, a member of the Chamber of Commerce expressed the merchants’ self-interest succinctly: ‘Is there any tax levied upon the colony which is not a tax on trade? Are we not all here as traders?’

There had always been tensions between the expatriates and the Chinese, where colonial officials saw that they had to play a mediating and moderating role for the sake of stability. In 1880, the first Chinese unofficial member, Wu Tingfang, a barrister, was appointed to LegCo to reflect the view of the growing Chinese community. In 1894, a group of 362 expatriate merchants, bankers and ratepayers petitioned Parliament demanding that they be given the right to manage their affairs in Hong Kong and control government expenditure by means of electing unofficial members to LegCo. The British government rejected the demand as it saw it as an attempt to put power ‘in the hands of a select few, and to constitute a small oligarchy’. The merchants’ plan provided for 800 British male expatriates to be enfranchised out of a population of 221,400, of whom 211,000 were ethnic Chinese. British ministers appreciated the objectionable nature of such a race-based proposal and concluded that: ‘the well-being of the large majority of the inhabitants is more likely to be safeguarded by the Crown Colony system’. 
To reduce criticisms from both communities, in 1896 the government took two important decisions that had long-term impact. It appointed two prominent expatriate businessmen to ExCo as unofficial members and another Chinese unofficial member to LegCo. These appointments aimed to show the expatriate merchants that the government was willing to listen to them and at the same time to show the Chinese majority that their interests would be safeguarded. These measures brought ‘merchant opposition and elite Chinese opinion into an advisory relationship in which, in exchange for influence, they were required to approve decisions largely taken by the bureaucracy’. These appointments signalled the start of the absorption of elites into the colonial political structure, a major factor in sustaining colonial rule for 155 years.

By the turn of the 19th century, three out of six unofficial LegCo seats were given to ethnic Chinese. Despite their positions as legislators, they remained in reality on the periphery of the establishment. They could voice concerns but not block government policies. The Chinese elites were made up of the appointees to LegCo and other public bodies as well as influential merchants. The British colonials had left them to mediate between the administration and the Chinese community from the early days with the excuse that the Chinese did not like to deal with foreigners. By separating themselves from the ‘natives’, the colonial officials were often ignorant on local issues. Furthermore, by leaving the Chinese to take care of themselves, the colonial administration did not have to incur costs for social services. The colonials in fact encouraged the setting up of various philanthropic and charitable bodies including religious organisations so that the rich Chinese and Christian churches could provide the Chinese community with education and welfare services.

Not much had changed in the 20th century. Appointments of elites to the colonial establishment were seen as a safe way to infuse it with legitimacy, and naturally it usually appointed individuals with a positive orientation towards the government. Apart from ExCo and LegCo, a larger number of these elites were put on a range of government committees with interlocking memberships of official members so that they felt consulted on policies. These small, closed bodies became an essential characteristic of the colonial government as the appointment system evolved. Enduring criticisms of the government’s consultative system of advisory bodies are its overlapping memberships, the appointees’ poor attendance records, as well as their inability to generate solutions to problems and lack of contribution to the quality of governance.

Thus, Hong Kong’s attitude to governance was very much set in the 19th century. The combined effects of the internal and external constraints on financial policies resulted in financial conservatism and a pro-business orientation that became hallmarks of the colonial governing tradition.
Characteristics of appointees

By the 1920s, as serious labour unrest broke out which led to a series of strikes across various industrial sectors for the next several years, the colonial government realised that it could not leave the Chinese elites to sort out problems with the wider Chinese community. It was then that the administration realised that it needed to give much greater weight to the welfare of local workers. It became obvious that to ensure stability the authorities had to provide at least basic education, healthcare and social services. Matters were complicated by the rise of nationalism on the Mainland, posing a challenge to British rule in Hong Kong. In order to demonstrate that the British trusted the local Chinese, Shouson Chow became the first Chinese unofficial member appointed to ExCo in 1926.38 In the same year, the landowners of the New Territories formed the Heung Yee Kuk, which became the government’s consultation body on rural affairs.39 As Hong Kong’s population continued to grow between the wars, the Sanitary Board, which had five unofficial appointees, was transformed into the Urban Council in 1935.

Hong Kong had a bustling industrial sector by the 1920s that was internationally competitive. Indeed, in 1931, 25% of the working population worked in manufacturing. However, Hong Kong’s early industrial history had been understated by some historians.40 Governor Alexander Grantham also downplayed it because it did not fit his vision of the colonial government.41 The rhetoric was that Hong Kong’s prosperity came from its free-port status and trade. The British thought that investment other than in trade was risky given the turbulence in China. Hong Kong was deemed unsuitable for industrial development because the demand for the return the territory to China was always latent. Thus, even though there was an active manufacturing sector dominated by the local Cantonese, the government chose to ignore it. The Cantonese manufacturers were not appointed to the establishment’s highest consultative bodies. Appointments of this group came much later after some of them became rich and successful. The long years of neglect of the sector created tension with the colonial administration, who clearly favoured trade and commerce over manufacturing.42

The typical appointees came from among the traditional elites of the comprador and banking families as well as the British-educated professionals.43 In time, they included the rich manufacturers, real estate developers and the top managers of the major public companies, as well as senior partners of firms of lawyers and accountants. Doctors and academic heads of universities were popular appointees. The Chinese elites who rose to the highest prominence with appointments to ExCo and LegCo were those who not only had economic power or special professional knowledge but were also Westernised members of the Chinese capitalist meritocracy. Without co-option of these business and professional elites they could pose a constant threat to Britain’s legitimacy to govern. In other words, the appointment system provided an effective method to buy off potential adversaries and was a strategic device to create a semblance of democracy.44
**Political reform shelved**

After the Japanese occupation of Hong Kong during World War II, the Chinese population went through another transformation in their expectation of government. They wanted a greater say in public affairs. In London, the Labour government also pledged to introduce self-government throughout the British Empire. Initial plans did not exclude Hong Kong. The returning governor, Sir Mark Young, pursued a programme to give the inhabitants ‘a fuller and more responsible share in the management of their own affairs’. Young added a second Chinese member to ExCo soon after the British took back Hong Kong. Up until the war, ExCo had seven official members, two expatriate unofficial members and one Chinese unofficial member. Thus, a second Chinese ExCo appointment put the number of British and Chinese ‘unofficials’ on the same footing. Furthermore, what became the ‘Young Plan’ of 1947 included the creation of an elected municipal council to allow local inhabitants a share of the management of local affairs, although the colonial government would continue to control the key functions of government. Young recognised that the only way to keep the colony British was if the local Chinese preferred British to Chinese rule and he thought that could only be done through some kind of popular participation.

Young’s initiatives did not survive the governorship’s passing to Sir Alexander Grantham, who did not believe the Young Plan would make the Chinese more loyal to Britain. In 1952, Grantham persuaded Britain to abandon all plans for political reform because it did not ‘interest the British electorate’. Then before the Hong Kong public he blamed London for cancelling the plans. By 1960, Britain had ruled out the prospect of any major change to Hong Kong’s political system. This also appeared to be what the Chinese government preferred at the time. Grantham thought that ‘provided that the government maintains law and order, and does not tax the people too much and they can obtain justice in the courts they are satisfied and well content to devote their time to making more money in one way or another’. This view remained prevalent among officials and the elites in Hong Kong up until the end of British rule.

World War II and the subsequent years disrupted much of Hong Kong’s way of life. The establishment of the People’s Republic of China in 1949 cut the Mainland off from the rest of the world, including Hong Kong and the overseas Chinese business network. With the onset of the Cold War, Hong Kong’s role as a regional entrepôt declined, especially after 1951 with the United Nations’ embargo on China during the Korean War. The hongs and their compradors had to adapt, those who failed did not survive. However, just as Hong Kong thought its economic raison d’être had gone, the rise of consumerism in Europe and the United States demanded cheap, light-industrial products that Hong Kong could supply. From the 1950s to the 1970s, Hong Kong’s manufacturing sector began to do well by exporting to those markets.
Autonomy and governing principle

It may be said that the mindset for Hong Kong’s decolonisation began in the 1960s. There were three influencing factors in the decolonisation process. Firstly, the Suez Crisis in 1956 accelerated the retreat from the colonial empire, which had already started after World War II. Secondly, with increasing trade with Western markets, Hong Kong people developed a greater affinity for Western tastes and lifestyles. Thirdly, in order to counter Chinese propaganda during the Cultural Revolution between 1966 and 1976, the colonial government began to nurture a sense of belonging among the Hong Kong Chinese, many of whom had arrived recently as refugees. Social scientists noted that after 1976, Hong Kong became a different society with a distinct local identity divergent from China’s in a major fashion.52

With Britain adopting an ‘end of empire’ attitude, Hong Kong began to operate more autonomously from Whitehall on domestic issues. Decision-making was in effect left to the local political system dominated by business interests. The colonial administration had to play a mediating role to ensure that the public interest was not totally ignored. It created the political rhetoric, more grandly referred to as the ‘governing principle’ skilfully built around the rule of law and laissez-faire economics, to include public and private interests in government decision-making to stop the elites from being seen to over-exploit their privileged positions within the political structure. This aspect of colonial governance is discussed in a later section.

With rapid industrialisation from the 1950s and the Hong Kong economy becoming increasingly dependent on Western export markets, the colonial administration needed to become more efficient in the way it managed Hong Kong. It focussed on technical and administrative effectiveness more than on policies underpinned by political values and ideologies. ‘Pragmatism’ became a justification for Hong Kong’s disinterest in political debates and the laissez-faire principle the mantra to justify both action or inaction.

Politics of appointment

‘Administerisation’ of politics

This section discusses how the politics of appointment shaped Hong Kong politics. As the British believed that China would react negatively to an elected government in Hong Kong, the elite-dominated appointment system had to be made to give colonial rule a semblance of democracy and to create a good environment for economic development.

Hong Kong’s system in the 1960s and 1970s was described as the ‘absorption of politics into the bureaucracy’ and the goal of the government was ‘to achieve a maximum level of political stability in order to foster economic
growth. The key to that goal was the ‘administerisation’ of politics; it was the antithesis of ‘politicisation’. In other words, the process was designed for ‘keeping politics out of the electoral process’ and developed people who became ‘adept as appointees’ representing the views of the economic and professional elites. The result being that ‘as a consequence, the governing authority is made legitimate, a loosely integrated political community is established’.

**Failure of the appointed elites**

The combination of laissez-faire economics and ‘consensus’ government dominated by the elites led to out-of-touch policies that ended with crises in 1956 with Kuomintang fomented riots, and again in 1966 and 1967 as a result of poor social conditions in Hong Kong, as well as the overspill of the Cultural Revolution. The riots provided stark evidence that the elitist and narrow nature of the appointment system was unable to cope. Furthermore, these sudden eruptions of political violence also highlighted the irrelevance of the colonial power system to Hong Kong’s real political landscape.

There were numerous occasions when government officials could have implemented policies that better met the needs of the majority of the people but the unofficial LegCo appointees neither understood nor reflected the needs of the working population. Despite rising wealth in post-war Hong Kong, the government met solid resistance to any suggestion to increase taxation and government spending. In 1950, for example, unofficial members of LegCo argued that the British government should first make good Hong Kong’s war losses before talking about raising taxation for spending on local needs. The following exchange of memoranda between two Colonial Office staff illustrated how they saw the Hong Kong elites’ social policy attitudes. It is interesting to note that one thought that even if there were an unofficial LegCo majority, it would still be hard to change LegCo’s stance on taxation:

> What is unsatisfactory is that large sums of money are being made in the Colony and going into private pockets instead of being used for the benefit of the community.

> ... if Hong Kong is going to be given a more advanced constitution with an unofficial majority, it is even less likely that she will be willing to submit to increased taxation except to meet expenditure which she herself can be persuaded to consider desirable.

The second official may well have been right in his assessment. The history of tax reform in Hong Kong since World War II and up to the present is a story of how very little happened. As the administration did not have the support of LegCo for many of the reforms, the colonial officials had to construct justifications to act in spite of objections from those who were supposed to reflect the
people’s views. They had to explain why no one demanded social reforms when the actual conditions were dire. The fiction they invented was that ordinary Hong Kong people were ‘apolitical’ when the truth was that the people had no voice within the political system.\textsuperscript{60}

What is evident is that the LegCo of the 1950s and 1960s was not ‘the arena for the resolution of deep-rooted political and social sentiments of Hong Kong’.\textsuperscript{61} Despite the scare in 1956, not enough was done to alleviate social conditions that eventually led to the 1966 riots. In examining the fast pace of economic growth in the 1960s (Hong Kong’s GDP per capita grew from HK$3,588 to HK$4,775 between 1962 and 1965), the newly created wealth was not much redistributed within society but remained in the hands of business owners. Workers’ standards of living remained Dickensian. The longstanding policy of operating a ‘minimal state’ plus the fiscal conservatism of the local elites did not provide the climate of opinion for the government to reform labour conditions and promote social welfare programmes. The result was that there was a consistent accumulation of large budget surpluses from 1947 to 1966. The Commission of Inquiry set up to assess the 1966–7 riots concluded that there were serious problems that went to the heart of the rationalisation for the imperial presence in Hong Kong, which was to provide good government. An illustration of how disconnected and remote LegCo was at that time could be seen from the fact that its members chose not to debate the riots, ‘except peripherally and, in accustomed Hong Kong fashion, to ask what they would cost the taxpayer’.\textsuperscript{62}

\textit{Reform and retreat}

After the Cultural Revolution–inspired riots in 1967, and as a result of riots in the previous year that resulted from poor social conditions, the colonial government embarked on a major reform programme that included improving labour legislation, improving public relations overall by paying attention to public opinion, redressing grievances by expanding the UMELCO Office,\textsuperscript{63} using Chinese as an official language, and increasing the number of advisory bodies and consultative forums. By 1976, there were 142 formal advisory bodies of various sorts and many more informal ones.\textsuperscript{64} The reforms, which were all structural and not fundamental in nature, were considered successful as social calm was sustained. By the end of the 1970s, the British became anxious about the expiry of the 99-year lease on the New Territories and governor Murray MacLehose made an initially secret trip to Beijing in 1979 to discuss the future of the territory. Upon his return to Hong Kong, he said that Deng Xiaoping asked him to tell ‘investors to put their hearts at ease’ which signalled the beginning of Britain’s retreat from Hong Kong.\textsuperscript{65}
Hong Kong's colonial governing formula

This section looks at how the lack of democracy became touted as a key to Hong Kong’s economic and governance success. Britain and China began their negotiations over the future of Hong Kong in 1982. London and the colonial administration in Hong Kong needed to explain to the world and to the people of Hong Kong why it was not possible to provide a democratic government. Creating the ‘Hong Kong story’ was necessary to compensate for the lack of legitimacy of the administration as it began negotiating the return of Hong Kong to China in 1997. The rationale used was simple: Hong Kong had something better than democracy.

Hong Kong was successfully portrayed as a ‘barren rock’ turned capitalist paradise. According to this narrative, Hong Kong was an unimportant fishing village before the British colonised it, and it was due to the rule of law and economic policies of a benevolent government that the small society remained politically stable. Coupled with a political system that was built on consultation and consensus with the local elites, Hong Kong had none of the divisive politics so common in Western democracies and was thus able to grow into an extraordinary economic powerhouse. That governing formula was said to have been so successful that by the end of British rule in 1997, Hong Kong’s GDP had exceeded that of the United Kingdom.⁶⁶ The governing formula provided a political rationale that assumed an air of inevitability.⁶⁷ Colonial officials promoted the idea that they had created an ingenious system that provided the political stability and capitalist principles for Hong Kong to triumph.⁶⁸

This message resonated with many internationally famous economists and business leaders who lauded Hong Kong’s strong economy, small government, fiscal conservatism, low taxes, modest welfare, free trade and pro-business orientation, respect for the rule of law, individual liberty and mild politics.⁶⁹ Hong Kong has been touted for many years as having the freest economy by conservative think tanks, such as the US-based Heritage Foundation.⁷⁰ These were seen as ringing endorsements of the Hong Kong governing formula. With such accolades, a colonial attorney general was moved to describe the city as having an ‘Athenian democracy’ that was a great ‘innovation’. The Hong Kong system was ‘vital to social stability in a community whose government is not and cannot be elected’. The system took ‘more care to be sensitive to catch even the whispers of the public’ and created consensus politics by co-opting representatives from ‘interested and expert groups . . . unpaid private citizens, knowledgeable and experienced in their subject’ into the power structure, who had ‘the freedom to represent the interest of the entire community, and not just some faction or political party’.⁷¹

What is often ignored is the origin of the rhetoric. To give preference to trade and commerce because they are seen as less risky than investing in industrial development, and to ensure that the government appeared fair-minded in its decision-making, the colonial administration needed to articulate a principle of governance that could firstly convince the public to give support to its policies,
and secondly, to separate public and private interests in a system where the majority of local players in the political structure were drawn from the business elites. In other words, the colonial administration consciously refrained from intervening in the economy, creating a ‘boundary maintenance’ strategy which became its governing principle. The principle had two prongs: the rule of law, and laissez-faire economics which, from the 1970s, became known as ‘positive non-intervention’, and ‘maximum support, minimum intervention’ by the 1990s. The slogan had a quasi-ethical and ideological appeal that even managed to unify the public behind the colonial government.

It is seldom realised that positive non-intervention was designed to be the bulwark against the elites over-profiting from their alliance with the government. The colonial administration retained control of the economic policies and management of Hong Kong but gave itself a narrow brief. For example, as the elites favoured low taxes, any cries from them for subsidies and bailouts could be refused on the basis that the public purse lacked the revenue to finance them. It could refuse to adopt grand industrial policies that involved the picking of specific businesses or ‘winners’ for public investment. The colonial administration refused to support industrial projects on various occasions in the 1960s. Businessmen were asked to take their own risks and cope with business cycles. What the government did was to provide the physical infrastructure that benefited everyone, such as airports, subways, roads, schools and hospitals. With the establishment of the powerful Independent Commission Against Corruption (ICAC) in the 1970s and a determination to root out corruption, the Hong Kong political system, where democracy was denied and business and professional elites given exceptional influence through appointment to key government bodies, seemed overall tolerable to the community up until the end of the 1980s.

That is not to say that the appointment system was not seen for what it was. It was obvious that the elites benefited from the prestige and personal privileges that came with appointment to the establishment. While they were meant to act as guardians of the public interest, the appointees had opportunities for financial and commercial gains and advancements. Being on ExCo meant access to privileged information. Being on LegCo allowed regular access to important decision-makers. Being on advisory committees provided early information invaluable to shape policies and influence distribution of resources that had an impact on their own business sectors.

Selection of the post-colonial elites and setting of the HKSAR economic policies in the Basic Law

When it became certain in the early 1980s that the British would leave in 1997 and that China would resume sovereignty, Hong Kong’s political dynamics shifted. Beijing’s strategy to ‘win hearts and minds’ during the Sino-British negotiations involved the active cultivation of the Hong Kong business and professional elites
because they were seen to be essential to the smooth running of Hong Kong. This group, who had invested heavily in Hong Kong, was seen by Beijing as having the most to lose if the city became unstable, and thus could be relied upon to maintain stability under Chinese rule.77 While both Beijing and Whitehall wanted the Hong Kong elites to support their respective positions during the Sino-British negotiations, Beijing had the upper hand, as it was the incoming sovereign whereas Whitehall was the lame duck. Not only that, with the Chinese economy developing rapidly, the Hong Kong business and professional elites were keen to cultivate cordial relations to ensure easier business entry into the Mainland. As Xu Jiatun observed: ‘a businessman’s political inclination is normally linked to his business. He would side with whoever supports him. This accounts for the phenomenon that some people would swim with the tide’.78

The Sino-British Joint Declaration signed in 1984 settled the issue of transfer of sovereignty. It was agreed that the post-1997 legislature would be constituted by ‘elections’, and the chief executive shall be appointed by Beijing ‘on the basis of the results of elections or consultations to be held locally’.79 The creation of FCs through the 1985 LegCo election was part of the transition package of reforms that first appeared in the colonial government’s 1984 Green Paper: The Further Development of Representative Government in Hong Kong, which secured the position of the elites during the transition and within the post-colonial political structure.80

Furthermore, Beijing used a series of appointments to the National People’s Congress, Chinese People’s Political Consultative Conference, Basic Law Drafting Committee, Basic Law Consultative Committee, Preliminary Working Committee Preparatory Committee and Selection Committee during the last decade and a half of colonial rule to create a group of status markers for the future. While some of the appointees had longstanding leftist affiliations and were not the sort of people the colonial administration appointed to its political structure, many of the appointees were from among the elites.81

By the end of the 1980s, Hong Kong’s business and professional elites had been co-opted by Beijing and accepted its pledge that it would safeguard their interests post-1997. During the drafting of the Basic Law, Hong Kong’s post-1997 constitution, the elites were able to exert influence on Hong Kong’s future economic management through being members of the Basic Law Drafting Committee and Basic Law Consultative Committee. Indeed, some 70% of the membership of the Basic Law Drafting Committee was made up of business elites.82 While the Basic Law was explicit that free trade, small government and low-tax policies should continue, it also imposed on the HKSAR administration a responsibility to ‘encourage investments, technological progress and the development of new industries’ and a duty to ‘formulate appropriate policies to promote and co-ordinate the development of various trades such as manufacturing, commerce, tourism, real estate, transport, public utilities, services, agriculture and fisheries’.83 A key Mainland drafter of the Basic Law elaborated that the HKSAR administration should involve itself more extensively in economic
management than its colonial predecessor, although the issue of how to reconcile this with the constitutionally-mandated fiscal conservatism and to finance development programmes was not discussed.84

Moreover, the Basic Law further strengthened the position of the elites through establishing the 400-member Selection Committee to choose the candidate for the first chief executive. Of the 400, a quarter each came from the industrial, commercial and financial sectors; the professional; labour, grassroots, religious and other sectors; and political figures.85 The Selection Committee transformed into the expanded 800-member Election Committee for the first post-1997 LegCo election in May 1998, choosing 10 out of 60 legislators, whereas the FCs elected 30 members with 24 being directly elected.86 The new Election Committee was made up of essentially the same four categories of members arising from a similar base to the FC electoral base. Though the number of legislators elected by the Election Committee was reduced to six in 2000 and phased out altogether by 2004, while the number of directly-elected seats increased to equal those of the FCs; the fact remains that its influence continues with the selection of the chief executive. The same body would have been used for the by-election in July 2005 had there been more than one candidate.87

Tung’s policies 1997–2005

The Tung economic philosophy was encapsulated in the slogans ‘big market, small government’ and ‘market leads, government facilitates’,88 which has been referred to as a philosophy of ‘selective intervention, comprehensive support’.89

The HKSAR government’s more active role in the economy to assist private business could be seen with Tung’s early policies, and this is discussed below. In his first policy address, Tung, a former shipping tycoon, went on a spending spree in creating various programmes, grants and funds that he knew would lead to ‘an increase of HK$7.7 billion in recurrent spending in the next financial year, rising to HK$18.6 billion annually for the financial year beginning in April 2001. Over the same five-year period, capital expenditure of HK$88 billion will be incurred.’90 His expansionary fiscal policies led to a large current account budget deficit, which became apparent by 2002.91 Fortunately, with the economic upturn that started in the summer of 2004, the ‘fiscal crisis’ has receded although the government’s recurrent spending remains an issue, and it continues to hint repeatedly that a goods and services tax (GST) may be imposed in the future.92

Specifically, Tung complained publicly in 1997 about the banks’ conservative lending policies to small and medium-sized enterprises (SMEs). In 1998, the HKSAR government launched a lending scheme to help SMEs. Another scheme was devised in 2001 with the government subsidising the cost of lending to SMEs that had relatively high loan delinquency rates and poor management records.93 In 1997, Tung also stated that he wanted to drive down property prices. He announced an annual target of providing a minimum of 85,000 flats,
which started a huge drive to put up cheap public housing at breakneck speed. In 1999, the government announced that it would partner with the Pacific Century Group (renamed PCCW) to build ‘Cyberport’ to promote Hong Kong as an information technology centre, as well as invest in Hong Kong Disneyland, a theme park, to promote tourism. In 2001, he announced the government would invest in a new exhibition centre, and in 2003, to provide a HK$1 billion economic re-launch package, including sponsoring, to the tune of HK$100 million, HarbourFest, a music festival, after the Severe Acute Respiratory Syndrome (SARS) outbreak. Tung’s 85,000 flats drive was seen to have contributed to the dramatic drop in property prices, which was perceived to have left many property owners in negative equity; and by not tendering the Cyberport but giving the multi-billion development to one company, Tung was accused of favouritism and by-passing longstanding government practice in the awarding of projects. Furthermore, the government was forced to call an inquiry into the perceived poor management of HarbourFest.

In 2004, a series of controversial and unpopular property-related decisions heightened public complaints of ‘collusion’ between government and business. These included the development of a giant logistics park on Lantau Island, possibly even re-launching manufacturing in Hong Kong, reclamation projects in Central and Wanchai, developing West Kowloon using a single-developer model without having thought through the massive development properly, selling the new publicly built estate Hunghom Peninsula to a developer who then wanted to demolish it, and the Link REIT (Real Estate Investment Trust) privatisation of the commercial properties of the Housing Authority. Tung’s approach is described in Chapter 9 as ‘corporate welfare’.

In his 2005 policy address, Tung felt the need to respond to the allegations by stating that he was resolutely against collusion between business and government and pledged to eliminate any transfer of benefits. His remarks re-ignited public outrage by re-focussing attention on his decision in 1999 to award the Cyberport to PCCW without tender. As attacks on the HKSAR government did not ease, Tung then asked the Secretary for Commerce, Industry and Technology, John Tsang, to provide a written explanation through the print news media to rebut the allegation that Cyberport was ‘a prime example of collusion between government and business’. The attempt to mollify critics raised even more questions and demands for the release of relevant documents to examine how the decision was made. John Tsang’s final comment on the issue was simply a plea to LegCo: ‘Let bygones be bygones.’

As the Cyberport controversy raged, tycoon Gordon Wu added fuel to the fire:

Look at Cyberport and the West Kowloon cultural district project and you know only the mega companies would be qualified to play in Hong Kong. . . . It [collusion] is not just about how to get business with government assistance or some companies taking advantage of official procedures. It is also about obscuring others from getting business done, and again with the government’s
assistance. . . . This is the most bizarre situation I’ve ever met in nearly 50 years of business. . . . The business environment in the past years has been very bad.\textsuperscript{108}

Bearing in mind that the colonial administration’s ‘boundary maintenance’ strategy against demands for public subsidies by the business elites, the problem for the authorities is that despite its ability under the Basic Law to practice more interventionist economics, it has not been able to persuade the people that it is fair-minded. Thus, the current chief executive, Donald Tsang, may wish to remember that the HKSAR government is just as vulnerable as the colonial administration to suspicions of favouring certain private interests. The frequent accusations of cronyism and ‘black box politics’ should be constant reminders to both Beijing and the HKSAR authorities that the Hong Kong public fear the high level of involvement of business elites within the power structure.\textsuperscript{109}

Functional constituencies and electoral reform

The FCs produce 30 out of 60 legislators. It may be said that 16 of the FCs represent the interests of the traditional business and professional elites, (two commercial, two industrial, finance, accountancy, medical, legal,\textsuperscript{110} real estate and construction, architecture, surveying and planning, financial services, textiles and garment, import and export; wholesale and retail, and insurance), plus the Heung Yee Kuk, which represent rural landowning interests. Tourism, transport, catering and information technology may be said to represent the interests of newer sectors. Many of the FC representatives in LegCo are seen to have close links with tycoons and/or large business interests.

In considering constitutional reform, one property tycoon said in 2004: ‘A lot of us are pretty happy with the current system. Nothing major needs to be changed. . . . I believe that, structurally speaking, the status quo is the best way to go.’\textsuperscript{111} Others have said that pushing for universal suffrage in 2007 and 2008 against Beijing’s wishes could create ‘chaos’\textsuperscript{112} and that the pace of reform should be more ‘gradual’.\textsuperscript{113} In one extraordinary case, a tycoon asserted that: ‘Even if some local business are currying favour from Beijing, benefits received are private to those individuals and are economic in nature. It is no one’s business.’\textsuperscript{114}

In describing what is meant by ‘the previous capitalist system and way of life shall remain unchanged for 50 years’ in Article 5 of the Basic Law, it has been suggested by one tycoon that the ‘previous’ system and way of life that is to be preserved is ‘balanced participation’, where business, professionals, grassroots and the middle class ‘participated directly in politics’ under an ‘executive-led’ government model.\textsuperscript{115} It has also been argued that Beijing needs to protect the rights of Hong Kong’s business community by not allowing a dilution of its power in LegCo and the Election Committee. In the case of LegCo, the business sector should be able to keep at least 25\% of the seats.\textsuperscript{116} This line of logic would necessarily rule out universal suffrage for the 50-year period.
Another approach to political change is through taxation. Several tycoons argued that since only the richest one-third of Hong Kong’s working population pays income tax, so only that one-third should have a say in how the government is run. The FCs are seen by them as essential for keeping ‘welfarism’ and ‘free lunches’ at bay, which they believe to be the inevitable result of universal suffrage. These tycoons would presumably disagree with the view expressed in Chapter 9 that their lobbying the government directly and through the FCs legislators for subsidies is corporate welfare. The Catering FC representative said that if there were more pro-democracy legislators elected, investors ‘will not be interested in Hong Kong, because whenever they make huge profits, the democrats will be after them’. One tycoon went as far as making the ‘no taxation without representation’ argument with a Hong Kong spin that only income-tax payers understand how an absence of democracy promoted stability and prosperity. This type of argument by the tycoons is disingenuous when few of them pay any direct tax since Hong Kong in fact does not have an income tax system but only taxes salaries paid by employees and not proprietors.

Even more graphically expressed, the Real Estate and Construction as well as the Accountancy FCs members explained why the rich needed protection. They said, in response to the HKSAR government plugging a profits tax loophole, that the proposed legislative amendment would:

unnecessarily restrict legitimate business practices, incite antagonism and weaken investor confidence. . . . The administration cannot find new means of solving the fiscal deficit and figures it can squeeze more from the rich — they have lots of money, why don’t we rob them? . . . The amendment discriminates against the debt market, infringes the rule of law and the guiding principle of equality, which is a core value of our society.

This amendment could confuse serious investors, could lead to wasteful litigation and breaches the territorial source principle.

These various statements were all made publicly and in high-profile manners. They were also made with no reference to how the Hong Kong public see capitalism. From academic research, there are no indications that the people have lost confidence in capitalism. It is no wonder that the tycoon’s statements set the tone for how the Hong Kong public looks at the most influential elites, who are often seen to be protecting their own businesses. The growing consensus that Hong Kong should have a comprehensive set of competition policies and laws is evidence that the public is beginning to demand open markets for the domestic economy, where many sectors are dominated by the tycoon-controlled conglomerates, which in turn can control a number of FCs in LegCo and Election Committee seats for the selection of the chief executive.

Indeed, from the promotion of the term ‘balanced participation’ linked with ‘executive-led’ government, it is not difficult for the public to be reminded of
colonial governance. Yet, the HKSAR is no longer a colonial entity and Hong Kong people are now administering Hong Kong, while the Basic Law provides for elections. The Hong Kong political system, modelled on the colonial system, is suffering from a major disconnect with public expectations.

In March 2005, the Business and Professionals Federation of Hong Kong, with Sir David Akers-Jones driving the effort, put forward the idea of a bicameral solution for 2012, noting that to have a fully directly elected LegCo and to abolish the FCs ‘would be to stride into an unpredictable future. It would not meet the gradual and orderly criteria and would not be acceptable to the Central Government’. The group provided a more fully fleshed-out position in July 2005 in a booklet entitled 2012: A Bicameral System for Hong Kong. The group’s challenge in promoting bicameralism will be to ensure it can improve governance and resolve the problems noted in this book in the functioning of FCs. Up until February 2006, the various political parties and even most of Hong Kong’s political scientists appear not to be convinced the bicameral path is the way ahead.

Concluding observations

For almost the whole of Hong Kong’s colonial experience, politics was circumscribed by the peculiar relationship between a constitutionally powerful governor, and his relationship with Whitehall as well as LegCo. Nevertheless, the ‘executive-led’ system created in the 19th century for Whitehall to govern the British Empire did not in fact preclude elected legislatures as were formed in Bermuda and Australia. What was extraordinary about Hong Kong was how little its political structure changed over the years. As the colony evolved, the colonials in Hong Kong developed an appointment system to co-opt influential people into the political structure in order to give the administration legitimacy. The appointment of business and professional elites into the establishment was also a strategy to build an alliance with those who could be the opposition to colonial rule.

With the introduction of a measure of direct elections to LegCo in 1991, Hong Kong people’s political aspirations had a new focus, especially as the Basic Law provides for universal suffrage as the ultimate aim. With intense public debate about the pace of achieving democracy, Hong Kong people are more politicised than ever before and it seems doubtful that they will give up their wish for universal suffrage. In discussing the pace and options for constitutional reform, the FCs will need to be dealt with. Within a vision of universal suffrage, the current FC election system needs to be replaced. However, the heads of some of the largest business conglomerates are saying that there is no need for major reform, and even if there has to be, business interests must be protected. The question that needs to be asked is whether the tycoons’ utterances reflect the majority view of a diverse business sector. While they advocate the need to protect business interests, what they have not said is how Hong Kong can
improve governance, which from various opinion surveys is what is foremost on the public’s mind. Furthermore, the recent utterance of one tycoon that he had ‘lied’ for seven years in public saying the property market would recover despite his disagreement with Tung’s housing policy provided the best evidence of the obsequious nature of Hong Kong’s business-government alliance.

It was to address the issue of business participation in politics that Donald Tsang said in June 2004:

The public is demanding greater inclusion, transparency and openness in our political development and policy making. In this climate, business also needs to rethink how it handles such demands. The approach of business so far to politics has tended to be rather reactive, conservative and behind-the-scenes. An atmosphere of suspicion and distrust, unfortunately, still prevails.

If business wants political parties to champion their cause, then business needs to engage the political parties and convince them why championing the cause of business is good for Hong Kong and its people. Businessmen need to shed their anxiety and fear that if and when they step into the political arena, it will give rise to a perception of a collusion of business and political interests. In open society, every sector is a legitimate player in politics. But to be a player you must do so in an open and public manner.

At the moment, functional constituencies covering various business and commerce groups elect LegCo members to represent their interests and reflect their views in our legislature. As such, business, commerce and professional groups will maintain a direct line in the legislative process and in performing a ‘check and balance’ function on the government. But, as we head down the road to our ultimate goal of electing all LegCo members by universal suffrage, then functional constituencies will have to evolve with this process.

The business community as a whole needs to start thinking about how it deals with this change. It must be prepared to get more involved. For example, business can do more to nurture and support political talent and parties. In my view, a more vocal, community-spirited and transparent business lobby would garner public trust, which in turn would help dispel any misconceptions about collusion.

The above statements show how deeply the longstanding government-business alliance has coloured Hong Kong’s political life. Powerful elites have often opposed reforms because they already had what they wanted from their privileged position in the political structure. For example, in recent years, some of them have been far from enthusiastic with competition policies to open Hong Kong’s domestic markets even though market-augmenting reforms would be beneficial to Hong Kong as a whole. Thus, when reference is being made to ‘balanced
participation’ and the need for business interests via the FCs to continue to be protected, the HKSAR government and Beijing need to also distinguish between what are self-serving interests of certain business elites or business sectors, and what are in the interest of Hong Kong as a whole.
CHAPTER 2

Business friendly and politically convenient — the historical role of functional constituencies

Leo F. Goodstadt

Functional constituencies have had a long and controversial history in Hong Kong. Even after the British had conceded the right to democracy and directly-elected legislatures throughout the rest of their Asian empire, they were not ready to extend universal suffrage to Hong Kong, a reluctance that was to be shared by China’s leaders. The British preference was for indirectly-elected functional constituencies, which were introduced originally during the first decade of colonial rule. They were still proving politically convenient to both London and Beijing in the final decades of the 20th century and remained a major feature of the political system after the British had left.

A colonial legacy

In the 19th century, colonial officials found functional constituencies useful in securing the cooperation of the business community and of British interests in particular. During the 20th century, their attractions for the government fluctuated sharply. In the 1920s, London regarded functional constituencies as too radical to allow their role to be expanded. By the 1950s, London had changed its mind and looked on them as an alternative to universal suffrage. The administration in Hong Kong, however, had lost confidence in functional constituencies and spent the next three decades resisting them. They returned to favour only in 1985 as British officials looked for a formula to implement their commitment in the Sino-British Joint Declaration to a legislature ‘constituted by elections’.

After the British departure, their importance increased. Even the chief executive had his own ‘functional constituency’ in the shape of an election committee which tied his office tightly to the business community, complicating the process of selecting a successor for Tung Chee Hwa when he prematurely stepped down as first chief executive in 2005.

Throughout their history, functional constituencies have defined their electorates in terms of business interests, professional qualifications, class or occupation, and similar criteria. This has encouraged legislators to see their role
as representing special interest groups rather than as speaking on behalf of the whole community. An attempt has been made to invest key functional constituencies with more representative credentials by creating them as ‘election’ or ‘selection’ committees, which incorporated several — but still separate and distinct — social and economic groups. Nevertheless, by whatever name, functional constituencies have consistently been structured to ensure in the first place that a convenient number of seats in the legislature would be in pro-government hands and, more recently, to control the outcome of the process of selecting the chief executive.

This chapter will outline the development of functional constituencies under British rule and the changing political environment which affected their role. It will identify the conflicts between government and business after World War II which helped to convince business leaders that political reform would threaten their freedom to run lucrative monopolies. It will also demonstrate how the colonial administration, with London’s agreement, came to oppose even the modest progress represented by functional constituencies. Finally, the chapter will show how a dependence on functional constituencies has affected the post-1997 administration and the selection of the chief executive in particular.

In the absence of democracy

From the earliest days of British rule, colonial officials faced two problems in managing their non-democratic political system:

- How could a measure of representative government be achieved without handing over power to the Chinese majority? The 19th century was an era of mounting political liberalism and expanding democracy in the United Kingdom. It was hard to justify denying similar rights to British citizens in Hong Kong, particularly to those of ‘pure British descent’. But universal franchise not related to race was regarded as out of the question. It would have brought colonial rule to an early end.

- In the absence of popular elections, who should be selected as legislators? Candidates had to be reasonably prominent in business or the professions in order to command some measure of public respect. They ought, too, to be representative of the community or, at least, of those segments which the colonial administration regarded as politically significant. Furthermore, the danger was that if they were all appointed by the colonial administration, the public would look on the legislature as filled with placemen and cronies.

The solution to both problems was indirect elections. These would not enfranchise the community as a whole. Instead, they would permit the
administration to create special relationships with the sections of the community most likely to collaborate with British rule and to provide political support for the administration. The difficulty lay in defining suitable groups with whom to share power selectively, first within the British merchant class and later among the Chinese business and professional elite.

The first ‘functional constituency’ was created informally in 1849 when Governor Sir George Bonham found it easiest to let the expatriate business community select its own nominees for the legislature by allowing the justices of the peace to identify suitable representatives. In 1857, another governor, Sir John Bowring, sought to put this practice on a more formal basis, and he allowed the British merchants who were justices of the peace to nominate three candidates for two seats in the Legislative Council. The Colonial Office in London disapproved of this innovation because it was reluctant to permit British business interests to dominate the administration of a largely Chinese community. As a result, the nomination of Legislative Councillors stopped and was not resumed until 1884.2

In the 1880s a new governor, Sir George Bowen, saw the necessity for making the legislature more representative of public opinion. He believed, however, that direct elections would be impracticable. His solution was to allow the justices of the peace and the Hong Kong General Chamber of Commerce to each nominate a member of the legislature. He also wanted to ensure the Chinese community had at least one seat in the Legislative Council, but a bid to create a functional constituency to represent Chinese business interests failed. This time, the Colonial Office endorsed the proposal for indirect elections, although, in practice, this arrangement strengthened the role of big business — and mainly British interests — in the legislature.3

In 1916, British firms mounted a campaign to win control over the legislature by persuading London to increase the number of seats British business controlled in the Legislative Council. However, they did not wish their representatives to be placemen appointed by the colonial administration. Instead, they wanted the additional members to be elected by the existing ‘functional constituencies’, the justices of the peace and the Hong Kong General Chamber of Commerce. The Colonial Office refused to accept these demands which would have allowed the 270 expatriate members of these two constituencies to control the affairs of 450,000 Chinese who produced the bulk of the colony’s tax revenues.4 A subsequent attempt to broaden the basis for nominating representatives of the expatriate community to the legislature came to nothing. Thus, these two ‘functional constituencies’ were to survive intact and unreformed until the 1970s.5

The 1920s saw a revival of interest in constitutional development. There was agitation for Kowloon to be given its own representative in the Legislative Council because of the rapid growth in its population. But this proposal got nowhere. Consideration was also given to having representatives elected by the Chinese General Chamber of Commerce. However, the creation of a Chinese functional constituency of this sort proved too radical a proposal for officials in London.6
Defeating democracy

Functional constituencies seemed set to acquire a wider role after World War II. In London, a new Labour government made a commitment to put the entire colonial empire on the road to self-government, and Hong Kong was not excluded from this pledge. The governor, Sir Mark Young, announced a plan to establish a new municipal council, two-thirds of whose members would be directly elected. In addition, ten seats would be chosen ‘by professional and other bodies’ and evenly divided between Chinese and non-Chinese members.7

The post-war appetite for political and social reform would not have been satisfied by a system dominated by functional constituencies and their vested interests. Thus, these functional constituencies were to be a subordinate element in the new constitutional arrangements. In any case, neither Young nor London — at this stage — mistrusted universal suffrage as the basis for Hong Kong’s new political arrangements. Functional constituencies were thought necessary, nevertheless, in order to reassure the different racial and business groups within the community that they would not be left without their own voices in the new, popularly-elected council.

Such commitment to democracy was to prove unique among colonial governors until the arrival of Christopher Patten in 1992. Young’s reforming zeal seems to have been strengthened by his disillusionment with the behaviour of the traditional power structure during the Japanese war. The reputations of this elite were in tatters by the time British rule was restored in 1945. Young had seen how, except for two, ‘every Anglicised Chinese and Eurasian grandee who had loomed large in public life’ had retained the same privileged status under the Japanese occupation. Despite London’s policy of ignoring such war-time collaboration, he was unenthusiastic about a blanket whitewash for the great and good.8 Nor did he want the business and professional elite they had represented to recapture its dominant influence over government policy. For example, he was not prepared to let the elite control discussions of the post-war tax system.9

Young was replaced as governor in 1947 by Sir Alexander Grantham, whose political outlook was entirely different. In his first speech to the Legislative Council, the new governor conveyed a complete lack of enthusiasm for the radical proposals in the Young Plan.10 He succeeded in burying the plans for constitutional development even though they had received public endorsement from the United Kingdom government.

In the most authoritative account of this first betrayal of London’s pledges to introduce democracy, Dr Steve Tsang puts a significant share of the blame on the business representatives in the Legislative and Executive Councils.11 He describes these appointees as ‘shadowy figures’ in the plot, who ‘could not possibly have been enthusiastic about any of the proposals for constitutional reform since these would inevitably have involved political risk’ and who, in addition, had personal interests to protect.
Yet, as Tsang’s analysis indicates, the largest British companies had started out by supporting significant political reforms for post-war Hong Kong (although they did not want control to pass into Chinese hands). Sir Man-kam Lo, the most effective spokesman for the Chinese community in the colonial power system, was also an initial supporter of plans for constitutional development. Furthermore, as Tsang shows, the political risk to be feared was not generated by the Chinese Communist Party’s defeat of its Mainland foes and the establishment of the People’s Republic of China in 1949.12

What, then, was the immediate political risk that convinced the business elite, both Chinese and British, that political change would prove hostile to their interests? And why were they reluctant to come out of the shadows? The answer is to be found in an obscure and little-researched clash between government and big business.

**Bowing to business**

Buried in the details of the Young Plan was a proposal for the new municipal council to take responsibility for the oversight of the monopolies which ran the public utilities. Here, British companies were particularly prominent, controlling the supply of electricity and gas, the telephone company and three out of five public transport operators. In 1948, the prospect of independent oversight of the monopolies took on menacing implications for the business world. In the immediate post-war years, they were making exceptionally high profits during a period of low wages and sharp rises in the cost of living.13 The result was mounting public discontent and a surge in strikes and industrial disputes.14

The colonial administration could not ignore the threat of political unrest fuelled by the predatory behaviour of the public utilities. Behind the scenes, senior officials tried to induce their managements to exercise more restraint in setting prices and pursuing profits. When these efforts failed, the government began to investigate the possibility of introducing a levy on excess profits and of imposing statutory controls on fares and on power and other charges. The political strains that the monopolies were causing were severe enough to persuade Grantham to authorise his officials to make what amounted to the first steps towards a state takeover of the public utility sector. The business elite was outraged when informed of the government’s intentions, and the administration, according to the financial secretary, lost the goodwill of the business community in general. Nevertheless, the government continued to seek ways to curb the public utilities’ excessive profits until late 1950.

At this point, officials backed down. They had become alarmed at the collapse of business confidence in Hong Kong after the outbreak of the Korean War, which was followed by United Nations’ and United States’ embargoes that brought the traditional China trade to an abrupt end. The colonial administration was now fearful of provoking investors to dump their Hong Kong assets. At the same time, officials were desperate to persuade large employers to cooperate
with government planning to counter the economic crisis and the threat of widespread unemployment.\(^{15}\) The time for confrontation with big business had passed.

For the future, how could an elected municipal council be trusted to be business-friendly after the colonial administration had shown itself tempted to curtail the public utilities' right to maximise their profits?\(^{16}\) In the wake of this experience, the Young Plan and its proposals for a system of more representative government with powers to protect the public against profiteering by local monopolies could hardly be welcomed by major business interests and the largest British firms in particular.\(^{17}\) Since the struggle to protect the public utilities was conducted very largely in private, the business elite had no need to explain publicly why it came to regard political reform with increasing apprehension. In any case, with Mao Zedong in power on the Mainland and the start of the Cold War, the colonial administration and the business community had a plausible excuse for not sharing political power with the community at large.

**In search of safety**

There now developed a marked sense of unease within the administration about any form of political activity, let alone power-sharing, which could not be justified by any specific threat to British rule. Although the Chinese Communist Party was now in power and relentless in its public denunciations of British imperialism, colonial governors were relatively confident about the contemporary scene. For a start, despite the widespread colonial belief that the Chinese community felt little loyalty to a British Hong Kong, the public displayed no signs of wanting to overthrow British rule in the near future. Furthermore, Grantham and his successor, Sir Robert Black, showed a shrewd understanding of Beijing’s pragmatism and the unwillingness of the Chinese leadership to destabilise the Hong Kong economy which was making a major contribution to China’s development.\(^{18}\)

It was not fear of subversion, then, that inspired the colonial administration’s intolerance of any form of political activism. Rather, as the analysis below will show, governors seemed simply to assume their rule could not withstand public scrutiny, not even by the carefully chosen members of the Executive and Legislative Councils whose constitutional duties included holding the administration to account. It was hardly surprising, therefore, that governors resisted all suggestions for greater public participation in government, even in the form of the tame functional constituencies which dated back to the 19th century. To illustrate this British nervousness, the sections that follow will present selected examples of the colonial administration’s intolerance of any political activity not under its control between 1950 and 1985.

Initially though, there seemed some hope that a measure of constitutional development might still be possible. The immediate post-war self-confidence about building a better Hong Kong in which its people would have a significant
voice was gone, but the need for some kind of democratic credentials had not entirely disappeared. Local pressure groups were lobbying for elected representatives to form a majority of members in the legislature. As the Colonial Office in London judged the situation in 1952, these ‘advocates of constitutional reform’ could not be ignored if only because, in 1947, officials at the highest levels in both London and Hong Kong had promised the community a significant measure of progress towards democracy.

The challenge was to find a formula for constitutional development that would be ‘safe’. A senior London official summed up the dilemma:

\[
\ldots \text{in present conditions a franchise restricted to genuine and avowed British subjects [i.e., mainly expatriates and Eurasians] would be too limited to allow of proper representation of the people; while an extension of the franchise to citizens who are not or do not claim to be British subjects could obviously involve a risk of unsafe representatives being elected.}
\]

He concluded ‘that a system of indirect election offers the only practical solution’.

**In fear of friends**

London thus left the door open to some measure of political reform provided the electoral process excluded candidates who might prove ‘dangerous’. The colonial administration, however, preferred to keep the political system as closed as possible. Indeed, almost all forms of political activity became suspect, and the myth was created that the people of Hong Kong were so obsessed with economic success and so conditioned by their Confucian heritage that they were wholly apathetic about political affairs.20

At the same time, governors recognised that this apparent apathy was not entirely a matter of cultural attitudes. It also reflected how boring the public found the Legislative Council and its proceedings. Grantham realised that the legislature’s inability to capture public interest undermined the credibility not only of the Legislative Council but of the colonial political system generally. For him, however, the solution was not a more representative and thus more relevant legislature but livelier debates in the Legislative Council.21 Three decades later, another governor, Sir Murray MacLehose was still making the same complaint and proposing the same remedy.22

Furthermore, despite governors’ pleas for more vigorous exchanges in the Legislative Council, the colonial administration became increasingly uncomfortable about public scrutiny of its policies and performance. Indeed, there developed a marked resentment among officials of public criticism, which soon came to be viewed as dangerous interference with the government and a challenge to its right to rule, no matter how well-intentioned or well-informed. Hostility was not directed solely against independent-minded groups outside the colonial
power structure. Even the chosen few appointed by the governor to the governing Executive and Legislative Councils were not above suspicion.

Grantham, for example, assured London that on ‘polito-co-international’ matters, his appointees and the representatives nominated by the justices of the peace and the Hong Kong General Chamber of Commerce would not vote against the administration. This confidence was borne out by the close cooperation on almost every issue proffered by representatives of the business and professional classes appointed to the Legislative Council. They acted, to all intents and purposes, as part of the government, sticking to consensus and avoiding controversies that might embarrass officials.

Nevertheless, the administration preferred not to trust them on ‘sensitive’ matters. One such issue was education. Primary education did not become free and compulsory for all children until 1971. ‘Non-Chinese’ children, however, enjoyed privileged access to heavily subsidised primary and secondary education from very early after World War II. Grantham personally intervened to ensure that there would be a school place for every expatriate British child. The government’s main concern was to get the necessary funding approved by the Legislative Council’s Finance Committee without alerting its Chinese and Indian members to the full extent of these expatriate privileges. The solution was simple enough. Officials prepared documentation for the committee which was less than frank. It was 1961 before senior officials ended these deceptions and began to retreat from an educational policy based on racial discrimination.

If necessary, senior officials would simply lie. One case was of major constitutional importance. In 1965, Hong Kong faced the most serious banking crisis in the second half of the last century. The Hang Seng Bank had to be rescued by HSBC, and the government was forced to inject substantial liquidity into the financial system to prevent the total collapse of several other local banks. The government commissioned a Bank of England official to investigate the origins of the near collapse of the local banks and to recommend how the system could be stabilised.

His report advised that the resources available to the Banking Commissioner should be increased. This recommendation required approval by the Legislative Council’s Finance Committee, which asked to see a copy of the Bank of England report before granting the funds. For reasons which are still unclear, officials were determined not to concede the committee’s right to be given all the information available while reviewing the government’s financial request. The colonial administration’s confidential files on this matter show that the officials involved deceived the committee about the report. They claimed, misleadingly, that they were prevented from disclosing the document because of the nature of its contents and the conditions imposed by the Bank of England in preparing it. Finance Committee members were successfully misled. At that date, the committee still conducted its business in secret, so that there was no risk of official lies coming to light or being challenged.
But the most striking display of mistrust occurred during the secret discussions between London and Beijing about the end to British rule. In 1979, MacLehose visited the Chinese capital and raised the 1997 question with Deng Xiaoping. Neither before nor after his trip did the governor take the Hong Kong Executive Council into his confidence. Although widely hailed as a liberal and reforming governor, he did not treat his Executive Councillors as if they could be trusted to give him honest and confidential advice on an issue of the gravest importance to Hong Kong. Furthermore, the British Foreign Office allowed him to breach his constitutional obligation to consult them on such a crucial issue. If the representatives of this elite group, each of whom had been hand-picked by MacLehose and then scrutinised by London, did not enjoy the confidence of the authorities, there could hardly be any groups in the local community with whom the British felt politically comfortable.

London wanted a similar secrecy to be maintained during the 1982–84 negotiations on the Sino-British Joint Declaration. This plan failed. Executive Council members were outraged when they discovered that the British Prime Minister, Margaret Thatcher, had been less than frank when talking to them in 1982 about her own meeting with Deng Xiaoping. The result was that London faced an Executive Council mutiny. Under pressure from a new governor, Sir Edward Youde, London relented and allowed council members to be told what the diplomats were up to in the Chinese capital. Significantly, Executive Council members did not advocate sharing information about the negotiations with the rest of the community.

Political paranoia

If the colonial administration was unable to regard its own appointees as entirely reliable partners, its mistrust of advocates of political and social reform verged on the paranoiac. Colonial officials felt threatened by any form of opposition or overt criticism, which made it virtually impossible to contemplate the introduction of more representative government even in the diluted form of functional constituencies.

A striking example was the 1954 case of the Association to Study Democratic Socialism. This organisation was effectively banned, initially on the astonishing grounds that its promoter’s main objective was ‘his own aggrandizement’. Grantham personally defended the ban with the claim that the promoter ‘would indulge in public political activity and become a source of embarrassment to the Hong Kong government’. The fact that the commissioner of police had declared that neither the association nor its promoter was of any political significance carried no weight with the governor.

The British Labour Party found it difficult to understand why ‘democratic socialism’ should be regarded as a taboo subject for study, and it forced the Colonial Office to intervene. In London, officials were in no doubt that Grantham had acted in flagrant violation of the law. But they decided to concoct a case to
disguise this oppressive behaviour by the Hong Kong government. Significantly, the Colonial Office’s unwillingness to protect an individual’s civil rights on this occasion was in marked contrast to its misgivings about the governor’s use of powers to summarily dismiss civil servants and policemen when suspected of corruption.34

A similar neurosis about public criticism led to criminal proceedings against a Jesuit priest in 1953. He wrote an article observing that in England judges were recruited from among private legal practitioners, which reinforced the judiciary’s independence from government. In Hong Kong, by contrast, judges were appointed from the ranks of the Colonial Legal Service, a practice which did not seem to promote the rule of law. He was tried and convicted for bringing the administration of justice into disrepute.35 In the 1960s, the Hong Kong Bar Association took up the issue. It urged London to consider barristers in private practice for appointment as judges. The Colonial Office refused the lawyers’ request to bring Hong Kong into line with British practice on the grounds that the careers of members of the Colonial Legal Service would be blocked if outsiders were appointed. Not surprisingly, the Colonial Office was not prepared to allow its reasoning to be disclosed to the public.36

The best-known example of official intolerance of public opposition in the 1970s was the harassment of the Hong Kong Observers. This middle-class pressure group was founded in 1975 by young professionals, many of them British-educated. They tried to conduct public debates on government policy. The colonial administration’s reaction was extremely hostile.37 Undeterred, they published well-researched, hard-hitting articles on current scandals and social problems in both the Chinese and English-language press. By the 1980s, they were enthusiastic advocates of an elected legislature.

The Hong Kong Observers were not the only offenders. Teachers and social workers also became suspect. The government’s response was to expand the mandate of the political arm of the police force (Special Branch) to include pressure groups and grassroots political organisations. Officials mounted ‘black propaganda’ operations to discredit those involved. A special Standing Committee on Pressure Groups (SCOPG) was established in 1978 to oversee policy on the various surveillance and monitoring operations.38

**A loss of nerve**

The insecurity of the colonial administration helps to explain why it had not welcomed London’s suggestion in the early 1950s that political reform through indirect elections was still feasible. As recounted earlier, the Colonial Office believed that functional constituencies would help to counter complaints that the British and Hong Kong governments had broken their promise of greater democracy. Grantham resisted London’s proposal, claiming that indirect elections meant special constituencies like ‘Social Welfare Services’ would have to be created, thus enfranchising ‘enthusiastic but inexperienced bodies who have
little knowledge of wider policy and whose true value to the community has still to be measured’. They would also be open to ‘penetration by undesirable elements’. The governor argued that any additional indirect elections should be confined largely to the traditional formula of justices of the peace and chambers of commerce. In practice, even this token progress proved too radical, and no expansion of indirect elections took place while Grantham remained in office.

His successor, Sir Robert Black, might have been expected to have a better sense of political management. He had been promoted from the post of Hong Kong Colonial Secretary to become the last governor of Singapore. There, he had presided over the final transition to internal self-government and the emergence of Lee Kuan Yew and his People’s Action Party as the dominant political force in that city-state. On his return to Hong Kong, however, he proved even more wary of political reform than Grantham. Black regarded campaigns for direct elections as unsettling, and he also opposed indirect elections because they would be ‘the start of a slippery slope’ leading to direct elections. He wanted London to make a formal statement quashing any expectations of significant constitutional changes.

The next governor, Sir David Trench, took much the same attitude. He, too, was nervous about starting a momentum towards constitutional change through ‘creeping indirect elections’, which supporters of political reform were now urging on the government. Trench, nevertheless, perceived a need for wider representation of the community in the Legislative Council, particularly, he believed, of the social services, the New Territories and manufacturing. The last group posed a special problem. The Federation of Hong Kong Industries had been set up to act as the administration’s main link with manufacturers. But it was now demanding the right to nominate a member of the Legislative Council.

Trench did not accept the basic rationale for functional constituencies and would not bow to this demand. He felt that if Legislative Councillors were appointed from specific business groups or professional associations, they must serve in a strictly personal capacity. If they were to serve as individuals rather than representatives, there was little point in indirect elections via functional constituencies. Trench did not believe that even the ultra-conservative and avowedly pro-British justices of the peace and the Hong Kong General Chamber of Commerce should retain their historical privilege of nominating a representative for appointment to the Legislative Council. During the 1960s, the justices of the peace representatives in particular had started to take on an overt representational role, using the annual budget debate to highlight the case for improved youth and health services, anti-tobacco measures, women legislators and an ombudsman. Faced with ‘radicalism’ from such an unlikely quarter, it was not surprising that the Colonial Office agreed with Trench that these ‘functional constituencies’ should be phased out.
Populism without democracy

Despite his opposition to functional constituencies, Trench remained anxious to broaden the membership of the Legislative Council but made little headway. Riots in 1966 and violent confrontation with Maoist extremists in 1967 made constitutional initiatives look even riskier than usual. His successor, Sir Murray MacLehose, also found himself beset by serious challenges to colonial authority. Unlike those of the 1960s, these were neither violent nor inspired by ideology. They were caused by domestic issues: corruption, the status of the Chinese language, labour disputes in the public service and, above all, by complaints about housing and social services. The political landscape in the 1970s was dominated by social protests organised very largely by middle-class professionals who could neither be suppressed nor marginalised. MacLehose needed to find some means of making the government seem more responsive to the public’s rising expectations. But he had no intention of changing the fundamentals of the power structure.

MacLehose followed much the same strategy as Trench. There would be no revival of the traditional functional constituencies but, instead, the governor would broaden the community’s representation in the legislature. He began with a school principal and a social worker. Next, he asked his staff to identify ‘grass-roots candidates’ for appointment as Legislative Councillors. This unprecedented request upset senior officials who had no experience of searching among the working class for nominees who could be guaranteed not to cause political embarrassment. With difficulty, they came up with a trade unionist, a former bus driver and a housewife.

In trying to balance the different backgrounds represented in the legislature, MacLehose took the process of creating ‘functional constituencies’ to a new stage. For the future, social background could not be ignored in selecting legislators. If functional constituencies had to be revived — as proved the case in 1985 — they could no longer be confined, as they had been traditionally in Hong Kong, to the business and professional classes.

MacLehose was not intentionally laying the foundations for a more democratic system. As one his senior officials admitted, the government was no more than ‘inching forward with its plans for minuscule political change’. Thus, despite MacLehose’s appointment of some token community representatives to the legislature, its membership was, if anything, more dominated by business representatives than ever before. Furthermore, appointed members, whether from the grassroots or from the elite, continued to cooperate with the administration, and the Legislative Council remained largely free from controversy and confrontation. This cosy collaboration would not last much longer, however.

Negotiations on the 1984 Sino-British Joint Declaration setting out the terms for ending colonial rule made democracy an issue of the highest importance. At first, neither the Chinese nor the British negotiators contemplated radical reform of Hong Kong’s existing political system. Indeed, constitutional
change only appeared on the agenda in December 1983 when Prime Minister Thatcher warned her cabinet committee dealing with Hong Kong that the public, both in the colony and in the United Kingdom, would reject any agreement that did not incorporate the principle of elections.

Despite her intervention, British diplomats, colonial officials and Hong Kong’s business-dominated Executive Council retained their deep-seated reservations about democracy. Indirect elections would prove as far as they were ready to go.\(^{50}\) After the Joint Declaration was published, a delegation of appointed members of the Executive and Legislative Councils went to London and publicly warned the British Prime Minister not to ‘move too quickly towards democracy because this would jeopardise stability and prosperity’ in Hong Kong.\(^{51}\)

For its part, the Chinese government had not been much impressed by the belated insistence of the British negotiators on an elected legislature. Beijing saw no advantage in making a commitment to universal suffrage or a wholly-elected Legislative Council, and London took six months of difficult negotiations to induce the Chinese side to accept the vague formula that Hong Kong should have a legislature ‘constituted by elections’.\(^{52}\) Chinese officials believed they had an understanding with their British counterparts that Hong Kong’s existing system would be preserved indefinitely ‘with no changes’. In consequence, it was improper, Beijing claimed, for the colonial administration even to consult the public about such reforms as direct elections.\(^{53}\) In the years that followed, Beijing was to view the creation of functional constituencies as less objectionable than the introduction of universal suffrage.

The colonial administration and members of its Executive and Legislative Councils took much the same view. When, in 1985, the legislature discussed the white paper on constitutional development, little enthusiasm was displayed for any kind of political change. Exactly half the 28 appointed members who participated chose to make no comment on the merits of reform in general or of democracy in particular. Only four appointed members came out in favour of direct elections, while nine expressed misgivings about such a step. The most venomous objections came from textile magnate, Francis Yuan-hao Tien.

\(\ldots\) democracy gone wrong is a dire danger — put graphically, it is something like the art of running the circus from the monkey cage. Democracy gone wrong is defined as a system in which the whole is equal to the scum of the parts. If a majority tells us that \(2+2=5\) or if it seeks to spend money which it does not possess, then we are close not to democracy, but to dictatorship.\(^{54}\)

Functional constituencies, by contrast, attracted criticism from only four members. If anything, the general sentiment in the Legislative Council was that not enough functional constituencies had been proposed to meet demand from all the business and professional groups that merited a guaranteed place in the new political system.\(^{55}\)
The government did nothing to challenge this negative response. On the contrary, it seemed to welcome the way in which public debate had been diverted from democracy in the form of universal suffrage and directed to arguments about the merits of indirect elections and the number and types of functional constituency. The attorney general, who, until recently, had been a prominent London lawyer, endorsed the anti-reform mood of the appointed members by echoing their misgivings about democracy.

The recent experience of [London] in transplanting western-style constitutions to dependent territories in post-war years has not been altogether successful. . . . Furthermore . . . Asian countries have not readily taken to democratic methods of government. Certainly they have adopted constitutional forms quite different from the Parliamentary style of government that has flourished in Europe. So in Hong Kong, it is all the more necessary to proceed slowly. . . .

Repackaging the past

Yet, some degree of political reform was unavoidable because of the pledges given in connection with the Joint Declaration both to the British Parliament and in a Hong Kong government white paper. Functional constituencies offered a substitute for universal suffrage, and they became a major political institution in 1985. They were presented to the Hong Kong public and the outside world as a bold innovation, a major advance towards a democratic future. These indirect elections were to be the first stage in the programme, the administration pledged, ‘to develop progressively a system of representative government at the central level which is more directly accountable to the people of Hong Kong and is firmly rooted in Hong Kong’.58

This statement seemed to promise the transfer of control of the legislature from colonial appointees dominated by business interests to the community’s elected representatives. Supporters of democracy believed their day was about to dawn. Political scientists were more sceptical. They saw functional constituencies as part of a ‘corporatist strategy’ to promote political consensus and stability and bestow a degree of legitimacy on the political system while keeping political power firmly in the hands of the civil service and its business allies.59

As subsequent events revealed, there was no British blueprint for a democratic future. The reality was that functional constituencies were no more than a repackaging of an old colonial formula under a pretentious modern label. Their resurrection in 1985 on a larger scale than in the past was another episode in the discreditable struggle to minimise democracy in Hong Kong during the second half of the last century.

But even this modest reform changed the political landscape drastically. The government could define most of the electorates to ensure that its traditional allies among the business community retained a controlling voice. But in a few
constituencies, voters could not be relied on to reject ‘radical’ and ‘populist’ candidates.\textsuperscript{60} A limited but important opportunity was created for members of pressure groups committed to political reform to enter the legislature, notably as representatives of the legal, educational and social welfare professions.\textsuperscript{61} These ensured that the debate over democracy remained high on the public agenda.

They were still a minority in the Legislative Council, outnumbered by the representatives of business-dominated functional constituencies and the administration’s appointees. But they had extensive public support. The people of Hong Kong declined to be bought off with functional constituencies as an acceptable substitute for universal suffrage. A majority of the community wanted the first directly-elected members to join the Legislative Council no later than 1988.\textsuperscript{62} This date was far too early for Beijing, and Chinese and British officials struck a secret deal to postpone direct elections until 1991, which caused widespread public indignation.\textsuperscript{63}

The historical role of functional constituencies

**Post-colonial crisis**

Functional constituencies continued to exert a powerful influence over Hong Kong’s constitutional development during the final years of British rule. Behind the apparently bitter conflicts between London and Beijing over political reforms, there was a shared apprehension up to mid-1992 about the consequences of universal suffrage.\textsuperscript{64} Both British and Chinese officials had found in functional constituencies a formula which limited the risks of democracy.

The arrival of Christopher Patten, the last colonial governor, brought an end to British attempts to avoid genuine constitutional reforms. Nevertheless, the disputes with Beijing which followed were not about democracy in terms of universal suffrage. The number of directly-elected seats in the Legislative Council had been decided already by mutual Sino-British agreement and the Basic Law.\textsuperscript{65} The central issue was the definition of functional constituencies and the size of their electorates, including a ‘super’ functional constituency to be set up as the Election Committee.\textsuperscript{66}

At the heart of the Chinese leadership’s case against Patten was the complaint that he ‘attempted to apply direct elections to all the members of the Legislative Council in 1995’ because he ‘tried to change the nature of the election by functional constituencies’.\textsuperscript{67} Chinese officials regarded ‘industrialists and businessmen’ as the primary architects of Hong Kong’s prosperity and therefore in need of separate and special representation in the power structure if the capitalist economy was to survive.\textsuperscript{68} For the same reason, the Basic Law, the Mainland’s blueprint for post-colonial arrangements, increased the power of indirectly-elected legislators.\textsuperscript{69}
The rejection of universal suffrage and the reliance on indirect elections continued to create controversy after the British had departed. In 2004, the Chinese government decided to halt the introduction of universal suffrage for the 2007 (chief executive) and 2008 (Legislative Council) elections. The Special Administrative Region government and Beijing’s local allies then made considerable efforts to divert public attention away from universal suffrage and to focus discussion on improvements to the arrangements for functional constituencies.70

Debate about functional constituencies took on a new dimension in 2005. Tung Chee Hwa, the first chief executive, had been nominated for office by an election committee, which was a business-dominated functional constituency by another name. After Beijing had endorsed the committee’s choice and appointed him for another five-year term in 2002, he acknowledged a special relationship with his electors. Tung presented himself as identified totally with the business community which, thanks to the election committee, had ensured his second term.

[This meeting with the joint chambers of commerce] is like coming home. Indeed we the business sector of Hong Kong are one big family. . . . Yet for me to say that I am coming home is only half correct, because, in a very real sense, I have never left it!71

At the time, this statement had seemed like a mixture of personal sentiment and politically polite rhetoric. The full implications of the functional constituency formula only emerged after Tung stepped down in 2005. His premature retirement was followed by an acute constitutional dispute. This crisis developed after Mainland officials claimed that the electoral process prescribed by the Basic Law created a close identity between a chief executive and the election committee that endorsed him, which must be maintained. In consequence, they insisted among other arguments, that because his successor would be selected by the same election committee that had chosen Tung, the new chief executive would only be entitled to serve out the unexpired portion of Tung’s term. This view was contrary to the apparent provisions of the Basic Law. It was more important, it seemed, to fulfil the expectations of the functional constituency that had originally selected the chief executive than to comply with the plain language of the Basic Law.72

This special treatment accorded to the business elite and its aspirations reflected a widespread belief among Mainland officials and their Hong Kong supporters that democracy would somehow undermine the economy.73 This abiding fear of the public at large was a legacy from the British. Patten’s response to this sort of mistrust before 1997 had been one of surprise. As he put it:
The notion that the people of Hong Kong, who operate as successfully as anyone in the world in every market known to man and woman, are not sufficiently responsible and sophisticated to manage a modest increase in the amount that they can participate in public affairs, in my view, shows an astonishing view of their aptitude and capacity.  

Without the good sense of Hong Kong’s remarkable people, there would have been no economic success in the first place. It was hard to imagine a community less likely to use universal suffrage to destroy the prosperity they had toiled so hard to create in the last 50 years. The Mainland saw things differently and was convinced that Hong Kong’s progress was dependent mainly on the business community. The nation’s president declared: ‘Industrial and business sectors in Hong Kong have played a dominant role in the process of economic prosperity in Hong Kong, and served as an important force in maintaining social stability’. Indirect elections and functional constituencies remained the surest way of achieving business pre-eminence in the political sphere as well.

Although one of Hong Kong’s most senior officials claimed that ‘the sun-lit path of democracy’ was among the ‘core values’ on which Hong Kong’s success depended, the Secretary for Justice twice informed the Legislative Council that Hong Kong would adopt its own view of what democracy ought to mean. ‘Indirect elections could lawfully be retained,’ she declared, ‘consistently with the ultimate aim of universal suffrage.’ On that analysis, functional constituencies might survive indefinitely.
CHAPTER 3

Privileged to vote: Inequalities and anomalies of the FC system

Simon N.M. Young and Anthony Law

Introduction

The Legislative Council of the Hong Kong Special Administrative Region (LegCo) uses an electoral system known as functional constituencies (FCs) to elect half of its members. The system confers a right to vote on a small percentage of the adult population based on membership or registration in a recognised social, economic, industrial, commercial, political advisory, or professional body or sector. Geographical affinity within the region plays no role in determining the electorate of an FC. A unique feature of the system is the conferral of voting rights on incorporated and unincorporated bodies alongside individual voters. The system of FCs runs parallel to the system of geographical constituencies (GCs), which in 2004 was used to elect the other half of the members in LegCo.

This chapter explores Hong Kong's FC system from the perspective of its constituencies and electors. In the first part, the system of FCs in terms of its delineation of constituencies from 1985 to 2004 is examined. The official justification of the system as articulated by various officials and stakeholders over the years is studied. Next, when the FC system is considered alongside the GC system, an infringement of the 'one person, one vote' principle is seen. In the two sections that follow, the 2004 arrangements and the development of FCs since 1985, particularly against the backdrop of significant constitutional events, are described. A critical look is taken at which functions and sectors are recognised and which are not. The manner of grouping functions together into constituencies is explained. Finally, the significant disparity in constituency sizes is examined to draw out the deleterious effects on voting power.

In the second part, the FC electorate is analysed. Of the three methods used to determine electors, the most common method is membership in a recognised umbrella organisation. Each method applies arbitrary and sometimes illogical distinctions for the purpose of limiting the overall size of the electorate. Many of the processes for determining and qualifying electors are not stipulated in the legislative scheme; instead, they are the subject of policy and ad hoc decisions by the administration, LegCo, and membership rules of private bodies. When the
standing of individual electors is compared to that of corporate electors, systemic examples of unequal treatment are observed. This is primarily due to the ability of large corporate bodies to pack FCs with controlled entities so as to increase their number of votes.

The chapter ends with a summary of findings and conclusions organised under the headings of systemic inequalities, anomalies and incoherence, inadequate safeguards to protect against abuse, abdication of governmental responsibility, and inaccessible primary data.

The functional constituency system

Definition and rationale

Before functional constituencies were introduced in Hong Kong, there was a practice of appointing leaders from various economic and professional sectors to sit as unofficial members of LegCo. These members were capable of reflecting the views of Hong Kong people and contributing their ‘specialist knowledge and valuable expertise’ to LegCo. The FCs evolved this practice into a formal one using elected representatives.

The introduction of FCs in 1985 was part of an overall plan to develop representative government in Hong Kong, and in LegCo particularly, during the final 12 years of British sovereignty. In a LegCo motion to welcome the 1984 White Paper on the Further Development of Representative Government in Hong Kong, the chief secretary outlined in detail a set of principles and objectives, both immediate and long-term, behind the FCs and other reforms that were introduced in 1985:

Objectives
Our objectives can be stated quite simply. They are, first, that the future system of representative government in Hong Kong should be rooted firmly in the community and thereby be directly accountable to the people of Hong Kong. The second objective is to provide for changes in the composition and method of selection of the Legislative Council which will ensure that it is broadly based, and which will minimise any tendency to factional politics and divisiveness. The third objective is to provide a foundation for further developments in the composition and method of selection of the Legislative Council, in the light of experience gained.

Principles
To achieve these objectives the plans in the White Paper have been based on four principles. The first principle borne in mind was that the system should be
based, as far as possible, on our existing institutions and should preserve their best features, including the well-established practice of government by consensus. The second principle borne in mind was that the system should be developed gradually and progressively. The third principle borne in mind was that a reasonable balance should be struck in the membership of the Legislative Council between elected, appointed and official members. And the fourth principle borne in mind — and very much so — was that the more representative system should not put at risk those factors which have secured the social stability and economic prosperity of Hong Kong.

In the rather longer term the application of these principles should enable three other objectives to be realised. That is to say, the application of these principles should assist us, first, to decide upon the changes which should be made in the composition, method of selection and powers of the Executive Council; secondly, to define the position of the Governor in relation to the Legislative and Executive Councils; and, thirdly, to determine how best to make the executive organs of the Government more accountable to the legislature.

The ultimate objective of the application of these principles is to ensure that a system of government is firmly established during the next twelve years which will preserve and enhance the essential features of our present society and which will ensure a smooth transition for Hong Kong from its present status as a British Dependent Territory to that of a Special Administrative Region of China, with a high degree of autonomy.4

In May 1999, the Hong Kong Special Administrative Region (HKSAR)’s Constitutional Affairs Bureau reiterated two of the aims of FCs in response to a question about the ‘concept of FCs’:

Elections of LegCo members by functional constituencies were first introduced in 1985. The aim of these elections is to ensure that the economic and professional sectors which are substantial and of importance in the community are represented in the legislature, and that they can have the full opportunity to contribute, using their professional qualifications and experience, to the work of the Legislative Council and to the well-being of our community.5

Justifications by Chinese officials for the system of FCs tend to emphasise the importance of having different sectors of society represented in LegCo for maintaining Hong Kong’s stability and prosperity. In 2002, the then vice-premier, Qian Qichen, gave the following response on the question of how the HKSAR’s political system should develop:

In my view, it should design its own path for development according to its actual conditions and gradually proceed. It should not blindly copy experiences
of others.... To promote democracy in Hong Kong, one cannot have Hong Kong emulate the system of other regions.

Instead it should see whether it is suited to Hong Kong’s characteristics; whether it is conducive to safeguard the prosperity and stability of Hong Kong; and whether it would be accepted by people from various walks of life in Hong Kong.

Hong Kong is a commercial city and it is one of our country’s special administrative regions. This determines that it cannot copy the political systems of another country. The past practices have shown that the model based on functional constituency elections is an effective way to ensure that people from various walks of life can have balanced participation in political life. As a result, this should be kept intact. Other systems that also conform to Hong Kong’s characteristics should also be retained.6 [emphasis added]

The HKSAR Government’s 2004 Constitutional Development Task Force echoed these views of Chinese officials in its own views on issues of principle relating to constitutional and political development:

5.18 When submitting the Basic Law (Draft) and related documents at the Third Session of the Seventh NPC on 28 March 1990, Director Ji Pengfei explained that, with regard to the political structure of the HKSAR, consideration must be given to the interests of the different sectors of society. As seen from the history of Hong Kong’s economic development, its economic prosperity is largely attributable to the joint efforts of the trade and industrial sectors, the middle class, professionals, the working class and other sectors of society. Therefore, this principle deals with a proper appropriation of political power among all sectors, with the aim of preserving prosperity and stability. In accordance with this principle and the actual situation at that time, half of the seats in the Legislative Council were reserved for functional constituencies for the 10 years after reunification.

5.19 The Task Force is of the view that, any proposed amendments must enable different sectors of society to be represented within the political structure and to participate in politics through various channels, with consideration given to the interests of different sectors of society.7

Since the transfer of sovereignty in 1997, the prevailing justification for maintaining the FC system has been preserving prosperity and stability. This justification can be reduced to two assumptions: unless the FC system exists, business and other sectoral interests will not find substantial representation in LegCo; and substantial representation of such interests in LegCo is integral to maintaining Hong Kong’s prosperity and stability. Whether these assumptions hold true in present-day Hong Kong is very much open to debate.
Functional and geographical constituencies

The ‘one person, one vote’ principle

In the 2000 LegCo election, 30 members were elected by FCs, 24 by GCs, and six by the Election Committee. In 2004, with the Election Committee ceasing to return LegCo members, 30 came from the FCs and 30 from the GCs. Under the GC system, the elector votes for a list of candidates in one of five districts. It is a system of direct elections based on an electorate made up of the adult population of Hong Kong permanent residents. In 2004, each GC returned between four and eight representatives by a system of proportional representation.

The most fundamental and often-voiced criticism of the FCs is that it privileges a very small proportion of the general electorate with an additional right to vote in LegCo elections. In 2000, there were 3,055,378 individuals registered to vote in the GC election but only 5.25% (or 160,487 individuals) was entitled to vote in the FC election. There was only a minuscule improvement in 2004 when 5.76% of the general electorate was privileged to vote in the FCs. Thus, there appears to be a clear breach of the ‘one person, one vote’ principle.

The additional right to vote that the FC system confers was the subject of a constitutional challenge in respect of the 1995 LegCo election. In Lee Miu Ling v Attorney General, the applicant was a GC elector who was not entitled to vote in the FCs. She challenged this disentitlement as an infringement of the ‘one person, one vote’ principle protected by Article 25 of the International Covenant on Civil and Political Rights (ICCPR), which provides that all citizens have the right to vote ‘by universal and equal suffrage’. At the time, Article VII, paragraph 5 of Hong Kong’s constitution, the Letters Patent, prohibited the enactment of laws that were inconsistent with the rights protected in the ICCPR as applied to Hong Kong (the ‘human rights clause”).

The challenge was rejected in both the High Court and Court of Appeal. The courts found the system of FCs to be constitutional because at the time, Article VII, paragraph 3 of the Letters Patent (i.e., two paragraphs above the human rights clause) expressly sanctioned the provision of an additional right to vote to limited sections of the population. This paragraph read as follows:

Nothing in this Article shall be construed as precluding the making of laws which, as regards the election of the Members of the Legislative Council, confer on persons generally or persons of a particular description any entitlement to vote which is in addition to a vote in respect of a geographical constituency.

It is important to note that the Court of Appeal did not rule on whether FCs infringed the ‘one person, one vote’ principle, nor did it consider whether the system was a reasonable restriction on the right to vote by universal and equal
suffrage. The decision appears to rest on the narrow basis that, at the time, there existed a specific clause in the constitution permitting some to have an additional right to elect LegCo members.

There has yet to be a challenge to the FC system under the Basic Law of the HKSAR (Basic Law). Article 26 of the Basic Law provides that permanent residents of the HKSAR have the right to vote in accordance with law. The analysis of the issue under the Basic Law will likely be approached in a different manner because of important changes that have taken place since 1995. There are three that should be noted.

First, unlike the Letters Patent, the Basic Law has no express provision that permits the operation of an electoral system that infringes the ‘one person, one vote’ principle. While Annex II of the Basic Law does require the use of functional constituencies in forming the first three terms of LegCo, nowhere does it expressly permit, with the same degree of specificity as the provision in the Letters Patent, an infringement of the ‘one person, one vote’ principle.

Secondly, since 1998, over 90% of the 1995 FC voters have been disenfranchised. The facts in *Lee Miu Ling* showed that, as a result of the Patten reforms, (see discussion of historical developments below) 2.9 million persons out of the 3.9 million GC electorate potentially had the right to vote in the FCs. In June 2003, the Constitutional Affairs Bureau reported that the potential electorate in the 2004 FC election was estimated to be only 254,676 individuals.

While these first two changes tend to favour a successful challenge, a third and recent development tends to dampen this position. As described in detail below, the interpretations of the Basic Law and subsequent decision by the Standing Committee of the National People’s Congress (NPCSC) in April 2004 demonstrate that political and electoral arrangements are matters that greatly concern the central government. The implication is that any constitutional challenge to the system of FCs may ultimately attract legal sanctioning of the status quo by the NPCSC.

**Proportion of FC seats to GC seats**

From their inception until 2004, elected FC members have always outnumbered elected GC members. LegCo was given its first democratic element in 1985 with the introduction of the FCs. The proportion of FC seats in LegCo gradually increased from 21% in 1985 to 50% in 1995 (see Appendix 1 on the CDROM). Since 1995 it has remained at 50%. GCs, on the other hand, were introduced in 1991 with 18 seats representing 30% of all LegCo seats. This increased to 33% for the 1995 and 1998 elections and to 40% for the 2000 election. It reached its highest proportion thus far of 50% in the 2004 elections.

The Basic Law makes no express provision for the proportion of FC and GC seats in the 2008 LegCo term. In Annex II of the Basic Law, entitled ‘Method for the Formation of the Legislative Council of the Hong Kong Special
Administrative Region and Its Voting Procedures’, clause 3 provides for the following in respect of the formation of LegCo subsequent to the year 2007:

With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People’s Congress for the record. [Emphasis added.]

On 6 April 2004, the NPCSC adopted an interpretation of this clause. Under this interpretation, where the chief executive of Hong Kong submits a report to the NPCSC, the NPCSC would decide on whether there is a ‘need to amend’ the method of forming LegCo after 2007. The NPCSC would do this in accordance with Article 68 of the Basic Law and ‘in the light of actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress’. If the decision was positive then it would be left to the HKSAR government to propose the necessary implementing legislation in LegCo. These proposals would only take effect after passing three prerequisite legal procedures: endorsement of a two-thirds majority of all the members of LegCo, consent of the chief executive, and reporting to the NPCSC for the record. If, however, the NPCSC’s decision was negative or if the chief executive declined to submit the report that triggered the process, then the method of election for the 2008 election was to follow the unchanged terms of Annex II.

Following receipt of the chief executive’s report on 15 April 2004, the NPCSC gave its decision 11 days later on 26 April 2004. It decided that universal suffrage would not apply to the election of all members of LegCo in 2008, and that the ‘ratio between members returned by functional constituencies and members returned by geographical constituencies through direct elections, who shall respectively occupy half of the seats, is to remain unchanged.’ The procedures for voting on bills and motions in LegCo also would remain unchanged. Without violating these conditions, ‘appropriate amendments that conform to the principle of gradual and orderly progress may be made to . . . the specific method for forming [LegCo] in the fourth term in the year 2008 according to the provisions of Articles 45 and 68 of the Hong Kong Basic Law and the provisions of Article 7 of Annex I and Article III of Annex II to the Hong Kong Basic Law.’

While adhering to these limitations, gradual and orderly changes to the total number of LegCo seats, and the arrangement and electorate composition of the FCs, are possible for the 2008 election. These matters remain within Hong Kong’s autonomy. If the total number of LegCo seats increases then the number of FC seats will increase accordingly.
**Voting methods in LegCo**

The FC members of LegCo are treated as a separate chamber when voting is done on any motion, bill or amendment to a government bill introduced by an individual member of LegCo. If such a motion, bill or amendment is to pass, it must obtain both a simple majority of votes amongst FC members and a simple majority amongst all other LegCo members. Effectively, this amounts to giving the FC members a veto over legislative action introduced by GC members. Bills and amendments to bills introduced by the government only require a simple majority vote of all members of LegCo present.

**Arrangements of the 2004 election**

In September 2004, Hong Kong held its seventh FC election. There were 28 FCs, each electing a single representative, except for the Labour FC which elected three representatives. Appendix 2 shows the list of FCs. The constituencies cover a broad range of different sectors including commercial (two FCs), industrial (two FCs), finance, accountancy, labour, social welfare, medical, health services, education, legal, engineering, real estate and construction, architectural, surveying and planning, financial services, tourism, textiles and garments, import and export, wholesale and retail, transport, information technology, insurance, agriculture and fisheries, sports, performing arts, culture and publication, and catering. There are two additional FCs of a political advisory nature, one composed of the senior executives of the Heung Yee Kuk and the other composed of District Council members. Appendix 3 provides a brief historical description of each constituency.

The arrangement of the constituencies for the 2004 election was the same as that for the 2000 election (see Appendix 2). There were a number of changes to the composition of specific constituencies since the 2000 election. For example, full-time teachers of schools of continuing education, such as the HKU School of Professional and Continuing Education, were specifically added to the educational functional constituency in 2003. There were other changes, mostly made on a rolling basis to update the composition according to legislative and organisational changes (e.g., name changes, listed bodies ceasing to exist, new bodies added).

These composition changes resulted in a less than a half-percent increase in the potential FC electorate (from 298,138 potential electors in 2003 to 299,534 in 2004). When compared to the 1998 potential FC electorate size (i.e. 233,739) and 2000 potential FC electorate size (i.e. 260,331), the 2004 figure represents an increase of 28% and 15% respectively.
Historical development of functional constituencies

Appendix 2 is a table that shows the arrangement or delineation of FCs and their development from 1985 to 2004. Appendix 3 provides a brief historical description of each of the 28 FCs that were used in the 2004 election, and some other FCs that no longer exist. The table in Appendix 2 shows that the FCs developed gradually in the first decade with only 11 FCs in 1985, 13 in 1988 and 20 in 1991. In the second decade, the number of FCs jumped to 29 in 1995, as a result of the Patten reforms, and has stabilised at 28 since 1998. Appendix 2, however, does not show the significant changes to the electorate makeup and size in the two election years sandwiching the handover of Hong Kong in 1997.

The important political and constitutional backdrop to the historical development of FCs is summarised below. The most significant developments include the reforms of Governor Chris Patten to abolish the system of corporate voting and to expand the potential electorate size from 0.1 million to 2.7 million individuals, and the subsequent dismantling of these reforms in 1997 by the NPCSC, the Beijing-appointed Preparatory Committee, and the Provisional Legislative Council. The model of FCs restructured by the Preparatory Committee and Provisional Legislative Council is the one on which the 2004 LegCo election was based.

Pre-1995 developments

The origins of FCs as an electoral system can be traced to the colonial government’s 1984 Green Paper: The Further Development of Representative Government in Hong Kong. The following lengthy excerpt from the Green Paper explains the historical reasons for creating FCs:

19. The most distinctive feature of the present system of government in Hong Kong is that it operates on the basis of consultation and consensus. It is not a system based on parties, factions and adversarial politics but one of broad agreements which seeks to take a pragmatic approach to the problems of the day. There is full and frank discussion of the many important matters which arise, and decisions are reached on the basis of general consensus. The very real advantages of this system, which have enabled Hong Kong to enjoy sustained periods of economic growth and internal stability, must not be forgotten, or lightly thrown aside, in developing plans for the introduction of more representative institutions in Hong Kong.

20. This system of consultations and consensus has grown up around two separate approaches to the question of how the people of Hong Kong should be represented. Two different types of shared interests among the people have been recognised — first, those arising from their place of residence; second,
those arising from their occupations. These groupings can be described as ‘constituencies’—geographical constituencies and functional constituencies.

21. The geographical constituencies are based on institutions such as the Urban Council, the Heung Yee Kuk, the rural committees and, more recently, the District Boards.

22. The functional constituencies are based on people’s common interests, such as commerce, industry, law, medicine, finance, education, trade unions, etc. Many of these constituencies have a very long history in Hong Kong.

23. The development of these rather unique constituencies has been encouraged to a considerable degree by the compact geographical nature of Hong Kong.

24. It is from these geographical and functional constituencies that the appointed unofficial members of the various institutions of government, in particular the Legislative Council and the Executive Council, traditionally have been drawn. They have been selected to reflect the views of the Hong Kong community and its main preoccupations, and they provide considerable expertise and knowledge. Moreover, the system has evolved steadily to keep pace with the changing circumstances of Hong Kong: for example, the number of Unofficial members of the Legislative Council has been doubled during the past ten years, elected members of the Urban Council have been appointed to the Legislative Council for many years, and more recently two elected members of the District Boards have been appointed to the Legislative Council.

25. It is proposed to build on these geographical and functional constituencies by developing the present system whereby all Unofficial members of the Legislative Council are selected and appointed by the Governor from these constituencies into a system which will provide for a substantial number of Unofficial members to be elected from within these constituencies to the Legislative Council.

26. In the case of the geographical constituencies, it is proposed that an electoral college should be established consisting of all the elected and appointed unofficial members of the Urban Council, the Regional Council and the District Boards, which would elect a specified number of members of the Legislative Council. In the case of the functional constituencies it will be necessary to define clearly those constituencies which should be invited to elect representatives to the Legislative Council and to devise appropriate means of conducting those elections.
The *Green Paper* promised ‘to develop progressively a system of government the authority for which is firmly rooted in Hong Kong, which is able to represent authoritatively the views of the people of Hong Kong, and which is more directly accountable to the people of Hong Kong.’ The government did not propose the returning of all the LegCo members by GC elections for the reason that ‘direct elections would run the risk of a swift introduction of adversarial politics, and would introduce an element of instability at a crucial time’, referring to the Sino-British negotiations over the future of Hong Kong. Those who were to be returned by FC elections were only to form a minority of representatives in LegCo. The majority was still to be made up of appointed members (official or unofficial) and members returned by an electoral college (the predecessor of the Election Committee).

After implementing the recommendations in the 1984 *Green Paper* and *White Paper*, the first FC election was held in the autumn of 1985. By this time, China and Britain had already signed the Sino-British Joint Declaration on the Question of Hong Kong (Joint Declaration), an international treaty that provided for the British return of Hong Kong to China on 1 July 1997, when the New Territories lease was to expire. The Joint Declaration contained the policy that the ‘legislature of the Hong Kong Special Administrative Region shall be constituted by elections’. How those elections were to be conducted was not specified.

After the 1985 LegCo elections, the colonial administration again consulted the public, first with a green paper followed by a white paper, as to the way forward for democratisation in Hong Kong. The 1988 *White Paper: The Development of Representative Government: The Way Forward* reported that the FC system had ‘worked well’ since 1985 and there was a ‘good case for limited expansion in 1988’. The *White Paper* provided the following guidelines by which to consider whether a group or groups should become an FC:

(a) functional constituencies should be substantial and of importance in the community;

(b) any new constituency should be clearly defined to avoid difficulties over who qualifies for inclusion and how the electorate is prescribed;

(c) constituencies should not be based on ideology, dogma or religion;

(d) particular groups or bodies should not be represented in more than one functional constituency.

In the 1988 LegCo election, there was no change in the total number of LegCo members (see Appendix 1). However, there were two new seats in the two new FCs for the accountancy and health care sectors. The Labour FC
continued to return two members while the rest of the FCs returned one member each.

Following the signing of the Joint Declaration, China commenced a process to draft a legal framework for post-1997 Hong Kong. The drafting of this 'Basic Law' involved the work of two committees: the Basic Law Consultative Committee (BLCC), which was composed entirely of Hong Kong delegates, and the Basic Law Drafting Committee (BLDC), which was composed of mostly Mainland delegates and a minority of Hong Kong delegates. In respect of the future political framework, it was the position of China that any political developments in the years leading up to 1997 should ‘converge’ with the framework that would be contained in the Basic Law.

The Basic Law drafting process took place from late 1985 to early 1990, encompassing the events of June 1989 in Tiananmen Square. At the time, a number of models for forming the post-1997 LegCo was discussed. Before June 1989, Louis Cha, a BLDC member, proposed the so-called ‘mainstream model’, which involved a LegCo with mostly FC- and GC-elected members, but the proportion of GC members would begin at 27% in 1997 and gradually increase to 50% in 2007. After the Tiananmen Square incident, three alternative models were proposed by various notable persons. T.S. Lo, a BLCC vice-chairman, recommended a 1997 LegCo to be formed by GC-, FC- and Election Committee-elected members in the ratio of 25:50:25. He recommended that FC members have a veto power over decisions of the other members in LegCo.

The second alternative was known as the ‘Omelco Consensus’ because it had been devised by the members of the Executive Council and the Legislative Council (Omelco). Under this model, the proportion of FC members to GC members was to be 50:50 as early as 1995. The proportion of GC members would increase to 67% in 1999 and become 100% in 2003. The third alternative was known as the ‘4:4:2’ model. Representing a compromise reached by certain conservatives and some pro-democracy activists, it provided for a GC, FC, Election Committee member ratio of 4:4:2 in 1997. By 2001, there would only be GC and FC members in the ratio of 6:4.

Neither of the last two alternatives was acceptable to Beijing. As a result, a blended version of the ‘mainstream model’ together with T.S. Lo’s model was written into the Basic Law, which was adopted by the National People’s Congress and promulgated by the president of the People’s Republic of China on 4 April 1990.

The 1991 LegCo election was the first territory-wide election in which there were GC elections. The total number of LegCo members and the FC members was increased to 60 and 21, respectively (see Appendix 1). The number of FCs increased from 13 to 20 (see Appendix 1). This was due to the addition of four new FCs and the restructuring of the Engineering, etc., FC into three separate FCs (see Appendices 1 and 3). Two of the four new FCs were the Urban Council and the Regional Council FCs, both of whom were only new in form since they had existed under the electoral college arrangements in the 1985 and 1988
elections. According to the 1988 White Paper, there were ‘strong reasons for continuing to have elected representatives of the two Municipal Councils on the Legislative Council’, as they formed ‘a key part of the system of links between the three tiers of representative government’, which then existed. One of the principles governing the three-tiered system was that the tiers ‘should co-operate effectively, and be linked in such a way that the views and concerns at each level of government are adequately represented at the next higher level.’

**The Patten reforms and 1995 LegCo election**

In 1992, British politician Christopher Patten came to Hong Kong to become the new governor, replacing David Wilson, who had been often criticised for being too deferential to Chinese interests. Shortly after his arrival, without consulting Beijing, he put forward a controversial constitutional reform package. Patten proposed, among other matters, to implement a fundamental revamp of the FC system to include as many electors as legally possible in the 1995 LegCo election.

As he explained it, his objectives were ‘to extend democracy while working within the Basic Law. All [my] proposals . . . would, I believe, be compatible with the provisions of the Basic Law. What these arrangements should give us, therefore, is a ‘through train’ of democracy running on the tracks laid down by the Basic Law.’ The main proposed changes to the FC system were:

- the replacement of corporate voting via authorised representatives with voting by individual members or employees in all the FCs, and
- the creation of nine new FCs to include all the working population.

Under these arrangements, the electorate of the FCs was to increase five-fold resulting in as many as 2.7 million potentially qualified FC electors. According to Patten, these reforms would ‘give every single worker in Hong Kong the opportunity to elect to the Legislative Council a Member to represent him or her at the workplace. Secondly, by encompassing all occupations, we will ensure broad representation in the Legislative Council.’

China immediately objected, stating the proposals were in breach of the Basic Law, the Sino-British Joint Declaration, and the long-running understanding between Britain and China. Patten denied these accusations, stating in his biography some years later: ‘We had sinned, but it was not entirely clear how.’ To the Chinese political leaders, changing the FC system in such a dramatic way was to do away with it and to replace it with a system of GCs in disguise. This was said to violate the spirit if not the letter of the Basic Law. Common law scholars were also divided in their opinion as to the validity of Patten’s constitutional reform package in light of the Basic Law.

To break the deadlock, the British and Chinese governments held 17 rounds of diplomatic negotiations to settle the matter but to no avail. Patten himself also
unsuccessfully offered a concession to Beijing to cut down the size of the electorate of the nine new FCs by a third to 900,000. Alternative options were also raised by pro-democracy legislator Emily Lau and the pro-China Liberal Party then led by Allen Lee. While the former demanded the abolition of the FC system, the latter suggested a further reduction in the size of the FC electorate.

In 1994, after vigorous debates in LegCo, Patten’s constitutional reform package was written into the Legislative Council (Electoral Provisions) Ordinance (Cap 381) forming the method of electing the 1995 LegCo. In the same year, the NPCSC resolved to dissolve the local three-tier political system, including the 1995 LegCo, on 30 June 1997. In other words, there was to be no ‘through train’ for the LegCo members returned in the 1995 LegCo election.

The 1995 LegCo election was the last territory-wide election of the colonial era and the most democratic election thus far. The total number of LegCo members remained at 60; the 30 FC members (see Appendix 1) were elected from 29 FCs, including the nine new ones (see Appendix 2). The Labour FC returned two members while the remaining FCs returned one member each.

**Post-1997 LegCo elections**

When the Basic Law was adopted in 1990, the National People’s Congress (NPC) also adopted a decision providing for the formation of the first government and LegCo of the HKSAR. The term of the first chief executive was to be for five years, while the first LegCo was to be for only two years. In 1996, in accordance with this decision, the NPC set up a Preparatory Committee, whose 150 members were appointed by the NPCSC, to form the first government and LegCo. A 400-member Selection Committee, whose duty was to select the chief executive, was also established. The Selection Committee was given the task of ‘electing’ the members of a provisional legislative council that was to take the place of the 1995-elected LegCo after the handover.

The establishment of the Provisional Legislative Council took many by surprise since there was no mention of it in the original NPC decision. In late 1996, both the future chief executive and the Provisional LegCo members, which included a large number of those who were also members of the Selection Committee, had been ‘elected’ by the Selection Committee.

To reassure the public that the Provisional LegCo was only a temporary measure and was not to be the first HKSAR legislature, the Preparatory Committee decided to limit its term to one year and its jurisdiction only to enact necessary laws. In early 1997, the NPCSC announced that the Legislative Council (Electoral Provisions) Ordinance, which provided the legal basis of the colonial legislature, would not be adopted as a law in the HKSAR on the ground that it was in contravention with the Basic Law.

At the same time, the Preparatory Committee formulated 15 proposals, after ‘consultation’, to replace Patten’s nine FCs. These proposals were to be adopted in the first HKSAR LegCo election, which was postponed to 1998 because of the
interim one-year-term Provisional LegCo. Reintroduction of corporate electors was one of the proposals insisted upon by China. The HKSAR government adopted most of the proposed changes. With little opposition, the Provisional LegCo accepted these proposals and passed the Legislative Council Ordinance (Cap 542) in October 1997.

The 1998 LegCo election was the first territory-wide election in the HKSAR. The total number of LegCo members, including FC members, remained unchanged (see Appendix 1). In this election, there were 28 FCs including several new ones replacing those introduced by Patten (see Appendices 1 and 3). The Labour FC returned three members while all the others returned one each. The most significant impact of the post-1997 changes was the reduction in the potential electorate size from 2.7 million individuals to 233,739 corporate bodies and individuals (see Appendix 5). Of this number, only 59.5% registered to vote; of those registered voters, only 56.0% turned out to vote (i.e., 77,813 voters) for the 20 contested seats. Ten of the FC seats were returned uncontested.

In the 2000 LegCo election the total number of LegCo members remained unchanged (see Appendix 1). In this election, there were 28 FCs. As a result of the abolition of the municipal councils, the Urban Council and Regional Council FCs were replaced with the single District Council FC. A new FC for the catering industry was formed (see Appendix 3). The Labour FC returned three members while the other FCs continued to return one member each. The number of registered voters increased by 26.3% to 175,606 bodies and individuals (see Appendix 5). While 92,112 voters turned out to vote, the turnout rate of 56.5% was only marginally greater than that for the 1998 election. Nine of the 30 FC seats were returned uncontested.

As mentioned earlier, the arrangements for the 2004 FC election remained unchanged from those in 2000. The number of registered voters increased by 13.6% to 199,539 bodies and individuals (see Appendix 7). The FCs saw the highest ever voter turnout rate of 70.1%, which was notably greater than the 55.6% turnout rate for the GC election. However, 11 of the 30 FC seats were returned uncontested.

On 19 October 2005, after a 22-month process, the Constitutional Development Task Force released its Fifth Report setting out a package of proposals for selecting the chief executive in 2007 and forming LegCo in 2008. In respect of LegCo, it was proposed that 10 new seats be added, five going to the FCs and five to the GCs. Departing from the pattern of historical development, the task force did not propose the creation any new FC. Instead, it proposed adding the new FC seats to the existing District Council FC which would return a total of six legislators. It stated that the proposal was ‘fully consistent with the original intention of functional constituencies’, and that by increasing the number of District Council members in LegCo, it would ‘not only realise the principle of “balanced participation”, but could also substantively and effectively take forward Hong Kong’s constitutional development towards the ultimate aim of universal suffrage in a gradual and orderly manner’. While there a ‘plethora of
specific proposals’ for establishing new FCs, the task force felt unable to satisfy all of these, some of which would not have broadened the electorate base effectively. Aside from these changes, the existing system of FCs was to remain the same. It awaits to be seen whether the proposal will obtain the two-thirds majority support from all members of LegCo.

**The recognition and grouping of functions**

Why are some functions and not others recognised in the FC system? Why are some functions and sectors grouped together in a single FC while others are kept separate? As the previous section demonstrates, the historical development of FCs was not governed by any coherent theory. Their creation was very much a product of historical and political necessity. Changes in the system over the past two decades have been driven more by political forces and constitutional developments than by principled and informed decision making.

**The recognised functions**

In the 1984 *White Paper*, it was stated that the ‘economic and social constituencies’ should be ‘based on well-recognised major organisations, associations, and institutions with a territory-wide coverage’, whereas the ‘professional constituencies’ should be ‘based on membership of those professions with well-established and recognised qualifications’. Using these criteria, the system of FCs began conservatively with only 11 constituencies in 1985 (see Appendix 2).

The FC system has never attempted to reflect or cover all the major economic, social and professional sectors in Hong Kong. At any point in time, major sectors of the Hong Kong economy and major professions have not been represented. The best attempt was made to reflect the major socio-economic sectors and professions in the 1995–7 term, with the addition of the nine FCs introduced by Governor Patten. These additional FCs expanded the electorate to include all working persons in over 80 enumerated ‘major industry groups’. These groups were taken from a classification scheme known as the Hong Kong Standard Industrial Classification. Besides the alteration in the scheme of corporate voting, however, no attempt was made in these reforms to rationalise or alter the delineation of the 20 FCs used in the 1991 election. Thus, Governor Patten’s reforms were remedial rather than a comprehensive rethinking and reformulation of the system. The government has apparently never undertaken a comprehensive review of the FC system.

The handover presented an opportunity to rethink and redesign the entire system. Rather than take that opportunity, the administration and the Provisional LegCo kept the pre-1995 FCs, removed all the working-person electors introduced in 1995, restored the previous system of corporate electors, and introduced new FCs to replace some of those added in 1995. Many of the 82 major industry groups added in 1995 were not represented in the post-1997
reformed system of FCs. In the 1998 and 2000 elections, industry groups such as storage, communications, sanitary and environmental services were not represented.

The functions recognised by the FCs have not always been profit or income oriented. In the first FCs of 1985, non-profit-oriented sectors, such as social services, medical and teaching, were included. In the decade that followed, the only new non-profit-oriented sectors to be included were the political advisory bodies added in 1991 (i.e., Urban Council, Regional Council, and Rural). In 1995, Governor Patten’s reforms introduced several non-profit sectors under the Community, Social and Personal Services FC, including welfare institutions, religious organisations, and cultural services. Post-1997, this FC was restructured and renamed the Sports, Performing Arts, Culture and Publication FC, and now consists mostly of sports, arts, and/or cultural associations (see Appendix 11). Oddly enough, by virtue of the inclusion of the ‘publication’ sector in this FC, a number of the large profit-making media operators are included together with the non-profit groups. Another interesting development was seen in the Social Welfare FC in 1998, when for the first time, private social service societies and registered non-profit-making companies were added. In March 2000, however, a move was made to remove all the corporate electors from the FC, leaving only registered social workers.

Religious organisations were not included in the 2004 arrangement of FCs, although in 1995, people working in such organisations were included. One historical reason for this goes back to the 1988 White Paper on representative government, wherein it was said that the FCs should ‘not be based on ideology, dogma or religion’. No particular reason is given for this general rule. The implication is that the views of religious organisations are not as valuable as the other socio-economic and political sectors. But such a policy would be inconsistent with the policy adopted in the Basic Law that provides for a religious subsector in the Election Committee. The same Election Committee also elects the chief executive. It is controversial whether there should be a religious sector in the FC system. With the increasing number of non-profit-oriented sectors in the FCs, it becomes harder to justify excluding a sector that already has a voice in the selection of the chief executive. The Western notion of the separation between church and state, however, would be strongly in favour of exclusion.

Political advisory bodies as FCs

The Heung Yee Kuk and District Council FCs are unlike other FCs. Each returns a LegCo member not from a particular industry, sector or profession, but from an established political advisory body in Hong Kong. Both FCs are small in size, each with less than 500 potential electors. The Heung Yee Kuk is a statutory body, one of the objects of which is to advise the government on social and economic developments in the interests of the welfare and prosperity of the people of the New Territories. The 18 district councils are statutory bodies that
advise the government on matters related to local government services and the wellbeing of people living in a particular district. As these bodies already have a mandate and ability to influence government decision-making, it is not immediately obvious why each body should be given further representation and political power with a designated seat in LegCo.

The origins of the political advisory body FCs can be found in 1991 when the Urban Council, Regional Council, and Rural FCs were introduced. The Urban Council and Regional Council were constituencies in the electoral college elections of 1985 and 1988. As mentioned already, the colonial government decided to maintain these two bodies as functional constituencies because of the need to have the three tiers of government linked with each tier being represented in the next higher tier.

After the handover and the reorganisation of district organisations which abolished the three-tiered structure of representative government, the justification for keeping these FCs was put in doubt. One might argue on practical grounds that, in respect of the district councils, it would be more convenient to have a single representative of the common interests of all 18 councils. It may be more effective, however, to do this within the framework of the District Councils Ordinance, by, for example, creating a standing committee made up of a delegate from each of the district councils. As for the Heung Yee Kuk, in the 2004 LegCo election 15 GC members were returned by electors in the New Territories. With 25% of all LegCo seats representing the New Territories, the need for a further seat from the FC system based on an exceptionally small electorate is difficult to justify.

Interestingly, the future of the FC system appears to lie with the district councils given the task force’s proposal to add five additional seats in the District Council FC for the 2008 election. Such a proposal effectively turns the District Council FC into an electoral college like the ones used in 1985, 1988, and 1995 to return a substantial number of legislators.

**Unrecognised functions and persons**

The existing system of FCs does not fully capture all of the major socio-economic and professional sectors of Hong Kong. Even when the best effort was made to do so in 1995, clearly some sectors (particularly those that were non-profit) were systemically excluded. Examples of excluded sectors include full-time students of voting age, retirees, and homemakers or ‘housewives’. Persons in these groups make up a significant part of the population. Students and retirees, although not working in a recognised sector at the time of registration, could very well be entering a recognised sector or have just exited a recognised sector after years of engagement. It seems arbitrary not to recognise their obvious connected interest in the sector.

As for homemakers, this raises the issue of what economic activity is deserving of recognition. The work of homemakers in raising children and
performing domestic work is a valuable economic activity that is not officially recognised. Yet, given the importance of the function and the numbers of persons engaged, it is worth asking why this non-profit-making essential activity should not be recognised alongside health and medical services, education, social welfare, sports, and arts and culture.

Peripheral or supporting professions to registered professions often go unrecognised. Take for example the Legal FC. Besides registered barristers, solicitors and government lawyers, there are many other related and supporting roles that one would normally consider to be part of the legal sector. Judges are an obvious omission, but their exclusion has been based on grounds of judicial independence. Other notable groups that have been excluded include legal secretaries, barristers’ pupils, solicitor trainees, court reporters, court clerks, court interpreters, bailiffs, and police officers.

The FC system has also failed to recognise the economic reality of part-timers or freelance professionals. Nowadays individuals often work independently for many different bodies in recognised professional areas (e.g., education). Yet, these individuals, since they are not in full-time employment with a single employer, will not be recognised by the system.

**Grouping of functions**

The grouping of functions in FCs is another area that seems to defy logic. It appears to be driven more by political force and bullying by existing FCs than by principles of fairness and reason. The ongoing issue over the inclusion of Chinese medicine is a case in point. The suggestion in 2004 to include Chinese medicine as part of the Medical FC was strongly resisted by doctors and dentists. The alternative of having a separate FC for Chinese medicine, which was favoured by many Chinese medicine practitioners, was resisted by existing FCs. Consequently, unable to formulate an accepted policy on the matter, the administration deferred the issue until after the 2004 election. This decision was bound to frustrate Chinese medicine practitioners, especially since this sector has already been recognised in the Election Committee of the 1998 and 2000 LegCo elections and of the 2002 and 2005 chief executive election.

The name given to an FC has an importance that is often overlooked. Beyond the name, the legislation does not provide a definition for the FC. The legislation only provides specifications of the electors for each FC. Thus, if zookeepers were somehow specified as electors in the Legal FC, one realises a grave mistake has occurred because one’s understanding of the word ‘legal’ does not (normally) encompass zoos or zookeepers. If the name of the FC is its definition, it is also the means by which to discern what functions or sectors are grouped within a single FC.

There are two ways in which functions or sectors are grouped in the existing system. The first way is specified grouping, where the grouping is indicated in the name of the FC. For example, Architectural, Surveying and Planning specifically
groups architects, surveyors and planners. The grouping in this FC is relatively uncontroversial since the work of these three groups of professionals is closely related. The more dubious grouping of the profit-oriented publication sector together with the non-profit-oriented sectors of the Sports, Performing Arts, Culture and Publication FC has already been mentioned.

The second way of grouping occurs indirectly, by virtue of the broad nature of the FC’s name and definition. This kind of grouping, which can be called ‘encompassed grouping’, uses a very broad sector name such as ‘commercial’ or ‘industrial’ to group together many different kinds of sectors. FCs that exhibit this form of grouping face internal pressures by some of its encompassed groups wanting to split off to form their own FC. The Insurance FC, for example, was originally only a component of the Financial Services FC from 1991 to 1998. It split off in 1998 and now enjoys independent status. Also, one or more of the 26 distinct health care professional groups now encompassed in the Health Services FC will most likely make a move for independent recognition at some stage.

The two Commercial FCs and the two Industrial FCs are prime examples of FCs exhibiting encompassed grouping. The Commercial (First) FC electorate consists of the corporate voting members of the Hong Kong General Chamber of Commerce, whose membership includes ‘merchants, manufacturers, bankers, members of the professions, shipowners, shipbuilders and others (including corporations, partnerships, unincorporated associations and societies) carrying on any trade profession or business in Hong Kong’. The breadth of this membership criterion is so wide that the electorate in this FC not only overlaps with other FCs but it also encompasses commercial enterprises that are distinct in nature.

Similarly, the Industrial (First) FC electorate, which wholly consists of the Federation of Hong Kong Industries, shows enormous diversity. A search in the 2003 directory of members reveals (surprisingly at times) the following companies and firms:

- Airport Authority
- Allen & Overy (law firm)
- Asia Financial Holdings Ltd
- The Australian Chamber of Commerce in HK
- British-American Tobacco Co. HK Ltd
- Campbell Soup Asia Ltd
- China Airlines Ltd
- Everbright Industrial Co. Ltd
- eMergent Technology (Hong Kong) Ltd
- Lane Crawford (Hong Kong) Ltd.

Having a single FC that groups together many diverse functional bodies and individuals leads to problems of effective representation. With increased diversity in a single FC, it becomes more difficult for the elected representative to
represent and understand all the diverse and potentially conflicting interests in the FC. By their nature, an FC strives to represent only a single interest or function. Yet, specified and encompassed grouping is inconsistent with this purpose and can threaten the legitimacy of the FC.

With a limited number of seats, grouping is an inevitable part of the FC system. In an ideal world that accepts the premises of FCs, there should be an unlimited number of representatives, one for every unique functional group worthy of recognition. But this is not the world provided for in the Basic Law, which, at least until 2007, caps the number of LegCo members at 60, 30 of which must be elected by GCs in 2004. Given the promise of universal suffrage, future developments beyond the 2008–12 term are towards a greater proportion of GC seats rather than lesser. With a decreasing proportion of FC seats, the problems associated with grouping only become worse. One sees an inherent conflict here: if the FC system is to gain greater legitimacy, more functions need to be recognised and grouped functions of diverse character need to be disentangled. Yet, unless the total number of LegCo seats is increased, this legitimacy seems unachievable.

Relative size of functional constituencies

There has always been great variation in the size of FCs. As recognised by Justice Keith in the High Court decision of *Lee Miu Ling v Attorney General*, differences in constituency size are ‘inevitable when constituencies are determined by function’. The largest FC in the 2004 LegCo election, Education, had 77,696 registered voters (and a potential of 103,953) while the smallest one, Heung Yee Kuk, had 149 potential and registered voters (see Appendix 7 for the precise breakdown). The same degree of divergence was also seen in the 2000 election (see Appendix 6).

In 2004, only four of the 28 FCs had more than 10,000 registered electors, and of these, two had more than 30,000 (i.e., Education and Health Services). The registered electorate in the Education and Health Services FCs constituted 57% of the total number of FC registered voters (see Appendix 7); the remaining 43% was distributed unevenly amongst the other 26 FCs. In general, FCs are small in size. In 2004, 12 FCs had less than 1,000 registered electors, four had between 1,000 and 2,000, five had between 2,000 and 6,000, and three had between 6,000 and 10,000 (see Appendix 7).

Where the constituency size is small relative to the actual number of persons engaged in the sector, the constituency will have enormous difficulty in trying to appear representative of the actual economic or business sector. The elected representative is accountable to only those privileged enough to be an FC elector; he or she can safely ignore the views of non-electors, where they are at variance with those of electors, without negatively impacting re-election prospects. Small constituencies attenuate the objective of using FCs to represent a broad range of different sectoral interests. They also result in a smaller pool of people from which to draw candidates to represent the sector.
Another significance of constituency size is in terms of the voting power of an elector within a particular constituency. In an ideal world, the size of constituencies should be the same so as to maintain an equal measure of voting power. Variation in constituency size affects how much weight a person’s vote carries in determining the candidate(s) to be elected. For example, a person’s vote in a constituency size of 20 certainly carries much more weight than in a constituency of 1,000 electors. This is because a vote in small constituencies has more influential force in determining the representative than a vote in large constituencies, where the effect of the individual vote is more diluted.

A related issue is that, with a smaller constituency, an elector can generally have more frequent and direct access to the elected representative, as he or she is competing with only 19 rather than 999 other electors. Thus from the point of view of determining and accessing one’s elected representative, electors in smaller constituencies tend to enjoy an advantage over those in larger ones.

In *Lee Miu Ling v Attorney General*, the disparity in constituency size resulting in an inequality in voting power was raised as a separate complaint to the main ‘one person, one vote’ challenge. In the Court of Appeal, Mr Justice Bokhary rejected an argument that the disparity was justified due to the ‘embryonic stage’ of Hong Kong’s electoral system. He nevertheless found the system not irrational or disproportionate primarily because ‘by their very nature, functional constituencies are bound to vary in size’. He found that devising groups defined by function in such a way as to ensure an equal number of electors was not feasible. The decision has been the subject of academic criticism. The issue has yet to be litigated post-1997 under the Basic Law.

In 2004, 15 of the 28 FCs had less than 1,500 registered voters. Of this number, two-thirds were FCs with exclusively (or almost exclusively) corporate voters. All nine FCs with more than 5,000 registered voters were FCs with exclusively (or almost exclusively) individual voters (see Appendix 7). Thus, from the perspective of voting power and effective representation, the FC system tends to disadvantage FCs with individual electors while favouring those with corporate electors. There is no apparent reason for why this should be the case. Indeed, if equitable principles were to dictate, the balance of favour should be the other way around, as individuals tend to be less capable of influencing political decisions and policies than more economically powerful corporations and bodies.

One method of trying to alleviate the problem of constituency size disparity is to allocate more seats to larger constituencies so as to equalise the number of voters per representative. This strategy has never been attempted in Hong Kong. The history of the FCs shows that each FC has always returned only one member, except for the Labour FC, which returned two members in the first five elections and three members since 2000. It is ironic that the Labour FC has always been a small constituency, being composed of trade unions rather than individuals. By adding more representatives to an already small constituency, the advantage enjoyed by this constituency is magnified.
A further observation can be made when the sizes of FCs are compared to the actual number of persons engaged in the various sectors. Appendix 8 shows the number of persons engaged in the major industry sectors and groups as reported by the Hong Kong government for the year 2000. From this appendix, it can be seen that of the 2.2 million persons working in all major sectors, 46% were engaged in the wholesale, retail, import/export, restaurants and hotels sectors, 6% in the transport sector, and 11% in the financing, insurance, and real estate sectors. The number of registered electors in the corresponding FCs, however, was not in the same proportion. In the 2000 election, only 4% of all registered FC electors were in the Wholesale and Retail, Import and Export, Tourism and Commercial (First) FCs, 0.1% were in the Transport FC, and 0.9% were in the Finance, Financial Services, Real Estate and Construction, and Insurance FCs (see Appendix 6). From this data, it is seen that the relative size of FCs do not reflect the relative size of the industrial sector in terms of the number of persons engaged in the sector.

The functional constituency electorate

Three methods of elector determination

With GCs, electors are determined according to their residency in defined geographical regions. Determining electors of FCs is a more complicated exercise. The Legislative Council Ordinance (Cap 542) uses three different methods. The first is to use membership in so-called ‘umbrella organisations’, which are listed in the ordinance. These organisations may be incorporated or unincorporated bodies that have either individual or corporate members, or both. It is the members of these organisations, determined as such according to the membership rules of each umbrella organisation, who exercise the right to vote in FC elections. This method can result in both individual and corporate electors in an FC, depending on the membership rules of the umbrella organisation.

The second method is to specify major representative bodies as electors in the legislation. This method results in only corporate electors. The third method recognises certain professionals as electors and results in only individual electors. A particular FC may use one or more of these methods to determine its electorate. Appendix 4 shows which of the three methods were used in the 2004 FCs.

The following description of the three methods with examples is taken from a paper prepared by the administration for the Legislative Council Bills Committee:
a) Corporate or individual members of ‘umbrella organisations’ entitled to vote at general meetings of such organisations
These umbrella organisations are not themselves FC electors, but their members who are entitled to vote at their general meetings are. For example, in the Commercial (First) FC, the electorate comprises members of the Hong Kong General Chamber of Commerce who are entitled to vote at general meetings of the Chamber. Another example can be found in the Tourism FC, the electorate of which includes, inter alia, members of the Travel Industry Council of Hong Kong entitled to vote at general meetings of the Council.

b) Major organisations representative of the relevant sectors
For example, the electorate of the Labour FC comprises trade unions registered under the Trade Union Ordinance of which all the voting members are employees.

c) Professionals registered under relevant legislation
An example would be the Social Welfare FC, the electorate of which comprises social workers registered under the Social Workers Registration Ordinance.93

As Appendix 4 shows, membership in umbrella organisations is the most commonly used method for determining FC voters, followed by the use of major representative organisations, and finally by recognised individual professionals.

Membership in umbrella organisations
The use of umbrella organisations is a convenient way to find and verify individuals and bodies engaged in a particular sector. Appendix 10 lists the umbrella organisations recognised in the Legislative Council Ordinance (Cap 542) in 2004. There are, however, a number of practical limitations to the use of this method.

Inclusion of all umbrella organisations
Fairness would seem to require that all genuine umbrella organisations for a particular sector should have the opportunity of being included under the legislation. This would be the most effective way of ensuring that all persons and bodies engaged in that sector would have a right to vote in the FC in question. The reality is that not all relevant umbrella organisations are included. Often, it is simply the case that the administration has yet to catch up with developments in the business world, such as with the creation of new associations or the restructuring of old ones. There does not appear to be any active role taken by the administration to find and add organisations that should be included.
Changes to the list of umbrella organisations are done reactively, as a result of actions taken by the private bodies or individuals themselves.

Every year (and more so in or near election years), private bodies apply to the government informally for recognition as an umbrella organisation. The legislation does not set out, nor has the government published, any criteria on the requirements for recognition. As the final decision requires an amendment to legislation, it is initially proposed by the government and then ultimately decided by LegCo. Under the Basic Law, proposals to change the political structure can only come from the government.\textsuperscript{94} Thus, the government faces a perennial problem in having to decide which umbrella organisations to recognise. Without the benefit of legislative criteria, such decisions will inevitably lead to criticisms that the process was non-transparent, arbitrary, or, in the worst case, biased. The failure to provide the necessary checks and balances against arbitrary decision making is an abdication of governmental responsibility.

In 2003, the government proposed seven new umbrella organisations for the Information Technology FC, all of which were ultimately added to the legislation.\textsuperscript{95} Appearing in the papers of the Bills Committee for the amendment bill was a letter from the Information Security and Forensics Society (ISFS), that applied unsuccessfully to be an umbrella organisation in the same FC. It appears this society did not meet the government’s approval for recognition even though the objectives of the society, pertaining to information security and digital evidence, seemed to be suitable for inclusion. Indeed, there seemed to be little explanation for why ISFS was not acceptable when the Hong Kong & Mainland Software Industry Cooperation Association Ltd, a group in existence for only one year, was one of the seven included as a new umbrella organisation.

The administration appears to give priority to certain established umbrella organisations. Take the example of chambers of commerce. Under the legislation, only two chambers are recognised as umbrella organisations: the Hong Kong General Chamber of Commerce and the Chinese General Chamber of Commerce. Yet, there are numerous other chambers of commerce in Hong Kong that have not obtained recognition. Some examples include:

- The Hoi Ping Chamber of Commerce of Hong Kong
- The Hong Kong Chamber of Small and Medium Business Ltd
- International Chamber of Commerce — Hong Kong, China
- Business Council
- Hong Kong Chiu Chow Chamber of Commerce Ltd
- Hong Kong Junior Chamber (Jaycees)
- Kowloon Chamber of Commerce
- New Territories General Chamber of Commerce.\textsuperscript{96}

There is no apparent reason for why these other groups should be excluded. One possible explanation may be the belief that the two general chambers have a membership that overlaps the membership of all the other chambers. While this
may be true to some extent, it is doubtful that there is a complete overlap of membership, or else there would be little justification for having the smaller chambers. This state of affairs reflects a questionable policy of favouring two large organisations and requiring all engaged bodies and individuals to be a member of these organisations if they want to vote in an FC.

The problem of non-recognition is also seen in the real estate and construction sectors. The legislation in 2000 and 2004 only recognised three umbrella organisations: The Real Estate Developers Association of Hong Kong, The Hong Kong Construction Association Ltd, and The Hong Kong E&M Contractors’ Association Ltd. From a government directory of local trade associations, there appear to be several other organisations that could also be recognised as umbrella organisations in this sector. These include:

- Chartered Institute of Building (Hong Kong)
- Construction Industry Training Authority
- The Hong Kong Construction Association
- The Hong Kong Association for the Advancement of Real Estate and Construction
- Hong Kong Institute of Construction Managers
- Hong Kong Institute of Real Estate Administration
- Hong Kong Real Estate Agencies Association Ltd
- Society of Hong Kong Real Estate Agents Ltd

Bodies and individuals not belonging to umbrella organisations

The FC system tacitly assumes that all bodies and individuals engaged in a particular sector belong to a recognised umbrella organisation. This plainly is not the case. For whatever reasons, bodies and individuals will choose not to belong to an association. These people, though carrying out a function that should entitle them to vote in an FC, are not counted as electors. The legislation does not provide a system for such bodies or individuals to apply directly to be an elector of an FC.

As for individuals, it is really a matter of luck whether an umbrella organisation recognises them as members. Neither the legislation nor the administration adopt a formal policy in requiring or not requiring organisations to offer individual membership. The Hong Kong General Chamber of Commerce (Commercial (First)) does not allow individual membership, while the Chinese General Chamber of Commerce (Commercial (Second)) does. Likewise, the Federation of Hong Kong Industries (Industrial (First)) does not allow individual members while the Chinese Manufacturers’ Association of Hong Kong (Industrial (Second)) does. There are many more examples of this variability. The lack of a general standard requiring individual membership ensures that a system of electorate determination based on umbrella organisations will never be able to capture all persons engaged in the particular sector.
Even where individual membership is permitted, the number of individual electors tends to be low. The numbers in no way reflect the actual number of persons engaged in the sector. For example, in 2000, there were 80 registered individual electors in the Financial Services FC (see Appendix 6). Economic data in 2000 showed that there were at least 14,961 persons engaged in that sector (see Appendix 8). There seems to be no reasonable explanation for saying that 80 persons in the sector should be privileged with the right to vote in the FC while the remaining 99.5% should not.

Regulating and enforcing membership rules
Eligibility for being an elector is primarily based on proof of membership in a recognised umbrella organisation. The legislation does not provide for any verification procedure to ensure that the elector is in fact engaged in the sector or function of the particular FC. The policy of the law has been to leave such verification to the umbrella organisation who will verify the application according to its own membership rules. Given this delegated responsibility, a group applying to be an umbrella organisation should be scrutinised to ensure that it has a sufficiently rigorous ongoing process of verifying membership requirements, particularly in relation to sector engagement.

This system of delegated responsibility raises serious concerns of its own. Government scrutiny of the process only occurs when the umbrella organisation initially applies for recognition and if the recognised organisation changes its constitution in a material way. Other than on these occasions, the umbrella organisation is essentially left to enforce its own membership rules. A corrupt umbrella organisation could sign up voting members who have no connection whatsoever to the function in question. The system has no obvious safeguards to prevent this type of abuse. The ‘12-month rule’ requires individuals and bodies to have been members of umbrella organisations for 12 months before applying to be an elector. Corporate electors also need to have been ‘operating’ during the same 12-month period. This 12-month rule, however, cannot guard against corruption since the government relies on the umbrella organisation itself to verify whether the elector has complied with the rule. Unless there is more active supervision of the process, this type of abuse could easily go undetected.

The legislation requires that the elector member of the umbrella organisation have a right to vote in the general meetings of the organisation. Most umbrella organisations have different types of membership, with only full membership conferring such a right to vote. An elector member’s right to vote must be provided for in the constitution of the umbrella organisation at the time it was recognised or in an amended constitution, which has been approved by the Secretary for Constitutional Affairs.

Other than having a right to vote in general meetings, the law does not impose any additional requirements or standards on the type of membership qualifying a person to be an FC elector. Nevertheless, when approving amendments to the constitutions of existing organisations, the government does apply
certain criteria, which have no legislative basis whatsoever. These criteria were disclosed in a paper prepared by the administration for the Bills Committee on Legislative Council (Amendment) Bill 2003:

**Criteria for Approving an Application for Amendment**

5. We receive from time to time requests from umbrella organisations for approval to amend their constitutions under section 3(2A). When considering such applications, [the Secretary for Constitutional Affairs (SCA)] gives due regard to the policy and legislative intent of the provisions relating to the relevant FCs in the LegCo Ordinance. These provisions define the nature of the FCs and delineate the electorate. Thus, SCA will assess whether the amendments to constitution proposed by an umbrella organisation will affect:

(i) the objects of the organisation;

(ii) the criteria and conditions of membership of the organisation; and

(iii) the eligibility of members of the organisation to vote at its general meetings.

If so, SCA will need to further assess whether any of these changes are likely to alter significantly the electorate or the nature of the relevant FC. Generally speaking, the proposed amendments to an umbrella organisations’ constitution for the [purpose] of the LegCo Ordinance will be approved, if they do not lead to significant changes in the electorate or the nature of the relevant FC.100

Unfortunately, this statement fails to provide a clear direction to umbrella organisations as to when amendments will likely be approved. Reading between the lines, the implicit agenda behind this vague statement of policy is most likely one of size control. Indeed, the administration, during the consideration of the Amendment Bill in 2003, made this policy explicit. The Bills Committee report to the House Committee noted that, in respect of the delineation of FCs, the administration’s ‘policy intention is that the number and composition of the existing FCs should remain unchanged for the 2004 LegCo elections, except for minor amendments to the electorate of certain FCs’.101 This policy puts the administration in a difficult position of having to make arbitrary decisions about which people or organisations will or will not receive a right to vote. The policy, if strictly adhered to, is probably inconsistent with the Basic Law principle of gradual and orderly progress towards ultimate universal suffrage (Article 68), which was affirmed in the NPCSC decision of 26 April 2004.

Recently, the government has taken steps to apply membership standards for new umbrella organisations that have not been in existence for very long. Of the seven new umbrella organisations added to the Information Technology FC in 2003, one of them, the Hong Kong & Mainland Software Industry Cooperation
Association Ltd, was only established a year prior. In respect of this umbrella organisation, there was much debate in the Bills Committee over whether corporate and individual members could be electors, how long an IT business track record the member had to have prior to registering as an elector, and whether executive members, who may not have had a sufficiently long track record, could still be electors. In the end, it was decided for the sake of consistency within the Information Technology FC, the right to vote would only be conferred on those members who had been in the IT business for four years prior to applying for registration as an elector. Interestingly, this membership standard was applied not only to the Hong Kong & Mainland Software Industry Cooperation Association Ltd, but also to three other new umbrella organisations.

On the face of it, the imposition of a four-year requirement as a prerequisite to voter eligibility seems unreasonably onerous as it goes well beyond the 12-month rule contained in the legislation. The central concern should be whether, at the time of the election, the member is bona fide engaged in the function of the FC. While a lengthy track record may be conclusive of this bona fide engagement, it certainly should not be an absolute requirement.

The extent to which this track record requirement is imposed on all FCs and umbrella organisations is unclear. The only other express statutory track record requirement is the minimum six-year funding record required of statutory or registered arts bodies in the Sports, Performing Arts, Culture and Publication FC. In respect of umbrella organisations, no track record requirement is seen in the legislation, suggesting that the imposition of the requirement in the Information Technology FC is a new development. Indeed, under the Memorandum and Articles of Association of the Hong Kong General Chamber of Commerce, a business can become a full member by simply paying the necessary dues and satisfying the requirement of ‘carrying on any trade profession or business in Hong Kong’. Most of the umbrella organisations probably adopt the same practice. The principle of equality before the law requires, at minimum, that persons seeking the same public benefit or right be treated in the same way. It is wrong that some groups will need to satisfy more onerous requirements than other groups before being entitled to a benefit provided or administered by the government.

Representative organisations

Appendix 11 lists all of the representative organisations accorded elector status under the 2004 legislation. There were ten FCs that used this method of determining corporate electors, and some of them used other methods as well (see Appendix 4). Appendix 11 also indicates two ways in which representative organisations are listed. First, representative organisations may be directly specified in the Legislative Council Ordinance (Cap 542). For example, there were 80 bodies specified as electors in the 2004 Agriculture and Fisheries FC. Secondly, representative organisations, though not directly specified, may be listed by
reference to being registered or authorised under another piece of legislation. For example, the 2004 Insurance FC included only those bodies authorised or deemed to be authorised under the Insurance Companies Ordinance (Cap 41).

Using representative organisations to define the electorate of an FC, by definition, excludes individual electors. As seen in Appendix 4, four FCs (Finance, Labour, Transport and Insurance) used this method to the exclusion of all others, thereby resulting in only corporate electors in these FCs. Appendices 6 and 7 also show that these four FCs had a very small electorate size (generally less than 500 registered corporate electors in 2000 and 2004). The exclusion of individuals from these sectors is questionable.

Individual members of umbrella organisations can from time to time be electors in FCs, as noted above. Thus, there is no policy to exclude systematically non-professional individuals from being electors in FCs. For the 2004 election, the administration estimated there to be about 16,820 potential individual FC electors who did not come within one of the recognised profession-based FCs, such as legal, medical, health care, etc. This represents 7% of all potential individual electors. Once again, there appears to be some arbitrary executive decision-making occurring. What can be the justification for allowing individual electors, albeit a small number, via the umbrella organisation method, while disallowing individual electors by using the representative organisation method? One explanation may be the policy of size control. To open the door to individual electors under the Labour and Transport FCs could very well cause the size of these FCs to surge. This consequence could have constitutional implications on the grounds that with such a broad electorate base, these constituencies will cease to be FCs as they are understood in Annex II of the Basic Law. Whether this constitutional position is accurate or not, it is clear that by adopting a policy of size control, the administration is placed in a difficult position of having to recognise some people’s right to vote but not others, using illogical or other unjustified grounds.

The method of conferring a right to vote on ‘representative’ organisations raises issues of what ‘representative’ means and who decides whether a body is ‘representative’ of a sector. The legislation does not expressly include a formal mechanism for recognising representative organisations. It is left to the administration to propose organisations for endorsement by LegCo. There are no published criteria for deciding whether organisations will or will not be accepted as being representative. In the 2003 Bills Committee debate, there was a glimpse of some criteria for deciding which specified bodies could be added to the Sports, Performing Arts, Culture and Publication FC. The Constitutional Affairs Bureau stated that:

In considering whether a particular organisation should be included in Part 3 of Schedule 1B, our main consideration is whether the organisation concerned is a major organisation representative of the sector. We will take into consideration factors including the organisation’s objects, its date of establishment, its membership criteria, its membership size, and past activities held. For organisations
which we consider appropriate for inclusion in the FC, amendments would be made to Schedule 1B.\textsuperscript{107}

Unfortunately, this statement does not define ‘representative of the sector’. It probably does not mean having identical interests, since major organisations in a sector will most likely have different interests from minor players in the sector. Possibly it means that there are shared interests, which can be left to the major organisations to voice. Shared interests also exist, however, in respect of geographical constituency members, as people living in a certain district have shared interests although the full range of their interests is not identical. With GCs, though, there is no justification for saying that some, such as the major players (whoever they may be) should have the right to vote while others should not because their shared interests are already represented by those who have the right to vote. If, putting aside self-interest, the ultimate issue is choosing the elected representative who can most effectively represent the interests of the sector then both major and minor organisations engaged in that sector have a role to play in this decision. In profession-based FCs, such as the Legal and Medical FCs, it is often the case that opinions will differ as to which candidate, assuming a contested seat, can most effectively represent the constituency. For example, in the 2004 election, nine candidates ran in the Accountancy FC with the successful candidate winning by a margin of only 37 votes.\textsuperscript{108} These FCs reflect the principle that everyone engaged in the sector has valuable input of equal weight to contribute to the selection of the representative for the sector.

By contrast, the method of according electoral rights only to representative organisations in a particular sector systematically disadvantages the firms or bodies in the sector who are not treated as ‘representative’. There is no apparent justification for undervaluing the input that this segment could make in choosing the representative for the sector.

\textit{Recognised professionals}

In 2004, there were 10 FCs that included recognised professionals, partly or wholly, as their electorate (see Appendix 4). These FCs confer a right to vote on professionals, such as lawyers, engineers, architects, accountants, doctors, dentists, health care professionals, teachers, social workers, restaurateurs, and others. Six of these FCs, by using this method exclusively, are made up solely of individuals (see Appendices 4, 6, 7, and 9). The Engineering and the Architectural, Surveying and Planning FCs use umbrella organisations as well but are also wholly composed of individuals, as their umbrella organisations only accept individual members. The Catering and the Financial Services FCs comprise of both individual professionals and corporate bodies. The list of professional groups recognised in these 10 FCs can be found in Appendix 12.

Recognition is accorded to this category of electors as individuals rather than as bodies or a combination of bodies and individuals. While many of these
professionals carry on their profession on their own (e.g., barristers, medical doctors), it is also common for individuals in these professions to organise themselves into firms or associations, such as solicitors’ firms and accountancy firms. The legislation nevertheless does not confer voting rights on such associations or firms together with the individual professionals in the same FC. However, many of these firms and associations are voting members of either the Hong Kong General Chamber of Commerce or the Federation of Hong Kong Industries, making them eligible electors in the Commercial (First) and the Industrial (First) FCs, respectively.

Two questions follow: what does it mean to be a ‘professional’? And should other individuals who come within this definition of ‘professional’ be treated in the same way as recognised professionals? Appendix 12 shows that, for the most part, recognised professionals are those who are registered under an ordinance and whose profession is subject to regulation by the government. An exception to this is seen in the Education FC where full-time employment as a teacher, researcher or administrator in certain institutions, rather than formal registration under an ordinance, is the precondition for recognition. Membership in certain governing bodies, such as school councils and boards of governors, can also confer elector status in the Education FC.

There appears to be two elements common to all the recognised professions, with the exception of the Catering FC: a profession that involves the application of specialised knowledge gained from advanced tertiary educational qualifications and government regulation of the profession. If satisfying these elements is sufficient for being a recognised professional then there are many other professionals, not members of umbrella organisations, who should also be recognised. Chinese medicine was a profession that received much attention during the debate over the 2003 Amendment Bill. Due to a lack of consensus amongst LegCo members, it was in the end decided that the question of their inclusion would be deferred until after the 2004 elections.109

There are other examples. Professionals in the Finance, Financial Services, and Insurance FCs often possess and apply specialised knowledge obtained from years of advanced education. As well, these sectors will often have ethical codes of practice that govern professionals who have obtained the necessary qualifications. For example, under the Insurance Companies Ordinance (Cap 41), there is a system of recognising only ‘appointed insurance agents’ and ‘authorised insurance brokers’.110 The Hong Kong Federation of Insurers also has a code of practice with which all insurers and insurance agents must comply.111 These regulated insurance agents and brokers appear to be no different in kind from those in the recognised professions, and yet they are not accorded an individual right to vote.

The same is also seen in the investment banking sector, which is highly important to Hong Kong’s financial industry and is the subject of government regulation. Many professionals working in this sector have advanced educational qualifications such as the Master of Business Administration (MBA) or the
Chartered Financial Analyst (CFA) designation. Those with the latter must comply with certain professional and ethical standards, adopted by the internationally recognised Association for Investment Management and Research, to maintain the designation. The Hong Kong Society of Financial Analysts Ltd reports a membership of more than 2,000 CFA charterholders. In 2004, however, the Finance FC had no individual electors, and the Financial Services FC had 776 potential electors, of which 46 were individuals who had registered to vote and 598 were registered corporate voters (see Appendix 7). These individual electors were exchange participants of a recognised exchange company; in other words, they were essentially authorised securities traders.

Further research would probably reveal more anomalies. One possible explanation for the continuance of these anomalies is that the recognised professions, as a way of entrenching their own privileged status, have resisted the recognition of new or additional professions. They may use their influence in LegCo to block the necessary legislative amendments. Another explanation is the policy of size control, which sacrifices principled decision-making and fairness in order to resist an influx of individual electors and maintain the status quo. The government clearly takes no positive steps to try to correct these anomalies, so it is left to private parties and groups to seek inclusion on a case by case basis.

**Individual electors**

An individual, who is a member of a recognised umbrella organisation or profession, must comply with a number of additional conditions if he or she is to be entitled to vote in a particular FC. He or she must:

- be registered as a GC elector (or is eligible to register and an application is being processed);
- not be registered in any other FC;
- comply with the 12-month membership rule in respect of certain bodies; and
- not be disqualified from being registered.

Eligibility to vote in the GC requires that the individual must:

- be a permanent resident of Hong Kong;
- ordinarily reside in Hong Kong.
have provided a residential address in the application that is the only or principal residence for the individual in Hong Kong;\textsuperscript{120}

be 18 years of age or more, or be 18 years of age by a certain cut-off date in the year of the election;\textsuperscript{121} and

hold an identity card (or be in the process of obtaining a new or amended one).\textsuperscript{122}

Under Article 26 of the Basic Law, the right to vote, like the right of abode, is reserved only for permanent residents of Hong Kong. This does not necessarily mean that permanent residency alone entitles an individual to vote. Article 26 appears to qualify this right with the expression, ‘in accordance with law’. Similarly Article 21 of the Hong Kong Bill of Rights disallows ‘unreasonable restrictions’ on the right to vote, implying that reasonable restrictions are permissible.\textsuperscript{123} There has yet to be a challenge to the above preconditions as being inconsistent with the right to vote under the Basic Law. In a pre-1997 Bill of Rights case, it was held that the requirement of being ordinarily resident in Hong Kong for a 10-year period immediately preceding the nomination for being a candidate in a District Board election was unreasonable.\textsuperscript{124}

**Not registered in any other FC**

It is a basic principle that if a person is eligible to register in more than one FC, he or she is only entitled to vote in one FC as an individual.\textsuperscript{125} With two exceptions, the individual may choose in which FC he or she wants to be registered. The first exception is where one of the eligible FCs is the Heung Yee Kuk FC, in which case the individual must register in that FC.\textsuperscript{126} The second exception, which does not apply to individuals, makes registration in the Agriculture and Fisheries FC, the Insurance FC, and the Transport FC mandatory if the person is eligible to register in any of these FCs.\textsuperscript{127}

**Compliance with 12-month rule**

If the individual is an elector by virtue of being a member of a certain specified body, then he or she is required to have been a member of the body for 12 months before applying to register as an elector.\textsuperscript{128} Verification of such compliance is left to the body. The specified bodies that permit individual membership are those in the following FCs: Real Estate and Construction, Commercial (Second), Industrial (First), Financial Services, Sports, Performing Arts, Culture and Publication, Import and Export, Textiles and Garment, Wholesale and Retail, and some bodies in Information Technology. As mentioned earlier, the purpose of the 12-month rule is to prevent abuse of the system by ensuring the individual’s genuine involvement in the organisation and function in question.
Not disqualified
The disqualifying conditions are generally based on three grounds: crime-related, mental incapacity, and membership in any armed forces. Under the crime-related head, there are three non-mutually-exclusive categories: individuals sentenced to death or imprisonment anywhere in the world and who have neither served the sentence nor received a free pardon, individuals serving a sentence of imprisonment at the time of registration, and persons convicted of a specified corruption or election-related offence (disqualification in this category only lasts for the three years following conviction). There has yet to be a constitutional challenge in Hong Kong on the basis of a prisoner’s right to vote.

Residency requirements
An individual must be both a permanent resident of and ordinarily resident in Hong Kong to be eligible to vote in either a GC or FC. Thus, unlike other countries, Hong Kong does not allow permanent residents living abroad to vote in Hong Kong elections. This requirement is not one that precludes eligibility if one is also a national of another country. Hong Kong permanent residents having other nationalities but ordinarily resident in Hong Kong are still entitled to be registered. An additional but related precondition is that the individual’s address reported on the application form must be his or her only or principal residence in Hong Kong, which means ‘a dwelling-place in Hong Kong at which the person resides and which constitutes the person’s sole or main home’. The purpose of this precondition is apparently to ensure certainty in identification and direct receipt of correspondence.

Age and identification
The individual must be at least 18 years of age or turning 18 by a certain cut-off date in the same year there is an election. In a year in which a District Council election is to be held, the cut-off date is September 25th, in all other years, the date is July 25th. Originally the age of voting was 21 years, but this was reduced to 18 for the 1995 elections as part of the Patten reforms. An individual seeking registration must also possess proper identification.

Corporate electors
Under the 2004 legislation, corporate electors may be incorporated companies or unincorporated bodies, and include ‘a firm or group of persons (which may include incorporated or unincorporated bodies) who are associated with each other through a shared relevant interest’. Hong Kong may be the only jurisdiction in the world that allows corporations to vote in its general elections. Despite a considerable amount of public concern with the system of corporate voting, the task force in 2005 did not propose any changes. It noted that there were few concrete proposals on how corporate voting could be replaced by individual
voting and that its abolition might ‘not be consistent with the original intention of setting up functional constituencies.’

In an electoral system that defines constituencies on the basis of socio-economic functions and sectors, it is understandable that corporations and associations would want to be counted as part of the electorate. In both civil and criminal law, it is recognised that corporations are separate legal persons with their own set of rights and obligations. Thus, in theory, there is nothing to suggest that a corporation cannot enjoy a right to vote in a system of FCs. But in practice, as discussed below, the current system of corporate voting is open to abuse and manipulation in ways that compromise the basic tenets of an electoral system.

The **theory of representation**

The act of voting requires both a physical act and a rational decision. Thus, a corporation without a physical mind or body is incapable of voting unless some theory of individual representation is applied.

The same problem is seen in the context of corporate criminal responsibility. Under English and Hong Kong law, a theory of representation based on the ‘directing mind and will’ of the corporation has been adopted to make corporations criminally responsible. This theory looks to the *mens rea* of individuals that make up the ‘directing mind and will’ of the company (e.g., the directors and officers) to determine the *mens rea* of the company. This is sometimes known as the identification theory of liability since the mental state of the individual is identified as the mental state of the company.

The corporate elector has been a part of the FC system since its inception. Corporate electors are determined either by direct specification in the legislation as a major representative organisation or by membership in a recognised umbrella organisation. While it is sometimes stated that the Patten reforms in 1995 abolished corporate voting, this statement is not entirely accurate. Prior to this, corporate electors were able to vote by applying a theory of representation based on principles of agency. This theory was simple. The corporate body was to appoint an individual to act as its agent in casting its vote. Each corporate body was left to determine on its own the method for selecting its agent.

Although the corporate electors of the 1991 arrangements still found recognition in the 1995 election, under the Patten reforms, agency voting was abolished and replaced with a system whereby up to six members of a company’s board of directors were entitled to vote as individuals. For unincorporated associations or bodies, it was the members of the management or executive committee that were entitled to vote. The legislation did not prescribe how a company was to select the voting directors. Each director was left to make his or her own voting decision, which could never be revealed. A consequence of allowing more than one individual to be identified as the company was that there was no guarantee that the company would speak with one voice in its electoral
decision. But it was this very consequence that marked this system as one not involving a theory of agency but rather as one involving a theory of identification. The directors, being the directing mind and will of the body, exercise an independent decision in casting the company’s vote. Similar to corporate criminal responsibility, the theory of representation being applied was a theory of identification. The voting directors were identified as the company.

In 1998, agency voting was reintroduced to replace the 1995 system of voting. As discussed below, the system of agency voting which exists now suffers from both theoretical and practical problems.

**Preconditions to voting**

A company or body that is either directly specified in the legislation or a member of a recognised umbrella organisation must also, before it can vote in a particular FC:

- select an eligible person to be its authorised representative for the purpose of casting its vote at an election;\(^{138}\)

- not be registered in any other FC;\(^ {139}\) and

- comply with the 12-month rule in terms of operation and, where applicable, membership in respect of certain bodies.\(^ {140}\)

A person is eligible to be an authorised representative only if he or she:

- is registered as a GC elector (or is eligible to register and an application is being processed);\(^ {141}\)

- has a ‘substantial connection’ with the corporate elector;\(^ {142}\)

- is not registered, and has not applied to be registered, as an individual elector for the constituency;\(^ {143}\)

- is not an authorised representative for any other body;\(^ {144}\) and

- is not disqualified from being registered or voting.\(^ {145}\)

Eligibility to vote in the GC requires that the individual must:

- be a permanent resident of Hong Kong;\(^ {146}\)

- ordinarily reside in Hong Kong;\(^ {147}\)
• have provided a residential address in the application that is the only or principal residence for the individual in Hong Kong;\textsuperscript{148}

• be 18 years of age or more, or be 18 years of age by a certain cut-off date in the year of the election;\textsuperscript{149} and

• hold an identity card (or be in the process of obtaining a new or amended one).\textsuperscript{150}

An authorised representative who meets all of the conditions of eligibility must formally register with the Election Registration Officer before voting.\textsuperscript{151}

\textbf{The ‘authorised representative’ and problems with agency voting}

Unfortunately, the FC system does not guarantee equal treatment of individual and corporate electors. Corporate bodies are treated more favourably than individuals, resulting in an unfair advantage in terms of both entitlement to vote and voting power.

Under the legislation, an authorised representative has a ‘substantial connection’ with the corporate body if he or she is ‘a member, partner, officer or employee of the body’.\textsuperscript{152} This extremely broad definition is evidence that the legislative scheme intended agency voting rather than voting based on a theory of identification. In other words, the corporate elector decides (in whatever manner it chooses) which candidate to vote for, and the authorised representative, as agent, is given instructions to effect this decision. This is in accordance with the legislation which states that the ‘corporate elector is required to select one eligible person to be its authorised representative for the purposes of casting its vote at an election’ [emphasis added]. The authorised representative, who can be any employee of the company, is to cast the company’s vote and not his or her own vote. Had the authorised representative been restricted to the most senior executive members of the company then the implication would have been much stronger that he or she was more than a mere agent.

The legislation expressly states that the voting is to be done by secret ballot, and the authorised representative is not required to tell anyone (including a court) for whom he or she voted.\textsuperscript{153} Indeed, it is an offence for any person to require or purport to require, without lawful authority, the authorised representative to disclose the choice made.\textsuperscript{154} There is, however, an inherent incompatibility between agency voting and secret ballot voting. The incompatibility lies in the impossibility of ever making the agent accountable to the principal (i.e. the corporate body) since it can (almost) never be determined whether the agent followed the principal’s instructions.\textsuperscript{155} The system is an imperfect one since the risk that the agent will not in fact give effect to the corporate elector’s will cannot be minimised and suspected failures to give effect to the corporate will cannot be corrected.
Preconditions imposed on the authorised representative rather than body

Few preconditions for voting are imposed on the corporate elector itself. The corporate elector must be specified for an FC, have a properly appointed authorised representative, register and vote in only one FC, and comply with the 12-month rule where applicable. Other preconditions that apply to individual electors do not apply to the corporate elector directly but through its authorised representative. In other words, it is the authorised representative, rather than the corporate elector itself, who must comply with the non-disqualification conditions, the residency requirements and others. In this way, the authorised representative is identified as the company, and where he or she satisfies these requirements, so does the company.

This arrangement is both odd and inconsistent. The legislative scheme uses a partial theory of identification when it comes to the preconditions for voting, but a theory of agency when it comes to effecting the electoral decision. On matters as important as exercising a political right, it is hard to accept that an authorised representative, who can be any member or employee of the corporate elector, should in all cases be identified as the corporate body. In terms of eligibility for voting, some absurd results can arise. In 2004, there was nothing to prevent the following otherwise eligible corporate electors, whose authorised representatives meet all of the statutory requirements, from voting:

- a company whose directors have all been recently convicted of a corruption or election-related offence that would normally disqualify an individual elector;
- a company whose current or former chief executive officer or chief financial officer are serving a term of imprisonment for corporate fraud;
- a company that was convicted of a bribery or election-related offence that would normally disqualify an individual elector;
- an overseas company that has never carried on business in Hong Kong; none of its officers or directors have ever travelled to Hong Kong and its only Hong Kong employee is the authorised representative; or
- an overseas company that has transferred its operations to Hong Kong six months ago; none of its directors, managers and employees are permanent residents except for the authorised representative, a recently hired secretarial assistant.

In all of these cases, had the disqualifying condition and residency requirements applied directly to the corporate elector, each of these bodies would have been ineligible to vote. Since the legislation only requires that the authorised
In this respect, there appears to be unequal treatment between corporate and individual electors. In substance, more impediments are imposed on individuals than on bodies when it comes to voter eligibility. While the full array of preconditions is applied to individuals, corporate electors are not subject to the same degree of scrutiny. Indeed, individual electors, unlike corporate electors, are not given the luxury of choosing a substitute person who can satisfy these preconditions and cast the vote for himself or herself.

**Controlled entities and the problem of packing**

The source of the greatest unequal treatment between corporate and individual electors is the ability of the former to control any number of entities, such as subsidiary or affiliated companies, all of which could be electors in the FC system. This gives rise to the problem of ‘packing’, where an elector (or any person) has packed a single or even multiple FCs with associated or controlled electors so as to increase his or her overall number of votes. Packing does not breach any law since each elector has a unique name and identity. In substance, however, once the corporate veil has been pierced, the practice breaches the fundamental rule that a registered elector is only entitled to vote once in a single FC.

The problem of packing is most acute with large conglomerate companies that own many subsidiaries, associated companies, and jointly controlled entities. Take for example, the conglomerate Hutchison Whampoa Ltd, which in December 2003 reported interests in 68 companies operating in Hong Kong. Appendix 13 shows that of these 68 companies, 36 were potential electors in four different FCs in 2004; 37 when the parent company is included. The Commercial (First) FC was packed the most, with 24 potential electors. The total number of companies listed in this appendix reflects only a minimum figure as it was not possible to determine the full extent of packing by this company.

Others have also reported packing in elections prior to 2004. In respect of the 2000 election, Gren Manuel reported multiple instances of packing by many companies in the Real Estate and Construction FC. In respect of the 1998 election, packing in the Finance FC, Insurance FC, Real Estate and Construction FC, and Transport FC was documented by the Hong Kong Human Rights Monitor. Reported problems of packing in the real estate FC date back to the 1991 elections.

Identifying the full extent to which there is packing in all the FCs is practically impossible. This is because of the governmental policy not to disclose the names of electors for research purposes. While any person may inspect the public register of FC electors, recording or copying any information from the register for a research purpose is prohibited. In the absence of data from the government register of electors, less reliable and more time-consuming means
must be sought to reconstruct the potential elector list, e.g., searching for the membership list of umbrella organisations.

Packing is not a problem unique to the FC system. Indeed, the problem will always exist in any general association that admits corporate voting members. Mindful of the unfairness that results from packing, some of these associations have adopted voting mechanisms to compensate for this inequality in their own general meetings. For example, in the Hong Kong General Chamber of Commerce, the ‘aggregate voting rights’ of corporate voting members of the ‘same group of companies’ is restricted to 1% of the total voting rights of all members. Recognising the potential for large conglomerates to dominate general votes, this rule imposes a cap on the voting power of such companies. Strangely enough, when it comes to voting in the Commercial (First) FC, of which all full members of the Hong Kong General Chamber of Commerce are potential electors, this rule is not applied. There is nothing in the legislation that requires the General Chamber to apply this rule. Even this internal rule adopted by the General Chamber has its difficulties, since it still allows packing to a limited extent.

Given the electoral system’s tolerance of packing, it has always been vulnerable to abuse and manipulation. ‘Deliberate packing’ occurs when individuals and/or companies create or register subsidiaries for the dominant purpose of obtaining additional votes in an FC. It is difficult to detect deliberate packing, but there are reports that it occurred in the 1991 election and possibly in the 2000 election. There is no provision in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) that specifically prohibits this practice. It is reported that the chairman of the Electoral Affairs Commission called upon the government to close a loophole that allowed the easy registration of shelf companies in the real estate FC for the purposes of packing. While the government is aware of the problem, its only response, as discussed below, is the feeble 12-month rule.

In addition to the advantages derived from packing, large corporate electors enjoy another advantage over individual and small corporate electors. Large corporate electors that have several different business areas will often be eligible to vote in several FCs. For example, Hutchison Global Communications Ltd is entitled to register in at least the Information Technology FC, Commercial (First) FC, Commercial (Second) FC, and Industrial (First) FC. While the law prevents an elector from voting in more than one FC, the fact remains that this elector has the choice of where it will place its vote. This is a factor that reflects an enhanced voting power in the FC system. As it is not uncommon for FC seats to be returned uncontested, where this occurs in a particular FC, the individual elector who is eligible to vote in only that FC will not have the opportunity to make his or her vote count. But the corporate elector that is eligible to vote in more than one FC will have a greater capacity to choose to vote in a contested FC thereby making its vote count.
The 12-month rule

As mentioned earlier, corporate members of umbrella organisations must satisfy a two-fold 12-month rule before they are eligible to vote. They must have been members of the umbrella organisation for the 12 months prior to applying to register and have been ‘operating’ in the same period of time. There is no definition of what it means to be operating or any indication of how it would apply to holding companies whose only purpose and function is to hold minimal amounts of property and assets. Compliance with the 12-month rule is left entirely to umbrella organisations to verify. No apparent standards are imposed by the legislation on how umbrella organisations should approach this verification process.

For corporate bodies that are directly specified as electors due to their representative status, they need only have been operating for the 12 months immediately before applying to be an elector. Compliance with this rule is usually verified by the government. It would be useful to research what standards are imposed by the government.

These 12-month rules were introduced in the original Legislative Council Ordinance (Cap 542) enacted after the handover in October 1997. As explained by the government at the time, the purpose of the 12-month rules was to ‘prevent “vote planting”’. This is another term for describing the problem of deliberate packing already discussed.

There are at least two problems that render the 12-month rules ineffectual. First, smart companies or individuals intent on deliberate packing will simply create their ‘operating’ subsidiaries at least 12 months before applying to register. While the enactment of the rule in October 1997 may have prevented deliberate packing in the 1998 election, the rule loses its force as time goes on since informed manipulators can easily comply with the rule by creating their shelf companies sufficiently early.

Secondly, there does not appear to be any active enforcement of the rules. Lack of definition and standards employed by the government and umbrella organisations is a major part of this problem. If the approach of the government is to treat holding companies as ‘operating’ while they are simply holding property without performing any other function then the 12-month rule is easily satisfied; it simply becomes a question of when the company was created.

There is another problem with the 12-month rule from the opposite perspective. The rule can exclude companies (of any size) that are genuinely and actively operating in the function of the FC because they have not been operating for 12 months, or not been a member of the umbrella organisation for 12 months, even though having been operating for years. The rule is a blunt one, unable to look at the specific circumstances of the body to judge it on its merits.

There seems to be little justification in keeping the 12-month rule. While it is ineffectual in preventing deliberate packing by informed manipulators, it also screens out legitimate enterprises that would otherwise be entitled to vote in the
An extension of the period is not an answer to the current system’s flaws as it would tend to screen out even more legitimate enterprises. Reducing the period will make it easier for informed manipulators to increase their voting power. It seems the only answer is to abolish the 12-month rule entirely and to replace it with a system that tests the legitimacy of each and every corporate elector applicant on the basis of fixed standards.

Residential ties to Hong Kong

It has already been seen that the system does not scrutinise the corporate elector directly for its residential ties. Since the authorised representative of a corporate elector can be any employee of that body, the residential requirements can be easily satisfied even by a body that is neither incorporated nor actively operating in Hong Kong.

In Appendix 13, it can be seen that of the 37 companies listed, six of them were not incorporated in Hong Kong (although all have their principal place of operations in Hong Kong). Furthermore, many of the umbrella organisations allow foreign companies or states to join as members. Amongst the membership in the Hong Kong General Chamber of Commerce include the consulate general offices of Belgium, Canada (commercial division), The Netherlands, Republic of Korea and others, the Government of the Province of Alberta, Canada, the Queensland Government Office Hong Kong, the California Association of China & Hong Kong SAR Ltd, the State of Illinois Far East Office, and the Vienna Representative Office o/b City of Vienna. These foreign state offices have joined the general chamber primarily to promote the interests of their own country and nationals either in Hong Kong, China, or their own home country.

Under the Basic Law’s Article 26, permanent residency is the prerequisite for the constitutional right to vote and stand for elections. Since individual electors must satisfy both a permanent and ordinary residency requirement, it seems appropriate to ask whether corporate electors should be expected to have a closer residential tie to Hong Kong in terms of their actual operations and economic contributions to the region. There are approximately a million non-permanent individual residents of Hong Kong,168 the majority of which directly contribute to Hong Kong’s economic and social well-being. By virtue of being non-permanent residents, they are categorically excluded from the electoral system. Yet, the system confers a fundamental political right on bodies that may have no residential ties whatsoever to Hong Kong and may even exist for the purposes of promoting the interests of another country. There seems to be no reasonable explanation for this unequal treatment.
**Governmental bodies with votes**

Public authorities are entitled to be electors in the FC system. Some clear examples include the Airport Authority Hong Kong, Kowloon-Canton Railway Corporation, and MTR Corporation Ltd, all of which are directly listed electors for the Transport FC. Further research would probably uncover more examples.

The inclusion of public authorities in a system of general elections obviously raises the issue of independence. Here the distinction between corporate and individual electors is significant. Whereas individual electors, regardless of their position in the civil service, ultimately make their political choices according to their own conscience and reason, corporate electors (ignoring the problems of agency voting) are motivated by their own corporate interests. It follows that where the corporate elector is a governmental authority, it is a governmental decision that is reflected in the vote. If the principle of separation of powers is to be adhered to, this type of direct executive input in the legislative election should be avoided.

**Electorate configurations in FCs**

The 28 FCs in 2004 exhibited three different electorate configurations: exclusively individual electors, exclusively corporate electors, and a mixed configuration with both individual and corporate electors. Appendix 9 lists the FCs according to these three electorate configurations. It shows that the number of FCs under each category is roughly the same. The third column in Appendix 9 shows nine FCs, including the Finance, Labour, and Tourism FCs, with only corporate electors. No obvious reason exists for excluding individual electors from these FCs.

Individual electors in a mixed configuration FC, such as the Information Technology or the Wholesale and Retail FCs, must inevitably contend with the problems of packing discussed earlier. Such individuals may themselves already control companies engaged in packing; nevertheless, to have to contend with this problem is both disconcerting and burdensome. This is to be contrasted with individual electors in FCs with exclusively individual voters, such as the Legal or the Education FCs. In these FCs without corporate electors, there is no risk that an elector might control more than one vote and have a greater say in the outcome of the election. These individual electors enjoy an undue advantage over individual electors in mixed configuration FCs. No valid reason seems to exist to justify the discriminatory treatment of the latter group.
Summary of findings and conclusions

Findings

**FC system**

The prevailing justification for the current system of FCs rests on two assumptions: that without the FC system, business and other sectoral interests will not find substantial representation in LegCo, and that substantial representation of such interests is integral to safeguarding Hong Kong’s prosperity and stability.

In 2004, only 5.76% of all registered GC electors had an additional right to vote in the FC election. There were over 3 million GC registered electors who were not entitled to vote as an FC elector.

The system of FCs breaches the ‘one person, one vote’ principle since individual FC electors are entitled to vote twice in the LegCo election, while GC electors ineligible to vote in an FC are entitled to vote only once.

There has yet to be a Basic Law challenge to the FC system on the basis that it breaches the right of permanent residents to vote. But such a challenge could attract another NPCSC interpretation.

Since the inception of FCs in 1985, the proportion of FC seats in LegCo has always been greater than that of GC seats. In 2004, for the first time, the proportions of FC and GC seats were the same at 50% each. The NPCSC has decided that this proportion will remain unchanged in the 2008 election.

The arrangement of the FCs in the 2004 election was unchanged from those in 2000 election, although some updates and changes were made to the electorate composition of individual FCs.

The number of FCs gradually increased from 11 to 29 in the system’s first decade. It has stabilised at 28 since 1998. The number of members returned is slightly more since the Labour FC has always returned more than one member.

The most significant period of development for the FC system occurred in the years surrounding the resumption of sovereignty in 1997. In the 1995 LegCo, the FC system experienced important changes arising from the reforms of Governor Patten. The number of registered voters increased from 69,825 in 1991 to 1,133,125 in 1995. This was mainly due to the addition of nine new FCs whose electorate consisted of working persons in over 80 major industry groups. Another important change was the replacement of the system of corporate voting with a new system that conferred individual voting rights on the directors and executive members of bodies.

Following the handover, most of the Patten reforms were dismantled. The number of registered FC voters in the 1998 elections shrank to 138,984, as a result of removing working persons from the electorate. The previous system of
corporate voting was restored. The number of FCs remained roughly the same, although the sectors represented in the new FCs were altered somewhat.

There is no single coherent theory that explains what sectors and functions are recognised, or how sectors and functions should be grouped together. The arrangement of FCs is driven more by political forces and constitutional developments than by principled and informed decision making.

The system of FCs has never been able to (or attempted to) reflect all the major economic, social, and professional sectors in Hong Kong. The system has been slow to recognise non-profit-oriented sectors. A religious sector is not recognised, although such a sector exists in the election of the chief executive and had existed in the LegCo Election Committee.

It is difficult to understand why political advisory bodies, such as the Heung Yee Kuk and District Councils, should have specific representation in LegCo when they are already mandated and empowered to influence government decision making under their constitutive legal framework.

The FC system does not recognise non-mainstream economic activity, such as domestic work, or part-time and freelance professionals. The system also does not recognise individuals who provide support to a recognised sector or profession.

With the large number of different sectors, functions, and professions, and the limited number of FC seats, grouping of functions is inevitable.

Some FCs, such as the Commercial (First) and Industrial (First) FCs, group together electors that come from a diverse range of sectors. Effective representation of such diversity becomes extremely challenging. Others either do not involve grouping (e.g. District Council members, qualified lawyers) or group a very small number of specific sectors or professions (e.g., doctors and dentists in the Medical FC). FCs that exhibit specified or encompassed grouping will periodically face the pressure of individual sectors wanting to split off to form a separate FC.

In 2004, the size of individual FCs varied greatly, with the largest having 77,696 registered electors while the smallest had only 149 registered electors. This disparity was also seen in the 2000 election. The largest FCs tend to be the ones with only individual electors, while the smallest ones tend to be FCs with exclusively corporate electors. Electors in smaller constituencies have a greater degree of voting power than those in larger constituencies.

The strategy of allocating more seats to larger constituencies to try to equalise the number of voters per representative has never been adopted.

The proportion of FC-registered electors for the various recognised sectors does not reflect the same proportion of actual persons engaged in the same sectors.

Where the number of registered FC electors is small, when compared to the actual number of persons engaged in the same sector, it is difficult to say that the FC electorate for that sector is representative. The restricted size also limits the pool of candidates from which to choose the elected member.
FC electorate

Three methods are used for determining electors in the current system of FCs: membership in recognised umbrella organisations, specified representative bodies, and recognised professionals. The first method is most commonly used.

The government’s policy for recognising new umbrella organisations is not transparent. Many umbrella organisations that would seem to fit within the FC system are not recognised.

Using umbrella organisations as a method to determine electors fails to capture bodies and individuals that do not belong to such organisations. There are no mechanisms for such bodies and individuals, who are legitimately engaged in the particular function of an FC, to register as an elector.

As most of the recognised umbrella organisations only admit corporate members, the number of individual electors is systemically restricted.

The responsibilities of verifying membership and legitimate engagement in a sector are delegated to the umbrella organisations. Governmental scrutiny of the process is only in relation to the recognition of the umbrella organisation and approval of certain changes to the constitutions of such organisations.

No consistent standards are imposed on the membership rules of umbrella organisations. In the recognition of new umbrella organisations for the 2004 election, certain onerous standards were imposed.

In relation to changes to the FC system for the 2004 elections, the administration expressly adopted a policy that the number and composition of FCs should remain unchanged. Applying such a policy inevitably forces arbitrary distinctions and qualifications to be made.

The use of representative bodies to define the electorate of an FC, by definition, excludes individual electors. Four FCs use this method exclusively. There is no explanation for why individual electors should be excluded in this way. As individual electors are allowed under the umbrella organisation and recognised professionals methods, there appears to be an inconsistent policy being applied.

The concept of a ‘representative organisation’ is also problematic. The concept presupposes that smaller organisations cannot make a worthy contribution in deciding the best representative for the sector.

Recognised professionals are accorded voting rights as individuals rather than as collective bodies or firms.

The recognised professionals are those who have specialised knowledge gained from advanced tertiary educational qualifications and whose profession is the subject of government regulation. Many other professionals that fit this description are not recognised as individual electors, e.g., insurance agents and brokers, financial analysts, etc.

It is a recognised principle under the legislation that a person, whether an individual or body, may only vote once in only one FC. If a person is eligible to vote in more than one FC, the person may choose in which FC to vote, but there are several exceptions to this rule.
Individuals specified for a particular FC must have permanent residency status, ordinarily reside in Hong Kong, comply with a 12-month membership rule in respect of certain bodies (where applicable), not be disqualified, hold an identity card, and be at least 18 years of age before they are entitled to vote.

Corporate electors vote by way of an eligible authorised representative according to a theory of representation based on agency voting. An authorised representative can be any employee of the corporate body. Agency voting is incompatible with secret ballot voting since the principal (i.e., the body) can never determine if the agent followed the principal’s voting instructions. An alternative to agency voting is to reserve the corporate body’s right to vote to an individual (or individuals) representing the directing mind of the body. This form of voting was used in the 1995 election.

No residential or disqualifying conditions are imposed on the corporate body directly. Instead, it is the authorised representative who must satisfy these requirements. But since the authorised representative can be any employee of the company, these conditions are easily met. Having selected an eligible authorised representative, the corporate body can become an elector even if it has no residential ties to Hong Kong and even if its directors and officers are disqualified from being electors. In this respect, corporate electors have an undue advantage over individual electors.

Corporate electors possess another advantage over individual electors in their ability to pack constituencies with controlled or associated entities so as to increase their overall voting power. There is evidence that packing is widespread in the FC system, although the full extent of the problem has not been researched. There are also reports that the corrupt practice of deliberate packing has occurred in previous FC elections. The legislation contains no mechanism to eliminate or diminish the unfair advantage realised with packing and the use of controlled entities.

The 12-month membership and operating rules were introduced in 1997 to deter deliberate packing. There are good reasons to believe these rules are ineffective since the definition of ‘operating’ is unclear, and with advance planning, the rule can be easily satisfied.

Some corporate electors are public authorities. The decision-making of such bodies lacks independence from the government.

There appears to be no explanation for why some FCs have both corporate and individual electors, while others have only corporate electors. Individual electors in mixed configuration FCs are systemically disadvantaged since they must contend with the problem of packing, which has a diminishing effect on the voting power of these individual electors.
Conclusions

The conclusions drawn from the above findings are arranged under four headings:

Systemic inequalities

The current system of FCs systemically benefits certain groups of people over others without any reasonable basis for the differential treatment. This inequality is seen most clearly in the treatment of GC electors engaged in a particular functional sector. Only those who are fortunate enough to be specified as an FC elector will have an additional vote.

In every Hong Kong workplace where one finds employees (or the employer itself) eligible to vote in the FCs, there will inevitably be a number of employees in the same workplace who are ineligible. This type of unequal treatment breeds animosity amongst the GC electorate, contributes to social divisiveness, and perpetuates social values of elitism, which are contrary to the values of a civil society.

Inequalities in voting power appear in a most vivid way from the extreme variability in constituency size and the gross size differential between the largest and smallest constituency. The relative sizes of FCs, on closer examination, reveal systemic discrimination against individual electors, a disproportionate number of which are in the largest FCs. At the same time, corporate electors, many of which populate the smallest FCs, are unjustifiably benefited. It is not an answer to say that it is in the nature of FCs for there to be size differential. Just as size is a criterion in drawing up geographical constituencies, it should also be taken into consideration in conceiving and reforming the FC system. However, trying to force absolute equality may inevitably result in contentious grouping of functions, which has implications for effective representation.

Individual electors in mixed FCs (having both individual and corporate electors) are in a disadvantaged position compared to individuals in non-mixed FCs (exclusively individuals), as the former must contend with the problem of packing, which is a problem not affecting the latter group. The answer to this problem is neither to have all mixed FCs nor no mixed FCs, but to devise ways to prevent the abuses of corporate voting.

Corporate electors enjoy undue advantages over individual electors by virtue of the authorised representative system, which enables corporate electors to more easily satisfy preconditions for voting. If corporate electors are to be treated on par with individual electors then the residency and the non-disqualification preconditions should be directly satisfied by the corporate elector as an entity.
Anomalies and incoherence

There is a lack of coherence in the system of FCs. Incoherence is seen in the recognition of functions, the grouping of functions, the recognition and treatment of umbrella organisations, and the recognition of representative organisations and professionals as electors. Why a greater number of individual electors cannot be included in certain FCs is inexplicable. Indeed one could say with confidence that the government’s policy on individual electors in the FC system is unintelligible and incoherent.

The administration’s policy of size control has greatly contributed to these anomalies. The policy is against the grain of the Basic Law principle of gradual and orderly progress towards universal suffrage. Another contributing factor is that the system is always behind the latest developments and changes in the economic and business world. No active steps are taken to try to ensure that the system is a reflection of current economic reality.

If the system of FCs is to be maintained, at least for the near future, a comprehensive rethinking of the entire system is needed. The system should be engineered according to a set of agreed principles, which should include principles of fairness and equal treatment at its core.

Inadequate safeguards to protect against abuse

The current systems of umbrella organisations and corporate voting are vulnerable to abuse. The legislation has few effective safeguards to protect against corrupt umbrella organisations. The law does not require the government to verify membership criteria or to oversee the membership approval process.

Actual abuses of the corporate voting system have been documented. There is no excuse for failing to tackle the problems of packing and deliberate packing, especially when organisations like the Hong Kong General Chamber of Commerce try to address the problem in meetings for their own chamber business. The current system is flawed in many other ways, including its theory of representation and authorised representative system; it is in dire need of a complete overhaul if not abolition.

The 12-month rules are ineffectual to prevent abuse. These rules are easily circumvented and can also block out electors genuinely engaged in the sector. More efforts must be taken to put in place a system that examines a potential elector’s bona fide engagement in the FC sector.

Abdication of governmental responsibility

The Basic Law and Hong Kong’s international human rights obligations impose responsibilities on the government to provide for an open, free and fair electoral system. The findings of this report strongly suggest that many steps need to be taken by the government to make the FC system fairer and more transparent.
There is an undue delegation of responsibility to private umbrella organisations for the purposes of identifying and verifying electors. While the use of umbrella organisations is a convenient method of determining electors, this method and the method of using major representative organisations are fraught with such difficulties that it is probably best to move towards abandoning them.

A statutory body, such as the Electoral Affairs Commission, should be given the responsibility to oversee FC elector determination according to a sector engagement criteria defined in the legislation for each of the FCs. These criteria would be more than the elector specifications that exist in the legislation, and the statutory body would be required do more than check the applicant’s membership in a specified umbrella organisation, a function currently performed by the Registration and Electoral Office. The person seeking to be an elector would need to provide evidence to satisfy the statutory body that he or she has met the relevant sector engagement criteria.

**Inaccessible primary data**

It is ironic that while the Constitutional Development Task Force’s Second Report called for greater public policy research, one of the most important items of primary data for studying FCs, i.e. the voters’ register, is inaccessible. The register is open for public inspection (but not recording), and copies may be made available for ‘any purpose related to an election’, but research to promote greater understanding of the electoral system does not come within this purpose according to the Registration and Electoral Office.

Valuable public policy research into FCs, particularly with respect to corporate electors, would be enabled if the FC elector register could be made available, with necessary restrictions taken to protect electors’ privacy interests, for this limited purpose.

In view of these conclusions, it is natural that the proposals of the task force in its Fifth Report come as a disappointment. Whatever merits the District Council proposal may have, they unfortunately do not address the many problems with the existing FC system. Any comprehensive reform of the FC system will necessarily involve and require a public discourse on how universal suffrage is to be established in Hong Kong. Such a discourse however has yet to begin.
CHAPTER 4

Elected by the elite: Functional constituency legislators and elections

Simon N.M. Young

Introduction

This chapter explores the functional constituency (FC) system from the perspective of its legislators and elections. FC legislators are a rare breed because of their origins in a unique electoral system. Candidates must satisfy many eligibility preconditions in order to qualify for FC election. One of the most important preconditions, which applies to all but 12 of the FCs, is the requirement that the candidate be of exclusively Chinese nationality. An analysis of legislators’ backgrounds since 1985 provides fruitful insights into the nature of the FC system. FC legislators are predominantly well-educated, middle-aged Chinese men who have established themselves in the business or professional world. Although the proportion of female FC legislators is increasing, diversity and community representativeness are generally lacking.

The chapter also examines the quantitative performance of FC legislators and their tendency to utilise modern methods of communication (such as email, mobile phone, pager, website) to stay in touch with the public. Quantitative performance is assessed according to membership on Legislative Council (LegCo) committees, chairmanship of committees, attendance at meetings, number of questions asked in LegCo meetings, and number of motions and amendments to motions moved. Legislators are ranked according to their summed performance rankings. The overall rankings are compared against a number of characteristics pertaining to FCs and FC legislators.

In the second part of this chapter, three aspects of FC elections are discussed. First, the high incidence of uncontested FCs is examined and critiqued. Secondly and thirdly, the elector registration and voter turnout rates are studied.

The chapter concludes with a summary of findings and conclusions related to concerns about public accountability, commitment to public service, diversity and representativeness, political parties, and widening of the electorate.
Functional constituency legislators

Eligibility preconditions for being an FC legislator

A person may be nominated as a candidate in an FC election only if the person satisfies the following nine preconditions; that he or she:

- has reached 21 years of age;
- is both registered and eligible to be registered as an elector for the constituency or has a ‘substantial connection’ with the constituency;
- is both registered and eligible to be registered as an elector for a geographical constituency (GC);
- is not disqualified from being elected as a member;
- has ordinarily resided in Hong Kong for the three years immediately preceding the nomination;
- is a Chinese citizen who is a permanent resident of Hong Kong with no right of abode in any country other than the People’s Republic of China, unless candidacy is sought in one of 12 specified FCs;
- has lodged a deposit with the returning officer concerned;
- has made and signed the necessary statutory declarations and promissory oaths; and
- is not currently nominated as a candidate for another constituency, whether geographical or functional.

With two exceptions, these preconditions also apply to persons seeking candidacy in GC elections. The second precondition listed above does not apply in GC elections; this means that candidates seeking election for a particular GC need not be a registered elector in or substantially connected to that GC. The GC candidate need only be registered and eligible to be registered in any GC. The other exception is that all candidates for GC elections must be Chinese citizens who are permanent residents of Hong Kong with no right of abode in any country other than the People’s Republic of China.
Minimum age requirement

Candidates for LegCo elections must be 21 years of age, which is three years more than the minimum age for being a LegCo voter. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Basic Law) does not prescribe this age limit, but does prescribe a minimum age requirement in respect of the chief executive and the president of LegCo, both of whom must be not less than 40 years of age.13

Before the implementation of Governor Patten’s 1995 political reforms, the minimum age for voters and candidates was the same: 21 years of age. Patten’s reform package did not include a proposal to lower the minimum age for candidacy. According to Article 21 of the Hong Kong Bill of Rights, only reasonable restrictions may be imposed on the right to be elected. There has yet to be a challenge to the minimum age requirement as an unreasonable restriction on this right. If such a challenge was to arise, the argument justifying this restriction would emphasise the practical need for legislators to have a degree of maturity and human experience. With the average age of incoming FC legislators at 52 and the youngest incoming FC member thus far at 33 years of age, the issue is unlikely to arise in practice (see Appendices 14 and 15).

This age requirement together with the precondition of having GC elector status makes clear that only individuals, and not corporate bodies, are eligible to be FC legislators.

Connection with the FC

It is sensible that a person who seeks to be the legislator for a particular FC should have some connection or ties to that FC. As previously noted, this constituency connection requirement does not apply in the GC elections. Hong Kong’s small territorial size and dense population make such a requirement neither necessary nor appropriate in the GCs, as each of the five geographical areas is hardly distinct in character or identity from the others. It might also unduly restrict the pool of talent for some areas such as the New Territories and the islands.

The FC connection requirement is not confined to having individual elector status in the particular FC. This is wise since 16 of the current 28 FCs have exclusively or predominantly corporate voters. Nor is the connection requirement confined to only individual electors and authorised representatives of corporate voters registered for the FC. Instead the connection requirement includes registered individual electors and anyone with a ‘substantial connection’ to the FC.14 ‘Substantial connection’ has the following two-part, non-exhaustive definition:

(i) being a member, partner, officer or employee of a corporate elector of the constituency or a corporate member of such a corporate elector [emphasis added]; or
(ii) belonging to a class of persons specified as being electors of the constituency.\textsuperscript{15}

An ‘officer’, in relation to a body corporate, is defined as including ‘a director or executive, or any other person concerned in the management, of the body’.\textsuperscript{16} If, after the close of nominations, a candidate ceases to have a substantial connection with the FC, he or she is disqualified from being elected as a member of LegCo for that FC.\textsuperscript{17}

While part (i) of the definition appears similar to the definition of ‘substantial connection’ qualifying authorised representatives of a corporate elector, it is broader.\textsuperscript{18} Candidates can be drawn not only from the pool of all possible authorised representatives of a corporate elector, but also from the pool of members, partners, officers and employees of all ‘corporate member[s] of such a corporate elector’ in the FC. This part of the definition can be explained with the aid of Figure 1 below.

\textbf{Figure 1. Substantial connection requirement for candidacy}

In Figure 1, A is a corporate elector and a body that allows membership by other corporate bodies. B, C and D are all corporate members of A. According to part (i) of the definition, any person who is a member, partner, officer or employee of A, B, C or D would have a substantial connection to the FC in which A is registered, even if B, C, and D are not eligible to vote in that FC. There is no guarantee that bodies B, C, D are actually engaged in the same function or sector as body A because the legislation imposes no controls on how corporate elector A admits its members. Thus, with this broad definition of ‘substantial connection’, it is possible for candidates for a particular FC to have no connection in substance to that FC.

Under part (ii) of the definition, a person has a substantial connection with the FC if he or she belongs to a class of persons specified as being electors of the constituency. For example, in the Social Welfare FC, any registered social worker
comes within this definition because the class of registered social workers is specified as electors for this FC. The significance of this part of the definition is that a person may opt to be a candidate for an FC even if that person is not a registered voter in that FC, and may even be a registered voter of a different FC. What is important is the individual is entitled to register as a voter in either FC.

The legislation makes clear that parts (i) and (ii) of the definition do not exhaust the meaning of ‘substantial connection’, and, in theory, a court could apply a broader meaning based on ordinary principles of statutory interpretation. No caselaw on this point exists, however.

The current definition of ‘substantial connection’, with one change, was enacted in 1997, before the 1998 election. Prior to the resumption of sovereignty and when corporate voting existed in the FC system (i.e. prior to the 1995 election), the legislation contained a different definition of ‘substantial connection’. From 1985 to 1994, a person had a substantial connection to an FC if he or she was:

- a ‘member, partner, director, officer’ or ‘concerned in the management (or any part of the management)’ of a corporate voter or recognised umbrella organisation for that FC; or
- a person who belonged to a class of persons entitled to vote in the FC.

This narrower definition differs from the current definition in two respects: it did not expressly include the employees of the corporate voters or umbrella organisations, and it included personnel of the umbrella organisations but not personnel of the corporate members of corporate voters. In terms of the example in Figure 1, under the former definition, members, partners, directors, and officers of B, C, D could not be candidates unless these bodies were themselves either eligible corporate voters or recognised umbrella organisations.

Given that most FCs are small, a broad definition of ‘substantial connection’ is desirable so as to maximise the potential pool of candidates. But a broader definition also risks attracting candidates with no connection in substance to the FC in question. In practice, however, the risk is negligible since it is unlikely a candidate with no connection in substance to the FC would be elected.

Unfortunately, the current definition of ‘substantial connection’ does little to increase the pool of candidates in FCs with exclusively individual electors, as the pool of potential candidates is no greater than the potential number of electors for the FC. Two such FCs, the District Council FC and Heung Yee Kuk FC, had less than 500 registered electors in the 2004 election. This partly explains why there has never been a contested election for the Heung Yee Kuk FC (and its predecessor, the Rural FC) and why the same person (Mr Lau Wong-fat) held the seat from 1991, when the Rural FC was established, to 2004. This pattern reoccurs in 2004 when Mr Lau took the District Council FC seat after an election and another senior member of the Heung Yee Kuk (Mr Daniel Lam Wai-keung) took the Heung Yee Kuk FC seat without contest.
Properly registered GC elector

To be eligible to register as a GC elector, the individual must:

- be a permanent resident of Hong Kong;25
- ordinarily reside in Hong Kong;26
- have provided a residential address in the application that is the only or principal residence for the individual in Hong Kong;27
- be 18 years of age or more, or be 18 years of age by a certain cut-off date in the year of the election;28 and
- hold an identity card (or be in the process of obtaining a new or amended one).29

Not disqualified from being elected

Unsurprisingly, there are more disqualifying conditions for candidates than for voters. Since candidates must be eligible to register as GC voters, they must pass the three sets of disqualifying conditions for voters: crime related, mental incapacity, and membership in any armed forces.30 As with disqualified electors, individuals who have been sentenced to death or imprisonment anywhere in the world and who have neither served the sentence nor received a free pardon, individuals who are serving a sentence of imprisonment, and individuals recently convicted of a specified corruption or election-related offence, will be disqualified from being nominated as a candidate.31 The period of disqualification for those convicted of a corruption or election-related offence is five years from the time of conviction, which is two years more than that for electors.32

In the 2004 election, the ‘serving a sentence of imprisonment’ condition came to the public’s attention when a GC candidate, Alex Ho Wai-to, was ordered to undergo six months of administrative detention by Mainland authorities for allegedly engaging the services of a prostitute.33 The issue was whether undergoing administrative detention without trial was the same as ‘serving a sentence of imprisonment’ for the purposes of disqualification. The Hong Kong Department of Justice considered this issue and ultimately gave the legal opinion that it was not the same.34 This position is consistent with the general principle that restrictions on fundamental human rights, such as the right to be elected, should be narrowly construed.35

In addition to these grounds, a person is also disqualified from being nominated as a candidate if he or she:

- is a judicial officer;36
• is a prescribed public officer;\textsuperscript{37}

• is an officer of LegCo or a member of staff of the LegCo Commission;\textsuperscript{38}

• has been convicted of treason;\textsuperscript{39}

• within the last five years, was convicted of any offence anywhere in the world for which the person was sentenced to imprisonment, whether suspended or not, for a term exceeding three months without the option of a fine;\textsuperscript{40}

• is ineligible or disqualified by the operation of any other law;\textsuperscript{41}

• is a representative or salaried functionary of a government of a place outside Hong Kong;\textsuperscript{42}

• is a member of a legislature, assembly or council of any place outside Hong Kong, other than a people’s congress or people’s consultative body of the People’s Republic of China;\textsuperscript{43} or

• is an undischarged bankrupt or, within the previous five years, has either obtained a discharged in bankruptcy or has entered into a voluntary arrangement with the person’s creditors, in either case without paying the creditors in full.\textsuperscript{44}

The Basic Law also contains disqualifying conditions that apply to serving LegCo members. These conditions are similar to those in the Legislative Council Ordinance, but with a few notable differences that reflect a higher standard of integrity expected of serving members. Article 79 of the Basic Law provides the following:

The President of the Legislative Council of the Hong Kong Special Administrative Region shall declare that a member of the Council is no longer qualified for the office under any of the following circumstances:

(1) When he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons;

(2) When he or she, with no valid reason, is absent from meetings for three consecutive months without the consent of the President of the Legislative Council;

(3) When he or she loses or renounces his or her status as a permanent resident of the Region;
(4) When he or she accepts a government appointment and becomes a public servant;

(5) When he or she is bankrupt or fails to comply with a court order to repay debts;

(6) When he or she is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the Region and is relieved of his or her duties by a motion passed by two-thirds of the members of the Legislative Council present;\(^45\) and

(7) When he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of the members of the Legislative Council present.

**Preceding three years ordinarily resident**

Prior to 13 July 1995, qualified LegCo candidates had to have ordinarily resided in Hong Kong for 10 years immediately proceeding the nomination. The period was changed to three years following an important court challenge to the old requirement. In *Lau San Ching v Liu, Apollonia*,\(^46\) the petitioner was disqualified from running in the 1994 District Board election on grounds that he had failed to meet the 10-year residency requirement. Although Mr Lau was born in Hong Kong, held permanent residency status, and had spent most of his life residing in Hong Kong, he had the misfortune of being detained and later imprisoned for counter-revolutionary charges on the Mainland from 1981 to 1991. As he was not physically in Hong Kong from 1984 to 1991, the returning officer found that Mr Lau was not ordinarily resident in Hong Kong for the 10 years preceding his nomination in 1994.

Mr Lau challenged the disqualification decision on two main grounds. First, he argued that the returning officer misapplied the law in failing to find Mr Lau ordinarily resident for the 10-year period. Secondly, he argued that the 10-year residency requirement was an unreasonable restriction on his right to be elected protected by Article 21 of the Hong Kong Bill of Rights. While the judge decided both issues in favour of Mr Lau, he confined the *ratio decidendi* of the case to the first ground. Justice Cheung found that, although not physically present in Hong Kong, Mr Lau was nevertheless ‘ordinarily resident’ for the 10-year preceding period having regard to his previous residency in Hong Kong, his temporary and involuntary absence, and his continuous intention to return to Hong Kong.

On the Bill of Rights ground, Justice Cheung accepted the three-fold purposes of having a residency requirement, as stated in the Canadian case of *Re Yukon Election Residency Requirement*:\(^47\) ‘(i) assurance of the integrity of the elected process; (ii) assurance that the voters are properly informed of the issues in any election; and (iii) assurance that voters have a sufficient connection with the territory’.\(^48\) Justice Cheung found it was unnecessary to have the 10-year
residency period to achieve these purposes. He also found the requirement disproportionate to the legitimate aims, while noting the shorter residency requirements, ranging from three to 12 months, in Canada, Australia and New Zealand. The most significant point of irrationality was the absurd circumstance at the time that a permanent resident was entitled to vote without demonstrating any preceding ordinary residence, but the same permanent resident needed to demonstrate 10 preceding years of ordinary residence to be a candidate.

The government responded by lowering the residency requirement to three years just before the 1995 LegCo elections. A private member’s bill to lower the requirement to 18 months was never enacted.

**Chinese citizenship**

The general rule is that LegCo members must be (1) a Chinese citizen; (2) a permanent resident of Hong Kong; and (3) have no right of abode in a foreign country. Exception may be made to this general rule if candidacy is sought in one of the following 12 FCs: Legal; Accountancy; Engineering; Architectural, Surveying and Planning; Real Estate and Construction; Tourism; Commercial (First); Industrial (First); Finance; Financial Services, Import and Export; and Insurance. This precondition is discussed in greater detail in the next section.

**Lodging of deposit and making declarations and oaths**

To be nominated, the candidate must deposit a prescribed amount with the returning officer and file certain signed declarations and promissory oaths. For the 2004 election, the deposit was HK$50,000, for candidates running in the GCs, and HK$25,000, for those running in the FCs. The candidate must sign a declaration ‘to the effect that the person will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region’. Taking of the oath of office is required by Article 104 of the Basic Law, which provides that LegCo members, when assuming office, ‘must, in accordance with law, swear to uphold the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China.’ The precise terms of the oath are prescribed in Schedule 2 of the Oaths and Declarations Ordinance (Cap 11) wherein it is described as ‘The Legislative Council Oath’.

In October 2004, following his election to LegCo in the GC elections, Mr Leung Kwok-hung brought an application for judicial review to determine if he was entitled to add an additional clause to the prescribed Legislative Council Oath, which he was scheduled to take in next few days. The translation of Mr Leung’s amended oath, with the additional clause emphasised, was as follows:
I, Leung Kwok-hung, solemnly, sincerely, and truly declare and affirm that I swear by the people of China and the residents of Hong Kong, as well as the principles of democracy, justice, human rights and freedom that, being a member of the Legislative Council of the Hong Kong Special Administrative Region of the People’s Republic of China, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China and serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity.

The Court of First Instance refused to grant Mr Leung leave to bring the application. Justice Hartmann found that however laudable were the sentiments expressed in the added clause, it was nevertheless not prescribed by law and accordingly not ‘in accordance with law’ as required by Article 104 of the Basic Law. He observed that the oath ‘constitutes a solemn declaration, a form of promise, which binds the maker to a particular code of conduct. A failure to adhere to that code of conduct may render the maker liable to expulsion from office.’ He found that a uniform oath required of all elected legislators was required to ‘ensure the integrity of a legislature’. Ultimately, Mr Leung adhered to the decision and took the prescribed oath, but voiced statements both before and after taking the oath in the LegCo chamber.

Finally, candidates must also declare their nationality and whether they have a right of abode in any foreign country. The promissory oath must be to the effect that the candidate will not do anything that would create a disqualifying condition during his or her term of office.

Not nominated for any other constituency

To avoid the problem of having one person being elected in more than one constituency at the same time, there is a general rule that limits candidacy to one LegCo constituency, whether FC or GC, at a time.

Exclusive Chinese nationality restriction

Article 67 of the Basic Law provides that:

The Legislative Council of the Hong Kong Special Administrative Region shall be composed of Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country. However, permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the Legislative Council of the Region, provided that the proportion of such members does not exceed 20 percent of the total membership of the Council.
While the meaning and intent of the article is clear, there is unfortunately no indication of how the 20% allowance rule should be implemented. On the face of Article 67, the allowance rule would seem to apply to all LegCo candidates irrespective of the electoral method by which he or she was elected. In other words, members elected by GCs should have an equal opportunity of enjoying the allowance rule as those elected by FCs.

The April 1988 Draft of the Basic Law did not contain qualification requirements for legislators because the Sino-British Joint Declaration on the Question of Hong Kong included no restrictions on qualification and such requirements were unnecessary given Hong Kong’s status as an international financial centre. According to Professor Xiao Weiyun, it was only after the British government ‘violated the solemn undertaking it made’ in the Joint Declaration by granting 50,000 Hong Kong households full British citizenship with the right of abode in the United Kingdom in December 1989 that the Basic Law Drafting Committee decided to include Article 67. The 20% allowance rule was defined ‘after references were made to the number of foreign nationals in the [then] LegCo of Hong Kong and to the ratio of foreign nationals in Hong Kong to the [then] population of 5,000,000-plus’.

In theory, there are essentially two ways to implement Article 67. First, candidacy rules can be applied before the election to ensure that the 20% allowance could never be exceeded. This method can be described as an ‘ex ante implementation’. The second method is to apply modification rules after the election to modify the results, if necessary, so as not to exceed the 20% allowance. This method involves ‘ex post implementation’. Since the 1998 elections, the HKSAR government has followed a method of ex ante implementation.

By designating only 12 FCs (or 12 LegCo seats) as constituencies in which candidates may be exempted from the general rule, this guarantees that no more than 20% of LegCo members will be non-Chinese citizens or have a foreign right of abode. The government’s stated reason for choosing these FCs was the belief that there would be a higher proportion of non-Chinese nationals wishing to contest these seats. This was explicated in an answer to a question from Dr Leong Che-hung in 1999:

C1. On Dr Hon LEONG Che-hung’s proposal regarding the 12 FCs specified in section 37 of the Legislative Council Ordinance, to provide information on the rationale for selecting these 12 FCs, whether any requests have been received from other FCs for inclusion as one of the 12 specified FCs, and candidates and elected Members in the 1998 LegCo election who are not of Chinese nationality or have the right of abode in foreign countries.

A1. Under section 37 of the existing Legislative Council Ordinance, persons who are not of Chinese nationality or who have the right of abode in other places may contest in the 12 specified FCs. The reason for proposing to choose these 12 FCs is that we believe there should be a higher chance of having
persons who are not of Chinese nationality wishing to contest in these 12 FCs. The proposal was passed by the Provisional LegCo. The relevant arrangement worked well in the 1998 LegCo election, and we have not received any requests from other FCs for inclusion into these 12 specified FCs. We therefore propose in the Legislative Council (Amendment) Bill 1999 that the same arrangement be adopted for the second LegCo election.

At the election held in May 1998, there are 16 candidates who are not of Chinese nationality or who have the right of abode in other places among the 27 candidates running in the 12 specified FCs. As for elected LegCo Members, five out of 12 Members in the 12 specified FCs are not of Chinese nationality or have the right of abode in other places.65

There are at least three difficulties with the present method of implementation. First, the belief that a greater proportion of non-Chinese nationals are more likely to be candidates in these 12 FCs may not be grounded in fact. It is also unrealistic to try to assess the likelihood of non-Chinese nationals running for seats in the GCs, for which there is no substantial connection requirement. Secondly, the 20% allowance is not only meant to benefit non-Chinese nationals, but also Chinese nationals having foreign rights of abode. The likelihood of persons holding foreign passports wanting to be a candidate is probably evenly distributed amongst potential candidates in all functional and geographical constituencies. Thirdly, persons running as candidates in constituencies other than the 12 designated ones are automatically deprived of the opportunity of coming within the 20% allowance rule. There is nothing in the Basic Law that says GC candidates cannot take advantage of this allowance rule, but the present arrangement systematically removes this potential benefit from all GC candidates. Professor Yash Ghai has expressed doubts about the constitutionality of this mechanism, suggesting that ‘it violates the right to equality before the law (Article 25 of the Basic Law).’66

The alternative method of implementation, i.e. ex post implementation, imposes no additional restrictions on candidacy but modifies the initial election results so as to comply with Article 67 before the results are finalised. For example, the elections could be held without any restrictions on non-Chinese nationals or foreign passport holders. If the initial election results reveal that the 20% allowance is exceeded then a lottery is held among those legislators in breach of the general rule to determine who can enjoy the allowance. Persons who are unsuccessful in the lottery may then take steps to try to retain their seats, for example, by giving up a foreign right of abode, but if this is not possible (for example, if one is a non-Chinese national) then they will need to step down, and either the next eligible person with the highest number of votes assumes the seat or a by-election is held. This alternative method is not without its difficulties as it will lead to greater uncertainty in election results and will likely require that elections be held much earlier than September to allow time for any necessary
modifications. Its main advantage is that it would preserve an equal opportunity for all candidates to enjoy the 20% allowance rule. In this way, the plain language of Article 67 is respected.

Both methods of implementation are clearly unsatisfactory. The many problems of implementation manifest the problematic nature of the rule itself. The 20% allowance imposes an artificial and arbitrary restriction on the outcome of LegCo elections. The general rule, particularly the no foreign right of abode limb, is arguably an unreasonable restriction. Countries such as Canada, the United States of America, the United Kingdom, and New Zealand permit its citizens with dual nationality to stand as candidates in legislative elections.67

Understandably, those who exercise executive power in Hong Kong, which is the most direct form of political power under the Basic Law, should hold Chinese nationality, Hong Kong permanent residency, and no foreign right of abode. The legislature, however, differs from the executive in that it represents the will of the public. If it is the will of the public to have greater diversity (ethnic or otherwise) in its legislators, then this will should not be suppressed.

Furthermore, as Hong Kong is a cosmopolitan and international city, it should not be surprising if its diversity is reflected in its legislature. The promotion of pluralism is something already accepted by the Hong Kong government in its cultural and social policies,68 and should be allowed to permeate the legislative arena.

One might argue that the no foreign right of abode requirement ensures patriotic loyalty in legislators. But is a Chinese permanent resident holding a foreign passport necessarily less patriotic and loyal to Hong Kong than one with no foreign right of abode? The high incidence of Hong Kong Chinese permanent residents holding foreign passports may have more to do with the uncertainty surrounding the 1997 resumption of sovereignty than with questions of loyalty. The historical impetus for Article 67, as a ‘tit for tat’ measure in response to a pre-1997 British-Hong Kong immigration policy, has largely faded in significance and from people’s memory, particularly given the economic and political stability that Hong Kong has enjoyed since 1997.

The Constitutional Development Task Force sought public views in 2004–5 on whether there should be any reform of the nationality requirement and allowance rule. In its Fifth Report, the task force noted that different sectors of the community preferred to maintain the status quo.69 It proposed that the existing arrangement of 12 seats be maintained for the 2008 election.70 The task force however did not discuss or consider the nationality requirement separately from the exclusive right of abode requirement.

Background of the legislators

Tables A to G of Appendix 14 provide detailed background information about the FC legislators elected in the seven FC elections held from 1985 to 2004. Appendix 15 summarises this data in a single table. The background information
includes the legislators’ gender, age, educational qualifications, political affiliation and self-stated principal occupation. Data pertaining to the contested nature of each seat is also included.

From Appendices 14 and 15, the average FC legislator is male, Chinese, 52 years of age, university educated with at least one degree likely to have been obtained outside of Hong Kong and China, and without any political affiliation. He will be a professional and/or a company director and only serve as a legislator on a part-time basis. He is likely to be the incumbent legislator being returned, and there is an almost 40% chance that he will take the seat without contest. If there is to be a contested election for the seat, there will probably be no more than two other candidates competing. Some of these background characteristics are discussed in more detail below.

Gender and age

Since the inception of FCs, there have been a total of only eight female FC legislators (Elsie Tu, Margaret Ng, Selina Chow, Miriam Lau, Sophie Leung, Li Fung-ying, Elizabeth Wong, and Mandy Tam), some of whom have been returned many times. This is substantially less than the 73 male FC legislators returned over the same period (see Appendix 14). On average, approximately three female FC legislators (or 11% of all FC legislators) are returned in each election. This figure is less than the average proportion of all female LegCo members returned in each election over the same period (15%). Nevertheless, the trend is towards a greater proportion of female FC legislators being returned. In both the 2000 and 2004 elections, five of the 30 FC legislators (17%) were women.

With an average age at election of 52 years, most FC legislators are middle-aged individuals who have already achieved success in their business enterprises and/or professional careers (see Appendix 15). There is no upward or downward trend in the average age, though it has fluctuated from 50 years to 55 years. On average, FC legislators elected in the 2004 election were the oldest ranging from 39 years to 68 years. The youngest FC legislator (Bernard Chan) was elected in 1998 at the age of 33 years. The oldest (Elsie Tu) was elected in 1991 at the age of 78 years.

Educational background

In each FC election, approximately 76% of the returned FC legislators have obtained one or more university degrees (see Appendix 15). Fifty-two percent have obtained their degree(s) from a university outside of Hong Kong and China. These relatively high proportions are to be expected given the business-and profession-based nature of the FC system.

The trend in having a university degree, both generally and from an overseas institution, is clearly an upwards one (see Appendix 15). Whereas in 1985, only
67% of FC legislators had obtained a university degree, the figure in 2004 was 83%. Similarly, 50% of the 1985 FC legislators had obtained a university degree overseas, while in 2004, the proportion was 63%. These trends are positive as it means that FC legislators are better equipped to understand the complex and technical issues that legislative work can often entail. With an overseas education, legislators will have a broader experience base to draw upon in devising new ideas and commenting on local practices.

**Stated occupation**

The most commonly stated occupation is company director or chairman. On average a third of all FC legislators elected in each election are holding one or more company directorships or chairmanships (see Appendices 14 and 15). The proportion of company directors/chairmen appears to be increasing (37% in 2000 and 2004) after hitting its low point of 27% in 1995.

Most of the remaining FC legislators either hold managerial positions in companies or practice a specific profession requiring advanced educational or other specialised qualifications. The Labour FC and Agriculture and Fisheries FC have attracted members with occupations that are clearly in the minority, such as trade union staff member and fisherman.

An interesting trend to note is the proportion of FC legislators who stated their occupation as ‘legislator’. Rather surprisingly, the proportion is exceptionally small, only 8% on average in each election. It was not until 1995, under Governor Patten’s widened electorate, that there was the emergence of FC legislators who thought of themselves as primarily ‘legislators’. Seventeen percent of all FC legislators included ‘legislator’ as their stated occupation in 1995. Since this time, however, the proportion has fallen significantly, down to only 3% in 2004. It is probably safe to infer that those who have included a different stated occupation will tend to devote only part of their time to their legislative work. As the work of LegCo becomes heavier and more complex, this downward trend is somewhat worrisome.

In 1995, when the FC system was the most democratic, there was the largest proportion of self-reported ‘legislators’ and the smallest proportion of company directors and chairmen. This is probably not a coincidence. The GC elections tend to attract a far greater proportion of full-time legislators. In 2004, 43% of all GC legislators indicated that they were full-time legislators.72

**Political affiliation**

FC legislators having political affiliations did not begin to emerge until 1991, the year in which direct elections to LegCo were introduced. The proportion (73%) having political affiliations peaked in 1995 (see Appendices 14 and 15). Since the handover, the proportion has fallen to around the 50% level. Thus, since 1998,
about half of the elected FC legislators have sat as independents (members without declared political affiliations).

As shown in Table 1 below, the Liberal Party (LP) is by far the dominant political affiliation amongst FC legislators. This is followed by the Democratic Party (DP) and the Democratic Alliance for the Betterment of Hong Kong (DAB). Since 1995, the proportion of DP-affiliated members has gradually decreased, while the proportion of DAB-affiliated members has increased slightly. Another trend observed in recent years is the disappearance of less mainstream political group affiliations. With the merger of the DAB with the Hong Kong Progressive Alliance (HKPA), the DAB is likely to maintain or increase its presence in the FCs.73

Table 1. Political affiliation of FC legislators 1991–2004

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<tr>
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</tr>
<tr>
<td>Other</td>
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<td>0</td>
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</table>

Source: Appendices 14 and 15.

Methods of communication with electorate

In a representative democracy, elected representatives perform two distinct roles. They must carry out the day-to-day work of legislating and being a check on the executive authorities. They must also act as the point of interface between the ordinary members of the public and the large impersonal government machinery. The Supreme Court of Canada has described these as the ‘legislative’ and ‘ombudsman’ roles of representatives:

Ours is a representative democracy. Each citizen is entitled to be represented in government. Representation comprehends the idea of having a voice in the deliberations of government as well as the idea of the right to bring one’s grievances and concerns to the attention of one’s government representative; as noted in Dixon v B.C. (A.G.), [1989] 4 W.W.R. 393, at p. 413, elected representatives function in two roles — legislative and what has been termed the ‘ombudsman role’.74
Serving the ombudsman role presupposes that legislators will make themselves accessible to the public. This chapter studies the extent to which FC legislators make use of modern methods of communication to stay in touch with the public. The sole source of data has been the Legislative Council website (http://www.legco.gov.hk) which contains the individual contact information for all legislators. The website was accessed on 11 September 2004 (one day before the 2004 LegCo election) retrieving the data that pertains to the 2000–2004 LegCo members. Appendix 16 collects this data and indicates whether legislators provided an office address, telephone and fax number, email address, and website address (including the last occasion the website was updated). The website was accessed again on 14 December 2004 and 24 February 2006 to retrieve data pertaining to the 2004–2008 LegCo members. The data for this group of legislators are found in Appendix 17.

All of the 2000 and 2004 FC legislators provided an office address, telephone and fax number. Eighty-seven percent of the 2000 FC legislators and 57% of the 2004 FC legislators provided either a pager or mobile telephone number in the ‘LegCo Members’ Contact Directory’, updated to 14 July 2004 and 13 December 2004, respectively. Ninety-three percent of the 2000 and 2004 FC legislators also provided an email address.75

Only 60% of the 2000 FC legislators and 53% of the 2004 FC legislators provided a link to a website. Approximately a third of the links/websites for the 2000 legislators were either inaccessible or had not been updated in the preceding six-month period. When accessed on 11 September 2004, three of the inaccessible websites contained a message stating that the site was suspended pending the 2004 election. Other than rules limiting election advertising, however, there are no laws or rules that require candidates to suspend their websites pending an election.76

In total, there were twelve 2000 FC legislators (40%) and ten 2004 FC legislators (33%) as at Dec 2004 who had provided links to websites that were operable and updated on a regular basis. By February 2006, the proportion had increased to 47%. Given Hong Kong’s high Internet user rate, these low figures are surprising.77 The operable websites that were regularly updated often provided useful information on the performance of the particular legislator and on issues relevant to electors in the particular FC and to the public generally.78 These websites are commendable not only because they keep the public informed of political developments but also because they provide a basis from which to scrutinise the work of the legislator.

A correlation exists between the size of the constituency and the provision of a webpage by the legislator for that constituency (see Table B in Appendices 16 and 17). Eighty-three percent of the 2000 FC legislators who provided operable and updated webpages were from FCs that ranged in size from 3,375 to 71,390 registered electors (Appendix 16, Table B).79 All of these FCs were composed of either exclusively or mainly individual electors. At the other end of the spectrum, out of the 16 FCs with between 148 and 1,831 registered electors, only two
legislators (Ms Li Fung-ying of the Labour FC and Mr Ip Kwok-him of the District Council FC) provided operable and updated webpages. Of these 16 FCs, 88% of them were composed of either exclusively or predominately corporate voters.

A similar correlation appears with the 2004 legislators (see Table B of Appendix 17). Seventy-one percent of the 2004 FC legislators who provided operable and updated webpages were from FCs that range in size from 4,571 to 77,696 registered electors (Table B of Appendix 17). Indeed all 10 of the FCs in this size range provided such webpages, and each of these FCs were composed of either exclusively or mainly individual electors. At the other end of the spectrum, out of the 18 FCs with between 149 and 4,063 registered electors, only four legislators (Ms Li Fung-ying, Mr Wong Kwok-hing and Mr Kwong Chi-kin of the Labour FC and Mr Bernard Chan of the Insurance FC) provided operable and updated webpages. Of these 18 FCs, 78% of them were composed of either exclusively or predominately corporate voters.

No obvious correlation exists between having a political party affiliation and the provision of a website. Whereas the three Democratic Party members in the 2000–2004 LegCo had provided access to their updated websites, the same was not true for legislators from the DAB and the Liberal Party. Of the nine DAB and LP members, only two provided operable and updated websites (Ms Selina Chow (Wholesale & Retail FC) and Mr Tommy Cheung Yu-yan (Catering FC) (see Appendix 16). Forty percent of the 2004 FC legislators with political affiliations provided operable and updated websites (see Appendix 17).

Overall, it appears that the larger the constituency size and the greater the proportion of individual electors in an FC, the greater the likelihood that the elected legislator for that FC will provide a well-maintained website for public access and scrutiny. With an increasing constituency size, the demand on the ombudsman role of the legislator increases along with the need to keep the constituency members informed. Internet technology can greatly assist legislators in carrying out this role while minimising the amount of time needed for face to face communication. In small constituencies, however, a website may be unnecessary for constituent members, particularly if they are corporate voters, who can just as easily pass on grievances and receive information through traditional methods of communication. But without a website, the general public will not have the benefit of easily accessing and scrutinising information about one’s work as a legislator.

Quantitative performance of legislators in 2000–2004

This chapter also studies the quantitative performance of FC legislators in the 2000–2004 term. Quantitative performance is measured in terms of membership in LegCo committees (see Appendix 18), chairmanship and deputy chairmanship of committees (see Appendix 19), attendance rate at Council and committee meetings for 2003–2004 only (see Appendix 20), and questions
asked and motions without legislative effect raised, including amendments to motions (see Appendix 21). Legislators were ranked according to their quantitative performance in each of these categories. An overall ranking was done on the basis of the summed ranks of each legislator in all of the categories (see Appendix 22).

It is recognised that there are limitations to studying only the quantitative performance of FC legislators. The amount of effort and time spent on legislative work does not necessarily reflect how well that work was performed or the impact and benefit the work has had on society. In other words, determining how well a legislator has carried out his or her legislative and ombudsman roles requires an examination of both the quantitative and qualitative aspects of performance.80

Nevertheless, legislators are elected to serve the public, and the public expects legislators to be fully committed to and engaged in their legislative and ombudsman roles. The quantitative factors considered in this study are indicative of the degree to which legislators are engaged in the public office for which they have been elected. They reflect how dedicated the legislator is to legislative work. Low performance on these factors is indicative of time and energy spent on non-legislative work. In this respect, it could well be that the time and energy has been spent carrying out the ombudsman role of being an elected representative. This study has not considered performance of legislators in their ombudsman role.

A study of quantitative performance has particular importance with respect to FC legislators, as most FC legislators perform their legislative role on a part-time basis together with their existing and established professional or corporate role.81 One would generally expect the quantitative performance of FC legislators to be low given their pre-existing functional obligations. Another concern is that FC legislators might tend to see themselves as only needing to work in their sector’s interest and consequently able to ignore matters unrelated to their sector, even though of great public interest. This is another systemic factor that could militate against quantitative performance.

Interestingly the results of the study do not reveal a consistently low performance amongst FC legislators; rather, the findings show quite a varying degree of performance. To gain a better understanding of this variation, the overall performance ranking of legislators is compared with a series of factors that relate to either the FC legislator or the FC itself. The extent to which there is correlation between performance ranking and the factor in question is analysed. The results of this analysis are shown in Appendix 23. A correlation may have predictive value in terms of the quantitative performance of future legislators from a particular FC. The following comparative factors relating to the FC legislator were considered: political affiliation, whether the stated occupation was ‘legislator’, first-time legislator, and the provision of an operable and updated website. The following comparative factors relating to the FC itself were considered: whether the FC was profession-based, whether the FC was composed of all or mainly corporate voters, the size of the FC, and whether the FC was uncontested in 1998, 2000, or 2004.
Legislators with a political affiliation

A strong correlation exists between quantitative performance and the presence of a political affiliation by the FC legislator. The top five ranking performers were all affiliated with a political party, whereas the bottom five were not (see Appendix 23). Five other legislators with political affiliations were in the upper half of the overall ranked list, making a total of 10 legislators in the upper half. These legislators came from the Democratic Party (three members), the Liberal Party (five members), and the DAB (two members). The four members in the lower half of the ranked list came from the LP (two members), HKPA (one member) and the DAB (one member).

These findings are unsurprising. Legislators who take their legislative role seriously are likely to be a member of a political party and to show a high level of quantitative performance. Having a major party’s backing also means that the legislator is more likely to be concerned with issues of general and public concern. Such involvement requires attending more meetings, joining more committees, asking more questions, and generally taking on more legislative work. The parties represented in the FCs also field candidates in the GC elections. Many GC legislators are members of these parties. As the parties cater to a broad public constituency, there is public pressure on party members, whether they are elected by FCs or GCs, to be seen as performing well. The public inevitably associates legislators with their parties, and therefore there is party pressure on members to avoid weak individual performance which could reflect poorly on their party.

Legislators who stated their occupation as ‘legislator’

Of the four FC legislators who reported their occupation as ‘legislator’ either exclusively or together with another occupation, three demonstrated quantitative performance in the upper half of the ranked list (see Appendix 23). The fourth person was ranked 17th on the list. The highest ranking reached by the three in the upper half was seventh place. Thus, as one would expect, legislators who state their occupation as ‘legislator’ generally perform well quantitatively, although they are not the top performers.

Experience as a legislator

No clear correlation was found between performance and being a first-time legislator. First time legislators tend to rank in the middle of the ranked list of FC legislators, with four in the upper half and four in the lower half.

Nor does being an experienced legislator correlate with performance. The top five performers ranged in experience from having previously served one to three terms as a legislator, while the bottom five ranged in experience from having previously served one to five terms as a legislator.
Legislators who provided operable and updated websites

A correlation exists between a legislator’s performance and his or her provision to the public of an operable and updated website. Of the 12 legislators who made such provision, 10 were performers in the upper half of the ranked list, including the first, third and fifth ranked performers (see Appendix 23). The two in the lower half were ranked 17th and 21st.

This correlation might be explained on the basis that FC legislators who take an active part in their legislative work are more likely to want to communicate their achievements and work progress with the public. Indeed, under-performers will have little to report to their constituents and to the public in general.

FCs based on established profession

A correlation also exists between a legislator’s performance and whether his or her FC is one based on an established profession. FCs such as Social Welfare, Legal, Health Services, etc. are comprised of individual professionals in each of these licensed professions; no corporate voters are included in these FCs. Of the nine profession-based FCs, the legislators from seven of them rank in the upper half of the ranked list (see Appendix 23). The other two occupy the 18th and 21st positions on the list.

Finding generally good performance amongst legislators who are elected from profession-based FCs is not surprising. The electors in these FCs are generally well educated and tend to have high expectations of their elected representative. Most of these FC legislators were elected out of competitive elections and not merely because there were no other competing candidates. Furthermore, none of these FCs have corporate voters, a factor which, as discussed below, is correlated with weaker quantitative performance.

FCs with exclusively or predominantly corporate voters

Almost half of the FCs have, exclusively or predominantly, incorporated or unincorporated bodies as their electorate. The legislators from 69% of these FCs were ranked in the lower half of the ranked list (see Appendix 23). To this extent, it could be said that there is a correlation between weak performance and a high proportion of corporate voters in the specific FC.

One theory to explain this correlation may be that corporate voters are not interested in having elected representatives who try to discharge their legislative role to the fullest extent. They simply want legislators who will protect and further their corporate interest which, at its core, is a profit-making one. Thus, for legislators whose mandate comes from a corporate electorate, there is little if any incentive to involve themselves in legislative work unrelated to their electorate’s interests. To fully explain the correlation also requires consideration of other factors that are generally associated with these FCs, such as their relatively small
size and their tendency to generate legislators without contest. These two factors are discussed below.

Legislators from corporate-electorate FCs are also capable of high quantitative performance. The second, fourth and eighth ranked performers all came from an FC with exclusively corporate voters (the Transport FC, Tourism FC and Commercial (First) FC respectively). Their high performance is probably best explained, however, by their affiliation to an established political party, and their general popularity gained having served in LegCo for more than one full term prior to 2000.83

**FCs that are small in size**

In 2000, almost half of the FC legislators came from FCs with less than 1,000 registered electors (see Appendix 16, Table B). Of these 14 legislators, 64% ranked in the lower half of the ranked list (see Appendix 23). When the size threshold is increased to 5,000 registered electors, 61% of the 23 legislators in this category ranked in the lower half of the list (see Appendix 23). These results show that FC legislators who have performed below average are more likely to come from small FCs.

A smaller constituency is probably easier to appease than a larger one. Thus, small functional constituencies with narrow interests (typically corporate interests) provide few incentives to encourage active legislative work, most of which the corporate constituents would consider unnecessary. Nor does the system have sufficient disincentives to deter laxity. As discussed below, many of the below average performers from small FCs were returned without contest in 1998, 2000 or 2004.

**Uncontested FCs**

The FCs in the bottom half of the ranked list have a strong tendency to return uncontested legislators. In 1998, 2000, and 2004, 70%, 89% and 82%, respectively, of the uncontested seats came from these FCs (see Appendices 23 and 26). The small size of these FCs partly explains the correlation: 93% of them had fewer than 5,000 registered electors in 2000 (see Appendix 23). As the size decreases, the pool of potential candidates who can participate in the FC election diminishes. Another explanation is that many of these FCs are non-profession-based and have a high proportion of corporate voters. If the FC legislator can cater for the interests of these corporate voters, then he or she is well assured a return to office even if his or her quantitative performance is low.
Functional constituency elections

Contested and uncontested FCs

The FC system is notorious for returning legislators without contest, as noted above. Appendix 26 tracks the history of this phenomenon. Since 1985, at least 30% of the FCs in each election year has returned legislators uncontested. In the first three elections, the proportion of uncontested FCs rose as high as 62% in 1988. With Governor Patten’s democratisation of the FCs in 1995, the proportion fell to its lowest point of 31%. Patten’s nine new FCs, which contained the bulk of the 1.1 million registered electors, all held contested elections.

Since 1995 and following China’s resumption of sovereignty over Hong Kong, the proportion of uncontested FCs has fluctuated but on the whole has increased on average by 5%. From 1998 to 2000 when the number of registered electors increased by 26%, there was a drop in the proportion of uncontested FCs from 36% to 32%.84 From 2000 to 2004, however, when the number of registered electors increased by 14%, the proportion of uncontested FCs increased from 32% to 39%. This counter-intuitive correlation suggests that incremental increases to the electorate size without any substantial changes to the delineation of the FCs will not necessarily decrease the proportion of uncontested FCs.

Another important observation from Appendix 26 is that the same FCs appear to return uncontested legislators repeatedly. As Table 2 shows, the Commercial (Second) FC is the worst offender as this FC has never in history held a contested election. The current member, Mr Philip Wong Yu-hong, has held this seat since 1991. He managed to retain his seat in 2004 without competition even though he was the second-lowest quantitative performer in LegCo in 2000–2004 (Appendix 23). He is also infamously known for insulting protesters with his middle finger gesture during the massive protest march on 1 July 2003 against proposed national security laws.85 Clearly, neither quantitative performance nor negative attitudes toward the public appear to affect his standing as an FC legislator.

The FC legislator who had the lowest performance ranking is also from an FC with a high rate of uncontested elections. The Finance FC has only had one election since 1985 and the same person, Mr David Li Kwok-po, has managed to hold this seat at all times. In 2000, Mr Li won the seat by a margin of 57 votes against Mr Leo Kung Lin-cheng, the only competing candidate.86 As the chairman and chief executive of the Bank of East Asia, Mr Li is perceived by the Finance FC electorate, which is comprised of banks and deposit-taking companies, as being capable of representing their interests. So long as he promotes and attends to these interests, he ensures his return to office without having to do more in his legislative role.87

The Heung Yee Kuk FC is another small FC with a high incidence of uncontested elections and whose 2000–2004 legislator exhibited poor quantitative
performance. Since its creation in 1991, then known as the Rural FC, it has never had a contested election. The same person, Mr Lau Wong-fat (chairman of the Heung Yee Kuk since 1980), held the seat from 1991 to 2000. In 2004, he won the District Council FC seat after a contested election with two other candidates. Unlike the Finance, Commercial (Second) and Industrial (First) FCs, the Heung Yee Kuk FC does not have a concentration of interest in specific corporate or business matters, but rather in the affairs of people living in the New Territories, particularly those in rural communities. It is the smallest of all FCs, with only 148 registered individuals in 2000, making up the executive council of the Heung Yee Kuk, a statutory advisory body to the government. With such a small pool of potential candidates and a narrow concentration of interest, a legislator who can competently represent the interests of the Heung Yee Kuk is unlikely to attract any adversaries for his post.

Even when there is a contested election for an FC, it tends to attract few competing candidates. Since 1985, the overall average number of competing candidates in contested FC elections is 1.9 (see Appendix 15). The Accountancy FC election in 2004 attracted much public attention when nine candidates competed for the seat. The incumbent, Mr Eric Li Ka-cheung, had decided not to run again. This triggered an anomalous competitiveness which is probably best explained by underlying tensions and differences in opinion within the accountancy profession.

<table>
<thead>
<tr>
<th>Uncontested FC</th>
<th>Number of times uncontested 1985–2004 (7 elections in total)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial (Second)</td>
<td>7</td>
</tr>
<tr>
<td>Industrial (First)</td>
<td>6</td>
</tr>
<tr>
<td>Finance [known as Financial in 1985]</td>
<td>6</td>
</tr>
<tr>
<td>Heung Yee Kuk [known as Rural in 1995 &amp; 1991]</td>
<td>5</td>
</tr>
<tr>
<td>Commercial (First)</td>
<td>4</td>
</tr>
<tr>
<td>Industrial (Second)</td>
<td>4</td>
</tr>
<tr>
<td>Real Estate &amp; Construction</td>
<td>3</td>
</tr>
<tr>
<td>Architectural, Surveying and Planning</td>
<td>3</td>
</tr>
<tr>
<td>Import &amp; Export</td>
<td>3</td>
</tr>
<tr>
<td>Labour</td>
<td>3</td>
</tr>
<tr>
<td>Insurance</td>
<td>2</td>
</tr>
<tr>
<td>Agriculture &amp; Fisheries</td>
<td>2</td>
</tr>
<tr>
<td>Textiles &amp; Garment</td>
<td>2</td>
</tr>
<tr>
<td>Social Welfare [known as Social Services in 1991]</td>
<td>2</td>
</tr>
<tr>
<td>Urban Council</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: Appendix 26.

Table 2. Frequency of multiple uncontested FCs 1985–2004
Registration and voter turnout rates

In 2004, approximately 68% of all individuals and bodies potentially eligible to vote in the FC system were registered to vote (see Appendix 24). This figure was only fractionally more than the 2000 rate but was an increase of more than 8% over the 1998 rate.

No consistent increase can be seen in the registration rate within individual FCs from 1998 to 2004. While several FCs show an upward trend, another common trend is a sharp rise from 1998 to 2000, followed by a smaller decrease in 2004. Changes in the potential size of the electorate, whether brought about by legislative change or the behaviour of existing or potential electors, will clearly affect the registration rate.

The registration rate across the spectrum of FCs varies significantly. In 1998, the registration rate ranged from 14.3% to 100%, with nine FCs below 55%. In 2004, the rate ranged from 21.5% to 100%, with eight FCs below 55%. With such low registration rates, one may query whether the voting electorate is representative of the whole potential electorate. For example, in 2004, when the Textiles and Garment FC had a potential electorate of 18,093 persons, only 3,894 were registered to vote, and of these, only about 2,330 cast effective votes.

More significantly, such low interest and participation may naturally lead one to ask whether the particular sector should have an FC seat in LegCo at all. If its potential members are uninterested in taking part in the electoral process, can there be any justification for allowing the sector a privileged voice in the legislature?

The varying registration rates across FCs are difficult to explain. As one would expect, the smaller the potential electorate size, the higher the registration rate, as it is generally easier to identify and register a smaller number of potential voters. The inverse is not necessarily true, however, as many of the large profession-based FCs, such as Education, Health Services, Medical, Social Welfare, Engineering and Legal, have managed to achieve high registration rates (probably because these professionals are already registered as required by statute).

One factor that does tend to correlate with low registration rates is an FC’s tendency to return uncontested legislators. In 1998, four of the five FCs with the lowest registration rates were uncontested. In 2000 and 2004, three of the five FCs with the lowest registration rates were uncontested. One should not be too surprised to find such a correlation since both indicators are consistent with three possible sentiments: a general contentment with the single candidate (who is often the incumbent legislator), a feeling that there is no point in registering if there is not going to be a competition, and a general lack of interest in the entire process.

To fully understand FC registration rates, one needs to study how each FC determines its electors. The FCs with the lowest registration rates tend to be based on commercial or economic sectors rather than established professions. Many of them have a high proportion of corporate voters. The five FCs with the
lowest registration rates (Textiles and Garment, Import and Export, Wholesale and Retail, Commercial (Second), and Commercial (First)) predominately use recognised umbrella organisations to determine its electorate. In other words, the legislation provides that the voting members of certain specified organisations will be entitled to vote in the FC. More research needs to be done on why the government and specified umbrella organisations have been unable to register the full voting membership of individual umbrella organisations.

Another method for determining electors is according to a government licensing scheme to carry on certain activities. For example, textiles manufacturers and traders registered with the government are entitled to vote in the Textiles and Garment FC. Yet, with a registration rate of only 21.5% in 2004, a substantial number of these bodies are not registered to vote.

The data on voter turnout are more in accordance with expectations (see Appendix 25). Generally, the average turnout rate is higher than that for the GC elections. From 1998 to 2004, the average FC turnout rate was about 13% greater than the average GC rate. As the FC electorate tends to be well-educated, affluent and well-informed (particularly in respect of political issues affecting their sector or profession), it is predictable that the FC turnout rate would be higher than the GC rate. In 2004, the average FC turnout rose to as high as 70.1%, which is the highest average rate for any FC or GC election. The two FCs with the lowest turnouts are Health Services and Catering. One wonders if this is partly due to the need for persons engaged in these two sectors to have to work on election day, and if so, whether more can be done to accommodate these work commitments.

Summary of findings and conclusions

Findings

Eligibility to stand for election as an FC legislator

Individuals who wish to run as a candidate for a particular FC must be registered as an elector in that FC, be eligible to be so registered, or have a substantial connection with that FC. Having a substantial connection includes being a member, partner, officer or employee of either a corporate elector of the constituency or a corporate member of such a corporate elector. Corporate members of a corporate elector need not necessarily be engaged in the same functional sector as the corporate elector. It may be possible to have candidates who do not have a substantial connection to the FC in terms of the nature of the sector he or she is engaged in.
Eligible candidates also need to be 21 years of age and have ordinarily resided in Hong Kong for the three years immediately preceding the nomination. Prior to 1995, the residency requirement was 10 years immediately preceding nomination. Both these preconditions are more stringent than those required of eligible FC voters. They impose restrictions on the fundamental right to be elected. Whether these restrictions are reasonable will depend on the importance of the reasons for having these restrictions and whether the restrictions themselves are proportionate responses in view of the importance of the reasons.

Many disqualifying conditions apply to FC (as well as GC) candidacy. In addition to those related to crime, mental incapacity and membership in armed forces, which also apply to potential electors, there are additional conditions based on one’s official position, being convicted of certain offences at certain times, and becoming bankrupt. A person serving a sentence of imprisonment at the time of nomination is also disqualified. In the 2004 LegCo election, the government stated that it did not consider being under administrative detention in the Mainland as ‘serving a sentence of imprisonment’ for purposes of disqualification.

Another important precondition to becoming a serving legislator is the taking of the Legislative Council oath of office. The Court of First Instance has held that this oath must be taken in accordance with the Oaths and Declarations Ordinance (Cap 11), particularly Schedule 2. The elected candidate is not entitled to alter the prescribed wording of the oath however much his or her conscience would so dictate.

Article 67 of the Basic Law provides that LegCo members must be Chinese citizens, Hong Kong permanent residents, and without any foreign rights of abode, with the exception that 20% of permanent resident legislators may be non-Chinese citizens and/or hold a right of abode elsewhere. Since 1997, this allowance has been implemented *ex ante* by the designation of only 12 FCs in which this allowance may be enjoyed by legislators. This implementation appears to be inconsistent with the plain language of Article 67 which does not restrict the enjoyment of the allowance to only certain FCs. It also appears to be inconsistent with the principle of equality before the law.

The alternative *ex post* implementation would ensure that all elected members have an equal chance of enjoying the allowance, but this implementation gives rise to uncertainties and can be disruptive. Consideration should be given to whether the restriction is justified at all for the legislative branch of government.

**Background of the FC legislators**

By a significant margin, most FC legislators are male. Since 1985, the ratio of male to female FC legislators has been nine to one. In recent years, there is a slight upward trend in the proportion of FC female legislators, though the proportion is still less than that seen in the GCs. The average age of FC
legislators is 52, which indicates that most legislators are already successful business people or professionals by the time they are elected.

With 76% of FC legislators since 1985 having obtained one or more university degrees, these legislators tend to be well educated. In recent years, an increasing proportion of FC legislators have a university degree and have obtained a degree from an overseas institution.

Since 1985, about a third of the FC legislators were holding company directorships or chairmanships on election, and the trend in this respect is increasing. The remaining legislators mostly held senior managerial positions or practised a specific profession. Few FC legislators publicly declared their occupation to be that of ‘legislator’, which implies that few if any FC legislators devote their time exclusively to carrying out their legislative role.

About half of the current FC legislators have declared political affiliations. This proportion has fallen from its high point of 73% in 1995. The Liberal Party is the dominant political affiliation.

**Methods of communication with electorate**

Since 2000, all FC legislators have provided an office address, telephone and fax number to the public for purposes of communication. Ninety-three percent also provided an email address (as at December 2004). Eighty-seven percent of the 2000 FC legislators provided a pager or mobile telephone number, but only a little more than half of the 2004 FC legislators provided such numbers.

Only 40% of the 2000 FC legislators and 47% of the 2004 FC legislators (as at February 2006) provided an operable and updated website informing the public of their legislative work.

Legislators from larger-sized FCs composed of individual electors have a greater tendency to provide the public with an operable and updated website. On the other hand, legislators from smaller-sized FCs with exclusively or predominantly corporate voters rarely provide such a website. The declaration of a political affiliation does not directly correlate with the tendency to provide an operable and updated website.

**Quantitative performance of FC legislators**

A correlation exists between strong quantitative performance and the declaration of a political affiliation. Legislators with a weaker performance ranking tend not to have any political affiliations. The correlation is unsurprising since the viability of political parties largely depends on its elected members who will need to form views and take an active interest in political and legislative matters generally.

FC legislators who state their occupation as ‘legislator’ generally perform well quantitatively but they are not the top performers.
First-time legislators tend to rank in the middle of the ranked performance list. Experienced legislators are found at both ends of the ranked list.

Good performers will generally provide an operable and updated website to inform the public of their legislative work.

A correlation also exists between good performance and FCs based on an established profession. In these types of FCs, which are made up of educated individuals with minds focused on their profession-related issues, there is probably a greater degree of pressure on the elected member to perform (or at least be seen as performing) at a high level.

Legislators from FCs that have exclusively or predominantly corporate voters mostly rank in the bottom half of the ranked performance list. These corporate-electorate FCs tend to be small, with focused corporate and profit-making interests.

Legislators from FCs with a tendency to return members uncontested were generally low performers on the ranked list. These FCs are very small and/or have a large proportion of corporate voters. They are also non-profession-based FCs.

**Uncontested and contested FCs**

At least a third of the FCs in each election returned a candidate without a contested election. In 1995, the proportion was the lowest at 31% but, in 2004, it had risen to 39%. The uncontested FCs tend to repeat themselves, with the same person holding the seat, with each new election. The incentive structures of these FCs are such that the same person can hold onto their seat despite poor quantitative performance in LegCo.

Contested FCs are generally not very competitive. The average number of competitors in contested FC elections is 1.9.

**Registration rates**

The FCs achieved an average elector registration rate of 68% in 2004, but the registration rates across FCs ranged from as low as 21.5% to 100% in 2004. The group of FCs with a registration rate of less than 55% has remained generally the same since 1998.

Large profession-based FCs tend to have good registration rates. But the FCs with the lowest rates are based on commercial or economic sectors and have a high proportion of corporate voters.

Once registered, FC electors will usually turnout to vote. The turnout rate rose to the unprecedented figure of 70.1% in 2004.
Conclusions

Based on the above findings, some preliminary conclusions can be drawn under the following headings:

Public accountability

Our society expects its legislators to be accountable to the public, and real mechanisms should exist to make legislators so accountable.

There are nonetheless many FCs for which real public accountability appears to be lacking. In these FCs, their representative can perform grossly below average quantitatively as a legislator and still be returned to office in the next term without any competition. This repeated phenomenon signals inherent flaws and defects in the FC system itself.

The FCs that exhibit poor public accountability are those that are small with a high proportion of corporate voters, and are based on commercial or economic sectors, rather than on established professions. These FCs have concentrated corporate interests, typically related to profit-making. Thus the mandate upon which these FC legislators are elected is a narrow one, i.e., to further the profit-making goals of the corporate electors in their constituencies. There is little if any incentive to engage in political, cultural, social, or legal issues unrelated to their sectors’ interests.

Ultimately, accountability for these FC legislators is to the corporate electors in their FC and not to the public generally. This explains the absence of a perceived need to provide an operable and updated website reporting one’s performance and achievements to the public generally. It also explains why on their part there is no perceived need to join LegCo committees, become chairpersons of committees, attend meetings, ask probing questions of the administration and bring motions if none of these activities can further the narrow interests of their corporate electors.

Many of these FCs also have difficulty in achieving a high registration rate, which calls into question why these particular FCs should even exist and reinforces the narrow interests captured by these FCs.

Commitment to public service

From its very nature, there is a tension between the FC system and commitment to public service. FC legislators are generally accomplished leaders in specific functional, professional and economic sectors, and it is unrealistic to expect that once they become legislators they will give up their past professional or business lives. In fact, FC legislators carry on with their established careers or business and devote only part of their time to legislative work.

Despite this inherent tension, some FC legislators still manage to accomplish a great deal as legislators, but most do not. Clearly, the distribution of legislative
work amongst FC legislators is grossly uneven. Many FC legislators, particularly the ones who lack public accountability, can do minimal legislative work and yet easily secure their seat in the next term. These FCs provide neither adequate incentives to encourage high quantitative performance nor adequate disincentives to deter laxity and non-performance. On the other hand, other FC legislators work extremely hard and will still need to fight a heated competitive election before returning to office (as the Legal and Information Technology FCs in the 2004 election).

As with public accountability, FCs that are non-profession-based, small, and with a corporate electorate are not conducive to producing legislators who are committed to serving the public in general. The incentive structures in these FCs are only conducive to producing legislators who will (exclusively or primarily) serve the narrow interests of their FC.

**Reflecting diversity and representing community views**

There is a general lack of diversity amongst FC legislators. The background data on legislators show that they are disproportionately university-educated, middle-aged Chinese males holding affluent professional careers and/or business interests. While one may say that this is the point of having FCs, a range of diversity may still be achieved amongst people engaged in certain professional and economic sectors.

This lack of diversity stems from a number of factors. The eligibility preconditions are relatively strict and do not encourage diversity. The substantial-connection requirement, although there is some flexibility with members of corporate electors, generally confines the pool of potential candidates for a particular FC to the pool of potential electors for that FC. This of course points to the most significant reason which is that the FC electorate in total only consists of about 6% of the electorate for the GCs. In other words, with only 184,756 individuals registered as FC voters in 2004, one begins with an extremely small pool from which to cultivate diversity.

Another reason is Article 67 of the Basic Law which requires LegCo members to be Chinese citizens and Hong Kong permanent residents without any foreign rights of abode. Exceptions are made for 12 of the 28 FCs. One wonders whether Article 67 should exist at all if one wants to encourage diversity in the legislature and views that are more representative of the community in general.

Finally, there are the problematic FCs that are antithetic to diversity given their tendency to return the same legislator uncontested and/or have a low voter registration rate.
Membership in political parties

Having FC legislators with political affiliations appears to be something positive for the FC system. Such legislators have demonstrated very good quantitative performance even if the legislators’ FCs are small and based on a high proportion of corporate voters. In other words, being a member of a major political party can override the deleterious effects on public accountability and commitment to public service associated with small, corporate electorate FCs.

Widening the electorate

The experience from the 1995 Patten-reformed FCs suggest that many benefits can be gained if the FC electorate is substantially, and not merely incrementally, widened.

The 1995 election produced the highest proportion of FC legislators with political affiliations and the highest proportion who declared their occupation to be ‘legislator’. There was also the lowest proportion of uncontested seats and self-declared company directors/chairmen in 1995.

The findings and conclusions of this chapter expose the systemic relationship between the FC system and the FC legislators in terms of their backgrounds, communication practices and quantitative performance. A full understanding of this relationship is critical to any debate concerning the reform or abolition of Hong Kong’s functional constituencies. The Constitutional Development Task Force’s proposal to add five additional FC seats to the District Council FC for the 2008 LegCo election has the potential to introduce new FC legislators who are more accountable and committed to serving the public generally. However this modest and isolated reform will have very little impact on the many other challenges facing the FC system identified and discussed in this chapter.
CHAPTER 5

The legal status of functional constituencies

Gladys Li and Nigel Kat

From a legal and constitutional standpoint, the system of functional constituencies (FCs) in the Legislative Council (LegCo) as presently established is inconsistent with provisions of the Basic Law which expressly import the provisions of the International Covenant on Civil and Political Rights or ICCPR. As such, the governments of the Hong Kong Special Administrative Region (HKSAR) and the People’s Republic of China (PRC) are under existing legal and constitutional obligations to rectify this inconsistency as soon as possible. One route towards satisfying these obligations would be to broaden substantially the franchise of the LegCo FCs, while at the same time removing the existing inequalities and vices in the existing FCs, an action that, according to this analysis, would conform with the Basic Law. (The relevant articles of the Basic Law (BL) are presented in the Annex to this chapter.)

The Basic Law

Article 68 (BL 68) of the Basic Law requires that ‘gradual and orderly’ progress be made towards the ultimate aim of universal suffrage. Before 1997, progress towards universal and equal suffrage had started and was being maintained. In 1997, however, the wholly-elected LegCo was replaced by an appointed Provisional Legislative Council and the elected municipal councils and wholly elected district boards were abolished in a dramatic regression. When LegCo was once more elected in 1998, the FCs reverted to narrowly-based constituencies similar to those in place before the electoral reforms of 1995, many of which included corporate voters.

The Decision of the National People’s Congress on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR sets out the composition of the first LegCo, while Annex II of the Basic Law sets out the composition of LegCo for its second and third terms, ending in 2008. For the first three terms the requirement for 30 members returned by FCs is specified. The composition of LegCo beyond the third term is not specified, but part III of Annex II lays out the procedure for amending its composition after 2007. It is generally accepted that in the absence of any change to the method of
election, the composition for the third term would remain. In addition, paragraph 2 of part I of Annex II explicitly states that constituency division and delimitation, electoral methods and seats returned are matters for the HKSAR to determine. These matters, so far as FCs are concerned, are currently provided for in sections 20, 20A–20ZB, 21 and Schedules 1, 1A–1E of the Legislative Council Ordinance, Cap. 542.1

While the Basic Law now no longer expressly dictates the pace at which the HKSAR may move toward universal suffrage, the Standing Committee of the National People’s Congress (SCNPC) has halted any progress towards universal suffrage after the third LegCo term by deciding that universal suffrage shall not apply to the election of all members of the Legislative Council in 2008, and requiring that the ratio of functional constituency members to geographical constituency members shall not be changed.

That decision does not preclude immediate reform to broaden substantially the franchise of LegCo’s FCs, which would not contradict the Basic Law in any way. The process of legislative amendment, including in accordance with part III of Annex II, will provide that progress is ‘orderly’ and, on an objective view of the history of suffrage in Hong Kong, such reform would also satisfy the requirement that progress be ‘gradual’. The HKSAR government is legally and constitutionally obliged to enact these reforms as soon as possible because, just as it was even before the SCNPC ruled out universal suffrage for 2008, the system under which members are returned to LegCo is a violation of citizens’ rights to vote by universal and equal suffrage without unreasonable restrictions.

This right is guaranteed in Hong Kong domestic law by Article 39 of the Basic Law, which provides that the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR. Further, as a matter of international treaty obligation, the PRC is bound to apply the provisions of these covenants in the HKSAR. These domestic and treaty obligations include the specific electoral rights contained in Article 25 of the ICCPR, and Articles 2 and 26 of the ICCPR require the enactment of effective legislation implementing these rights in the HKSAR. Any restrictions on the rights and freedoms enjoyed by Hong Kong residents must not contravene the provisions of these covenants. The following section examines the implications of the ICCPR for the legitimacy of the FCs in LegCo.

The International Covenant on Civil and Political Rights

The preamble to the ICCPR sets out that the ‘States Parties’ (signatory to the covenant) agree to the articles in the ICCPR in recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as being the foundation of freedom, justice and peace in the world and recognising that the rights derive from the inherent dignity of the human person.
Key aspects of these provisions are that the state is required to ensure, and that every citizen is to have these rights and the opportunity to exercise them; that they are to have them without any of the distinctions mentioned in ICCPR 2; that they are to have them without unreasonable restrictions and that the right and opportunity to vote is to be by universal and equal suffrage. (See the Annex to this chapter.) It is also essential to a proper understanding of the content of the rights and to the underlying basis of equality and non-discrimination that they derive from the inherent dignity and worth of every individual human being.

The obligation of the government is therefore to provide for an electoral system which complies with the provisions of the covenant. In the case of Lee Miu Ling and another v Attorney General (1995) 5 HKPLR 181, a legal challenge was made to the system of functional constituencies then in force. The colonial government relied upon the reservation which had been entered by the UK government in its application of the covenant to Hong Kong. This reservation has been enacted in the Hong Kong Bill of Rights Ordinance (BORO) at section 13. Mr Justice Keith rejected the government’s argument, holding that once the Legislative Council was to be elected, section 13 did not save a system of election which infringed Article 21 of the Hong Kong Bill of Rights (ICCPR Article 25). Justice Keith’s reasoning was not disapproved on appeal as the case in the Court of Appeal turned on the construction of the Letters Patent then in force. However, even though since 1997 the Letters Patent have been replaced by the Basic Law, the HKSAR government continues to rely upon the reservation as relieving it of an obligation to enact electoral laws compliant with the covenant. This is not justifiable. Considering this specific reservation, the authoritative United Nations Human Rights Committee (UNHRC) has expressed the view that once an elected Legislative Council is established, its election must conform to Article 25 of the covenant. The reservation also clearly falls foul of the UNHRC General Comment No. 24 relating to reservations made by states upon ratification or accession to the covenant. The comment says that a state may not reserve an entitlement to avoid taking the necessary steps at the domestic level to give effect to the rights of the covenant.

**Jurisprudence on the rights set out in the ICCPR**

The UNHRC is the body set up to monitor compliance with and implementation of the ICCPR. It has pronounced on the content of the rights in Article 25 in its general comment on the article. According to the UNHRC, Article 25 deals with the right of individuals to participate in those processes which constitute the conduct of public affairs. The ‘conduct of public affairs’ is a broad concept which relates to the exercise of political power, in particular, legislative, executive and administrative powers. It covers all aspects of public administration and the formulation of policy. According to Manfred Nowak, the term ‘public affairs’ permits a state party to structure the basic right to democratic participation in a manner consistent with the various models of democracy. As a common
minimum, the article establishes that the exercise of state authority must be based on the principle of sovereignty of the people, in which the government is ultimately responsible to the people and may also be controlled and deposed by it.6

The ‘right and the opportunity’ to take part in the conduct of public affairs means that the states parties to the ICCPR have a duty to guarantee with positive measures that all formally eligible persons have the actual opportunity to exercise their political rights.7 ‘Directly’ means that citizens’ participation in decision may be through mechanisms such as referenda or plebiscites. Citizens may also participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government. Where they participate through freely chosen representatives, it is implicit that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power.8

The right and opportunity is not merely the right and opportunity to vote but also to be elected. Such elections are to be by universal and equal suffrage. According to paragraph 21 of the UNHRC’s General Comment No. 25 on Article 25, although the ICCPR does not impose any particular electoral system, it does require that any system operating in a state party must be compatible with the rights protected by Article 25 and must guarantee and give effect to the free expression of the will of the electors. The principle of one person, one vote, must apply, and within the framework of each state’s electoral system, the vote of one elector should be substantially equal to the vote of another. The state is required to ensure that the drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of those entitled to be enfranchised to choose their representatives freely. The principle of equal suffrage means that each vote carries equal weight, that is both in numerical value and effect.9

The ICCPR requires that no distinctions are permitted between citizens in the enjoyment of the rights protected by Article 25. The electoral legislation must therefore not permit discrimination of any kind ‘such as race . . . [or] property . . .’ etc. and, further, must guarantee the absence of such discrimination. These equality and non-discrimination requirements in the right are further emphasised by ICCPR 2(2) (Article 1(2) BORO); see also s.5 BORO. The UNHRC has said that:

\[
\ldots \text{the Committee believes that the term ‘discrimination’ as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the}
\]
recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.\footnote{10} [emphasis added]

The cases and materials on the convention, summarised in Nowak’s authoritative ICCPR Commentary, put it beyond argument that: ‘Curial [sectional], class or plural suffrage that accords more weight to the votes of large land owners than those of other curiae violates the principle of universal suffrage’.

The Canadian jurisprudence on this right has established that electoral legislation must be directed toward securing effective representation in order to protect other rights and freedoms, as the legislature plays a primary role in this function in a democratic society.\footnote{11} Providing constituencies open to manipulation is inconsistent with the democratic values enshrined in the right to vote\footnote{12} and will therefore infringe ICCPR Article 25.

ICCPR Article 25 expressly prohibits ‘unreasonable restrictions’ on the right to vote. Reasonable restrictions would include setting a minimum age limit for the right to vote.

The UNHRC has said that:

It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements.\footnote{13} [emphasis added]

Instead, the state is obliged to institute positive measures to overcome specific difficulties such as illiteracy, language barriers, poverty or impediments to freedom of movement which prevent persons from exercising their rights freely.

Whilst the international jurisprudence recognises a limited range of permissible restrictions and favourable treatment in the organisation of elections and legislation on the right to vote and some derogation from strict equality, that derogation is subject to the requirements of justification. The accepted test is threefold: any such restriction must be ‘reasonable and compatible with international standards’\footnote{14} and ‘based on reasonable and objective criteria’\footnote{15} and it must be ‘rational and proportional’.\footnote{16} If the first two tests can be satisfied for each specific derogation, then and only then may a proportional allowance be made for systems dealing with the local peculiarities of the country concerned or a system undergoing reform\footnote{17} within the third qualification.\footnote{18} The state has the burden of justifying the inequality demonstrated or justification claimed.

For a discriminatory provision to stand, it has also generally been held necessary to demonstrate that both its purpose and its effect within that electoral system is to ensure some measure of equality of representation in the legislature or to ensure that the voice of some part or parts of a diverse community which might not otherwise be represented would be heard in the legislature: see e.g. Mathieu-Mohin and the Canadian Electoral Boundaries Reference above. However, even if the lesser equality provided can be justified on those criteria, if
the provision discriminates on grounds of ‘property or other status’ the infringement remains unreasonable under the covenant. 19

By Article 2 of the ICCPR, the state party undertakes to take the necessary steps to adopt such legislative or other measures as may be necessary to give effect to the rights in the ICCPR and to ensure that any person whose rights are violated shall have an effective remedy.

**Infringement of the ICCPR**

Hong Kong’s present domestically-enacted system of FCs clearly infringes the ICCPR on a number of counts. Prior to 1997, the UNHRC applied the convention principles above in its concluding observations on the section in the United Kingdom’s fourth periodic report relating to Hong Kong. The committee expressly said that it considered that the electoral system in Hong Kong did not meet the requirements of Article 25 or Articles 2, 3 and 26; that the system of FCs then in place, by giving undue weight to the business community, discriminated between voters on the basis of property and functions and by doing so violated ICCPR Articles 2(1), 25 and 26. 20 In paragraph 25 of the concluding observations, the committee recommended that ‘immediate steps be taken to ensure that the electoral system be put in conformity with Articles 21, 22 and 25 of the Covenant.’

Ironically, these observations and recommendations were made in October/November 1995 regarding the revised and broadened functional constituency system which, as then enacted, had enfranchised an estimated additional 2.7 million voters within the FCs who are not so enfranchised under the present system, as reintroduced after 1997. In the electoral system which has applied for all LegCo elections since the handover, the previous smaller, more disproportionate and narrowly based functional constituencies have once again constituted one-half of the legislature, effectively skewing representation in favour of a minority elite still smaller than that disapproved by the committee.

That present system attracted the same observations from the committee in November 1999. The committee reiterated that the electoral system for LegCo does not comply with ICCPR Articles 2, 25 and 26 in their concluding observations on the first report submitted by the PRC in respect of the HKSAR.

By themselves, the findings of the UNHRC and the directive requirements of ICCPR 2(2), 25 and 26 imposed on the PRC government as a state party are sufficient to constitute objective ‘need’ for the purposes of BL 68 and Annex II so that remedial legislation is required.

No legal justification has been offered for the retreat in 1997 from progress towards universal and equal suffrage or for the failure to comply with the ICCPR and the principles set out in BL 68 and Annex II. Although the HKSAR government has sought to justify the functional constituency system as an interim arrangement, there has been no serious attempt to deny that it fundamentally infringes the provisions of the covenant. Indeed, it is difficult to see how a system
which gives certain sectors of the electorate the right to elect two representatives while denying that right to the vast majority of the electorate could be other than unequal and discriminatory on prohibited grounds.

The political justification originally offered in the 1980s and 1990s and still heard today is that the purpose of functional constituencies is to provide a representative voice for the territory’s economic and professional sectors, reflecting their importance to the community. We observe that this is incompatible with the principles of non-discrimination in Articles 2 and 25 and the equality of rights enunciated in the preamble to the covenant. That certain sectors are regarded as being of more importance to the community and therefore more worthy of representation is also politically and legally offensive to those sectors which are not so recognised, as well as being socially divisive.

A closer consideration of the existing system of FCs discloses further infringements of the convention rights at various levels. There appears to be little rationality or proportionality in the present system. For example, some professions and some ‘sectors’ are given representation whereas others, such as students and housewives, are not.

There are numerous systemic illogicalities which produce inequality, especially the system of corporate voters within certain FCs, sometimes side by side with individual voters in the same constituency. The system of corporate voters is open to easy manipulation as it enables a single individual to incorporate many companies and thus control the vote in small FCs.

There are several large, diverse ‘organisations of organisations’ constituencies such as the Hong Kong General Chamber of Commerce, but other FCs are tied to one industry.

These systemic failures nullify the ‘equal footing’ required by the ICCPR. A comprehensive examination of the more notable infringements appears in the paper by Young and Law referred to in note 1.

Even if these derogations from the covenant were permissible, an analysis of the present FCs which focuses on the electors in those sectors deemed by the present system to be ‘important’ shows that not every HK permanent resident working in those privileged sectors is enfranchised. Within some FCs, only certain persons are considered sufficiently worthy to be entitled to express the will of those sectors or those permanent residents in that sector. Thus, discrimination is piled upon discrimination.

Furthermore, when functional constituencies are viewed in the context of the split-voting system presently enacted and preserved by the SCNPC, the extent of the deviance from the minimum standards contained in the ICCPR becomes plain. The voting power of the electorate in the geographical constituencies is at least equalled if not outweighed by that of the special interests that are enfranchised by the functional constituencies. The ICCPR rights of the electorate in the geographical constituencies to participate in public affairs through their freely chosen representatives are directly impaired by the privilege conferred on the various and disproportionate minorities who have the right and
the power to return a functional constituency representative whose vote is of equal worth in LegCo to that of a directly-elected member.

It is our view that these infringements cannot be justified as they are founded on the prohibited grounds of discrimination without having a purpose compatible with Articles 25 or 26. Nor is the favoured treatment of the FC electors justifiable within the ICCPR as ‘reasonable’ or based on ‘objective criteria’. As enacted, these provisions do not serve to ensure the hearing of any unrepresented voices; rather, they give a disproportionate voice and power to persons already represented in the legislature.21

The way forward

The double requirement in BL 68 and ICCPR 25 that progressive legislation must be enacted to provide electoral rights on terms of broad equality requires substantive compliance, albeit in a ‘gradual and orderly’ manner per BL 68. We see no objective or rational historical justification to satisfy less than substantive implementation at this time; the process of legislative amendment in itself will provide that progress is ‘orderly’ and, on an objective view of the history of suffrage in Hong Kong, would also satisfy the requirement that it be ‘gradual’.

The guarantees of these rights have been in place at both constitutional and domestic legislative levels for some 14 years while the covenants have been applicable to Hong Kong since 1976. The Basic Law, including Articles 39 and 68, was promulgated in 1990 to take effect in 1997; BORO, including ICCPR 2, 25 and 26 was also enacted in Hong Kong in 1990.

As noted above, no reasoned or detailed justification of the current system of FCs has ever been put forward either to demonstrate compliance with the principles of ICCPR 2, 25(b) or 26 or otherwise to justify in law the present restrictions on those rights. There is therefore no admissible reason why the recommendation of the UNHRC to implement the covenant obligations cannot be followed by the immediate enactment of legislation both to broaden the franchise substantially and to remove all the inequalities and vices in the FCs. Elections in 2008 should take place under a system which would be consistent with all the provisions of the BL, including BL 68 and Annex II and which would enable the sovereign government to comply with its international obligations.

Summary

The HKSAR government is obliged by Articles 39 and 68 and Annex II of the Basic Law to enact domestic legislation to reform the present system of FCs, which infringes those articles.

The new domestic legislation must:

• Comply with BL 68 and Annex II;
Comply with BL 39 and hence Articles 2(2), 25 and 26 of the International Covenant on Civil and Political Rights by which such legislation:

i. Must secure effective representation by protecting the right of all Hong Kong permanent residents to vote for their choice of representatives by universal and equal suffrage, including substantially equal numerical voting weight and substantially equal effect in the composition of the legislature so elected;

ii. Must not discriminate between voters on grounds of property or other status;

iii. Must not otherwise discriminate between voters save on any ground as can be shown to be reasonable and compatible with international standards, can be justified on reasonable and objective criteria, and can be shown to be rational and proportional to the present domestic and political conditions of Hong Kong; and

iv. Must not be open to manipulation.
Annex

Relevant provisions of the Basic Law

Article 39

The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.

Article 68

1. The Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election.
2. The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.
3. The specific method for forming the Legislative Council and its procedures for voting on bills and motions are prescribed in Annex II; ‘Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and its Voting Procedures’.

Annex II

I. Method for the formation of the Legislative Council

1. The Legislative Council of the Hong Kong Special Administrative Region shall be composed of 60 members in each term. In the first term, the Legislative Council shall be formed in accordance with the ‘Decision of the National People’s Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region’. The composition of the Legislative Council in the second and third terms shall be as follows:

   Second term
   Members returned by functional constituencies: 30
   Members returned by the Election Committee: 6
   Members returned by geographical constituencies through direct elections: 24
Third term
Members returned by functional constituencies: 30
Members returned by geographical constituencies through direct elections: 30

2. Except in the case of the first Legislative Council, the above-mentioned Election Committee refers to the one provided for in Annex I of this Law. The division of geographical constituencies and the voting method for direct elections therein; the delimitation of functional sectors and corporate bodies, their seat allocation and election methods; and the method for electing members of the Legislative Council by the Election Committee shall be specified by an electoral law introduced by the Government of the Hong Kong Special Administrative Region and passed by the Legislative Council.

[Part II excluded]

III. Method for the formation of the Legislative Council and its voting procedures subsequent to the year 2007
With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People’s Congress for the record.
Relevant provisions of the International Covenant on Civil and Political Rights

**Article 2**

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, *without distinction of any kind*, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status . . . [emphasis added]

**Article 25 (Article 21 of the Hong Kong Bill of Rights Ordinance)**

Every citizen [permanent resident] shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

(c) To have access, on general terms of equality, to public service in Hong Kong.

**Article 26 (Article 22 of HK BORO)**

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. [emphasis added]
CHAPTER 6

Comparative profiles and attitudes of FC voters versus GC voters in the 2004 LegCo election campaign

Michael E. DeGolyer

Executive summary

In a first in Hong Kong political studies, the Hong Kong Transition Project (HKTP) and Civic Exchange have compiled a comprehensive picture of functional constituency voters. The key findings of this comparative voting sector research are that Hong Kong’s increasingly contentious politics appear to be strongly connected to feelings of unfair influence stemming from the grossly inequitable voting power between functional constituency (FC) seats and geographical constituency (GC) seats, as well as extremely disproportional power, franchises, and election processes among FC seats. At the same time, and in seeming contradiction, many support special influence for the educated and well-off, though many without an FC vote want the FC franchises expanded and the two groups, FC Legislative Council (LegCo) members and GC LegCo members, separated into two bodies. However, upper houses in bicameral systems intentionally select more broadly representative members while lower houses are more narrowly geographically and interest orientated. In Hong Kong, the case is reversed, with the FC portion very narrow in interests and more geographically concentrated (research revealed residents of Hong Kong Island have considerably greater representational power and influence, especially among FCs). Also, as two in five FC voters live there, and FC voters are more active in civil society and among government and media than GC voters, legislative focus tends to be dominated by Hong Kong Island issues and voters. Many FCs have, in addition, large portions of voters who are civil servants or from the quasi-public sector. These are further inputs to the prevailing sense of unfairness which increases the bitterness of debate and erodes the legitimacy of the SAR system which promised to replace colonial inequity with ‘Hong Kong people ruling Hong Kong’.

The research also found that FC voters’ greater civil participation, rather than their privileged position of power and influence (a factor normally conducing to isolation), may be why FC voters are more supportive of
constitutional reforms toward full direct election of the chief executive and all members of LegCo than GC voters. Their extensive civil participation exposes them more than GC voters to the divisive effects the current unfair ‘representative’ system is having on social cohesion and governmental legitimacy. FC voters are more worried about instability, and more prepared to react to it by leaving Hong Kong, than GC voters. The vast majority of Hongkongers want social stability and economic prosperity. Most realise to ensure those goals requires a more equitable distribution of political and economic power. How to ensure a fairness that is the basis for legitimacy, while building in protections for property and minority rights (explicitly economic or ‘class’ minorities) which are the requirements of prosperity, lies at the heart of Hong Kong’s reform dilemma.

For this pioneering research project, the HKTP conducted 1,286 interviews with registered FC voters in a series of telephone surveys from May to September 2004 during the campaigning for the 2004 Legislative Council (LegCo) election. Voters from all 28 FCs were randomly interviewed and proportionally representative subsamples were extracted. In this chapter, samples of FC-registered and likely voters are compared with a dataset of 3,363 GC-registered and likely voters accumulated randomly over the same timespan. In the latter part, the pre-election GC/FC surveys are compared to an 800 sample GC/400 sample FC post-election survey conducted in mid-December 2004. The post-election survey focused primarily on issues of constitutional reform and reveals, for the first time, views of GC voters compared to FC voters on reforms.

Unfairness and its effects

This chapter presents the first random survey ever conducted of all 28 FCs. As such, and since there is not a body of research literature with which to compare it, it pays the reader and behoves the researcher to explain in more depth than usual the means and methods used. Problems associated with developing a random sample and thus a reliable picture of the characteristics and attitudes of FC voters are numerous. The reason random contact in surveys is so important is that unless all members of a group are equally likely to be selected, the results will be biased. For example, older folks tend to live in group homes more, or simply due to age and health problems such as hearing difficulties, answer the phone less often than others in a household. This is one of the main reasons the HKTP uses a Kish Table or a randomisation process that stipulates a particular member of a household to be interviewed rather than taking whoever answers the phone. But randomly contacting FC voters poses even more difficulties than normal surveys. The 199,539 registered FC voters in 2004, including those casting corporate votes, are hidden within a population of 6.9 million and thus are nearly impossible to contact through sheer random dialling. This is not the case with GC voters. Some 3.2 million persons registered to vote in GCs in 2004, including the 184,756 ‘individual’ FC voters who also had the right to vote in the GCs. Randomly contacting GC-registered voters by normal random dialling...
is simple. Odds are that nearly every other person in Hong Kong is a registered voter, and for those 18 and up, much better than that. However, only one person in 37 is an FC voter.

The contact issue points up critical barriers to researching FCs and also underlines why study of FC voters, though so important to understanding the dynamics of Hong Kong politics, has been limited. Half the seats on the Legislative Council derive from the 199,539 FC voters while the other half represent 3.2 million GC voters, including 184,756 individual FC voters who have the power to vote twice, in their FC and in their GC. The numbers and characteristics of these two groups also underlines critically important fault lines within the Hong Kong polity. A key issue dividing Hong Kong is fairness. Table 1 shows that the ‘typical’ GC voter is roughly equal to other GC voters in representative power in the sense that roughly equivalent numbers of voters are allotted to each seat. ‘Voting power’, the usual political science term, sounds somewhat abstract and Western to Chinese ears particularly. Of course some have more political power than others and even the gross disparities pointed out below might be considered acceptable. However, one of the fundamental concepts of law is that all are equal before it and equally bound by it. To ensure the legitimacy of law and hence to protect the rule of law, many states stipulate that the representatives elected to make the laws must represent an equal number of voters. The equality of representation ensures that the votes on the laws which equally bind all derive from equal representatives. This fundamental fairness in making laws equally binding on all provides the foundation of legitimacy. Among the 30 GC representatives in LegCo there is, as Table 1 shows, a considerable degree of equality, hence fairness.

<table>
<thead>
<tr>
<th>Constituency</th>
<th>Registered voters</th>
<th>Seats</th>
<th>Voters represented per seat</th>
</tr>
</thead>
<tbody>
<tr>
<td>HK Island</td>
<td>618,451</td>
<td>6</td>
<td>103,075</td>
</tr>
<tr>
<td>Kowloon East</td>
<td>524,896</td>
<td>5</td>
<td>104,979</td>
</tr>
<tr>
<td>Kowloon West</td>
<td>420,259</td>
<td>4</td>
<td>105,065</td>
</tr>
<tr>
<td>NT East</td>
<td>770,590</td>
<td>7</td>
<td>110,084</td>
</tr>
<tr>
<td>NT West</td>
<td>873,031</td>
<td>8</td>
<td>109,128</td>
</tr>
</tbody>
</table>

But, as Table 2 (in the Annex) shows, among FC voters the power or fairness ratio across seats varies dramatically. Initially, FC voters have a nominal ‘power ratio’ or ‘fairness ratio’ of approximately 16:1 over GC voters.\(^6\) That is, the many fewer FC voters electing the same number of representatives (30) as the many more GC electors had voting power 16 times greater than the typical GC voter in 2004. However, this would be a very wrong conclusion to draw. Fully 62% of all FC voters cast ballots for only two of the FC seats. That is, the actual ratio for most of the FC seats ranges very, very far from rough equality. The most powerful voters can almost be determined by reading the table from bottom to top.
top, with the exception of the Heung Yee Kuk (see Fairness Ratio, GC to FC for rankings in Table 2). The difference among voters per LegCo seat ranges from a maximum of 110,084 voters per LegCo seat in New Territories (NT) East GC to as few as 154 corporate voters for the Finance FC. Every Finance FC voter thus has equivalent representative power as 715 voters in NT East, a fairness ratio of 715:1, whereas the Education FC ratio to NT East voters is 1.4:1. Resentment by GC voters of the disproportionate, or unfair, influence of FC voters is understandable.

Within the 30 FC seats, fairness ratios also vary widely, resulting in resentment of one FC having more influence than others and in constant internecine battles to split FCs into smaller groups or merge them into larger ones. (See the Fairness Ratio, Education FC to FC column in Table 2 in the Annex.) For example, the ratio between the Education FC with 77,696 individual voters versus the Finance FC with 154 corporate voters is at least 505:1. The ratio is ‘at least’ 505:1 because the 154 corporate votes may very well include a single wealthy owner of several corporate entities in the Finance FC casting more than one vote by proxy control, giving that single voter an even greater ratio of power than even the vast nominal difference indicates. This is clearly the case with several of the FCs, handing tycoons with giant holding companies the proxy power to cast hundreds of votes in up to 10 FC seats. Jealousy and charges of conspiracy or collusion of certain businesses with government are a constant undertone of discussion among Hongkongers. The non-transparency of corporate voting, the lack of clarity as to who actually controls a corporate vote versus who casts it, and the explosion of suspicions among voters in these small-franchise elections especially when votes are close in a contested election are just the beginning of the effects the gross disparity of power creates. Unfair or undue influence is at the heart of Hong Kong’s increasingly contentious politics.

The disproportionate power of the FC voters is not confined to the 30 FC seats. FC voters live very disproportionately on Hong Kong Island, the GC constituency that perhaps incidentally (and then perhaps not) takes the fewest voters to return a GC seat, giving Hong Kong Island GC voters the greatest voting power per voter by far. Since the 184,756 individual FC voters also have the vote in GCs, the actual proportional voting power of those with only the right to vote in GCs is even less compared to FC voters, while voters living on Hong Kong Island have considerably more power per person than those living elsewhere. The effect is to skew legislative interest toward Hong Kong Island. It is hard to over-emphasise the effect the unfair FC voting system has on Hong Kong politics, the effects of unfairness are also difficult to measure, especially in a reliable rather than anecdotal manner. However, this is precisely what we claim to have accomplished. Therefore extended discussion of the methods used is required in order to establish the bases upon which some very significant, but hitherto unknown and sometime counter-intuitive, conclusions rest.
Methods and meaning

Surveying tiny numbers of corporate voters by random contact methods would cost so much and take so long as to be practically impossible. The government has never made available to researchers a comprehensive electoral roll of FC-registered voters, hence such voters are extremely difficult to contact by random means. Rather than randomise the final digits of telephone numbers input into the computer-aided telephone interview (CATI) database as with GC surveys, the three FC surveys in Table 3 retained the telephone numbers input from lists of registered voters without change. These lists were compiled from registers of members of organisations given an FC franchise, from listings of professionals such as lawyers in the telephone directories published in Hong Kong, from government registers of authorised persons in certain professions which have their own FCs, and from registered FC voter lists given to FC candidates participating in the FC study. Since many names in Chinese are alike, some names and numbers in the database were found to not be FC-registered voters. Further, in households with more than one FC voter, particularly female FC voters who did not answer the telephone and whose names were not listed in directories, we tried to interview both voters. The FC surveys also did not use the Kish Table to randomise who in the household we interview (this was used in GC surveys). Numbers from that universe of FC-registered and likely FC-registered voters comprised the database of over 20,000 numbers from which 20 numbers at a time were downloaded into our CATI stations for the FC surveys. The numbers successfully contacted and completing the questionnaires in the FC merged dataset are as follows.

The May and July HKTP surveys and the June and July GC surveys found FC-registered voters completely randomly as part of the survey of registered voters conducted at those times. The June, July and August FC surveys were specifically focused on surveying FC-registered voters. To overcome possible

### Table 3. FC-registered voters from each survey

<table>
<thead>
<tr>
<th>Date of survey (2004)</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>May HKTP#1</td>
<td>68</td>
<td>5%</td>
</tr>
<tr>
<td>June GC#1</td>
<td>79</td>
<td>6%</td>
</tr>
<tr>
<td>June FC#1</td>
<td>296</td>
<td>23%</td>
</tr>
<tr>
<td>July HKTP#2</td>
<td>77</td>
<td>6%</td>
</tr>
<tr>
<td>July GC#2</td>
<td>63</td>
<td>5%</td>
</tr>
<tr>
<td>July FC#2</td>
<td>305</td>
<td>24%</td>
</tr>
<tr>
<td>Aug GC#3</td>
<td>72</td>
<td>6%</td>
</tr>
<tr>
<td>Aug FC#3</td>
<td>326</td>
<td>25%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,286</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>
bias in our merged survey data, we took a variety of stratified samples from the merged database and analysed each against the full merged set of 1,286 cases. We excluded the Education FC from some stratified samples since that is by far the largest FC, with 77,696 registrants, 38.94% of the total of FC-registered voters. Our surveys contacted 226, 17.6% of the merged database. (We made no effort to compile an Education FC voters list, hence all educators were randomly contacted.) To see if this largest of all FCs distorted the demographics and attitudinal results of the other FCs, samples discussed below show ‘Education in’, or ‘Education out’, meaning that that FC was included or excluded from the analysis to test for distortions.

The 3,363 GC voters contacted includes 359 FC voters who were also registered as GC voters. This number represents roughly 10% of voters in the GC surveys whereas the 199,539 FC voters comprise about 6% of the overall GC registrants (3,207,227 in 2004 according to the Registration and Electoral Office). All random surveys conducted in Hong Kong tend to oversample younger, more educated respondents, which are also demographic groups most likely to contain FC voters. The age and education groups over-represented in the study sample, however, also tend to be more likely to vote than older, less educated respondents. So the over-sampling in demographic terms is much less evident compared to the age/education profiles of those who register to vote and then actually vote. In other words, the nominal oversampling better represents actual voter turnout profiles. Including the FC voters in the GC data gives a better idea of GC voters’ attitudes in terms of voting results in the GCs. However, there are distinct differences between those who only have a vote in the GCs and those with both FC and GC votes. A post-election survey conducted in December 2004 in which these distinctions were drawn is discussed below.

Due to the dramatically differing sizes of the FCs, a variety of stratified sampling techniques were employed to gain a more representative sample across all the FCs.⁹ We set up six databases created with different conditions:

1. A stratified sample from the total of cases from all 28 FCs (Labour has three seats but is considered one FC) based on the registered voter percentage in the population of all FC-registered voters. Denoted ‘Education in’ samples.

2. A stratified sample from the cases from 27 FCs based on the registered voter percentage in the population, excluding the Education FC because this is the biggest group and hence possibly most unlike the other FCs. Denoted ‘Education out’ samples.

3. A stratified sample from the total of cases from two regrouped sets, ‘business and business-oriented professionals’ and ‘non-business and non-business-oriented professionals.’ ‘Business and business-oriented professionals’ includes Agriculture and Fisheries,


5. A stratified sample from the total of cases from two regrouped sets, ‘small-franchise’ FCs and ‘large-franchise’ FCs. ‘Small franchise’ includes Heung Yee Kuk, Finance, Insurance, Agriculture & Fisheries, Transport, Industrial 1st and 2nd, Labour, Financial Services, Real Estate & Construction, Tourism, Commercial 1st and 2nd, Import & Export, and Sports, Performing Arts, Culture & Publication.

6. ‘Large franchise’ includes Textiles & Garment, Wholesale & Retail, Information Technology, Legal, Architectural, Surveying & Planning, Engineering, Catering, Medical, Social Welfare, Accountancy, Health Services and Education. Note the District Council is excluded from the large/small franchise analyses.

Classifying the FCs into business and business-oriented professionals versus non-business and non-business-oriented professionals is to test differences between the demographics and attitudes of the business-oriented FCs and the non-business-oriented FCs. Some of these divisions between business and non-business are judgement calls. For example, many Heung Yee Kuk FC voters are business people; others are not. Since the Kuk is primarily a representative organisation of a governmental body (representing the indigenous New Territories villagers), we deem it non-business. The same holds for District Councils. A number of Legal FC registrants are government employees, as are most in the Medical and Health Services FCs. Many in the Social Welfare FC are in non-profit NGOs.

The hypotheses being tested are whether there are significant differences between business-oriented and non-business-oriented FCs. The Education FC is included or excluded simply because it is so large it may distort response patterns of the other FCs. The small franchise versus large franchise tests are to determine if size of franchise affects voter attitudes. Since the smallest franchises have seldom been contested while the largest have always been contested, certainly size of franchise affects some aspects of voter or at least candidate behaviour.
However, it is less clear whether registered voters in smaller franchise FCs are systematically different from larger franchise FCs in other aspects.

Table 4 in the Annex shows the stratified sampling method applied in the available samples from the compiled FC database, with the Education FC included. We were able to achieve small variances of the actual stratified sample from the theoretical ideal in nearly all cases. However, for the small franchises, the number taken with the Education FC included was tiny, often only one case,

### Table 6. Stratified samples by business group* — Education FC in and out

<table>
<thead>
<tr>
<th></th>
<th>Population</th>
<th>Available FC samples</th>
<th>Number of stratified samples actually taken</th>
<th>Sampling distribution differences</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Registered voters</td>
<td>Stratified samples</td>
<td>% of total</td>
<td>Stratified samples</td>
</tr>
<tr>
<td>Education FC in</td>
<td>Non-business &amp; prof.</td>
<td>140,733</td>
<td>70.53%</td>
<td>574</td>
</tr>
<tr>
<td></td>
<td>Business &amp; prof.</td>
<td>58,806</td>
<td>29.47%</td>
<td>711</td>
</tr>
<tr>
<td>Education FC out</td>
<td>Non-business &amp; prof.</td>
<td>63,037</td>
<td>51.74%</td>
<td>348</td>
</tr>
<tr>
<td></td>
<td>Business &amp; prof.</td>
<td>58,806</td>
<td>48.26%</td>
<td>711</td>
</tr>
</tbody>
</table>


However, it is less clear whether registered voters in smaller franchise FCs are systematically different from larger franchise FCs in other aspects.

Table 4 in the Annex shows the stratified sampling method applied in the available samples from the compiled FC database, with the Education FC included. We were able to achieve small variances of the actual stratified sample from the theoretical ideal in nearly all cases. However, for the small franchises, the number taken with the Education FC included was tiny, often only one case,

### Table 7. Stratified samples by size of franchise* — Education FC in and out

<table>
<thead>
<tr>
<th></th>
<th>Population</th>
<th>Available FC samples</th>
<th>Number of stratified samples actually taken</th>
<th>Sampling distribution differences</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. registered</td>
<td>Stratified samples</td>
<td>% of total</td>
<td>Stratified samples</td>
</tr>
<tr>
<td>Education FC in</td>
<td>Small franchise</td>
<td>10,923</td>
<td>5.49%</td>
<td>122</td>
</tr>
<tr>
<td></td>
<td>Large franchise</td>
<td>188,154</td>
<td>94.51%</td>
<td>1157</td>
</tr>
<tr>
<td>Education FC out</td>
<td>Small franchise</td>
<td>109,23</td>
<td>9.00%</td>
<td>122</td>
</tr>
<tr>
<td></td>
<td>Large franchise</td>
<td>110,458</td>
<td>91.00%</td>
<td>931</td>
</tr>
</tbody>
</table>

Tables 5 in the Annex excludes the Education FC and achieves much larger, hence more reliable, sampling comparatively across most FCs. However, given the still limited sampling sizes, conclusions from the full stratified samples, whether Education is in or out, should be drawn with care. The regroupings according to business and non-business orientation and franchise size in Tables 6 and 7 allow much more confidence for comparison along these vectors. Besides testing hypotheses related to business- versus non-business-related FCs and the effects of franchise size and comparing each with results from the GC surveys, the regroupings in Table 6 and Table 7 provide sufficient sample size to provide greater degrees of confidence in the comparative results in the demographic and attitudinal variables explored later in this chapter.

Table 8 shows the effects of including or excluding the Education FC on sample sizes.

**Characteristics of FCs and GCs**

This section compares profiles of FCs with GCs, revealing characteristics of Hong Kong’s elites. The difference between the GC sample of Hong Kong Island residency (25.3%) and the stratified samples of FCs in Table 10 (in the Annex) means FC voters live disproportionately there. Educators tend to live more evenly distributed than other FCs, since the effect of taking educators out is to consistently widen the spread between FC voters living on Hong Kong Island from those living in other GCs. Table 11 (in the Annex) shows the results of the full, unstratified sample and the same for the business/non-business and franchise size classifications. The close correlation of these larger samples to the stratified samples in Table 10 buttresses confidence in the reliability of the

<table>
<thead>
<tr>
<th>Sample Description</th>
<th>Sample size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stratified full sample</td>
<td>657</td>
</tr>
<tr>
<td>Stratified non-business &amp; prof.</td>
<td>423</td>
</tr>
<tr>
<td>Stratified business &amp; prof.</td>
<td>177</td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>49</td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>850</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sample Description</th>
<th>Sample size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stratified full sample</td>
<td>516</td>
</tr>
<tr>
<td>Stratified non-business &amp; prof.</td>
<td>259</td>
</tr>
<tr>
<td>Stratified business &amp; prof.</td>
<td>241</td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>81</td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>819</td>
</tr>
</tbody>
</table>
cumulative sample method and in the stratification sampling methods applied. The dominance of Hong Kong, geographically characterised by the Peak, and the price differential in properties located on the Peak versus elsewhere are accurately reflective of the island’s dominant voting power and influence over the rest of Hong Kong. Table 12 shows the average ages, years of education and monthly family income among the FCs. Removing the Education FC lowers the average educational attainment among the non-business and professional stratified sample, as expected. But the most striking finding in this table is the considerable difference in educational attainment and income between the small and the large franchise FCs. The findings also confirm the elite nature of the FCs, showing all stratifications have average education and income levels above or well above those in the GCs. The GC sample includes randomly contacted FC voters, amounting to about 10% of the GC sample, meaning differences between the 184,000 FC voters and the 3 million voters with only a right to vote in GCs are even greater than indicated. Note also in Table 14, FC incomes are dominated by the HK$60,000+ category. If the income scale had been extended further, the average income of the FCs would be even higher, as many have incomes exceeding the top of the scale. In the post-election survey discussed later, we added five categories for incomes over $60,000 per month, topping the scale with incomes $100,000+. We also separated GC voters with no FC voting rights from the FC voters. The income differences widened as expected, from approximately an average of $28,000 per month family income to an average of about $56,000 per month.

The higher incomes of the FC voters are perhaps due to higher educational attainment, with over 70% of FC voters being university graduates or above. Since professionals are educationally credentialed, one might expect this finding, but the same holds for business-dominated franchises where education is much less significant to success or pay. Only the small-franchise FCs have a lower level of educational attainment. These include the Heung Yee Kuk, Agriculture & Fisheries, Transport and Labour FCs, which are dominated by less-educated working people. The other small-franchise FCs, Insurance, Industrial 1st and 2nd, Financial Services, Real Estate & Construction, Tourism, Commercial 1st and 2nd, Import & Export, and Sports, Performing Arts, Culture & Publication, are all business-dominated FCs whose average educational attainment is higher, but still less, than the professional-dominated FCs.

The small-franchise FCs, despite being dominated by business, tend to have lower incomes than other FCs, as can be seen in Table 14 in the Annex. All FC stratified samples show considerably greater proportions earning at the highest levels than the GC random survey respondents. Only 21.1% of the GC random sample had monthly family incomes of $60,000 and up. The full stratified sample with Education FC in (518 cases) showed 43.4% with monthly incomes of $60,000 plus. But incomes varied widely among the four alternative stratifications. Non-business and professionals (with Education FC out to maximise the cases in these smaller FC regroupings) showed 36.2% at the highest income
Profiles and attitudes of FC voters versus GC voters

Table 12. Mean age, education and income levels, FCs

<table>
<thead>
<tr>
<th>Sample</th>
<th>Age</th>
<th>Education*</th>
<th>Income*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stratified full samples</td>
<td>41.9</td>
<td>15.0</td>
<td>10.7</td>
</tr>
<tr>
<td>Stratified non-business &amp; prof.</td>
<td>42.2</td>
<td>14.9</td>
<td>10.3</td>
</tr>
<tr>
<td>Stratified business &amp; prof.</td>
<td>42.3</td>
<td>15.5</td>
<td>11.9</td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>41.7</td>
<td>13.4</td>
<td>9.0</td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>42.2</td>
<td>15.5</td>
<td>11.4</td>
</tr>
<tr>
<td>Stratified full samples</td>
<td>42.0</td>
<td>14.7</td>
<td>10.7</td>
</tr>
<tr>
<td>Stratified non-business &amp; prof.</td>
<td>42.6</td>
<td>14.4</td>
<td>10.2</td>
</tr>
<tr>
<td>Stratified business &amp; prof.</td>
<td>43.4</td>
<td>15.6</td>
<td>11.9</td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>42.6</td>
<td>13.0</td>
<td>9.9</td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>42.5</td>
<td>15.4</td>
<td>11.5</td>
</tr>
<tr>
<td>GC random sample</td>
<td>45.5</td>
<td>12.2</td>
<td>8</td>
</tr>
</tbody>
</table>

*Key: Education/Income

<table>
<thead>
<tr>
<th>Education†</th>
<th>Income category‡</th>
<th>Monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>None to 1 year</td>
<td>1</td>
</tr>
<tr>
<td>2–5</td>
<td>Primary undergrad</td>
<td>2</td>
</tr>
<tr>
<td>6</td>
<td>Primary graduate</td>
<td>3</td>
</tr>
<tr>
<td>7</td>
<td>Form 1/jr. high yr 1</td>
<td>4</td>
</tr>
<tr>
<td>8</td>
<td>Form 2/jr. high yr 2</td>
<td>5</td>
</tr>
<tr>
<td>9</td>
<td>F 3/High sch freshman</td>
<td>6</td>
</tr>
<tr>
<td>10</td>
<td>F 4/High sch sophomore</td>
<td>7</td>
</tr>
<tr>
<td>11</td>
<td>F5 grad/HS junior</td>
<td>8</td>
</tr>
<tr>
<td>12</td>
<td>F6/High school grad</td>
<td>9</td>
</tr>
<tr>
<td>13</td>
<td>F7/TC grad/4-year univ yr 1</td>
<td>10</td>
</tr>
<tr>
<td>14</td>
<td>Yr 1 univ (local) yr 2 4-year</td>
<td>11</td>
</tr>
<tr>
<td>15</td>
<td>Yr 2 univ (local) yr 3 4-year</td>
<td>12</td>
</tr>
<tr>
<td>16–18</td>
<td>University grad (both)</td>
<td></td>
</tr>
<tr>
<td>17–18</td>
<td>MA-PhD (post-grad study)</td>
<td></td>
</tr>
</tbody>
</table>

† Year of schooling completed. Note local and overseas terminology differences. Hong Kong currently has three-year university degrees. Many Hongkongers study abroad in four-year courses.
‡ Approximate monthly family income. Median monthly family income for Hong Kong is $HK15,000. On Hong Kong Island, median income is $HK21,075, a further confirmation of the island containing more business and professionals than elsewhere. (Median means half of family incomes are below, half above. These figures from the Census & Statistics Dept.)
level, while business and business-oriented professionals showed a majority, 55.3\%, had this highest level of income. The small-franchise FCs showed only 31.3\% at the highest income level while, contrary to expectations, large-franchise FCs had 51.7\%, taking home the highest incomes.

The significance of these findings lies in their systemic effects on politics and, even more importantly, on policy. Perceptions that legislators represent the people rather than certain favoured interests pit GC LegCo members against FC members. Yet if the intention of the present FC system is to give disproportionate influence to property-owning groups in order to protect Hong Kong’s capitalist status quo, the small-franchise groups, (voters who have by far the greatest influence per capita), turn out closest in income profile to the average GC voter than any other FCs. For example, the full stratified sample shows only 2.5\%, with the lowest income level of less than $10,000 per month. Business FCs show only 1.6\% at the lowest income level, non-business FCs have 3.6\%. But the stratifications by franchise size show the large-franchise FCs have 1.9\% at the lowest

Table 13. Education levels distribution by sample

<table>
<thead>
<tr>
<th>Education FC in</th>
<th>Primary &amp; below</th>
<th>Junior high</th>
<th>Senior high</th>
<th>Form 7–U (incomplete)</th>
<th>U grad &amp; above</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stratified full samples</td>
<td>11</td>
<td>19</td>
<td>63</td>
<td>52</td>
<td>507</td>
<td>652</td>
</tr>
<tr>
<td>1.70%</td>
<td>2.90%</td>
<td>9.60%</td>
<td>8%</td>
<td>77.80%</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Stratified non-business &amp; prof.</td>
<td>8</td>
<td>17</td>
<td>40</td>
<td>39</td>
<td>316</td>
<td>420</td>
</tr>
<tr>
<td>1.90%</td>
<td>4.00%</td>
<td>9.50%</td>
<td>9.30%</td>
<td>75.20%</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Stratified business &amp; prof.</td>
<td>2</td>
<td>2</td>
<td>11</td>
<td>11</td>
<td>150</td>
<td>176</td>
</tr>
<tr>
<td>1.10%</td>
<td>1.10%</td>
<td>6.30%</td>
<td>6.30%</td>
<td>85.20%</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>0</td>
<td>10</td>
<td>8</td>
<td>6</td>
<td>25</td>
<td>49</td>
</tr>
<tr>
<td>0%</td>
<td>20.40%</td>
<td>16.30%</td>
<td>12.20%</td>
<td>51%</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>8</td>
<td>14</td>
<td>50</td>
<td>49</td>
<td>721</td>
<td>842</td>
</tr>
<tr>
<td>1%</td>
<td>1.70%</td>
<td>5.90%</td>
<td>5.80%</td>
<td>85.60%</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Education FC out</th>
<th>Primary &amp; below</th>
<th>Junior high</th>
<th>Senior high</th>
<th>Form 7–U (incomplete)</th>
<th>U grad &amp; above</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stratified full samples</td>
<td>10</td>
<td>20</td>
<td>61</td>
<td>53</td>
<td>368</td>
<td>512</td>
</tr>
<tr>
<td>2%</td>
<td>3.90%</td>
<td>11.90%</td>
<td>10.40%</td>
<td>71.90%</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Stratified non-business &amp; prof.</td>
<td>5</td>
<td>17</td>
<td>37</td>
<td>27</td>
<td>171</td>
<td>257</td>
</tr>
<tr>
<td>2%</td>
<td>6.60%</td>
<td>14.40%</td>
<td>10.50%</td>
<td>66.50%</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Stratified business &amp; prof.</td>
<td>3</td>
<td>4</td>
<td>12</td>
<td>9</td>
<td>211</td>
<td>239</td>
</tr>
<tr>
<td>1.30%</td>
<td>1.60%</td>
<td>5%</td>
<td>3.80%</td>
<td>88.30%</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>3</td>
<td>9</td>
<td>21</td>
<td>11</td>
<td>36</td>
<td>80</td>
</tr>
<tr>
<td>3.80%</td>
<td>11.30%</td>
<td>26.30%</td>
<td>13.80%</td>
<td>45%</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>9</td>
<td>17</td>
<td>56</td>
<td>52</td>
<td>677</td>
<td>811</td>
</tr>
<tr>
<td>1.10%</td>
<td>2.10%</td>
<td>6.90%</td>
<td>6.40%</td>
<td>83.50%</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>
income versus the small-franchise FCs with 6.3%. The GC sample puts 15% at this lowest income level. Thus small-franchise FC voters and GC voters are closer in income distribution patterns than other FC groupings. This finding demonstrates that if the purpose of tolerating gross unfairness in influence over government decisions between GC voters and FC voters, and among small-franchise and large-franchise FCs, was purposely meant to favour property-owners, the smallest franchise FCs have signalantly failed to achieve the goal intended. In other words, the smallest franchise, thus highest influence per voter FCs, are actually closer in income characteristics to average GC voters, thus significantly reducing the actual unfairness in the sense of FCs representing the rich of the FC/GC split system.

However, if the purpose of the FCs is to give disproportionate influence to those who have jobs versus the retired, housewives and students, the design succeeds very well indeed. This introduces another aspect of unfairness and discrimination, and one which will grow as Hong Kong’s population ages rapidly in the decades ahead, for as retirees leave their jobs, most lose their right to vote in FCs. Since FC franchises are largely occupationally determined, the retired and unemployed would be expected to comprise only a small portion of FC voters in contrast to their proportion among the population as a whole. And they do. While 6% of the full sample are housewives, retired, unemployed or students, 39.2% of the GC random sample are from the same groups. Table 15 in the Annex, showing occupational distribution using Census and Statistics Department occupational categorisation, bears this out, as does the lower average ages for FC voters than for the random sample GC voters.

Professionals and educators form the two biggest occupational categories. Once the Education FC is excluded, professionals and associate professionals tend to dominate all stratified samples except the small-franchise FCs. Once again, the smaller FCs tend to counteract the occupational unfairness of the FC system (unfairness in terms of some occupations having more influence than others). The FCs, as designed, do tend to represent the working population, though this working population is also much more inclined to be managers and administrators and professionals or associate professionals. Among the FCs, these groups form a majority while among the GC random sample, only one in five occupations are from these groups. Thus certain occupational categories, certain age groups, residents on Hong Kong Island and, less distinctly, higher-educated and higher-income groups get disproportionately higher influence in LegCo. Small-franchise FCs tend to counteract these prevalent patterns in reality, but they seem to fail to do so in perception. The very fact that so few voters vote for the small-franchise legislators makes everyone assume they must be the most unrepresentative. This observation should not be taken as justification for small-franchise FCs; instead, and critically important to understand, is the fact that the small size of the franchise and lack of contestation for the LegCo seats significantly undercuts the legitimacy of the actual representativeness of these small-franchise FC legislators.
Table 16 reveals another unexpected aspect of the FC system which also casts the whole system in a very different light. This table shows that the FCs are dominated by the private sector rather than the public or non-profit sectors. Nearly half (47.7%) are in private sector employment and another 10.9% work for non-profits. However, the public sector, which includes both civil servants who work directly for the government and privatised public units such as the Housing Authority, Hospital Authority and Airport Authority (all owned by government but operated semi-autonomously) comprise a very large proportion of the FCs, well above their proportion of the working population as a whole (see GC random sample averages). For example, civil servants and privatised public workers in the full, Education FC in, sample comprise 41.5%, but only 14.1% in the GC sample (Note: these GC numbers are figures which exclude

<table>
<thead>
<tr>
<th>Civil servant</th>
<th>Privatised public facilities</th>
<th>Private sector</th>
<th>Non-profit organisation</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Education FC in</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stratified full samples</td>
<td>151</td>
<td>97</td>
<td>285</td>
<td>65</td>
</tr>
<tr>
<td>25.30%</td>
<td>16.20%</td>
<td>47.70%</td>
<td>10.90%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified non-business &amp; prof.</td>
<td>109</td>
<td>82</td>
<td>138</td>
<td>52</td>
</tr>
<tr>
<td>28.60%</td>
<td>21.50%</td>
<td>36.20%</td>
<td>13.60%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified business &amp; prof.</td>
<td>20</td>
<td>2</td>
<td>135</td>
<td>2</td>
</tr>
<tr>
<td>12.60%</td>
<td>1.30%</td>
<td>84.90%</td>
<td>1.30%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>2</td>
<td>3</td>
<td>38</td>
<td>0</td>
</tr>
<tr>
<td>4.70%</td>
<td>7%</td>
<td>88.40%</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>200</td>
<td>84</td>
<td>442</td>
<td>58</td>
</tr>
<tr>
<td>25.50%</td>
<td>10.70%</td>
<td>56.40%</td>
<td>7.40%</td>
<td>100%</td>
</tr>
<tr>
<td><strong>Education FC out</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stratified full samples</td>
<td>106</td>
<td>60</td>
<td>284</td>
<td>20</td>
</tr>
<tr>
<td>22.60%</td>
<td>12.80%</td>
<td>60.40%</td>
<td>4.30%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified non-business &amp; prof.</td>
<td>65</td>
<td>41</td>
<td>106</td>
<td>15</td>
</tr>
<tr>
<td>28.60%</td>
<td>18%</td>
<td>46.70%</td>
<td>6.60%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified business &amp; prof.</td>
<td>44</td>
<td>7</td>
<td>174</td>
<td>3</td>
</tr>
<tr>
<td>19.30%</td>
<td>3%</td>
<td>76.30%</td>
<td>1.30%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>7</td>
<td>1</td>
<td>65</td>
<td>1</td>
</tr>
<tr>
<td>9.40%</td>
<td>1.30%</td>
<td>87.80%</td>
<td>1.30%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>182</td>
<td>74</td>
<td>474</td>
<td>22</td>
</tr>
<tr>
<td>24.20%</td>
<td>9.80%</td>
<td>63%</td>
<td>2.90%</td>
<td>100%</td>
</tr>
<tr>
<td><strong>GC random</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>232</td>
<td>52</td>
<td>1697</td>
<td>43</td>
<td>2024</td>
</tr>
<tr>
<td>11.50%</td>
<td>2.60%</td>
<td>83.80%</td>
<td>2.10%</td>
<td>100%</td>
</tr>
</tbody>
</table>
housewives, retirees, students and unemployed and represent percentages of the workforce, not the whole population). In effect, many FC seats actually ‘represent’ government or public sector employees. While this may strengthen the hand of government against the poorer GC voters and their representatives, it also leaves the government strongly beholden to its own employees through their representatives on LegCo, and thus much less able to restrain spending, cut salaries, impose hiring freezes and staffing cuts and so on. That the government has managed to cut recurrent spending only once in absolute terms in the past 50 years, as reported by Financial Secretary Henry Tang in his 2005 Budget Address, despite over five straight years of deflation and deficit spending (2000–2004), should prove no surprise in light of these findings. Another consequence: Tung Chee Hwa’s alienation of civil servants by blaming his problems on them probably had more to do with his souring LegCo relations than otherwise might have been suspected. Not ideological differences but conflicts of interest may better explain bad Executive Council–Legislative Council relations.

One of the most surprising findings on the nature of the FCs is found in Table 17. While approximately 19% of Hong Kong residents profess either a Catholic or Protestant Christian faith, among the FCs the proportion of Christians is around a third. The education sector might be expected to be dominated by religious adherents since so many schools are religiously affiliated. Even so, the proportion of Christians remains very high even after removing the Education FC. Separate analysis of some FCs, such as the Legal FC for example, show a majority are Christians. This makes these FC voters highly distinct from the average GC voter, especially on certain issues. For example, these findings may do more to explain the reaction of FC voters to the Article 23 issue. Article 23 of the Basic Law requires the Hong Kong government to legislate forbidding treason, secession, sedition, subversion, theft of state secrets and having ties with foreign political entities and groups. The Vatican is a state and a member of the United Nations, as well as the centre of the Catholic Church. The prohibition of foreign political ties is therefore for Catholics a religious rather than merely a political or patriotic issue. The Chinese Communist Party and the Vatican do not have formal relations with each other, nor does the Chinese Patriotic Catholic Association (the official Catholic Church on the Mainland) have relations with Rome or consider itself under the Pope’s guidance. Since religion has a very contested existence on the Mainland, legislation implementing Article 23 turned out much more objectionable than either the SAR or Mainland government expected. The local government and the DAB and Liberal political parties did not expect the FCs to revolt either. But the presence of large numbers of FC voters in the massive 1 July 2003 demonstration sent a shock through the local and Mainland governments and led to James Tien’s (Liberal Party Chair) surprise resignation from the Executive Council, dooming the Article 23 legislation. The Liberal Party is dominated by FC representatives, gaining its first directly elected seats in September 2004.
Note also in Table 17 that the FCs show a much lower proportion of traditional ancestor worshippers than among the population as a whole. Only about 6.5% of the FC voters said they practised ancestor worship whereas 13% of the GC sample did so. Since ancestor worship is a common characteristic of Chinese traditional culture, the weakness of this practice among FC voters (and its general isolation to particular FCs like Catering) means that identity with Chinese culture may be, and likely is, weaker among FC voters than GC voters. (See the following section for more on identity and political attitudes.) The role of Chinese identity as the primary political or ideological basis for action or support for a candidate is likely weaker among practitioners of what are perceived of as ‘Western’ religions, particularly Catholicism. Similarly, when

| Table 17. Religious affiliation distribution by sample |
|---------------------------------|-----|-----|-----|-----|-----|
| None | Catholic | Protestant | Buddhist/Taoist | Ancestor worship* | Other |
| Education FC in |
| Stratified full samples | 347 | 54 | 183 | 25 | 43 | 5 |
| Stratified | 52.80% | 8.20% | 27.90% | 3.80% | 6.50% | 0.80% |
| non-business & prof. | 202 | 40 | 131 | 21 | 28 | 1 |
| Stratified | 47.80% | 9.50% | 31% | 5% | 6.60% | 0.20% |
| business & prof. | 102 | 23 | 35 | 5 | 11 | 1 |
| Stratified small franchise | 32 | 3 | 7 | 3 | 4 | 0 |
| Stratified | 57.60% | 13% | 20% | 2.80% | 6.20% | 0.60% |
| large franchise | 65.30% | 6.10% | 14.30% | 6.10% | 8.20% |
| Stratified | 466 | 81 | 227 | 29 | 39 | 8 |
| education FC out |
| Stratified full samples | 279 | 55 | 120 | 27 | 34 | 1 |
| Stratified | 54% | 10.70% | 23.30% | 5.20% | 6.60% | 0.20% |
| non-business & prof. | 125 | 21 | 77 | 17 | 19 | 0 |
| Stratified | 48.30% | 8.10% | 29.70% | 6.60% | 7.30% | 0% |
| business & prof. | 145 | 24 | 51 | 9 | 10 | 2 |
| Stratified small franchise | 42 | 13 | 11 | 9 | 6 | 0 |
| Stratified | 60.20% | 10% | 21.20% | 3.70% | 4.20% | 0.80% |
| large franchise | 466 | 78 | 198 | 32 | 40 | 5 |
| Stratified | 51.90% | 16% | 13.60% | 11.10% | 7.40% | 0% |
| small franchise | 466 | 78 | 198 | 32 | 40 | 5 |
| Stratified | 56.90% | 9.50% | 24.20% | 3.90% | 4.90% | 0.60% |
| large franchise | 466 | 78 | 198 | 32 | 40 | 5 |
| GC random | 1961 | 186 | 470 | 278 | 439 | 29 |
| GC random | 58.30% | 5.50% | 14% | 8.20% | 13% | 0.90% |

* ‘Ancestor worship’ also includes ‘Chinese folk belief’.
‘Chinese’ solidarity is demanded by Beijing leaders against fellow Christian religionists, personal belief finds itself in conflict with political interest. Political interest does not always win in such instances. Experience with such conflicts where Christianity had more influence than politics or economic well-being is one reason why China’s Communist Party leadership regards Christian religionists with such caution. The importance of religion among FC elites is one aspect of political life largely unknown before this survey. More research is called for.

In conclusion, the demographic characteristics of the FCs shows that income, education and occupation sharply distinguish FC voters from GC voters. Some of these characteristics may be desirable as far as the FC system was intended to disproportionately empower such features. However, other characteristics such as public sector employment and religion also distinguish FC voters from GC voters. These very distinct characteristics tend to assert themselves on issues the government might not, and often has not, always wished. Unfairness of influence costs in terms of legitimacy and public order. But deliberate disproportionate influence based on certain characteristics of a group cannot determine all aspects that distinguish such groups from the community as a whole. Some aspects do not lend themselves to government discipline in policy debates nor to control by accountability to an electorate. The FC electorates produce representatives like their FC members, in contrast to GC representatives who, whatever their personal characteristics and interests, age, occupation or religious belief, try to reflect the interests and views of a majority of their GC voters. Many FC representatives tend to vote on the basis of their personal feelings and characteristics since they do not have reliable means of ascertaining the feelings and characteristics of their voters. This is especially the case for FCs returned by corporate voting.

The ‘unfair’, discriminatory FC structure actually magnifies systemic instabilities and volatilities rather than reduces them. In this sense it is more a threat to stability than a buttress for it. Many states use a more widely representative upper house to balance the local peculiarities of a geographic-based representation system in a lower house. In the case of Hong Kong, the very narrowly based FCs function more like a highly parochial lower house than a more broadly representative upper house. The narrow interests of the FCs and the lack of broad franchises for the vast majority of the FCs means that there is little to no need for representatives to respond to anyone but a handful of voters. This makes FC representatives more likely to vote for the interests of a very few and use their votes to block the demands of the many, further exacerbating the sense of legislative and governmental unfairness which severely undercuts the ability of the Hong Kong government to govern. The next section examines just how like or unlike attitudes of FC voters are to GC voters on critical policy issues, particularly on proposals to fix the unfair system itself.
Attitudinal characteristics of GCs and FCs

The previous section showed there are significant demographic differences among the FC groupings and between the FC-stratified samples and the GC random sample. This is even more the case among FC groupings and the GC random sample in terms of attitudes. This should not be unexpected for attitudes largely derive from experiences and interests, which for the average FC voter often significantly differ from the average GC voter. The balance of this chapter examines these attitudinal differences. The first table in this section, Table 18, indicates the aspect of life in Hong Kong that causes respondents most concern. The questions go left to right, ranging from personal economic and political concerns, to family, then up to the society-wide economic and political concerns. Corruption is in some sense both economic and political, and is more a measure of the nature of government and whether it effectively controls corruption among its own members and in society. Among educators and the small-franchise FCs, which are business and labour dominated and, as shown in the previous section, most alike to GC voters among the FCs, worry about economics clearly dominates. When the Education FC is in the sample, 36% are most worried about economic prospects in Hong Kong. Once the Education FC is removed, worry about economics drops to 32% of the full sample, almost equal to worry about politics in all other FC groupings but the small-franchise FC. In the GC random sample, the 39% most worried about economic aspects clearly exceeds those worried about political concerns at 24%. Given the much higher incomes of FC voters and their greater ability to work abroad or go elsewhere in pursuit of opportunity, having less concern about economic prospects in Hong Kong than GC respondents makes sense. On the other hand, the FCs are often thought to be more business focused and hence more economically than politically concerned. Table 18 responses appear very much to provide evidence that this is not the case. In fact, the relatively few FC voters are more concerned about political stability than GC voters. One might hypothesise that their concerns must surely revolve around their ability to maintain their grossly unfair influence, and that FC voters by and large must oppose reforms much more than GC voters, especially if those reforms move toward direct elections of all members of LegCo and direct election of the chief executive, thus removing the very basis of their power. As will be seen in this section, this is not the case either.

As expected and shown in Table 19, FC groups participate in organisations at a much higher level than the general populace, except political pressure groups and kaifongs. The differences in religious affiliation between the overall public and FC voters is confirmed by their distinctly higher church/religious group attendance. The greater religious nature of the Education FC is also clearly indicated when that FC is excluded. While 21% of the GC sample had attended a religious group or church in the preceding six months, 34% of full sample, ‘Education in’, FCs had done so. Even with educators removed, 31% had done so. But clearly non-business and professional FC voters had the highest
attendance of a religious group among all FC groupings, showing 40% in the Education in sample and 35% with Education out. FC voters also participate more than the general public in environmental groups, surprisingly much more among the business and labour dominated small-franchise FCs than among the large-franchise FCs. At 16% of the small-franchise FC voters, attendance at environmental groups far exceeded the 6% average of the GC voters. However, the regrouping of business and professional FCs versus non-business and professionals FCs shows the non-business FCs with a higher environmental group

Table 18. Of the issues mentioned, which are you most worried about?*

<table>
<thead>
<tr>
<th></th>
<th>Personal standard of living</th>
<th>Personal freedom in HK</th>
<th>Family prospects in HK</th>
<th>Economic prospects in HK</th>
<th>Political stability of HK</th>
<th>Corruption in HK</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Education FC in</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stratified full samples</td>
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<td>96</td>
<td>92</td>
<td>345</td>
<td>277</td>
<td>60</td>
<td>959</td>
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<tr>
<td></td>
<td>9%</td>
<td>10%</td>
<td>10%</td>
<td>36%</td>
<td>29%</td>
<td>6%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified non-business &amp; prof.</td>
<td>27</td>
<td>30</td>
<td>28</td>
<td>109</td>
<td>97</td>
<td>27</td>
<td>318</td>
</tr>
<tr>
<td></td>
<td>9%</td>
<td>9%</td>
<td>9%</td>
<td>34%</td>
<td>31%</td>
<td>9%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified business &amp; prof.</td>
<td>62</td>
<td>66</td>
<td>64</td>
<td>236</td>
<td>180</td>
<td>33</td>
<td>641</td>
</tr>
<tr>
<td></td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>37%</td>
<td>28%</td>
<td>5%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>9</td>
<td>13</td>
<td>8</td>
<td>46</td>
<td>30</td>
<td>5</td>
<td>111</td>
</tr>
<tr>
<td></td>
<td>8%</td>
<td>12%</td>
<td>7%</td>
<td>41%</td>
<td>27%</td>
<td>5%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>79</td>
<td>83</td>
<td>84</td>
<td>295</td>
<td>247</td>
<td>55</td>
<td>843</td>
</tr>
<tr>
<td></td>
<td>9%</td>
<td>10%</td>
<td>10%</td>
<td>35%</td>
<td>29%</td>
<td>7%</td>
<td>100%</td>
</tr>
<tr>
<td><strong>Education FC out</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stratified full samples</td>
<td>42</td>
<td>50</td>
<td>44</td>
<td>149</td>
<td>149</td>
<td>30</td>
<td>464</td>
</tr>
<tr>
<td></td>
<td>9%</td>
<td>11%</td>
<td>10%</td>
<td>32%</td>
<td>32%</td>
<td>6%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified non-business &amp; prof.</td>
<td>21</td>
<td>20</td>
<td>23</td>
<td>82</td>
<td>75</td>
<td>18</td>
<td>239</td>
</tr>
<tr>
<td></td>
<td>9%</td>
<td>8%</td>
<td>10%</td>
<td>34%</td>
<td>31%</td>
<td>8%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified business &amp; prof.</td>
<td>20</td>
<td>20</td>
<td>30</td>
<td>66</td>
<td>69</td>
<td>11</td>
<td>216</td>
</tr>
<tr>
<td></td>
<td>9%</td>
<td>9%</td>
<td>14%</td>
<td>31%</td>
<td>32%</td>
<td>5%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>6</td>
<td>11</td>
<td>2</td>
<td>31</td>
<td>22</td>
<td>4</td>
<td>76</td>
</tr>
<tr>
<td></td>
<td>8%</td>
<td>15%</td>
<td>3%</td>
<td>41%</td>
<td>29%</td>
<td>5%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>75</td>
<td>73</td>
<td>73</td>
<td>257</td>
<td>214</td>
<td>47</td>
<td>739</td>
</tr>
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<td>10%</td>
<td>10%</td>
<td>35%</td>
<td>29%</td>
<td>6%</td>
<td>100%</td>
</tr>
<tr>
<td>GC random</td>
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<td>278</td>
<td>365</td>
<td>1194</td>
<td>735</td>
<td>197</td>
<td>3025</td>
</tr>
<tr>
<td></td>
<td>8%</td>
<td>9%</td>
<td>12%</td>
<td>39%</td>
<td>24%</td>
<td>7%</td>
<td>100%</td>
</tr>
</tbody>
</table>

*All figures remaining are rounded to the nearest whole following WAPOR and AAPOR guidelines for public opinion research. Previous results were reported to the nearest tenth of a percent to facilitate comparison with census data, which is reported in tenths of a percent.
participation (13% versus 10%). This indicates that environmental concerns may be concentrated among certain types of business and labour groups that have the smaller franchises. FC members also appear to participate more in social service and charitable associations (around 30% versus 17% in the GC sample), confirming the role of these groups in identifying and networking the Hong Kong elites.

Table 20 explores the institutions people contact when they have a problem or concern. This is a test of which institutions are perceived as more effective or more sympathetic, and as a tracking device in long-term surveys conducted by the Hong Kong Transition Project since 1993 in measuring the health of institutions and governance structures.12 The categories range, left to right, from governmental structures designed to be responsive and/or representative, to social institutions such as media and political parties, then to the extremes of taking matters into one’s own hands by demonstrating, petitioning and responding to surveys of opinion. Contrary to expectations, FC voters appear to take matters more into their own hands more often than the general public. While about one in five among the GC random sample demonstrated (remember this sample includes the FC voters as well to the proportion of about 10% of the GC random sample), FC full samples show between 28–29% demonstrated. An even larger gap opens between FC voters and the GC sample in participation in opinion surveys, confirming the FC voters as opinion-sensitive and
opinion-formers. Surprising also is the clear indication that FC voters tend to be more politicised, in the sense that more tend to contact pressure and political groups and their GC and FC LegCo representatives, than among the general populace (3%, 5% and 9% respectively among FC voters versus 1%, 3% and 1% by GC voters). FC voters also appear to be more active in contacting government departments about their concerns, 17–18% versus 10% of GC respondents.

As more active community members (as shown in Table 19) and as much heavier institutional users (as shown in Table 20), the political influence of the FC voters appears to be more widely based than even their considerable disproportionate voting power in LegCo. The attitudes of FC voters toward

### Table 20. In the past 12 months, did you express your concern* or seek help from the following groups?

<table>
<thead>
<tr>
<th></th>
<th>Gov't dept.</th>
<th>GC LegCo rep.</th>
<th>FC LegCo rep.</th>
<th>District Council</th>
<th>Local Council</th>
<th>Mass media</th>
<th>Local level group/kaifong</th>
<th>Pressure/political party member</th>
<th>Join rally/demonstrate</th>
<th>Sign petition</th>
<th>Opinion surveys</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Education FC in</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full samples</td>
<td>17%</td>
<td>5%</td>
<td>9%</td>
<td>7%</td>
<td>2%</td>
<td>4%</td>
<td>2%</td>
<td>3%</td>
<td>29%</td>
<td>40%</td>
<td>56%</td>
</tr>
<tr>
<td>Non-business &amp; prof.</td>
<td>16%</td>
<td>6%</td>
<td>8%</td>
<td>8%</td>
<td>1%</td>
<td>5%</td>
<td>2%</td>
<td>2%</td>
<td>31%</td>
<td>46%</td>
<td>57%</td>
</tr>
<tr>
<td>Business &amp; prof.</td>
<td>18%</td>
<td>5%</td>
<td>10%</td>
<td>6%</td>
<td>2%</td>
<td>4%</td>
<td>2%</td>
<td>3%</td>
<td>28%</td>
<td>35%</td>
<td>55%</td>
</tr>
<tr>
<td>Small franchise</td>
<td>23%</td>
<td>6%</td>
<td>5%</td>
<td>11%</td>
<td>1%</td>
<td>5%</td>
<td>6%</td>
<td>4%</td>
<td>24%</td>
<td>38%</td>
<td>47%</td>
</tr>
<tr>
<td>Large franchise</td>
<td>17%</td>
<td>5%</td>
<td>9%</td>
<td>7%</td>
<td>1%</td>
<td>4%</td>
<td>1%</td>
<td>2%</td>
<td>30%</td>
<td>40%</td>
<td>57%</td>
</tr>
<tr>
<td><strong>Education FC out</strong></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full samples</td>
<td>18%</td>
<td>5%</td>
<td>10%</td>
<td>7%</td>
<td>2%</td>
<td>4%</td>
<td>2%</td>
<td>3%</td>
<td>28%</td>
<td>37%</td>
<td>55%</td>
</tr>
<tr>
<td>Non-business &amp; prof.</td>
<td>16%</td>
<td>6%</td>
<td>11%</td>
<td>9%</td>
<td>2%</td>
<td>5%</td>
<td>3%</td>
<td>3%</td>
<td>27%</td>
<td>40%</td>
<td>54%</td>
</tr>
<tr>
<td>Business &amp; prof.</td>
<td>18%</td>
<td>5%</td>
<td>10%</td>
<td>6%</td>
<td>2%</td>
<td>4%</td>
<td>2%</td>
<td>3%</td>
<td>28%</td>
<td>35%</td>
<td>55%</td>
</tr>
<tr>
<td>Small franchise</td>
<td>23%</td>
<td>7%</td>
<td>5%</td>
<td>11%</td>
<td>1%</td>
<td>5%</td>
<td>7%</td>
<td>4%</td>
<td>24%</td>
<td>38%</td>
<td>47%</td>
</tr>
<tr>
<td>Large franchise</td>
<td>17%</td>
<td>5%</td>
<td>11%</td>
<td>7%</td>
<td>2%</td>
<td>4%</td>
<td>2%</td>
<td>3%</td>
<td>28%</td>
<td>37%</td>
<td>56%</td>
</tr>
<tr>
<td>GC random</td>
<td>10%</td>
<td>3%</td>
<td>1%</td>
<td>8%</td>
<td>0.4%</td>
<td>3%</td>
<td>3%</td>
<td>1%</td>
<td>21%</td>
<td>39%</td>
<td>39%</td>
</tr>
</tbody>
</table>

*Express concern* includes telephone, in person, by writing, fax or email.
constitutional reform therefore take a crucial position in the process of constitutional change. Hong Kong faces a long-term challenge of moving toward a more representative democracy, as promised in the Basic Law and as demanded by residents, even while preserving internal order and its external relations with a very worried Mainland elite. The rules for constitutional reform of the chief executive (CE) and LegCo elections requires that 40 of 60 members support reforms. Since just 30 of 60 are directly elected, that is GC representatives, this means at least 10 votes must come from the 30 FCs if reform toward full direct election of all LegCo members and CE direct election are to proceed. FC voter attitudes toward the direct election of the CE are perhaps the most crucial of all, for FC voters elect 630 out of 800 members of the CE Election Committee. This is an overwhelming influence on the most powerful official in this executive-led governing system. The CE is the final barrier to, or the strongest driver toward, reform. He must agree once reforms have passed LegCo with the minimum of 40 votes, and in reality, the CE must be a major force pushing toward LegCo consensus if any is in fact to develop. Attitudes of FC voters toward direct election of the CE and LegCo are therefore central in reforming the system. This means the distinctive characteristics of FC representatives exacerbated by variant franchise requirements and vast variations in numbers and characteristics of electors are even more crucial to the eventual solution to many of the problems the FC/GC split system itself has created, sustained, or exacerbated.

The results analysed here are based on a survey on issues related to constitutional reform conducted 11–22 December 2004. There were two linked and overlapping surveys, the first a random sample of 800 permanent residents and then an additional sample, random but focused on functional constituency registrants, of 405 registered FC voters. From these two main surveys, the attitudes of five distinct groups are covered in this analysis.

1. The Random group, including FC- and GC-registered voters and non-registered respondents, numbering 800 permanent residents. Random respondents may be taken to represent views of Hong Kong permanent residents in general. Responses may be used to contrast the general views of the public with more politically participative groups below.

2. FC active voters includes those registered in an FC who also indicated they voted in the September 2004 election. This group numbered 365 (405 claimed to be registered FC voters). FC active respondents may be taken to represent views of active FC voters.

3. GC active voters, excluding FC voters, so this group is of 353 respondents who were registered voters, voted in September, and are not registered FC voters. Since FC voters can have two votes
or more (if also designated voters for a corporate body as well as a professional or one of the FCs for business, for example), this group does not represent all voters in September. The GC Active voters will give the best sense of ‘grassroots’ sentiment on geographic constituency LegCo representatives versus the more elitist effects of FC active voters.

4. The September LegCo voters includes 504 from the random sample group who were registered GC and FC voters, who also said they voted in September 2004. This group will be used to examine the overall sentiments of politically active persons in Hong Kong and of voters in the recent elections.

5. The strongest contrast to the September LegCo voters are the 296 non-voting and non-registered respondents. Another way of designating this group would be the Politically Inactive. This sample might be taken as those not involved in formal political processes, at least as voters. This group, 37% of the 800 permanent residents, is least likely to act on constitutional reform issues, though its sentiments will affect general surveys that do not distinguish between politically involved and non-involved groups.15

It is crucially important in reading the analysis to keep in mind which group’s responses are being discussed. In principle, support for the key constitutional reform proposal, the direct election of all LegCo seats, is consistently very high across all five groups, with active FC voters the most supportive, as Table 21 shows. FC active voters support direct election of all LegCo seats by 77% versus 17% opposed. Among GC active voters, 74% support, 18% oppose. Politically inactives support direct election of all seats by 70% with 20% opposing, making

<table>
<thead>
<tr>
<th></th>
<th>Random</th>
<th>Sept. voters</th>
<th>Pol. inactive</th>
<th>GC active</th>
<th>FC active</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly support</td>
<td>21%</td>
<td>24%</td>
<td>17%</td>
<td>23%</td>
<td>23%</td>
</tr>
<tr>
<td>Support</td>
<td>52%</td>
<td>51%</td>
<td>53%</td>
<td>51%</td>
<td>54%</td>
</tr>
<tr>
<td>Oppose</td>
<td>16%</td>
<td>15%</td>
<td>17%</td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td>Strongly oppose</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>2%</td>
</tr>
<tr>
<td>Don’t know</td>
<td>9%</td>
<td>8%</td>
<td>11%</td>
<td>8%</td>
<td>5%</td>
</tr>
</tbody>
</table>

Sample size (#)*: 100% (800); 100% (504); 100% (296); 100% (353); 100% (365)

* Range of error (rounded off) at the 95% confidence interval for the sample sizes is +/-4 for the 800; +/-6 for the 504 sample; and +/-8 for the 296, 353, and 365 sized samples.
them clearly the least supportive and most opposed to full direct elections. Contrary to expectations, FC voters appear not to want to stand in the way of reforms which would eliminate their unfair voting power.

Overwhelming proportions of all groups believe direct election of all LegCo seats would help make government policies fairer, with 77% of FC actives feeling this way, 78% of GC actives, and even 72% of politically inactives seeing direct elections as aiding fairness. There are also considerable differences between those saying direct elections would make government policies less fair and those opposing direct election of all LegCo seats. For example, 20% of the politically inactives opposed direct election of all seats, but only 8% think direct election of all seats would make government policies less fair. Other groups

Table 22. Would direct election of all LegCo seats help make government policies fairer or less fair?

<table>
<thead>
<tr>
<th></th>
<th>Random</th>
<th>Sept. voters</th>
<th>Pol. inactive</th>
<th>GC active</th>
<th>FC active</th>
</tr>
</thead>
<tbody>
<tr>
<td>Much fairer</td>
<td>27%</td>
<td>30%</td>
<td>22%</td>
<td>29%</td>
<td>32%</td>
</tr>
<tr>
<td>Fairer</td>
<td>49%</td>
<td>48%</td>
<td>50%</td>
<td>49%</td>
<td>45%</td>
</tr>
<tr>
<td>Stay same</td>
<td>7%</td>
<td>5%</td>
<td>11%</td>
<td>4%</td>
<td>8%</td>
</tr>
<tr>
<td>Less fair</td>
<td>7%</td>
<td>6%</td>
<td>7%</td>
<td>7%</td>
<td>5%</td>
</tr>
<tr>
<td>Much less fair</td>
<td>2%</td>
<td>2%</td>
<td>1%</td>
<td>1%</td>
<td>4%</td>
</tr>
<tr>
<td>Don’t know</td>
<td>9%</td>
<td>9%</td>
<td>9%</td>
<td>9%</td>
<td>7%</td>
</tr>
<tr>
<td>Sample size (#)</td>
<td>100% (800)</td>
<td>100% (504)</td>
<td>100% (296)</td>
<td>100% (353)</td>
<td>100% (365)</td>
</tr>
</tbody>
</table>

Table 23. Support/oppose full LegCo direct election by ‘Would full direct election make government policies fairer or less fair?’ (Random sample)

<table>
<thead>
<tr>
<th></th>
<th>Much fairer</th>
<th>Fairer</th>
<th>Stay same</th>
<th>Less fair</th>
<th>Much less fair</th>
<th>Don’t know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly support</td>
<td>49%</td>
<td>15%</td>
<td>2%</td>
<td>1%</td>
<td>0%</td>
<td>1%</td>
</tr>
<tr>
<td>Support</td>
<td>43%</td>
<td>66%</td>
<td>42%</td>
<td>25%</td>
<td>33%</td>
<td>32%</td>
</tr>
<tr>
<td>Oppose</td>
<td>5%</td>
<td>12%</td>
<td>27%</td>
<td>55%</td>
<td>33%</td>
<td>26%</td>
</tr>
<tr>
<td>Strongly oppose</td>
<td>–</td>
<td>–</td>
<td>7%</td>
<td>15%</td>
<td>33%</td>
<td>5%</td>
</tr>
<tr>
<td>Don’t know</td>
<td>2%</td>
<td>7%</td>
<td>16%</td>
<td>4%</td>
<td>0%</td>
<td>36%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table contents: percent of column total. Chi-square = 399.9 with 20 df p = 0.0001.

(Cross tabulations are simple measures of association among variables, with the Chi-square measure indicating the degree of possibility these measures of association could occur by chance. If Chi-square is less or equal to 0.0001, that means there is less than a one in a thousand chance this pattern of association is from chance.)
show similar drops, roughly to half the levels of opposition. The issue of fairness thus strongly correlates with respondents’ support or opposition to full direct elections of all LegCo seats, and explains about half of the total opposition to full direct elections.

Tables 23 and 24 show cross tabulations with support for full direct elections of LegCo members by whether respondents think full direct elections will make government policies fairer or less fair. The results for the full random sample and the FC actives indicate that perceptions of the effect of full direct elections of all LegCo members on the fairness of government policies is strong. The small proportion who feel direct election would make government politics less fair overwhelmingly oppose direct election of all members.

**Chart 1. If support full direct election of LegCo members, then when to implement?**
The bottom line on full direct elections appears to be that FC voters are more supportive than other groups, as Chart 1 shows.

For those who support full direct election of all LegCo members these results do not, however, hold up when the full meaning of abolishing the FC seats with their special representation is specifically examined, as responses in Table 25 show. A majority support continuing to allow business and professionals ‘special influence’ in government, with 60% of FC actives doing so and even 52% of GC active or ‘grassroots’ voters supporting business and professional groups continued special influence. This appears anomalous with the FC active’s 77% support for full direct election of all LegCo members, which would result in that special influence, at least as structurally ensured in LegCo, being abolished.

Many perhaps do not seem to realise full direct elections means ending the formalised disproportionate influence of select groups. But there is strong support for the creation of a separate body from LegCo to represent such interests. Table 26 shows that by roughly two to one all groups support FC representatives being set up as a separate house to the directly elected representatives.

Table 25. Do you support/oppose continuing allowing business and professional groups special influence in government decision-making via FCs?

<table>
<thead>
<tr>
<th></th>
<th>Random</th>
<th>Sept. voters</th>
<th>Pol. inactive</th>
<th>GC active</th>
<th>FC active</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly support</td>
<td>4%</td>
<td>4%</td>
<td>3%</td>
<td>5%</td>
<td>4%</td>
</tr>
<tr>
<td>Support</td>
<td>51%</td>
<td>50%</td>
<td>53%</td>
<td>47%</td>
<td>56%</td>
</tr>
<tr>
<td>Oppose</td>
<td>24%</td>
<td>23%</td>
<td>26%</td>
<td>24%</td>
<td>23%</td>
</tr>
<tr>
<td>Strongly oppose</td>
<td>7%</td>
<td>8%</td>
<td>4%</td>
<td>8%</td>
<td>7%</td>
</tr>
<tr>
<td>Don’t know</td>
<td>14%</td>
<td>14%</td>
<td>14%</td>
<td>17%</td>
<td>10%</td>
</tr>
<tr>
<td>Sample size (#)</td>
<td>100% (800)</td>
<td>100% (504)</td>
<td>100% (296)</td>
<td>100% (353)</td>
<td>100% (365)</td>
</tr>
</tbody>
</table>

Table 26. Would you support/oppose setting up FC-elected representatives into a separate body from GC-elected representatives like the US Senate or UK House of Lords?

<table>
<thead>
<tr>
<th></th>
<th>Random</th>
<th>Sept. voters</th>
<th>Pol. inactive</th>
<th>GC active</th>
<th>FC active</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly support</td>
<td>4%</td>
<td>5%</td>
<td>3%</td>
<td>5%</td>
<td>4%</td>
</tr>
<tr>
<td>Support</td>
<td>43%</td>
<td>43%</td>
<td>42%</td>
<td>44%</td>
<td>42%</td>
</tr>
<tr>
<td>Oppose</td>
<td>19%</td>
<td>19%</td>
<td>21%</td>
<td>19%</td>
<td>22%</td>
</tr>
<tr>
<td>Strongly oppose</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td>Don’t know</td>
<td>31%</td>
<td>31%</td>
<td>31%</td>
<td>30%</td>
<td>30%</td>
</tr>
<tr>
<td>Sample size (#)</td>
<td>100% (800)</td>
<td>100% (504)</td>
<td>100% (296)</td>
<td>100% (353)</td>
<td>100% (365)</td>
</tr>
</tbody>
</table>
If an upper house was created based on present highly restrictive FC franchises, the results in Hong Kong would be very different from how those upper houses function in other places. Upper houses are meant to be less partisan, more broadly representative, and less immediately politically pressured. The US accomplishes this, for example, by giving senators six-year terms rather than two years as in the House of Representatives, and returning senators from states as a whole rather than from small districts. The two-house structures also push away from partisanship and narrow interests by forcing each house to compromise by giving each a veto power of the other’s actions, though in many cases this is limited or restricted to only some areas. The sense is apparent among many in Hong Kong that there should be power retained by either business and professional FC members or directly elected GC members to stop or delay bills passed by a simple majority. This is particularly the case among FC active respondents, who show 56% opposing changes to the rule allowing 16 FC or GC members to stop bills being amended to a simple majority rule. Among GC actives, 43% oppose dropping the veto while 34% support changing this rule.

While there is support for retaining special influence for business and professional groups, many also support increasing the number of those with rights to vote in FC elections. Non-FC voters (the GC active group) support, by 78%, increasing who has a right to vote in FC elections. Among FC active voters, diluting the power of their vote is a bit less supported, 66%, but this is still two-thirds supporting an increase in the franchise. The opposition also shifts from 25% of FC active voters opposing increasing the franchise to only 12% of GC actives opposing expansion. It seems from responses to this series of questions that a fair proportion of Hongkongers want a check-and-balance system that keeps any group from having total domination of policy. There is very strong support across the board to increase competition in FC elections. Among FC actives 73% support increased competition while 15% oppose. Among GC actives 75% support versus 11% opposed.

Increases to the size of the franchise of FC electorates is a sure method of increasing competition for seats. Currently, on average, a third of FC seats are uncontested, with this third being consistently the smallest franchise seats. As shown in the previous section, however, the small-franchise FCs are actually closer in demographic profile to GC voters than larger franchise FCs. How to make an FC-based house work in the Hong Kong context in a manner similar to its functions elsewhere may require that the narrow FC interests and smaller franchises of FC representatives be expanded to include as many managers, administrators, owners, directors, and even stock-holders as possible from FC groups rather than single corporate votes as now. Widening the franchise would raise competition for the seats, while restricting the franchise to owners and administrators would retain the property-protective character of the FC seats in the system. It should also lessen the sense of unfairness rooted in the notion that the votes of very few counter the wishes and demands of so very many.
This sense of the unfair power of the few over the many in LegCo has, within the overall Hong Kong governing system, its most intense focus on the chief executive office, for here as few as 401 people can negate the views and demands of nearly 7 million. Attitudes toward constitutional reform of CE elections show a clear majority across all categories supporting direct election. The CE is presently returned by an election committee of 800 members. Three fourths or 600 FC representatives are elected by FC voters and one fourth or 200 members including ex officio all 60 LegCo members (for a total of 630 FC-elected representatives including the 30 FC LegCo members), the National People’s Congress (NPC) and Chinese People’s Political Consultative Conference and other appointed current and former political figures. If anything support in principle for direct election of the CE is greatest among FC active respondents, with 79% in support and 15% opposed while 76% of GC active respondents support and 14% oppose. Only 67% of political inactives support direct CE election while 19% oppose. Follow-up questioning of the supporters of direct election on timing showed nearly half support direct election in 2007. Those who opposed or did not know amounted to about one in five. The majority want direct elections by 2012 or sooner (two thirds of all against 72% of FC actives). Chart 2 makes the greater support of FC active voters for direct CE election clear.

Table 27 details the reasons those who oppose or don’t know gave for their responses. The greatest differences, as might be expected, are between those active in the GCs only and those active in the FCs, or what could be characterised the ‘grassroots’ versus the elites.

The grassroots GC actives seem less willing to believe Hong Kong people are not ready for direct election than the FC actives. Only 1% of the FC actives and 1% of the random sample as whole oppose direct CE election because Beijing

**Chart 2. If you support CE direct election in principle, then when to implement?**
Table 27. If oppose (or don’t know above), what is your MAIN or MOST IMPORTANT reason for opposing direct elections of the chief executive?

Open-ended responses*

<table>
<thead>
<tr>
<th>Reason</th>
<th>Random</th>
<th>GC active</th>
<th>FC active</th>
</tr>
</thead>
<tbody>
<tr>
<td>Because Beijing objects</td>
<td>4 (1)</td>
<td>2 (0.3)</td>
<td>5 (1)</td>
</tr>
<tr>
<td>My interests would be affected</td>
<td>1.4 (0.1)</td>
<td>1 (0.2)</td>
<td>2 (0.3)</td>
</tr>
<tr>
<td>Would cause chaos</td>
<td>9 (1)</td>
<td>8 (1)</td>
<td>9 (1)</td>
</tr>
<tr>
<td>Would lead to HK independence</td>
<td>2 (0.4)</td>
<td>0 (0)</td>
<td>2 (0.3)</td>
</tr>
<tr>
<td>Undesirable candidate might be elected</td>
<td>6 (1)</td>
<td>2 (0.3)</td>
<td>12 (2)</td>
</tr>
<tr>
<td>HK people not ready for direct election/ not mature enough</td>
<td>30 (5)</td>
<td>27 (4)</td>
<td>42 (7)</td>
</tr>
<tr>
<td>HK parties not mature enough</td>
<td>10 (2)</td>
<td>16 (2)</td>
<td>18 (3)</td>
</tr>
<tr>
<td>Other reasons</td>
<td>28 (4)</td>
<td>27 (4)†</td>
<td>28 (4)†</td>
</tr>
<tr>
<td>Sample size (#)</td>
<td>126 (800)</td>
<td>85 (353)</td>
<td>73 (365)</td>
</tr>
</tbody>
</table>

* First #: % of those who oppose/don’t know; 2nd # in parentheses: % of all respondents.
† Percentages in FC active column do not sum to 100 due to multiple reasons being given; percentages in GC active amount to less than 100 due to many respondents giving no reasons. Three groups only compared.

objects (note this is 4% of the random sample who object and 5% of the FC active sample who object, but only 1% of the full samples, respectively). However, 40% of the random sample who object and 60% of the FC active sample who object (7% and 10% respectively of their larger groups), do so for reasons Beijing and its supporters advanced in defending the decision to intervene in April 2004 to prevent full direct election of LegCo and the CE in 2008 and 2007 respectively, that is, the supposed lack of maturity of Hongkongers or their unreadiness to act maturely in securing the greater interests of Hong Kong and China. This is one of the major issues in Hong Kong concerning the pace of constitutional reforms.

The implicit meaning to the term ‘maturity’ of the voters lies in the issue of patriotism and the identity of Hongkongers as Chinese citizens of the People’s Republic of China. Table 28 shows among FCs identity choices vary widely. Business and business-oriented professional FCs and small-franchise FCs dominated by business and labour groups show a slightly higher proportion identify themselves as Chinese, the most ‘patriotic’ identity. These groups have also been consistently identified in the literature and in the press as the most conservative elements in LegCo and society. However, the difference between the full FC samples and the GC random sample choosing Chinese identity is barely larger than the range of error. For the GC sample size the range of error at the 95% confidence level is +/-2 while the smaller FC samples range of error is +/-4. The
question asked respondents is: ‘The following is a list of how you might describe yourself. Which is the most appropriate description of you?’

There is an association between self-identity and support/opposition to direct election of the CE, with a much larger proportion of those identifying themselves as Chinese opposing direct election. While just 23% of those who oppose direct elections identify themselves as Hong Kong persons, 38% of the opposers chose the Chinese identity as most appropriate. Given that a much greater proportion of the overall samples chose Hong Kong person as their identity than chose Chinese (37% versus 29%), the dominance of Chinese identity among opposers to direct CE election is significant.

**Table 28. Self-identification of FC-stratified samples**

<table>
<thead>
<tr>
<th>Self-ID:</th>
<th>HK Chinese</th>
<th>HK person</th>
<th>HK British</th>
<th>Overseas Chinese</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Education FC in</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stratified full samples</td>
<td>184</td>
<td>158</td>
<td>216</td>
<td>16</td>
<td>11</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>31%</td>
<td>26%</td>
<td>36%</td>
<td>3%</td>
<td>2%</td>
<td>3%</td>
</tr>
<tr>
<td>Stratified non-business &amp; professional</td>
<td>112</td>
<td>109</td>
<td>135</td>
<td>9</td>
<td>4</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>30%</td>
<td>29%</td>
<td>36%</td>
<td>2%</td>
<td>1%</td>
<td>3%</td>
</tr>
<tr>
<td>Stratified business &amp; professional</td>
<td>36</td>
<td>49</td>
<td>76</td>
<td>3</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>21%</td>
<td>29%</td>
<td>44%</td>
<td>2%</td>
<td>1%</td>
<td>3%</td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>9</td>
<td>13</td>
<td>16</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>21%</td>
<td>30%</td>
<td>36%</td>
<td>2%</td>
<td>5%</td>
<td>7%</td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>226</td>
<td>214</td>
<td>297</td>
<td>23</td>
<td>10</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>28%</td>
<td>27%</td>
<td>37%</td>
<td>3%</td>
<td>1%</td>
<td>3%</td>
</tr>
<tr>
<td><strong>Education FC out</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stratified full samples</td>
<td>144</td>
<td>121</td>
<td>185</td>
<td>11</td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>30%</td>
<td>25%</td>
<td>39%</td>
<td>2%</td>
<td>2%</td>
<td>3%</td>
</tr>
<tr>
<td>Stratified non-business &amp; professional</td>
<td>73</td>
<td>58</td>
<td>93</td>
<td>7</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>30%</td>
<td>24%</td>
<td>39%</td>
<td>3%</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td>Stratified business &amp; professional</td>
<td>61</td>
<td>74</td>
<td>81</td>
<td>7</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>26%</td>
<td>32%</td>
<td>35%</td>
<td>3%</td>
<td>3%</td>
<td>2%</td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>17</td>
<td>21</td>
<td>31</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>23%</td>
<td>28%</td>
<td>42%</td>
<td>1%</td>
<td>1%</td>
<td>4%</td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>232</td>
<td>187</td>
<td>305</td>
<td>23</td>
<td>12</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>30%</td>
<td>24%</td>
<td>39%</td>
<td>3%</td>
<td>2%</td>
<td>3%</td>
</tr>
<tr>
<td><strong>GC random</strong></td>
<td>729</td>
<td>722</td>
<td>922</td>
<td>41</td>
<td>17</td>
<td>54</td>
</tr>
<tr>
<td></td>
<td>29%</td>
<td>29%</td>
<td>37%</td>
<td>2%</td>
<td>1%</td>
<td>2%</td>
</tr>
</tbody>
</table>
Chinese identity choices have been consistently associated with other variables regarding patriotism and pro-Beijing stances in earlier Hong Kong Transition Project studies. However, were Beijing to change stance, one would expect shifts in opinion among those identifying themselves as Chinese while those identifying themselves as Hong Kong persons would likely not show such a shift. There is, however, strong evidence that rural New Territories residents (Heung Yee Kuk members) strongly oppose direct election of the CE. The Heung Yee Kuk members are also strong traditional ancestor worship practitioners as well as supporters of the Mainland Chinese government. It is uncertain how much their opposition to direct CE election is because Beijing currently opposes it and how much derives from a belief that direct election of the CE would dilute their influence. But rural NT residents have taken a stance in support of order against chaos, even under the British, and this fear of chaos may have a great deal of

Table 29. Support/oppose direct election of CE by self-identification

<table>
<thead>
<tr>
<th>Identification</th>
<th>Support Dir. Elect.</th>
<th>Oppose Dir. Elect.</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hong Kong Chinese</td>
<td>30%</td>
<td>34%</td>
<td>30%</td>
</tr>
<tr>
<td>Chinese</td>
<td>29%</td>
<td>38%</td>
<td>30%</td>
</tr>
<tr>
<td>Hong Kong person</td>
<td>34%</td>
<td>23%</td>
<td>32%</td>
</tr>
<tr>
<td>Hong Kong British</td>
<td>3%</td>
<td>1%</td>
<td>3%</td>
</tr>
<tr>
<td>Overseas Chinese</td>
<td>2%</td>
<td>0%</td>
<td>1%</td>
</tr>
<tr>
<td>Other</td>
<td>3%</td>
<td>4%</td>
<td>3%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table contents: Percent of column total. Chi-square = 12.42 with 5 df p = 0.0295.

Table 30. If direct election of the CE were implemented in 2007, my reaction would be:

<table>
<thead>
<tr>
<th>Reaction</th>
<th>Random</th>
<th>Sept. voters</th>
<th>Pol. inactive</th>
<th>GC active</th>
<th>FC active</th>
</tr>
</thead>
<tbody>
<tr>
<td>No reaction</td>
<td>21%</td>
<td>17%</td>
<td>27%</td>
<td>20%</td>
<td>12%</td>
</tr>
<tr>
<td>Welcome decision</td>
<td>37%</td>
<td>41%</td>
<td>31%</td>
<td>39%</td>
<td>40%</td>
</tr>
<tr>
<td>Accept the decision</td>
<td>15%</td>
<td>14%</td>
<td>17%</td>
<td>14%</td>
<td>18%</td>
</tr>
<tr>
<td>Protest</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>Leave HK for PRC</td>
<td>0.1%</td>
<td>0%</td>
<td>0.3%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Leave HK for overseas</td>
<td>0.1%</td>
<td>0.2%</td>
<td>0%</td>
<td>0%</td>
<td>0.3%</td>
</tr>
<tr>
<td>Other</td>
<td>22%</td>
<td>24%</td>
<td>18%</td>
<td>22%</td>
<td>27%</td>
</tr>
<tr>
<td>Don’t know</td>
<td>5%</td>
<td>4%</td>
<td>5%</td>
<td>4%</td>
<td>3%</td>
</tr>
<tr>
<td>Total % (N=)</td>
<td>100% (800)</td>
<td>100% (504)</td>
<td>100% (296)</td>
<td>100% (353)</td>
<td>100% (365)</td>
</tr>
</tbody>
</table>
influence on these indigenous Hongkongers and on others who oppose direct election. Table 30 shows while a majority would welcome or accept a 2007 direct CE election if it were allowed to take place, about 15% believe the pace is too fast or that direct election of the CE in 2007 would create social chaos. This stance appears little affected by Beijing’s political position on the timing and pace of reforms, per se.

The 22% of the random sample who responded with ‘other’ responses can be seen in Table 31 to divide roughly one-third welcoming or accepting responses while two-thirds of the 22% (15% of the overall random sample) were concerned about the decision causing chaos or coming ‘too fast’. This 15% of the sample who are concerned about negative effects of direct election of the CE is consistent throughout the survey.

Should the small portion of the populace who fear direct election as destabilising continue to veto Hong Kong’s political development? While there are dangers in going forward, there are also dangers in standing still, and surprisingly, the greatest danger to standing still lies in the FCs. If Beijing chooses to delay direct election of the CE indefinitely, a large proportion of the respondents across all groups say they would protest and a significant percentage say they would leave. However, given the professional and business influence of FC-active voters over both the government and economy of Hong Kong, the reaction of this group is extremely important. As Table 32 shows, nearly one in five FC active voters would protest such a decision, and among this group, only 12% say they would have no reaction while fully 27% of the GC-active voters and 30% of politically inactives say they would have no reaction to indefinite delay of direct CE elections.

The 38% of the random sample (see Table 32) who gave an ‘Other’ response to their reaction to indefinite delay nearly all indicated opposition. While not willing to protest or leave Hong Kong, the reclassification of responses (Table 33) clearly indicate a large portion of those surveyed would feel strongly against

<table>
<thead>
<tr>
<th>Reclassified ‘Other’ responses</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feel happy and excited</td>
<td>17</td>
<td>10%</td>
</tr>
<tr>
<td>It will be great progress on constitution reform</td>
<td>21</td>
<td>12%</td>
</tr>
<tr>
<td>Hong Kong will be better</td>
<td>16</td>
<td>9%</td>
</tr>
<tr>
<td>Basically acceptable, but not feasible to implement in 2007</td>
<td>3</td>
<td>2%</td>
</tr>
<tr>
<td>The pace will be too fast, 2007 is inappropriate time for CE direct election</td>
<td>77</td>
<td>44%</td>
</tr>
<tr>
<td>Society will be chaotic</td>
<td>37</td>
<td>21%</td>
</tr>
<tr>
<td>Unclassifiable</td>
<td>3</td>
<td>2%</td>
</tr>
</tbody>
</table>
lengthy delays. They also indicate that the pool of people who might be driven to protest or leave is much larger than the initial responses in Table 32 indicate.

The most significant aspect of Tables 31 and 32 is that a perhaps critical number (approximately 110,000) would leave Hong Kong. As Table 34 indicates, this might only be the first and perhaps smallest wave of those who would choose to leave. As can also be seen in Table 34, FC voters are much more likely to say they would leave than the average Hongkonger. In some of the stratified samples, up to two-thirds say they would seek means to leave in such a situation. Given that FC voters are more educated and wealthier than the average, their ability to execute their contingent intentions must be taken very seriously, especially since an exodus of these 185,000 professionals and highly socially and politically active members of society would spell the death of Hong Kong as we know it.

Table 35 shows that all FC stratifications of those who say they would seek to leave (Table 34) show a pronounced sensitivity to Hong Kong’s political stability and personal freedoms. The GC random sample shows that for others, economic factors predominate by far, but nearly a majority of FC groups (adding those who would leave due to changes in their personal freedoms and those who

### Table 32. If direct election of the CE were delayed indefinitely, my reaction would be:

<table>
<thead>
<tr>
<th>Reaction</th>
<th>Random (Random)</th>
<th>Sept. voters (Pol. inactive)</th>
<th>GC active (GC active)</th>
<th>FC active (FC active)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No reaction</td>
<td>25%</td>
<td>22%</td>
<td>30%</td>
<td>27%</td>
</tr>
<tr>
<td>Welcome decision</td>
<td>3%</td>
<td>3%</td>
<td>4%</td>
<td>2%</td>
</tr>
<tr>
<td>Accept the decision</td>
<td>9%</td>
<td>7%</td>
<td>12%</td>
<td>8%</td>
</tr>
<tr>
<td>Protest</td>
<td>15%</td>
<td>19%</td>
<td>8%</td>
<td>18%</td>
</tr>
<tr>
<td>Leave HK for PRC</td>
<td>0.3%</td>
<td>0.2%</td>
<td>0.3%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Leave HK for overseas</td>
<td>2%</td>
<td>3%</td>
<td>0%</td>
<td>2%</td>
</tr>
</tbody>
</table>

### Table 33. Reclassification of ‘Other’ response (random sample only) N=305

<table>
<thead>
<tr>
<th>Other reclassifications</th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angry but won’t protest</td>
<td>12</td>
<td>4%</td>
</tr>
<tr>
<td>Oppose the decision, totally unacceptable</td>
<td>59</td>
<td>19%</td>
</tr>
<tr>
<td>Feel hopeless and frustrated</td>
<td>73</td>
<td>24%</td>
</tr>
<tr>
<td>Disappointed but not angry</td>
<td>76</td>
<td>25%</td>
</tr>
<tr>
<td>It will be impossible for government to delay indefinitely</td>
<td>39</td>
<td>13%</td>
</tr>
<tr>
<td>It will block all kinds of development in society</td>
<td>23</td>
<td>8%</td>
</tr>
<tr>
<td>Unclassifiable</td>
<td>23</td>
<td>8%</td>
</tr>
</tbody>
</table>
would seek to leave because of political instability together) are more sensitive to political aspects. However, and this is critical for Beijing to understand, what the vast majority of FC voters mean by ‘Hong Kong’s political stability’ is very different from the ‘no change for 50 years’ Beijing has defined to mean ‘no change in widening political participation by advancing to direct elections for CE and LegCo’.

Personal freedoms and political stability together add up to 47% of the full sample Education FC in, 45% with Education out, versus 28% of the GC random sample. FC members appear much more politically sensitive and readier to leave if personal freedoms and political stability are undermined. Their definition of political stability does not, however, mean the retention of the currently highly unfair FC system, since large majorities of FC voters support direct elections for LegCo and the CE, and want them sooner rather than later. However,

Table 34. If Hong Kong is no longer suitable for you, would you seek means to leave?

<table>
<thead>
<tr>
<th>Decision:</th>
<th>Yes</th>
<th>Like to but can’t</th>
<th>No</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education FC in</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stratified full samples</td>
<td>326</td>
<td>21</td>
<td>218</td>
<td>565</td>
</tr>
<tr>
<td>Stratified non-business &amp; prof.</td>
<td>192</td>
<td>13</td>
<td>152</td>
<td>357</td>
</tr>
<tr>
<td>Stratified business &amp; prof.</td>
<td>102</td>
<td>4</td>
<td>55</td>
<td>161</td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>22</td>
<td>1</td>
<td>19</td>
<td>42</td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>492</td>
<td>27</td>
<td>230</td>
<td>749</td>
</tr>
<tr>
<td>Education FC out</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stratified full samples</td>
<td>258</td>
<td>16</td>
<td>178</td>
<td>452</td>
</tr>
<tr>
<td>Stratified non-business &amp; prof.</td>
<td>118</td>
<td>6</td>
<td>101</td>
<td>225</td>
</tr>
<tr>
<td>Stratified business &amp; prof.</td>
<td>146</td>
<td>9</td>
<td>68</td>
<td>223</td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>36</td>
<td>2</td>
<td>33</td>
<td>71</td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>483</td>
<td>25</td>
<td>229</td>
<td>737</td>
</tr>
<tr>
<td>GC random</td>
<td>1070</td>
<td>193</td>
<td>1625</td>
<td>2888</td>
</tr>
</tbody>
</table>

Michael E. DeGolyer
there is also considerable support for retaining greater influence for business and professional groups, for setting up a two-house system, and for retaining the ability of GC LegCo members and FC LegCo members to veto each other’s majorities. There is also considerable support for widening the FC franchises, abolishing corporate voting and increasing competition for the FC LegCo seats. Hongkongers seem to realise the current GC/FC system is highly flawed and unfair. They support changes to it. Though some of those views appear contradictory, the clear sense is that Hongkongers want a system that works, one that

Table 35. What is the MAJOR change which you would find so unsuitable as to make you seek to leave?

<table>
<thead>
<tr>
<th>Education FC in</th>
<th>Personal standard of living</th>
<th>Personal health</th>
<th>Family projects</th>
<th>HK economic prospects</th>
<th>HK political instability</th>
<th>Corruption</th>
<th>Law &amp; order/political</th>
<th>Over crowding</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stratified full samples</td>
<td>29</td>
<td>51</td>
<td>41</td>
<td>44</td>
<td>102</td>
<td>5</td>
<td>10</td>
<td>2</td>
<td>45</td>
<td>329</td>
</tr>
<tr>
<td>Stratified non-business &amp; prof.</td>
<td>9%</td>
<td>16%</td>
<td>13%</td>
<td>13%</td>
<td>31%</td>
<td>2%</td>
<td>3%</td>
<td>1%</td>
<td>14%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified business &amp; prof.</td>
<td>11</td>
<td>27</td>
<td>21</td>
<td>25</td>
<td>73</td>
<td>4</td>
<td>10</td>
<td>0</td>
<td>27</td>
<td>198</td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>6%</td>
<td>14%</td>
<td>11%</td>
<td>13%</td>
<td>37%</td>
<td>2%</td>
<td>5%</td>
<td>0%</td>
<td>14%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>16%</td>
<td>19%</td>
<td>9%</td>
<td>20%</td>
<td>20%</td>
<td>1%</td>
<td>2%</td>
<td>0%</td>
<td>14%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>5</td>
<td>2</td>
<td>1</td>
<td>5</td>
<td>3</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>3</td>
<td>21</td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>24%</td>
<td>10%</td>
<td>5%</td>
<td>24%</td>
<td>14%</td>
<td>0%</td>
<td>10%</td>
<td>0%</td>
<td>14%</td>
<td>100%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Education FC out</th>
<th>Personal standard of living</th>
<th>Personal health</th>
<th>Family projects</th>
<th>HK economic prospects</th>
<th>HK political instability</th>
<th>Corruption</th>
<th>Law &amp; order/political</th>
<th>Over crowding</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stratified full samples</td>
<td>21</td>
<td>44</td>
<td>28</td>
<td>39</td>
<td>73</td>
<td>5</td>
<td>13</td>
<td>1</td>
<td>33</td>
<td>257</td>
</tr>
<tr>
<td>Stratified non-business &amp; prof.</td>
<td>8%</td>
<td>17%</td>
<td>11%</td>
<td>15%</td>
<td>28%</td>
<td>2%</td>
<td>5%</td>
<td>1%</td>
<td>13%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified business &amp; prof.</td>
<td>11</td>
<td>16</td>
<td>12</td>
<td>21</td>
<td>37</td>
<td>1</td>
<td>7</td>
<td>0</td>
<td>14</td>
<td>119</td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>9%</td>
<td>14%</td>
<td>10%</td>
<td>18%</td>
<td>31%</td>
<td>1%</td>
<td>6%</td>
<td>0%</td>
<td>12%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>13%</td>
<td>15%</td>
<td>15%</td>
<td>15%</td>
<td>28%</td>
<td>1%</td>
<td>6%</td>
<td>1%</td>
<td>7%</td>
<td>100%</td>
</tr>
<tr>
<td>Stratified small franchise</td>
<td>7</td>
<td>4</td>
<td>0</td>
<td>11</td>
<td>7</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>3</td>
<td>34</td>
</tr>
<tr>
<td>Stratified large franchise</td>
<td>21%</td>
<td>12%</td>
<td>0%</td>
<td>32%</td>
<td>21%</td>
<td>0%</td>
<td>6%</td>
<td>0%</td>
<td>9%</td>
<td>100%</td>
</tr>
<tr>
<td>GC random</td>
<td>220</td>
<td>199</td>
<td>567</td>
<td>281</td>
<td>263</td>
<td>10</td>
<td>29</td>
<td>16</td>
<td>96</td>
<td>1681</td>
</tr>
</tbody>
</table>

Profiles and attitudes of FC voters versus GC voters 189
protects property rights and interests of business and professionals while also more fairly representing the interests of all.

On the basis of the evidence in this first-of-its-kind study of the FC elites compared with the grassroots respondents, if Hong Kong does not go forward steadily, it may very well go backward toward instability and massive flight of its most able citizens. FC members are most sensitive to this possibility. Clearly, the current system is rife with stresses and strains related to its extraordinary unfairness. But Hongkongers do not want a system ensuring some sort of Maoist-style equality. Like the people of many other governing entities, they want prosperity and stability, which requires that the rights and property of all be respected and protected. How to ensure a fairness that is the basis for legitimacy while building in protections for property and minority rights which are requirements of prosperity lies at the heart of Hong Kong’s reform dilemma.
### Table 2. Voters to LegCo Representative, Functional Constituencies

<table>
<thead>
<tr>
<th>Functional constituency</th>
<th>Registered persons in 2000 LegCo election</th>
<th>Percent registered persons FC voters of total</th>
<th>Registered corporate ‘voters’</th>
<th>Fairness ratio, GC to FC</th>
<th>Fairness ratio, Educ. FC to FC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>77,696</td>
<td>42</td>
<td>1.4:1</td>
<td>1:1</td>
<td></td>
</tr>
<tr>
<td>Health Services</td>
<td>35,442</td>
<td>19</td>
<td>3:1</td>
<td>2:2:1</td>
<td></td>
</tr>
<tr>
<td>Accountancy</td>
<td>17,500</td>
<td>9.5</td>
<td>6:1</td>
<td>4:4:1</td>
<td></td>
</tr>
<tr>
<td>Social Welfare</td>
<td>10,405</td>
<td>5.6</td>
<td>11:1</td>
<td>7:5:1</td>
<td></td>
</tr>
<tr>
<td>Medical</td>
<td>9,356</td>
<td>5</td>
<td>12:1</td>
<td>8:1</td>
<td></td>
</tr>
<tr>
<td>Catering</td>
<td>7,353</td>
<td>4</td>
<td>433</td>
<td>14:1*</td>
<td>10:1†</td>
</tr>
<tr>
<td>Engineering</td>
<td>7,252</td>
<td>3.9</td>
<td>433</td>
<td>14:1*</td>
<td>10:1†</td>
</tr>
<tr>
<td>Architectural, Survey &amp; Planning</td>
<td>5,116</td>
<td>2.8</td>
<td>433</td>
<td>14:1*</td>
<td>10:1†</td>
</tr>
<tr>
<td>Legal</td>
<td>5,073</td>
<td>2.7</td>
<td>433</td>
<td>14:1*</td>
<td>10:1†</td>
</tr>
<tr>
<td>Information Technology</td>
<td>4,309</td>
<td>2.3</td>
<td>262</td>
<td>24:1</td>
<td>17:1</td>
</tr>
<tr>
<td>Wholesale and Retail</td>
<td>2,454</td>
<td>1.3</td>
<td>1,609</td>
<td>27:1</td>
<td>19:1</td>
</tr>
<tr>
<td>Commercial (2nd)</td>
<td>1,096</td>
<td>0.6</td>
<td>739</td>
<td>60:1</td>
<td>42:1</td>
</tr>
<tr>
<td>Import &amp; Export</td>
<td>618</td>
<td>0.3</td>
<td>767</td>
<td>79:1</td>
<td>56:1</td>
</tr>
<tr>
<td>District Council*</td>
<td>462</td>
<td>0.25</td>
<td>455</td>
<td>145:1</td>
<td>102:1</td>
</tr>
<tr>
<td>Real Estate &amp; Construction</td>
<td>302</td>
<td>0.016</td>
<td>455</td>
<td>145:1</td>
<td>102:1</td>
</tr>
<tr>
<td>Heung Yee Kuk*</td>
<td>149</td>
<td>0.008</td>
<td>738</td>
<td>738:1*</td>
<td>521:1*</td>
</tr>
<tr>
<td>Textiles and garments</td>
<td>79</td>
<td>0.004</td>
<td>3,815</td>
<td>28:1</td>
<td>20:1</td>
</tr>
<tr>
<td>Sports, performing arts, culture</td>
<td>48</td>
<td>0.003</td>
<td>1,583</td>
<td>67:1</td>
<td>47:1</td>
</tr>
<tr>
<td>Financial Services</td>
<td>46</td>
<td>0.003</td>
<td>598</td>
<td>171:1</td>
<td>121:1</td>
</tr>
<tr>
<td>Commercial (1st)</td>
<td>0</td>
<td>1,077</td>
<td>102:1</td>
<td>72:1</td>
<td></td>
</tr>
<tr>
<td>Tourism</td>
<td>0</td>
<td>964</td>
<td>114:1</td>
<td>81:1</td>
<td></td>
</tr>
<tr>
<td>Industrial (1st)</td>
<td>0</td>
<td>804</td>
<td>137:1</td>
<td>97:1</td>
<td></td>
</tr>
<tr>
<td>Industrial (2nd)</td>
<td>0</td>
<td>499</td>
<td>221:1</td>
<td>156:1</td>
<td></td>
</tr>
<tr>
<td>Transport</td>
<td>0</td>
<td>182</td>
<td>605:1</td>
<td>427:1</td>
<td></td>
</tr>
<tr>
<td>Labour (3 seats)</td>
<td>0</td>
<td>519#</td>
<td>636:1</td>
<td>449:1</td>
<td></td>
</tr>
<tr>
<td>Agriculture &amp; Fisheries</td>
<td>0</td>
<td>162</td>
<td>680:1</td>
<td>480:1</td>
<td></td>
</tr>
<tr>
<td>Insurance</td>
<td>0</td>
<td>161</td>
<td>684:1</td>
<td>480:1</td>
<td></td>
</tr>
<tr>
<td>Finance</td>
<td>0</td>
<td>154</td>
<td>715:1</td>
<td>505:1</td>
<td></td>
</tr>
</tbody>
</table>

Total: 184,756, 92.6%, 14,783

(Notes on following page.)
a Ranked by number of individual voters.
b Corporate bodies which have a designated voter to ‘represent’ the body are excluded in this count. These ‘designated voters’ are nearly impossible to locate and how they are chosen appears wildly variant and arbitrary. Seats chosen by corporate vote are rarely contested.
c Using the New Territories East GC number of voters per LegCo seat, 110,084 as base. The actual fairness ratio is even higher due to FC voters also getting to vote in GCs.
d The Education FC has the largest number of voters among the FCs.
e Ratios of total voters, including corporate votes against the NT East GC base.
f Both District Council and Heung Yee Kuk are ‘elected’ bodies. However, the 18 District Councils are formed by universal suffrage voting for 400 members with a further 100 government appointed. The Heung Yee Kuk is formed by village representatives elected by those living in indigenous New Territories villages (once restricted to males with provable provenance to 1898 ancestors, franchise has been extended to permanent residents living in an NT village for at least four years.) Villagers can vote for their Heung Yee Kuk representative and thus indirectly for that FC seat, for their GC seat, and if in business or professional groups, for that FC seat as well.
g The 433 organisational votes range from one corporate voter for a 10–member taxi owner association to one voter for the MTRC with scores of thousands of employees. So the fairness ratio is, if overall corporate members are considered, far better, or, if different size organisations are considered, actually far worse in terms of equality of voters. Given one owner may control hundreds of corporate votes, the opacity and inequality of the mixed corporate/individual votes among the FCs is the most extreme, even more so than FC to GC.

Actual votes per seat, 173.
Table 4. Stratified sampling of FCs, Education in

<table>
<thead>
<tr>
<th>FC</th>
<th>Population</th>
<th>Available FC samples in database</th>
<th>Number of stratified samples should be taken</th>
<th>Number of stratified samples actually taken</th>
<th>Sampling distribution differences</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Regis-</td>
<td>Number of stratified samples</td>
<td>% of total</td>
<td>% of total</td>
<td>% of total</td>
</tr>
<tr>
<td></td>
<td>tered</td>
<td>samples should be</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>voters</td>
<td>taken</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>% of total</td>
<td>% of total</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Heung Yee Kuk</td>
<td>149</td>
<td>11</td>
<td>0.07%</td>
<td>0.07%</td>
<td>1.05%</td>
</tr>
<tr>
<td>2 Agriculture and</td>
<td>162</td>
<td>4</td>
<td>0.08%</td>
<td>0.08%</td>
<td>1.05%</td>
</tr>
<tr>
<td>Fisheries</td>
<td>3 Insurance</td>
<td>10</td>
<td>0.78%</td>
<td>0.08%</td>
<td>1.05%</td>
</tr>
<tr>
<td>4 Transport</td>
<td>182</td>
<td>8</td>
<td>0.62%</td>
<td>0.09%</td>
<td>1.05%</td>
</tr>
<tr>
<td>5 Education</td>
<td>77696</td>
<td>226</td>
<td>17.59%</td>
<td>38.94%</td>
<td>226</td>
</tr>
<tr>
<td>6 Legal</td>
<td>5073</td>
<td>78</td>
<td>6.07%</td>
<td>4.69%</td>
<td>36</td>
</tr>
<tr>
<td>7 Accountancy</td>
<td>17500</td>
<td>123</td>
<td>9.57%</td>
<td>8.77%</td>
<td>67</td>
</tr>
<tr>
<td>8 Medical</td>
<td>9156</td>
<td>94</td>
<td>7.32%</td>
<td>6.69%</td>
<td>36</td>
</tr>
<tr>
<td>9 Health Services</td>
<td>35442</td>
<td>108</td>
<td>8.40%</td>
<td>17.76%</td>
<td>108</td>
</tr>
<tr>
<td>10 Engineering</td>
<td>7252</td>
<td>123</td>
<td>9.57%</td>
<td>3.63%</td>
<td>28</td>
</tr>
<tr>
<td>11 Architectural,</td>
<td>5116</td>
<td>155</td>
<td>12.06%</td>
<td>2.56%</td>
<td>19</td>
</tr>
<tr>
<td>Surveying and</td>
<td>Labour</td>
<td>519</td>
<td>1.09%</td>
<td>0.26%</td>
<td>2</td>
</tr>
<tr>
<td>Planning</td>
<td>Social Welfare</td>
<td>10405</td>
<td>5.21%</td>
<td>6.09%</td>
<td>40</td>
</tr>
<tr>
<td>14 Real Estate and</td>
<td>757</td>
<td>7</td>
<td>0.54%</td>
<td>0.30%</td>
<td>3</td>
</tr>
<tr>
<td>Construction</td>
<td>Tourism</td>
<td>964</td>
<td>0.48%</td>
<td>0.48%</td>
<td>4</td>
</tr>
<tr>
<td>16 Commercial (1st)</td>
<td>1077</td>
<td>10</td>
<td>0.78%</td>
<td>0.54%</td>
<td>4</td>
</tr>
<tr>
<td>17 Commercial (2nd)</td>
<td>1835</td>
<td>2</td>
<td>0.16%</td>
<td>0.92%</td>
<td>2</td>
</tr>
<tr>
<td>18 Industrial (1st)</td>
<td>804</td>
<td>3</td>
<td>0.23%</td>
<td>0.40%</td>
<td>3</td>
</tr>
<tr>
<td>19 Industrial (2nd)</td>
<td>499</td>
<td>2</td>
<td>0.16%</td>
<td>0.25%</td>
<td>2</td>
</tr>
<tr>
<td>20 Finance</td>
<td>154</td>
<td>7</td>
<td>0.54%</td>
<td>0.08%</td>
<td>1</td>
</tr>
<tr>
<td>21 Financial Services</td>
<td>644</td>
<td>10</td>
<td>0.70%</td>
<td>0.32%</td>
<td>2</td>
</tr>
<tr>
<td>22 Sports, Performing Arts, Culture &amp; Publication</td>
<td>1631</td>
<td>6</td>
<td>0.47%</td>
<td>0.82%</td>
<td>6</td>
</tr>
<tr>
<td>23 Import and Export</td>
<td>1385</td>
<td>16</td>
<td>1.25%</td>
<td>0.69%</td>
<td>5</td>
</tr>
<tr>
<td>24 Textiles and</td>
<td>3894</td>
<td>12</td>
<td>0.93%</td>
<td>1.95%</td>
<td>15</td>
</tr>
<tr>
<td>Garment</td>
<td>Wholesale and Retail</td>
<td>4083</td>
<td>2.04%</td>
<td>2.04%</td>
<td>15</td>
</tr>
<tr>
<td>26 Information</td>
<td>4571</td>
<td>32</td>
<td>2.49%</td>
<td>3.90%</td>
<td>30</td>
</tr>
<tr>
<td>Technology</td>
<td>Catering</td>
<td>7786</td>
<td>3.90%</td>
<td>3.90%</td>
<td>30</td>
</tr>
<tr>
<td>28 District Council</td>
<td>462</td>
<td>6</td>
<td>0.47%</td>
<td>0.23%</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>199,539</td>
<td>1,285</td>
<td>100%</td>
<td>100%</td>
<td>657</td>
</tr>
</tbody>
</table>

Note: sampling distribution differences equals ‘% of total in the population minus % of total in the stratified samples’.
Table 5. Stratified sampling of FCs, Education out

<table>
<thead>
<tr>
<th>FC</th>
<th>Population</th>
<th>Available FC samples</th>
<th>Number of stratified samples should be taken</th>
<th>Number of stratified samples actually taken</th>
<th>Sampling distribution differences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heung Yee Kuk</td>
<td>149</td>
<td>11</td>
<td>1</td>
<td>1</td>
<td>0.07%</td>
</tr>
<tr>
<td>Agriculture and Fisheries</td>
<td>162</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>-0.06%</td>
</tr>
<tr>
<td>Insurance</td>
<td>161</td>
<td>10</td>
<td>1</td>
<td>1</td>
<td>-0.06%</td>
</tr>
<tr>
<td>Transport</td>
<td>182</td>
<td>8</td>
<td>1</td>
<td>1</td>
<td>-0.04%</td>
</tr>
<tr>
<td>Legal</td>
<td>5073</td>
<td>78</td>
<td>25</td>
<td>25</td>
<td>0.68%</td>
</tr>
<tr>
<td>Accountancy</td>
<td>17500</td>
<td>123</td>
<td>88</td>
<td>88</td>
<td>2.49%</td>
</tr>
<tr>
<td>Medical</td>
<td>9356</td>
<td>94</td>
<td>47</td>
<td>47</td>
<td>1.43%</td>
</tr>
<tr>
<td>Health Services</td>
<td>35442</td>
<td>108</td>
<td>177</td>
<td>108</td>
<td>-8.16%</td>
</tr>
<tr>
<td>Engineering</td>
<td>7252</td>
<td>123</td>
<td>36</td>
<td>36</td>
<td>1.02%</td>
</tr>
<tr>
<td>Architectural, Surveying and Planning</td>
<td>5116</td>
<td>155</td>
<td>26</td>
<td>26</td>
<td>-0.04%</td>
</tr>
<tr>
<td>Labour</td>
<td>519</td>
<td>14</td>
<td>3</td>
<td>3</td>
<td>+0.16%</td>
</tr>
<tr>
<td>Social Welfare</td>
<td>10405</td>
<td>53</td>
<td>52</td>
<td>52</td>
<td>+1.54%</td>
</tr>
<tr>
<td>Real Estate and Construction</td>
<td>757</td>
<td>7</td>
<td>4</td>
<td>4</td>
<td>+0.15%</td>
</tr>
<tr>
<td>Tourism</td>
<td>964</td>
<td>12</td>
<td>5</td>
<td>5</td>
<td>+0.18%</td>
</tr>
<tr>
<td>Commercial (1st)</td>
<td>1077</td>
<td>10</td>
<td>5</td>
<td>5</td>
<td>+0.09%</td>
</tr>
<tr>
<td>Commercial (2nd)</td>
<td>1835</td>
<td>2</td>
<td>9</td>
<td>2</td>
<td>-1.12%</td>
</tr>
<tr>
<td>Industrial (1st)</td>
<td>804</td>
<td>3</td>
<td>4</td>
<td>4</td>
<td>-0.06%</td>
</tr>
<tr>
<td>Industrial (2nd)</td>
<td>499</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>-0.02%</td>
</tr>
<tr>
<td>Finance</td>
<td>154</td>
<td>7</td>
<td>1</td>
<td>1</td>
<td>+0.07%</td>
</tr>
<tr>
<td>Financial Services</td>
<td>644</td>
<td>10</td>
<td>3</td>
<td>3</td>
<td>+0.05%</td>
</tr>
<tr>
<td>Sports, Performing Arts, Culture &amp; Paper</td>
<td>1631</td>
<td>6</td>
<td>8</td>
<td>6</td>
<td>-0.18%</td>
</tr>
<tr>
<td>Import and Export</td>
<td>1385</td>
<td>16</td>
<td>7</td>
<td>7</td>
<td>+0.22%</td>
</tr>
<tr>
<td>Textiles and Garment</td>
<td>3894</td>
<td>12</td>
<td>19</td>
<td>12</td>
<td>+0.07%</td>
</tr>
<tr>
<td>Wholesale and Retail</td>
<td>4063</td>
<td>25</td>
<td>20</td>
<td>20</td>
<td>+0.54%</td>
</tr>
<tr>
<td>Information Technology</td>
<td>4571</td>
<td>128</td>
<td>23</td>
<td>23</td>
<td>+0.71%</td>
</tr>
<tr>
<td>Catering</td>
<td>7786</td>
<td>32</td>
<td>39</td>
<td>39</td>
<td>+0.19%</td>
</tr>
<tr>
<td>District Council</td>
<td>462</td>
<td>6</td>
<td>2</td>
<td>2</td>
<td>+0.01%</td>
</tr>
<tr>
<td>Total</td>
<td>121,843</td>
<td>1059</td>
<td>610</td>
<td>516</td>
<td></td>
</tr>
</tbody>
</table>

Note: 77,696 cases from the Education FC are excluded in the computation. Sampling distribution differences equals ‘% of total in the population minus % of total in the stratified samples’. With the exception of Health Services, all differences are less than ±5%.
Table 9. GC sample compared to registered voter distribution by GC

<table>
<thead>
<tr>
<th>Constituency</th>
<th>Sample</th>
<th>Percent</th>
<th>Registered voters</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>HK Island</td>
<td>850</td>
<td>25.28%</td>
<td>618,451</td>
<td>19.28%</td>
</tr>
<tr>
<td>KLN East</td>
<td>664</td>
<td>19.74%</td>
<td>524,896</td>
<td>16.36%</td>
</tr>
<tr>
<td>KLN West</td>
<td>487</td>
<td>14.48%</td>
<td>420,259</td>
<td>13.1%</td>
</tr>
<tr>
<td>NT East</td>
<td>731</td>
<td>21.74%</td>
<td>770,590</td>
<td>24.0%</td>
</tr>
<tr>
<td>NT West</td>
<td>631</td>
<td>18.76%</td>
<td>873,031</td>
<td>27.2%</td>
</tr>
<tr>
<td>Total</td>
<td>3363</td>
<td>100%</td>
<td>3,207,227</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 10. FC stratified samples, distribution by GC

<table>
<thead>
<tr>
<th>GC:</th>
<th>HKI</th>
<th>KLN East</th>
<th>KLN West</th>
<th>NT East</th>
<th>NT West</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education FC in</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stratified full samples</td>
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<td>8.30%</td>
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<td>15.10%</td>
<td>100%</td>
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</tbody>
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*The effects of small samples and of removing the Education FC to allow larger samples from smaller franchises can be seen clearly by comparing the two cells asterisked. With the Education FC in the sample size is so small that at first one might suspect the small-franchise FCs might be out of pattern with the other sampling that shows a plurality of respondents living on Hong Kong Island. The larger sample, for small franchises with Education out, corrects this impression.
Table 11. Distribution by GC, unstratified samples

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<th>GC:</th>
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<th>KLN East</th>
<th>KLN West</th>
<th>NT East</th>
<th>NT West</th>
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<td>100%</td>
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Table 14. Income levels distribution by sample

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### Table 15. Occupational distribution by sample

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<th>Professionals &amp; assoc. professionals</th>
<th>Clerks, service workers, machine operators</th>
<th>HRUS</th>
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<td></td>
<td></td>
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<td>165</td>
<td>652</td>
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<td></td>
<td>11%</td>
<td>10.50%</td>
<td>33.90%</td>
<td>39.20%</td>
<td>1.3</td>
<td>96%</td>
</tr>
</tbody>
</table>

*HRUS refers to ‘Housewife/Retired/Unemployed/Student’. The distribution of ‘Other’ occupation is not reported, so the total sum of each row does not add up to 100%. Classifications follow the Census and Statistics Department’s categories and classification guidelines. Other includes self-employed, part-time workers, semi-retired, entrepreneurs.*
CHAPTER 7


Rowena Y.F. Kwok and Chow Chiu Tak

Overview

In October 2004, Civic Exchange commissioned the authors to conduct a study of the roles of functional constituency representatives (FRs) in social policy making in Hong Kong between 1998 and 2004. This chapter reports on the findings of the study.

As a two-pronged approach has been adopted to understand and capture the dynamics in social policy making, this report is organised accordingly. Part I reports on a quantitative study which assesses the degree of participation (taken to be proxy for degree of interest and concern) of functional representatives in social policy deliberations and decision making. Part II reports on the qualitative aspect, consisting of two case studies to gauge major considerations that might have informed the positions of functional representatives on specific social policy issues. The two case studies are in labour protection and education policy making respectively.

Several major findings can be identified on the basis of these studies. Firstly, speaking overall, FRs were not as interested or diligent as the geographical/Election Committee (EC) members in social policy deliberations. From the various indicators used to ascertain interest and participation, the ratio of FRs to the other 30 legislators is on average 1:2, that is, for the engagement of two geographical/EC representatives, there was corresponding engagement of only one FR. Secondly, this observation has to be qualified for the sectoral FRs who, on the whole, were very active in posing sectorally-relevant questions, moving corresponding motions as well as joining pertinent panels and bills committees. Such activism, on the face of it, appears to be closely linked to the element of ‘role fixing’; while sectoral FRs would be immersed in sectorally-relevant activities, their concern for non-sectorally-relevant issues was at best lukewarm. Thirdly, when no sectoral relevance or interests were perceived, the FRs, in particular those without obvious political affiliations, sometimes seemed to suffer from ‘role confusion’. This is illustrated explicitly in the case of one FR, as well as in
the silence of many other FRs in the case studies, and in the lower engagement statistics in the quantitative study, thus casting doubt on how much sectoral expertise was contributed to policy making. Fourthly, in general, the FRs were supportive of the government especially in formal policy making when the vote was taken.

Introduction

The Legislative Council in policy making

According to the Basic Law, Hong Kong’s constitution, the Legislative Council (LegCo) is the legislature of the Hong Kong Special Administrative Region. As Hong Kong’s law-making body, LegCo has among its primary functions the duties to enact, amend or repeal laws, approve budgets, debate the chief executive’s policy addresses, raise questions on the work of the government, as well as debate any issue concerning public interests. Any bills that relate to government policies have to have the written consent of the chief executive before they can be introduced by legislators.

With the powers of policy initiatives effectively denied to them, mechanisms available to legislators to influence or monitor public policy making on a regular basis revolve mainly around the following: (a) putting questions to government officials for clarification or seeking information on the work of government; (b) moving motions for debates on issues concerning public interests; (c) moving amendments to the government’s draft bills and setting up bills committees for closer scrutiny of bills contents if necessary; and (d) engaging in the work of panels which correspond to major policy areas. In terms of time costs and effort required, the demands these activities impose on legislators probably ascend in the order above. Obviously, the degree of arduousness can only be put in very broad terms here as a lot will depend on the substance of the issues involved; moreover, the nature of different tasks may not be directly comparable, for example, panel work is more spread out and requires long-term commitment, whereas bills committee work is normally briefer but intense.

To the extent that a policy-making process is conceptualised as consisting mainly of the two stages of deliberation and decision making, legislators’ engagement in these activities will be indicative of their level of concern and commitment to the process. In asking questions, moving bills amendments and debate motions, and participating in panel work, etc., what legislators effectively do is find out more about government work and propose what they believe are better policy ideas or alternatives to government measures. Legislators participate in decision making in a more determinant manner when they vote on bills motions.
The composition of the Legislative Council

According to the Basic Law, the Legislative Council is 60-strong and currently equally split between two kinds of membership: 30 geographical constituency representatives (GRs) returned through direct elections and 30 FRs returned by functional constituencies. Currently, a total of 28 government-designated sectors are entitled to functional representation. These are: (1) Accountancy; (2) Agriculture and Fisheries; (3) Architectural, Surveying and Planning; (4) Catering; (5) Commercial First (the Hong Kong General Chamber of Commerce); (6) Commercial Second (the Chinese General Chamber of Commerce); (7) District Council; (8) Education; (9) Engineering; (10) Finance; (11) Financial Services; (12) Health Services; (13) Heung Yee Kuk; (14) Import and Export; (15) Industrial First (the Federation of Hong Kong Industries); (16) Industrial Second (the Chinese Manufacturers’ Association); (17) Information Technology; (18) Insurance; (19) Labour; (20) Legal; (21) Medical; (22) Sports, Performing Arts, Culture and Publication; (23) Real Estate and Construction; (24) Social Welfare; (25) Textiles and Garment; (26) Tourism; (27) Transport; and (28) Wholesale and Retail. Apart from the Labour constituency, which has three seats, each of the remaining sectors has one seat in the legislature.

While all Hong Kong permanent residents aged 18 and over qualify to vote in the geographical constituencies, not everyone working in the designated functional sectors qualifies to be an elector. In fact, there are nine constituencies whose electorates are solely corporate bodies. There is great variation in electorate sizes across functional constituencies, ranging from the smallest, the Heung Yee Kuk, which represents rural interests with 149 registered voters, to Education, with 77,696. Among the constituencies with solely corporate voting, four had less than 200 registered voters while four others had less than 1,000 in the September 2004 LegCo elections. The registered electorates of all functional constituencies totalled 199,539, about 6% of the 3.207 million of the geographical constituencies.

For the reasons of exclusive representation and voting rights, the functional representation system has long been branded ‘small-circle elections’ and criticised for creating different classes of citizens. In the words of one local observer, ‘the system of functional representation is not only a continuation but an institutionalisation of elite hegemony in Hong Kong . . . [u]nder such circumstances, “Hong Kong people ruling Hong Kong” would, at best, mean “elitist functional groups ruling the Hong Kong masses”’. Notwithstanding such observations, how functional representatives have impacted on policy making can only be better gauged through empirical investigations of their legislative behaviour.
The functional representatives in social policy making

The focus of this study is the role of functional representatives in social policy making. Social policies are taken to encompass the policy areas of education, health care, housing, labour and social welfare in this study. The investigation covers the years 1998–2004, spanning the first two legislatures after the hand-over. Relevant records were accessed primarily at the Legislative Council website and checked against the records of proceedings where necessary.

Ideally, a more thorough way of gauging the impact of legislators on policy making should involve close study of each member’s substantive contributions in the policy-making process, for example, the nature and numbers of questions asked, contents of motions moved, as well as distinctive views and substantive advice tendered in the deliberative processes. As far as the FRs are concerned in particular, one would be interested in examining the contribution of their sectorally-relevant expertise in policy making because this was one of the main reasons for the institution of functional representation in the first place. However, since such in-depth study is not possible for the scale and resources of this study, proxies are used instead. Pursuing the distinction drawn above between policy deliberation and decision-making, frequencies of FRs in putting questions to the government, moving motions in relation to bills and debates, as well as participating in relevant policy panels and bills committees will be examined. Such activities collectively will be taken as indicative of FRs’ interest and commitment in the deliberative processes of social policy making. To the extent that FRs were enthusiastic in these activities, it would lay the ground for more in-depth, qualitative study of their policy impacts. Conversely, if FR participation in these regards turns out to be lukewarm, then there may not be much policy impact to be assessed.

As well as the overall performance of FRs in the deliberative processes, special attention will be paid to the FR(s) presumed to have direct sectoral interests in a particular policy area, for example, the FR of Education in education policy deliberations and those of Labour in labour welfare and labour rights. These would be referred to as the ‘sectoral’ FRs. Findings in connection to the deliberative processes will first be reported and analysed in Part I of this report.

Voting records of bills and debate motions will be presented and the voting patterns of FRs on social policy making will be scrutinised for their formal impacts on policy making as well as on agenda setting. Votes on bills have legislative effects and constitute formal policy making. Debates, on the other hand, have no legislative effects, but do convey legislators’ concerns with issues of public interest, so the legislature’s stances on the debated issues have both symbolic and political significance. Debates can be perceived as attempts at agenda setting to draw both public and governmental attention to issues of public concern.

In Part II, qualitative examination of social policy episodes will be presented. The two case studies relate to school-based management and the use of display
screen equipment respectively. Despite the earlier reference to a substantive qualitative study being not feasible, these case studies were conducted to supplement the quantitative study so that the dynamics in social policy making can be understood in better relief. Additionally, it is hoped that some glimpses can be provided into the rationales underlying the stances of individual FRs and whether and what they contributed to policy making.

In Part III, summary findings as well as limitations of the research will be outlined.

**Part I. Quantitative study:**

**FR participation in social policy deliberations and decisions**

**Asking questions at Legislative Council meetings**

The legislature holds its regular, weekly meetings in public on Wednesdays. At such meetings, legislators may put questions to government officials. Normally, not more than 20 questions may be asked at any one meeting and legislators have to give prior notice to the clerk of the council. Legislators can specify whether an oral or a written reply is requested. In the case of the former, upon a legislator asking a question, the designated public officer who is to answer it will have to respond; if necessary, the president of the council may permit supplementary questions for the purpose of elucidating the officer’s answer. In the case of a written reply, the answer has to be supplied to each legislator as well as printed in the official record.

There are more than 10 rules that questions have to conform with, for example, a question must not ‘seek information about a matter which is of its nature secret’ or contain ‘arguments, inferences, opinions, imputations or epithets, or tendentious, ironical or offensive expressions’. Notwithstanding, ‘Question time’ at the weekly meetings does provide a regular opportunity for legislators to either seek information or clarifications on the work of government or to suggest that certain action be taken in relation to issues of concern to legislators. Such questions can be taken as a baseline indicator of legislators’ interest and concern with the issues involved. The following is an analysis of functional representatives’ questions in connection with social policy issues.

Table 1 shows that between 1998 and 2004, there were a total of 1,163 oral and written questions on social policy. Among these, the greatest number, 340, were about health care, followed by 318 on education and 216 on housing; social welfare and labour attracted 153 and 136 questions respectively. Overall
speaking, close to 44% (511) of these questions were posed by functional representatives.

Among the five policy areas, it appears that the FRs as a whole had most interest in health care, with 37% of all FR questions being on that issue. On the other hand, housing, labour and social welfare issues received relatively less attention, each attracting only about 12% of total FR questions. The last policy area, education, drew 26.6% of all FR questions posed.

Despite variations across policy areas, given that 44% of social policy questions were asked by the FRs, it would appear that there was no great difference between the FRs and GC/EC members in their frequency of asking questions. To the extent that the FRs have been elected to represent specific sectors, one would expect them to be more active in posing sectorally-relevant questions. This is confirmed when related records are examined.

From Table 2, it can be seen that the sectoral FRs indeed were very active in posing sectorally-relevant questions, so much so that sectoral FRs as a whole asked close to 40% of all social policy questions asked by the FRs. Taking the case of health care, the FRs whose sectoral interests would appear to be directly related would be Leong Che-hung (1998–2000) and Lo Wing-lok (2000–2004) for Medical, and Ho Mun-ka (1998–2000) and Mak Kwok-fung (2000–2004) for Health Services. Between them, the four FRs asked 87 questions on health care out of a total of 189 asked by FRs, constituting 46% of the total. Similarly, the five Labour FRs during the two legislatures together posed 28 questions out of a total of 64 on labour issues asked by FRs, 43.8% of the total. The Social Welfare FR alone contributed 37.5% of FR questions on welfare during the six years he represented that constituency while the corresponding contribution of

Table 1. (Questions): FR questions on social policy and as percentage of total corresponding questions, 1998–2004

<table>
<thead>
<tr>
<th>Policy area</th>
<th>Questions by FRs</th>
<th>Questions by GRs/ECRs</th>
<th>Questions by all members</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Column percent</td>
<td>Row percent</td>
</tr>
<tr>
<td>Education</td>
<td>136</td>
<td>26.60%</td>
<td>42.00%</td>
</tr>
<tr>
<td>Health care</td>
<td>189</td>
<td>37.00%</td>
<td>55.60%</td>
</tr>
<tr>
<td>Housing</td>
<td>58</td>
<td>11.40%</td>
<td>26.90%</td>
</tr>
<tr>
<td>Labour</td>
<td>64</td>
<td>12.50%</td>
<td>47.10%</td>
</tr>
<tr>
<td>Social welfare</td>
<td>64</td>
<td>12.50%</td>
<td>41.80%</td>
</tr>
<tr>
<td>Column total</td>
<td>511</td>
<td>100.00%</td>
<td>43.90%</td>
</tr>
</tbody>
</table>
the Education FR to his sector was close to 30%. For housing, there was no directly corresponding functional constituency, but one could regard the Real Estate and Construction, and the Architectural, Surveying and Planning constituencies to be those most immediately relevant to housing policies. The four FRs for these two functional constituencies over the two legislatures asked nine questions out of a total of 58 on housing asked by FRs, 15.5% of the total. It is not clear, however, how the four FRs actually perceived the relations between their sectoral concerns and housing issues.\(^\text{16}\)

It was observed earlier that the FRs had asked close to 44% of all social policy questions put to the government over the period of study. If, however, sectoral FRs were the main source of sectorally-relevant questions, then the next point of interest should be to re-assess the extent to which FRs as a whole had shown interest in asking social policy questions. Table 3 shows the actual number

\[\text{Table 2. (Questions): Sectoral FR questions on social policy and as percentage of total corresponding FR questions, 1998–2004}\]

<table>
<thead>
<tr>
<th>Policy area</th>
<th>Questions by all FRs</th>
<th>Questions by sectoral FRs</th>
<th>Percent of total FR questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>136</td>
<td>39</td>
<td>28.7%</td>
</tr>
<tr>
<td>Health care</td>
<td>189</td>
<td>87</td>
<td>46.0%</td>
</tr>
<tr>
<td>Housing</td>
<td>58</td>
<td>9</td>
<td>15.5%</td>
</tr>
<tr>
<td>Labour</td>
<td>64</td>
<td>28</td>
<td>43.8%</td>
</tr>
<tr>
<td>Social welfare</td>
<td>64</td>
<td>24</td>
<td>37.5%</td>
</tr>
<tr>
<td>Total</td>
<td>511</td>
<td>187</td>
<td>36.6%</td>
</tr>
</tbody>
</table>

\[\text{Table 3. (Questions): FR questions on social policy minus respective sectoral FR questions and as ratio to total corresponding GR/ECR questions, 1998–2004}\]

<table>
<thead>
<tr>
<th>Policy area</th>
<th>Questions by sectoral FRs</th>
<th>Questions by other FRs</th>
<th>Questions by GRs/ECRs</th>
<th>Ratio of questions by other FRs to GRs/ECRs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>39</td>
<td>97</td>
<td>182</td>
<td>1 : 1.9</td>
</tr>
<tr>
<td>Health care</td>
<td>87</td>
<td>102</td>
<td>151</td>
<td>1 : 1.5</td>
</tr>
<tr>
<td>Housing</td>
<td>9</td>
<td>49</td>
<td>158</td>
<td>1 : 3.2</td>
</tr>
<tr>
<td>Labour</td>
<td>28</td>
<td>36</td>
<td>72</td>
<td>1 : 2.0</td>
</tr>
<tr>
<td>Social welfare</td>
<td>24</td>
<td>40</td>
<td>89</td>
<td>1 : 2.2</td>
</tr>
<tr>
<td>Total</td>
<td>187</td>
<td>324</td>
<td>652</td>
<td>1 : 2.0</td>
</tr>
</tbody>
</table>
of questions in each social policy area asked by FRs after subtracting those asked by the respective sectoral FRs.

Since sectoral FRs had asked the bulk of questions in all the social policy areas except in housing, the actual numbers of corresponding questions asked by the other FRs as a whole declined quite significantly. Take the example of social welfare, after subtracting the 24 questions asked by the Welfare FR, the other FRs only asked 40 questions on welfare over the six-year period under study. If this figure is compared to the 89 corresponding questions posed by the GRs/ECRs (geographical/Election Committee representatives) over the same period, the ratio is 1:2.2, in other words, the GRs/ECRs had asked more than two times the number of questions on social welfare as the other FRs as a whole. By the same token, after subtracting the 28 questions asked by the Labour FRs, the other FRs together had in fact asked only 36 questions on labour issues. If this figure is compared to the 72 corresponding questions posed by the GRs/ECRs, the ratio is 1:2.0, that is, the GRs/ECRs had asked twice the number of questions on labour issues as FRs. In fact, this is the overall ratio of social policy questions posed by the FRs vis-à-vis the GRs/ECRs.

Moving debate motions and amendments\(^\text{17}\)

Debates are occasions during LegCo’s weekly meetings when legislators introduce matters for extended debate in the legislature. Usually, for every sitting of the legislature, there are two debate motions. Legislators are effectively free to raise any issue for debate and also to move amendments to debate motions. Often, legislators move debate motions to give articulation to sentiments in society on matters of public interest, or to pressure government for action deemed necessary. Although debate motions do not have legislative effects, since legislators represent public opinion, the positions they take in debates are politically meaningful and can in some way be seen as attempts at agenda setting.

As shown in Table 4, during the period under study there had been a total of 66 debate motions on social policy. Among these, labour issues attracted the most concern, involving 31 motions while housing issues attracted only four. Overall, FRs moved 45.5% (30) of all debate motions.

Among the individual policy areas, it appears that the FRs were most concerned about labour issues, with 43.3% (13 out of 30) of their motions being in this policy area. This was followed by health care, constituting 26.7% of all FR motions, then 23.3% on education. Housing and social welfare received the least attention, housing drawing only 6.7% of all FR motions while social welfare drew none at all.

As in the case of posing questions, sectoral FRs were in fact responsible for the bulk of sectorally-relevant debate motions. The numbers are in Table 5.

Table 5 shows that the first impression, that FRs on the whole were almost as interested in moving debate motions on social policy as the GRs/ECRs since they were responsible for 45% of motions moved, may be misleading. It turns out that
most FR motions were moved by the sectoral FRs concerned. On the high end, the four FRs for the Medical and the Health Services functional constituencies together sponsored 87.5% (seven out of eight) of all FR motions on health care, followed by the Education FR’s 71.4% (five out of seven) of all FR motions on education. Even on the low end, the Labour FRs moved 54% of all FR motions on labour issues. It is however noteworthy that FRs had moved no motions at all on social welfare while the total number of FR motions on housing was too small (only two) for mention. If these figures are taken into account, the broad picture of FR interest in moving social policy debate motions changes quite dramatically, as shown in Table 6.

If the motions moved by sectoral FRs are taken out, it transpires that the other FRs as a whole had moved significantly fewer motions on social policy

<table>
<thead>
<tr>
<th>Policy area</th>
<th>Motions by FRs</th>
<th>Motions by GRs/ECRs</th>
<th>Total debate motions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Column percent</td>
<td>Row percent</td>
</tr>
<tr>
<td>Education</td>
<td>7</td>
<td>23.30%</td>
<td>70.00%</td>
</tr>
<tr>
<td>Health care</td>
<td>8</td>
<td>26.70%</td>
<td>88.90%</td>
</tr>
<tr>
<td>Housing</td>
<td>2</td>
<td>6.70%</td>
<td>50.00%</td>
</tr>
<tr>
<td>Labour</td>
<td>13</td>
<td>43.30%</td>
<td>41.90%</td>
</tr>
<tr>
<td>Social welfare</td>
<td>0</td>
<td>0.00%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Column total</td>
<td>30</td>
<td>100.00%</td>
<td>45.50%</td>
</tr>
</tbody>
</table>

Table 5. (Debates): Sectoral FR debate motions on social policy and as percentage of total corresponding FR debate motions, 1998–2004

<table>
<thead>
<tr>
<th>Policy area</th>
<th>Motions by all FRs</th>
<th>Motions by sectoral FRs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percent of total FR motions</td>
</tr>
<tr>
<td>Education</td>
<td>7</td>
<td>71.40%</td>
</tr>
<tr>
<td>Health care</td>
<td>8</td>
<td>87.50%</td>
</tr>
<tr>
<td>Housing</td>
<td>2</td>
<td>50.00%</td>
</tr>
<tr>
<td>Labour</td>
<td>13</td>
<td>53.80%</td>
</tr>
<tr>
<td>Social welfare</td>
<td>0</td>
<td>N.A.</td>
</tr>
<tr>
<td>Total</td>
<td>30</td>
<td>66.90%</td>
</tr>
</tbody>
</table>
than the GRs/ECRs. For example, in labour issues, FRs other than the Labour
FRs had moved only six motions in total. When this is compared to the 18
motions moved by the GRs/ECRs, the ratio between the two is 1:3. The compar-
ison is more dramatic in social welfare, where the 12 motions were all moved by
the GRs/ECRs with none sponsored by FRs, not even the Social Welfare FR. For
housing, the ratio is 1:2. It was only on health care and education that the FRs
appeared to be on par with the GRs/ECRs.

The same picture largely obtains when the attention is shifted to amending
debate motions.

Table 6. (Debates): FR debate motions on social policy minus respective sectoral
FR debate motions and as ratio to total corresponding GR/ECR debate
motions, 1998–2004

<table>
<thead>
<tr>
<th>Policy area</th>
<th>Motions by sectoral FRs</th>
<th>Motions by other FRs</th>
<th>Motions by GRs/ECRs</th>
<th>Total</th>
<th>Ratio of motions by other FRs to GRs/ECRs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>5</td>
<td>2</td>
<td>3</td>
<td>10</td>
<td>1:1.5</td>
</tr>
<tr>
<td>Health care</td>
<td>7</td>
<td>1</td>
<td>1</td>
<td>9</td>
<td>1:1.0</td>
</tr>
<tr>
<td>Housing</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>4</td>
<td>1:2.0</td>
</tr>
<tr>
<td>Labour</td>
<td>7</td>
<td>6</td>
<td>18</td>
<td>31</td>
<td>1:3.0</td>
</tr>
<tr>
<td>Social welfare</td>
<td>0</td>
<td>0</td>
<td>12</td>
<td>12</td>
<td>0:12.0</td>
</tr>
<tr>
<td>Total</td>
<td>20</td>
<td>10</td>
<td>36</td>
<td>66</td>
<td>1:3.6</td>
</tr>
</tbody>
</table>

than the GRs/ECRs. For example, in labour issues, FRs other than the Labour
FRs had moved only six motions in total. When this is compared to the 18
motions moved by the GRs/ECRs, the ratio between the two is 1:3. The compar-
ison is more dramatic in social welfare, where the 12 motions were all moved by
the GRs/ECRs with none sponsored by FRs, not even the Social Welfare FR. For
housing, the ratio is 1:2. It was only on health care and education that the FRs
appeared to be on par with the GRs/ECRs.

The same picture largely obtains when the attention is shifted to amending
debate motions.

Table 7. (Debates): FR debate amendments on social policy and as percentage of
total corresponding debate amendments, 1998–2004

<table>
<thead>
<tr>
<th>Policy area</th>
<th>Debate amendments by FRs</th>
<th>Debate amendments by GRs/ECRs</th>
<th>Total debate amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Column percent</td>
<td>Row percent</td>
</tr>
<tr>
<td>Education</td>
<td>4</td>
<td>15.40%</td>
<td>57.10%</td>
</tr>
<tr>
<td>Health care</td>
<td>7</td>
<td>26.90%</td>
<td>87.50%</td>
</tr>
<tr>
<td>Housing</td>
<td>0</td>
<td>0.00%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Labour</td>
<td>11</td>
<td>42.30%</td>
<td>34.40%</td>
</tr>
<tr>
<td>Social welfare</td>
<td>4</td>
<td>15.40%</td>
<td>28.60%</td>
</tr>
<tr>
<td>Column total</td>
<td>26</td>
<td>100.00%</td>
<td>38.80%</td>
</tr>
</tbody>
</table>
Table 7 shows that there had been a total of 67 amendments to debate motions during the period under study. The biggest number of these amendments pertained to labour issues, 32 out of a total of 67, followed by 14 on social welfare. The rest were more or less equally spread across housing, education and health care. Relatively speaking, FR sponsorship of amendments to debate motions is lower in percentage points, only about 39%, compared to about 45% for questions and debate motions (see Tables 1 and 4 above).

From Table 8 it can been seen that, among the five social policy areas, the sectoral FRs for education and social welfare were responsible for 50% (two out of four) of the amendments moved to debate motions in their respective policy areas, followed by 42.9% (three out of seven) of the Medical and Health Services.
FRs on health care and 36.4% (four out of 11) of the Labour FRs on labour issues. FRs had moved no amendments to debate motions on housing.

After discounting the amendments moved by sectoral FRs, Table 9 shows the ratios of FR debate amendments on social policy to corresponding figures for GRs/ECRs. Since the FRs had moved no amendment to debate motions on housing, the ratio is the greatest here, six for the GRs/ECRs and zero for the FRs. On welfare, for every five amendments moved by the GRs/ECRs, the other FRs had moved only one amendment; on labour issues, the ratio is 1:3 FRs to GRs/ECRs while for education, 1:1.5 FRs to GRs/ECRs. The only exception to this picture of GRs/ECRs moving more amendments than FRs is in health care where for every four amendments moved by FRs, the GRs/ECRs had moved only one amendment.

Moving bills amendments

The Legislative Council is Hong Kong’s law-making body, but the Basic Law bars it from introducing any bill that relates to public expenditure, political structure or the operation of the government. The upshot of this is that the great majority of draft laws is moved by the government, and the most that legislators can do in relation to policy making is to move amendments to government bills. In other words, the real powers of policy agenda setting and policy initiatives are not in the hands of the legislators.

Table 10 shows the number of bills on social policy that had been moved by the government and associated member amendments during the period under study. There had been no draft laws in housing or social welfare, and only four bills in education and five in health care. Labour issues received the most attention, with 20 bills introduced. As far as amendments are concerned, although there had been a total of 20 member amendments in relation to the 29 bills, none was moved by the FRs. Since the amendments were all sponsored by the GRs, it

<table>
<thead>
<tr>
<th>Policy area</th>
<th>Government bills</th>
<th>Member amendments</th>
<th>FR amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>4</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>Health care</td>
<td>5</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Housing</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Labour</td>
<td>20</td>
<td>11</td>
<td>0</td>
</tr>
<tr>
<td>Social welfare</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>29</td>
<td>20</td>
<td>0</td>
</tr>
</tbody>
</table>
would appear that the FRs had either been more successful in settling any policy differences with the government, so that no ‘open battle’ on the floor of the legislature had been necessary for the FRs, or that their policy preferences were much in tune with those of the government’s.  

### Membership of relevant LegCo panels

Away from the spotlight of the weekly public meetings and the public debates, another major area of activities that legislators engage in is panel work. Panels are standing committees where legislators deliberate on issues relating to specific policy areas as well as keep a watchful eye over the performance of the corresponding policy bureaux and departments. Legislators are free to join any number of panels and there are currently 18 such panels. Apart from considering issues of public concern, the panels receive briefing papers and reports from bureaux and departments on major policy and administrative undertakings and give views on major legislative or financial proposals before these are formally introduced into the council.

During the six years under study, there were a total of 487 combined membership counts (one count is defined as membership of a panel for one year) across the five panels of Education, Health Services, Housing, Manpower and Welfare services. As shown in Table 11, the most popular among legislators was the Housing Panel, with 125 membership counts, following by Manpower with 111 and Education with 93. The Welfare Services and the Health Services Panels had the least membership counts, with 86 and 72 respectively.

If the sources of the membership counts are traced, it transpires that sectoral FRs again contributed a significant portion of the participation rates of all FRs. Both the Labour and the Health Services FRs contributed about one-third of

### Table 11. (Panels): LegCo social policy panels: FR membership counts, 1998–2004

<table>
<thead>
<tr>
<th>Panel</th>
<th>a</th>
<th>b</th>
<th>c</th>
<th>d</th>
<th>e</th>
<th>f</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Membership of sectoral FRs</td>
<td>Membership of other FRs</td>
<td>Membership of all FRs (a+b)</td>
<td>Membership of GRs/ECRs (c+d)</td>
<td>Total membership counts (c+d)</td>
<td>Ratio of membership of other FRs to GRs/ECRs</td>
</tr>
<tr>
<td>Education</td>
<td>6 (23.1%)*</td>
<td>20</td>
<td>26</td>
<td>67</td>
<td>93</td>
<td>1 : 3.4</td>
</tr>
<tr>
<td>Health services</td>
<td>12 (32.4%)*</td>
<td>25</td>
<td>37</td>
<td>35</td>
<td>72</td>
<td>1 : 1.4</td>
</tr>
<tr>
<td>Housing</td>
<td>12 (38.7%)*</td>
<td>19</td>
<td>31</td>
<td>94</td>
<td>125</td>
<td>1 : 5.0</td>
</tr>
<tr>
<td>Manpower</td>
<td>18 (34.6%)*</td>
<td>34</td>
<td>52</td>
<td>59</td>
<td>111</td>
<td>1 : 1.7</td>
</tr>
<tr>
<td>Welfare services</td>
<td>6 (20.0%)*</td>
<td>24</td>
<td>30</td>
<td>56</td>
<td>86</td>
<td>1 : 2.3</td>
</tr>
<tr>
<td>Total</td>
<td>54 (30.7%)*</td>
<td>122</td>
<td>176</td>
<td>311</td>
<td>487</td>
<td>1 : 2.6</td>
</tr>
</tbody>
</table>

* % of total FR membership counts.
total FR membership counts of their respective panels while the Education and the Welfare FRs were 23% and 20% respectively of theirs.

If the participation rates of the sectoral FRs were discounted, and the participation rates of the remaining FRs were compared to those of the GRs/ECRs, a picture emerges that shows the latter in more favourable light. On average, for the participation of every 2.6 GRs/ECRs in panels, there was participation by only one FR.

### Attendance of meetings of panels joined

As far as panel attendance is concerned, sectoral FRs’ participation rates show them to be very responsible and diligent. Table 12 shows that the means of the yearly average attendance rates of the sectoral FRs for Education, Health Services and Welfare Services were all about 98% of their respective panel meetings (see the note in the table for the calculation), while even the ‘less diligent’ Labour FRs still managed to attend 87% of the Manpower Panel meetings. When the attendance rates of the remaining FRs are compared to those of the GRs alone, the latter again have an edge. The GRs attended on average 77.5% of all panel meetings compared to the ‘other’ FRs’ average of 69.7% across the same five panels.

### Membership of relevant bills committees

Bills committees are set up by the legislature specifically to scrutinise draft laws in detail when deemed necessary. All legislators except the president of the

<table>
<thead>
<tr>
<th>Panel</th>
<th>Sectoral FRs</th>
<th>Other FRs</th>
<th>GRs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>97.8%</td>
<td>66.9%</td>
<td>75.4%</td>
</tr>
<tr>
<td>Health services</td>
<td>98.1%</td>
<td>73.8%</td>
<td>74.4%</td>
</tr>
<tr>
<td>Housing</td>
<td>69.1%</td>
<td>70.2%</td>
<td>77.2%</td>
</tr>
<tr>
<td>Manpower</td>
<td>86.8%</td>
<td>64.5%</td>
<td>81.0%</td>
</tr>
<tr>
<td>Welfare services</td>
<td>97.7%</td>
<td>73.3%</td>
<td>79.5%</td>
</tr>
<tr>
<td>Average</td>
<td>89.9%</td>
<td>69.7%</td>
<td>77.5%</td>
</tr>
</tbody>
</table>

Note: The mean of the yearly average attendance rates in six years of each group of legislators in each panel is calculated as follows:

1) the average of the attendance rates of all legislators in a group in each panel each year is first calculated; 2) the mean of the averages in six years is then calculated.
council may join any bills committees. A bills committee may invite government officials as well as members of the public to attend its meetings as it considers the principles and detailed provisions of a bill. After a bills committee has completed scrutiny of a bill, it reports its deliberations to the House Committee and is dissolved upon the passage of the bill concerned or as decided by the House Committee.

In the six years under study, there had not been any bill on either housing or social welfare (see Table 10 above), thus also no related bills committees. There had been a total of 12 bills committees on labour issues, while health care and education each had four bills committees. For the bills committees on labour issues, there was a total membership count of 160; for the health care and education bills committees, there were 42 and 36 membership counts respectively. Except for the Labour FRs, all sectoral FRs were in all sectorally-relevant bills committees. All the sectoral FRs in the three policy areas, furthermore, contributed about one-third of the total FR membership counts of sectorally-relevant bills committees.

If the participation rates of the sectoral FRs were discounted, and the participation rates of the remaining FRs were compared to those of the GRs/ECRs, the overall ratio of the participation rates between the two groups of legislators was 1:2, that is, for the participation of every two GRs/ECRs in bills committees, there was participation by only one FR.

**Table 13. (Bills committees): LegCo social policy bills committees: FR membership counts, 1998–2004**

<table>
<thead>
<tr>
<th>Policy area</th>
<th>a</th>
<th>b</th>
<th>c</th>
<th>d</th>
<th>e</th>
<th>f</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Membership of sectoral FRs</td>
<td>Membership of other FRs</td>
<td>Membership of all FRs (a+b)</td>
<td>Membership of GRs/ECRs</td>
<td>Total membership counts (c+d)</td>
<td>Ratio of membership of other FRs to GRs/ECRs</td>
</tr>
<tr>
<td>Education</td>
<td>4(36.4%)*</td>
<td>7</td>
<td>11</td>
<td>25</td>
<td>36</td>
<td>1 : 3.6</td>
</tr>
<tr>
<td>Health care</td>
<td>8(36.4%)*</td>
<td>14</td>
<td>22</td>
<td>20</td>
<td>42</td>
<td>1 : 1.4</td>
</tr>
<tr>
<td>Housing†</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>Labour</td>
<td>21(30.9%)*</td>
<td>47</td>
<td>68</td>
<td>92</td>
<td>160</td>
<td>1 : 2.0</td>
</tr>
<tr>
<td>Social welfare†</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>Total</td>
<td>33(32.7%)*</td>
<td>68</td>
<td>101</td>
<td>137</td>
<td>238</td>
<td>1 : 2.0</td>
</tr>
</tbody>
</table>

† No bills committees formed.
* % of total FR membership counts.
Attendance of meetings of bills committees joined

As regards bills committees attendance, sectoral FRs have similarly demonstrated exceptional diligence. As can be seen from Table 14, the mean of the yearly average attendance rates (see the note in the table for the calculation) of the Education FR was 100%, the means of the sectoral FRs for Labour and for Health Services were 82.5% and 91.1% respectively. When the attendance rates of the remaining FRs are compared to those of the GRs alone, the latter attended on average 76.0% of all bills committee meetings compared to the FRs’ average of 69.6% across the same committee meetings.

Voting patterns

While the preceding sections uncover the patterns of FR engagement in policy deliberation processes, their formal voting positions should also be examined because, ultimately, it is formal voting that determines policies in their final shapes. We thus turn to FRs’ voting patterns.

Voting records were obtained from the Legislative Council website and checked against the records of proceedings where necessary. Only the voting records on bills and debate motions are examined as these constitute the two most important activities undertaken by legislators in their weekly public meetings. The importance of votes on bills as draft legislation is self-evident since laws are made or not as a result. Debate motions, on the other hand, enable legislators to table issues of public concern. Albeit without legislative effects, such debates

Table 14. (Bills committees): LegCo social policy bills committees: FR mean yearly average attendance rates, 1998–2004

<table>
<thead>
<tr>
<th>Bills committee policy area</th>
<th>Sectoral FRs</th>
<th>Other FRs</th>
<th>GRs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>100.0%</td>
<td>82.8%</td>
<td>87.0%</td>
</tr>
<tr>
<td>Health care</td>
<td>91.1%</td>
<td>62.2%</td>
<td>71.0%</td>
</tr>
<tr>
<td>Housing*</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>Labour</td>
<td>82.5%</td>
<td>63.8%</td>
<td>70.0%</td>
</tr>
<tr>
<td>Social welfare*</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>Average</td>
<td>91.2%</td>
<td>69.6%</td>
<td>76.0%</td>
</tr>
</tbody>
</table>

*No bills committees formed.

Note: The mean of the yearly average attendance rates in six years of each group of legislators in each committee is derived as follows:
1) the average of the attendance rates of all legislators in a group in each committee each year is calculated; 2) the mean of the averages in six years is then calculated.
allow the legislature, as a collective body that represents Hong Kong public opinion, to indicate its stance on issues of public importance.

According to the Basic Law, voting in the legislature is governed by two separate rules. Government-sponsored motions require only a simple majority vote of legislators present to be passed. For legislators’ motions, however, the legislature is effectively divided into two ‘chambers’, one comprising the FRs alone, the other of legislators returned from geographical constituencies and the Election Committee. For legislators’ motions to be passed, a simple majority of legislators present in each of the two groups is necessary. This is the ‘split-voting’ mechanism.\(^{21}\)

When voting, legislators can choose to vote for, against, or abstain on a motion. When a motion is put to the vote, the president of the council will ask legislators in favour of and against the motion respectively to raise their hands in turn, then judge and declare whether the majority is in favour or against the motion. No record is made of how individual legislators have voted in such cases, these are therefore not amenable to further study. Legislators however are free to demand a ‘division’, in which case individual votes will be formally recorded. On the basis of the division votes, the next two subsections show the FRs’ voting patterns in relation to social policy bills and amendment motions, and debate motions and amendments respectively.

**Votings on bills and amendments**

Article 74 of the Basic Law stipulates that legislators can only sponsor bills that do not relate to public expenditure or political structure or the operation of the government. Any bills relating to government policies have to have the chief executive’s written consent before introduction. As a consequence, the great majority of bills motions are initiated by the government, although legislators may move motions to amend provisions in draft bills.

As shown in Table 15, between 1998 and 2004 there had been a total of 29 division votings on bills motions and amendments.\(^{22}\) Eleven of these division votings involved government motions while 18 were amendments moved by GRs. Among these division votings, 21 (72.4%) were ‘opposite’ votings, that is, when a majority of the FRs had voted ‘no’ to a motion, the majority of the GRs had voted ‘yes’ to the same motion, or vice versa.\(^{23}\)

Among the 21 opposite votings, six involved government motions while the rest were GRs’ motions. On further scrutiny, it turned out that among the 21 opposite votings, 15 (71.4%) of the ‘no’ votes (‘veto’ votes) had come from the FRs and all 15 were veto votings against GRs’ amendments to government motions. There was not one single veto voting on the part of the FRs against the 11 motions moved by the government.
### Table 15. (Votings): FR voting patterns on bills and amendments

<table>
<thead>
<tr>
<th>Policy area</th>
<th>Division voting</th>
<th>Opposite voting</th>
<th>FR veto voting</th>
<th>FR vetoes against GR motions</th>
<th>FR support for Gov’t motions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gov’t motions</td>
<td>6</td>
<td>5</td>
<td>0</td>
<td>7 (58.3%)†‡</td>
<td>–</td>
</tr>
<tr>
<td>GR motions</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>Total</td>
<td>13</td>
<td>12 (92.3%)*</td>
<td>7 (58.3%)†‡</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>

* Percent of total division votings.  
† Percent of total opposite votings.

<table>
<thead>
<tr>
<th>Policy area</th>
<th>Gov’t motions</th>
<th>GR motions</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>1</td>
<td>0</td>
<td>1 (33.3%)*</td>
</tr>
<tr>
<td>Health care</td>
<td>2</td>
<td>1</td>
<td>3 (100.0%)†</td>
</tr>
<tr>
<td>Labour</td>
<td>4</td>
<td>1</td>
<td>4 (87.5%)†‡</td>
</tr>
</tbody>
</table>

### Table 16. (Votings): FR voting patterns on debate motions and amendments

<table>
<thead>
<tr>
<th>Policy area</th>
<th>Division voting</th>
<th>Opposite voting</th>
<th>FR veto voting</th>
<th>FR vetoes against GR/ECR motion and amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>6</td>
<td>6 (100.0%)*</td>
<td>4 (66.7%)†</td>
<td>1 (25.0%)§</td>
</tr>
<tr>
<td>Health care</td>
<td>5</td>
<td>0</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>Housing</td>
<td>9</td>
<td>2 (22.2%)*</td>
<td>1 (50.0%)†</td>
<td>1 (100.0%)§</td>
</tr>
<tr>
<td>Labour</td>
<td>44</td>
<td>30 (68.2%)*</td>
<td>26 (86.7%)†</td>
<td>19 (73.1%)§</td>
</tr>
<tr>
<td>Social welfare</td>
<td>19</td>
<td>11 (57.9%)*</td>
<td>9 (81.8%)†</td>
<td>8 (88.9%)§</td>
</tr>
<tr>
<td>All policy areas</td>
<td>83</td>
<td>49 (59.0%)*</td>
<td>40 (81.6%)†</td>
<td>29 (72.5%)§</td>
</tr>
</tbody>
</table>

* Percent of total division votings.  
† Percent of total opposite votings.  
‡ Percent of total FR vetoes.
Votings on debate motions and amendments

As far as debates on social policy are concerned, out of the total of 133 debate motions and amendments, 83 (62.4%) involved division votings (Table 16). Among these, 49 (59%) were opposite votings, that is, when a majority of the FRs had voted ‘no’ to a motion, the majority of the GRs/ECRs had voted ‘yes’ to the same motion, or vice versa. Among the opposite votings, 40 (81.6%) of the ‘no’ votes had come from the FRs and among these 40 veto votings, 29 (72.5%) were against motions moved by the GRs/ECRs.

Summary findings on quantitative study

The intention of the quantitative study in this part of the research was to ascertain the extent and pattern of FR engagement in policy deliberations and decision making. For deliberation, several categories of legislative activities have been used to facilitate the estimation. These include: putting questions to government officials, moving debate motions and amendments, moving bills motions and amendments, as well as membership and attendance in panels and bills committees. For policy making, voting patterns on bills have been examined for the FRs’ formal policy stances.

As far as policy deliberations are concerned, it appears that several findings can be made about FR engagement:

1. Sectoral FRs have been found to be most conscientious in getting engaged where immediate sectoral issues appeared to be involved. Thus, they excelled among fellow FRs in asking questions, moving motions and amendments, as well as in joining panels and bills committees and attending associated meetings whenever these were sectorally-relevant.

2. FRs were otherwise not particularly enthusiastic in the above activities, thus, when compared to the GRs/ECRs, the ratio of FR participation was typically 1:2, in other words, for whatever one FR engaged in, GRs/ECRs would have been twice as engaged.

3. That FRs were mainly sectorally-minded appeared to be supported by an indirect piece of evidence. As there were no direct FR for Housing, we had taken the FRs for the Real Estate and Construction, and the Architectural, Surveying and Planning constituencies to be most immediately relevant with regard to housing issues. It turns out that their engagement was indeed more subdued compared to other sectoral FRs in their respective policy areas, for example, the four FRs were relatively inactive in posing housing questions or engaging in related debates (Tables 2,
5 and 7). Their attendance in relevant panels was also markedly less than other sectoral FRs in their respective policy panels. It could be that the ‘Housing’ FRs we designated considered their constituency interests to only partially pertain to housing issues.

From the above, it seems there is a phenomenon of ‘role fixing’ among FRs so that participation and engagement differed with the extent of direct or immediate sectoral interests perceived. When little such interests were perceived, FRs felt little responsibility or incentive to engage in policy deliberations; when there appeared to be direct correspondence between policy issues and sectoral interests, engagement became comprehensive and frequent.

In terms of voting positions on legislation, a few pertinent observations appear in order:

1. The great majority of government motions on social policy during the period studied was passed by the legislature with unanimity. Of a total of 233 votings on social policy bills, only 24 involved division votings, that is, just over 10%. All those motions passed with unanimity were government motions.

2. When GRs moved amendments to government bills, the FRs had overwhelmingly voted to negate the amendments and support the government’s motions instead; as a matter of fact, for about three-quarters of the time, the FRs had voted diametrically opposite to the GRs (Table 15).

3. FRs had not moved a single amendment to the government’s draft legislation on social policy during the six years under study. There are several possible explanations, which this study is however not in a position to confirm or refute: (a) most of the proposed legislation was non-controversial; (b) the FRs had been able to satisfactorily resolve differences with the government before formal voting on the draft legislation so that no open warfare on the floor of the legislature had been necessary; or (c) all the FRs had found the proposed legislation agreeable.

Votings on debate motions, on the other hand, involved a more direct ‘duel’ between the FRs and the GRs/ECRs because the government’s participation in this area was negligible. Of a total of 133 debate motions and amendments, 83 (62.4%) involved division votings. Among these, 49 (59%) were opposite votings in which the FRs and the GRs took diametrically opposite positions, with 40 (81.6%) being veto votings by FRs. Furthermore, of the 40 FR veto votings, 29 (72.5%) were vetoes against motions moved by GRs/ECRs. The inclination of the FRs to veto GR/ECR positions thus is equally manifest in their voting positions on debates.
Part II. Qualitative study:
Case studies on FR participation in social policy deliberations and decisions

Introduction

The quantitative study in Part I suggests that FRs might have been much guided by a conception of ‘role fixing’ in their legislative behaviour. Thus, when direct or immediate sectoral interests were perceived, it was as if the relevant sectoral FRs felt driven to immerse themselves in related legislative activities; conversely, the purpose of policy engagement appeared to quickly evaporate and participation became noticeably tepid.

In light of the above, two case studies were conducted. Through these, we sought to uncover ‘codes’ of behaviour, if any, that might stand in the place of sectoral identity and interests to guide the FRs’ policy-making behaviour.

In this connection, three conclusions are derived from the case analyses:

1. FRs tended to be inactive in the absence of perceived sectoral interests, as is corroborated by the two case studies.

2. Party affiliation was the second clue for legislative behaviour.

3. Despite conspicuous silence in the deliberations, there was however a prevalent inclination on the part of the FRs to support government proposals when voting time came, especially when the proposals did not directly connect or conflict with sectoral concerns and when the FRs thus suffered from ‘role confusion’.

School-based management and the Education (Amendment) Bill 2002

I. Introduction

This case concerns the introduction of the school-based management (SBM) governance framework to all aided schools in Hong Kong. The reasons for selecting this case are manifold. First, the legislative process took an exceptionally long period of time. The Education (Amendment) Bill 2002 had its First Reading in LegCo on 4 December 2002. It took 18 months for the Bill to be passed in the LegCo meeting on 8 July 2004. During that period, 39 bills committee meetings were held, at which the contents of the Bill were
carefully and substantially scrutinised. Even when the Bill was moved to LegCo for the Second and Third Readings, it took 13 hours of debate among legislators before the Bill was finally passed. Both proponents and opponents regarded the passage of the Bill as having far-reaching effects on the education system in Hong Kong. By studying the documentary materials of LegCo and others, one might start to comprehend how legislators, especially the FRs, came up with their positions, what considerations they might have in mind, what principles or values they might be upholding in their political arguments, and what strategies they had adopted to achieve their goals.

Secondly, the Bill had evoked great controversies not only in LegCo but also in society. On the one hand, the idea of making school authorities more accountable and transparent by introducing SBM was to the general public very appealing. Teachers’ associations and parents’ groups were generally in support of the Bill. On the other hand, there were persistent, strong and organised opposition from a fair number of school sponsoring bodies (SSBs), including the Catholic Diocese of Hong Kong and the Anglican Church Sheng Kung Hui, which together run about 300 schools in Hong Kong. If we consider LegCo as an arena for expressing, balancing and integrating different interests in society, the case of SBM stands a good chance of allowing some insights to be drawn. As far as our present purpose is concerned, we are particularly interested to see how the FRs reacted to conflicting opinions and demands in society, whether they brought a range of sectoral viewpoints into LegCo, and whether they contributed to the discussion of the Bill with their expertise, as all these are what the FRs are supposed to do.

Thirdly, the case further enables one to study closely the distinct impact, or the lack of it, of an FR. Here the role of Cheung Man-kwong is worth noting. As the FR of the education sector and the president of the Hong Kong Professional Teachers’ Union, the issue of SBM is of immediate relevance to Cheung. He was harshly attacked in the legislative process by opponents and parents’ groups as ‘turning the steer’ from supporting the idea of SBM to opposing the Bill. Later in this analysis we shall spell out the details of their arguments. Meanwhile it is interesting to note that, while Cheung was presumably the member in LegCo most qualified to contribute relevant expertise and integrate interests within the education sector, his recommendations and amendments of the Bill were largely ignored and rejected by his fellow legislators. From Cheung’s treatment at the hands of his colleagues, it appears that sectoral relevance need not necessarily render an FR more authoritative in political arguments. By studying the roles of Cheung in the SBM episode, one may better understand the realpolitik inside and outside of LegCo.

In what follows, we shall first explain the background and controversies of the Bill. It is not the purpose here to make judgment as to whose views were more correct. We shall plainly describe the core of the controversy. Having done so, we shall then proceed to a critical assessment of the roles of the FRs in the present case. We shall illustrate the pro-government tendency of the FRs and
suggest that political affiliation might be a significant factor in understanding the politics involved. Furthermore, by explaining the various roles of Chueng Man-kwong, we shall point out that although Cheung tried to resolve the conflicts between the government and the SSBs, his effort was not appreciated by the government. It appears that the government reckoned it would have sufficient support in LegCo and that LegCo voting, at the end of the day, could be a demonstration of sheer voting power if necessary.

2. **Background and development of the Bill**

The idea of school-based management dates back to the early 1990s. In 1991, the government introduced the School Management Initiative, under which schools were encouraged to adopt the SBM governance framework on a voluntary basis. One of the foci of SBM was that school management committees (SMCs) should open their membership to teachers, parents, alumni, and members of community so that there could be checks and balances. The scheme was not successful since, by 1997, only 334 schools (about 30%) had joined the scheme. When SMCs became entrusted with more and more resources however, demands in society, especially from teachers’ associations and parents’ groups, for more accountable and transparent SMCs also grew. In response, the then Education Department set up an Advisory Committee on School-Based Management (ACSBM) under the Board of Education in 1998 to draw up an SBM framework for aided schools.

In February 2000, the ACSBM published a consultation document, namely, *Transforming Schools into Dynamic and Accountable Professional Learning Communities*. This listed a number of recommendations concerning the legal status as well as the structure and composition of SMCs, the power of SSBs and the qualifications of school managers. A two-month public consultation ensued. The document invited many criticisms, mainly from SSBs. After the consultation period, the ACSBM drew up its final proposal, with a number of revisions, and submitted it to the Board of Education and the Director of Education in January 2001. Yet severe criticisms by SSBs continued.

Consultation with the LegCo Panel on Education was at the same time going on. The panel first discussed the ACSBM’s proposal at its meetings on 20 November 2000. Further meetings with government officials and deputations of SSBs were held on 11 December 2000 and 19 February 2001.

Having consulted the public and the panel, the government published the Bill in the *Gazette* on 22 November 2002. The First Reading of the Bill in LegCo was on 4 December 2002. At the LegCo House Committee meeting on 6 December 2002, LegCo members agreed to form a bills committee to study the bill, which sought to amend the Education Ordinance (Cap.279) to facilitate the implementation of SBM and introduce certain amendments.

The Bills Committee on Education (Amendment) Bill 2002 (hereinafter the Bills Committee) held a total of 39 meetings from February 2003 to July 2004.
The Bill went under careful and critical scrutiny by members of the Bills Committee and a number of revisions by the government were made. However, opposition from SSBs became even more intense. The Catholic Diocese of Hong Kong threatened to initiate litigation against the government for contravention of Article 141 of the Basic Law if the Bill was passed. Article 141 stipulates that religious organisations may, according to their previous practice, continue to run schools in Hong Kong. Notwithstanding, the Bill proceeded to the Second and Third Readings in LegCo on 7 and 8 July 2004. It was passed on 8 July 2004 with 29 of the 50 legislators present voting for it and the rest against it (see Tables 21 to 23).

3. The controversies

Why and how did the issue of SBM become so contentious? What were the controversies over the Bill? To begin, let us summarise its major provisions as follows:

- Each aided school shall set up an SMC in which 40% of its members (i.e. school managers) comprises parents, teachers, alumni and community representatives, with the other 60% made up of nominees of the SSB.

- A school manager shall not serve more than five SMCs.

- The SMC shall be registered as an incorporated body with limited liability under the Education Ordinance. The incorporated SMC shall become an independent legal entity. Individual school managers will not incur personal civil or criminal liability in the performance of school management duties so long as they act with prudence and good faith and do not approve or tolerate criminal acts.

- The SMC of a school shall keep a register of all declarations and disclosures of pecuniary or other personal interests of its school managers and allow the public to inspect the register.

- The SSB shall enjoy the power to set out the vision and mission of the school, maintain full control of funds and assets owned by it, draft the SMC constitution, appoint the chairperson (the supervisor) of the SMC, nominate the school principal, and make written request to the SMC to issue notice to the Permanent Secretary of Education and Manpower (PSEM) to cancel the registration of an SSB manager.

- The PSEM is empowered to refuse to register a person as a manager of a school on the ground that the person is not ‘a fit and proper person’.
• The PSEM is empowered to appoint one or more persons to be managers of a school for such period as he/she thinks fit if it appears to him/her that a school is not or not likely to be managed satisfactorily and that the education of the pupils of the school is not, or not likely to be, promoted in a proper manner.

• The PSEM retains the power to approve or disapprove the constitution of an SMC even if it has been passed by the SMC.

• The PSEM retains the power to give a direction in writing to the supervisor and to the principal of a school to the effect that a syllabus of instruction or any document specified in the direction shall not be used for instruction in any class in the school.

• Every aided school shall establish an SMC in accordance with the Bill by the year 2010. A review of the progress of implementation will be conducted in 2008. If necessary, LegCo can pass a resolution to postpone full implementation to 2012.

• The PSEM is empowered to appoint one or more persons to be the manager of a school which has failed to establish an SMC in accordance with the Bill and cancel the registration of any manager.

• Schools under the Direct Subsidy Scheme are allowed a choice whether or not to establish an SMC in accordance with the Bill.

• Government schools are exempted from the regulations of the Bill.

The Bill introduces considerable changes to the governance framework of aided schools in Hong Kong. Before its passage, SSBs had enjoyed full control over the structure and composition of their SMCs. There had been no requirement in the Education Ordinance covering either the membership or the operation of SMCs. Some large SSBs even set up a central SMC to administer their schools. Given the close relationship between the SSBs and the SMCs, it was conceivable that most members of SMCs had been compliant with the views of the SSBs. Furthermore, under the Education Ordinance, the SMCs were also not required to disclose the names and particulars of school managers, nor were managers required to declare personal interests that might conflict with the best interests of the school. Critics argued that this lack of accountability and transparency was unacceptable since the schools were funded by taxpayers. After the passage of the Bill, SSBs no longer enjoy supreme authority over their SMCs. The membership of SMCs has to be opened to teachers, parents, alumni and community representatives. From a legal point of view, the SSBs and the SMCs
become two separate bodies. The SMCs will no longer be subordinate to SSBs, the role and authority of the SSBs is therefore diminished.

The idea of making the SMCs more accountable and transparent was agreeable to the general public. Arthur Li, the Secretary for Education and Manpower, repeatedly stressed that the fundamental principle underlying SBM and the Bill was to engender the accountability and transparency of SMCs by providing for a participatory decision-making mechanism where all key stakeholders would be involved. It is not easy to reject this idea. In fact, during the consultation period on the ACSBM proposal in 2000 and early 2001, this idea was welcomed by teachers’ associations and parents’ groups, and rarely challenged by legislators or political parties. The only objections appeared to have come primarily from the SSBs, especially from the Catholic and Anglican churches. As the churches counter-argued, the government should not force all schools to follow one management model because different schools had different cultures and faced different problems. While they agreed that SMCs could be made more accountable and transparent, they firmly objected to the proposal that teachers, parents and others should enjoy decision-making powers in the SMCs. They alleged that the SMCs would become politicised. If parents and teachers not sharing the vision and mission of a school were elected to the SMC, there would be great trouble in the school. The churches suggested teachers and parents could instead perform a more active advisory role in school management.

On the face of it, it would appear that the protesting SSBs were opposing the idea of SBM mainly out of self-interest. It is worth noting however, that after the government drafted the Bill and moved the First Reading in December 2002, the Catholic Church had presented another line of argument which subsequently turned many original supporters of SBM into opposers. It warned that the Bill not only cut away the authority of the SSBs but also opened a door to suppression of anti-government thinking and teaching of politically sensitive issues in schools. Under the Bill, the PSEM was given enormous powers to directly intervene and control school operations, for example, in appointing an unlimited number of managers to an SMC whenever he/she saw fit, disallowing a person deemed not fit or proper from being a school manager, and sending a directive to a school to forbid certain topics and materials being used for instruction. The constitution of an SMC also had to have the PSEM’s approval. Since the powers of the SSBs would be substantially reduced under the Bill, no one would be in a position to counter-balance the powers of the government. The government would enjoy unchecked authority in manipulating schools and extending direct control into every SMC. For the Catholic Church, what the Bill was proposing was in truth centralisation of power under the cover of democracy, accountability and transparency.

Since the Catholic Church has been a vocal critic of the government in recent years, its worry may not be totally groundless. The church’s argument abruptly changed the position of many original supporters of SBM, including Cheung Man-kwong and his democratic allies. It was only when the Bill was put
under the scrutiny of the Bills Committee that legislators came to realise its potential to facilitate the extension of government powers into school operations. This is the main reason why the Bills Committee, most of its members belonging to the pan-democratic camp, had spent so much time on scrutinising the Bill, and why the seemingly uncontroversial idea of SBM had in the end become so contentious in the legislation process.

Not everyone, however, was convinced by the churches’ worries. While the government categorically denied the conspiracy theory, supporters of the Bill thought the Catholic Church was merely crying wolf. Some accused democratic legislators of opposing the Bill simply to garner political capital for the following LegCo elections, as the churches would likely ask their followers not to vote for candidates who supported the Bill. Arthur Li, the Secretary for Education and Manpower, retorted that the proposed Bill in fact did not give new powers to the PSEM, and that the PSEM had always had the powers that the opponents of the Bill said they were worried about. Li further said that the PSEM had to retain the powers so as to protect the interest of students in case of management malpractice in schools. Li more than once openly criticised the democrats for opposing the Bill for the sake of opposition, and disrupting the Bills Committee meetings for the sake of disruption. The secretary’s outbursts of course did not help the situation.

The government and the opponents of the Bill were therefore arguing on different grounds. While the government insisted that the aim of the Bill was solely to enhance transparency and accountability of SMCs, the opponents argued that since the powers of SSBs would be reduced, the Bill would in effect grant the government supreme authority over education. For the opponents, even though it might be true that the government had always had draconian powers under the Education Ordinance, that the government would enjoy supreme authority over education was dangerous in itself. They argued that, under the Bill, the government would be left unchecked and it would have every legal means to suppress anti-government thinking and teaching of politically sensitive issues in schools.

As disagreement between the government and the opponents deepened, consensus and compromise became more and more difficult to achieve. Although the government, under the pressure of the democrats, had made a number of amendments and clarifications on, for example, the relations between SSBs and SMCs, the liability of a school manager, and outdated provisions in the Education Ordinance, the government had rejected all other substantive recommendations made by the democrats, such as posing further limits on the powers of the PSEM, allowing LegCo to review the implementation of SBM in 2008 and if necessary, suspend its full implementation. As the democrats occupied only one-third of the seats in LegCo, it was apparent they could do little on their own to stop the Bill from passing.

On the eve of the Second and Third Readings of the Bill, the main opponent, the Catholic Church, was about to make a final move. The church threatened
that if the Bill was passed, it would initiate litigation against the government for contravention of Article 141 of the Basic Law, which states that:

Religious organisations may, according to their previous practice, continue to run seminaries and other schools, hospitals and welfare institutions and to provide other social services.

In the view of the church, the introduction of SBM was a contravention to ‘their previous practice’. The government, however, was standing firm. It responded by claiming that Article 141 should be read together with Article 136, which states that:

On the basis of the previous educational system, the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on the development and improvement of education, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational qualifications. Community organisations and individuals may, in accordance with law, run educational undertakings of various kinds in the Hong Kong Special Administrative Region.

The Bill was passed in stormy atmosphere on 8 July 2004. The Catholic Church has subsequently informed the government that schools under the Church will not be setting up incorporated SMCs as required by the law before 2008.33 We have thus dwelt at length with the main controversies surrounding SBM and the Education (Amendment) Bill 2002. As one could see from the above, the controversies were both fundamental and acute. They involved not only conflicts of interests among SSBs, teachers’ associations and parents’ groups, but also political disagreements among the government, SSBs, and legislators. In the remainder of this case analysis, we shall proceed to a critical assessment of the role of the FRs in the episode. In so doing, the political dynamics underlying the legislative process of the Bill can hopefully be put in better relief.

4. **FR involvement in the policy-making processes**

One simple but useful way of starting to gauge the involvement of the functional representatives in the episode is to look at the membership of the LegCo Panel on Education (hereinafter the panel) and the related Bills Committee and see how many FRs were involved.

Recall that in Section 2, the proposal of the ACSBM was discussed in three panel meetings between late 2000 and early 2001. In the legislative year 2000–2001, there were 19 members in the panel (see Table 17),34 six of who were FRs.
Table 17. Membership of the LegCo Panel on Education, 2000–2001

<table>
<thead>
<tr>
<th>Name</th>
<th>Political affiliation</th>
<th>Method of election</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cheung Man-kwong</td>
<td>Democratic Party</td>
<td>FC (Education)</td>
</tr>
<tr>
<td>Sin Chung-kai</td>
<td>Democratic Party</td>
<td>FC (Information Technology)</td>
</tr>
<tr>
<td>Cheung Yu-yan, Tommy</td>
<td>Liberal Party</td>
<td>FC (Catering)</td>
</tr>
<tr>
<td>Li Ka-cheung, Eric</td>
<td>Independent</td>
<td>FC (Accountancy)</td>
</tr>
<tr>
<td>Lo Wing-lok</td>
<td>Independent</td>
<td>FC (Medical)</td>
</tr>
<tr>
<td>Mak Kwok-fung, Michael</td>
<td>Independent</td>
<td>FC (Health Services)</td>
</tr>
<tr>
<td>Yeung Sum (Chairperson)</td>
<td>Democratic Party</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Szeto Wah</td>
<td>Democratic Party</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Wong Sing-chi</td>
<td>Democratic Party</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Ho Sau-lan, Cyd</td>
<td>The Frontier</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Lau Wai-hing, Emily</td>
<td>The Frontier</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Leung Yiu-chung</td>
<td>Neighbourhood and Workers’ Service Centre</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Tsang Yok-sing, Jasper</td>
<td>DAB</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Lau Kong-wah</td>
<td>DAB</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Wong Wang-fat, Andrew</td>
<td>Independent</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Eu Yuet-mee, Audrey (since 21 Dec 2000)*</td>
<td>Independent</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Yeung Yiu-chung (Deputy Chairperson)</td>
<td>DAB</td>
<td>Election Committee</td>
</tr>
<tr>
<td>Chu Yu-lin, David</td>
<td>HK Progressive Alliance</td>
<td>Election Committee</td>
</tr>
<tr>
<td>Ng Ching-fai (up to 14 July 2001)</td>
<td>New Century Forum</td>
<td>Election Committee</td>
</tr>
</tbody>
</table>

* Eu Yuet-mee was not yet a member of the panel for the first two meetings on the discussion of the ACSBM proposal.

(DAB = Democratic Alliance for Betterment of Hong Kong)

As regards the Bills Committee that operated from 23 February 2003 to 6 July 2004, Table 18 shows that among the 10 members, there were three FRs.

Thus, in both the panel and the Bills Committee, the FRs had occupied about 30% of the membership. Cheung Man-kwong and Cheung Yu-yan had joined both the panel and the Bills Committee, the former’s presence was to be expected as he was the sectoral FR concerned while the latter had probably participated as a representative of his party, the Liberal Party. Apart from these two, there were only four other FRs in the panel and one in the Bills Committee.

It will be prudent to note that a mere headcount may overlook the factor of political affiliation and party representation. FRs of the same political party or grouping usually divide labour across different panels and bills committees, for example, in the present case, Cheung Yu-yan, a member of the Liberal Party, was in fact representing and speaking on behalf of his party, whose LegCo members were all FRs. If one simply bases the evaluation of legislators’ participation on a head count in the panel and the Bills Committee, one may fail to capture the ‘political weight’ of certain members involved. A fairer assessment should better be considered in the light of the political parties or blocs to which the members belonged. Having conceded this though, it is also true that GRs did not seem to have been constrained by the same consideration, for example, both the Democratic Party and the Frontier had more than one GR member in the panel and the Bills Committee.

Table 18. Membership of the Bills Committee on the Education (Amendment) Bill 2002

<table>
<thead>
<tr>
<th>Name</th>
<th>Political affiliation</th>
<th>Method of election</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cheung Man-kwong</td>
<td>Democratic Party</td>
<td>FC (Education)</td>
</tr>
<tr>
<td>Cheung Yu-yan, Tommy</td>
<td>Liberal Party</td>
<td>FC (Catering)</td>
</tr>
<tr>
<td>Ho Chung-tai, Raymond</td>
<td>Independent</td>
<td>FC (Engineering)</td>
</tr>
<tr>
<td>Szeto Wah</td>
<td>Democratic Party</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Ho Sau-lan, Cyd</td>
<td>The Frontier</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>(Chairperson)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lau Wai-hing, Emily</td>
<td>The Frontier</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Leung Yiu-chung</td>
<td>Neighbourhood and Workers’ Service Centre</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Lee Cheuk-yen</td>
<td>Hong Kong Confederation of Trade Unions</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Eu Yuet-mee, Audrey</td>
<td>Independent</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Yeung Yiu-chung</td>
<td>Democratic Alliance for Betterment of Hong Kong</td>
<td>Election Committee</td>
</tr>
</tbody>
</table>

When the spotlight is turned on FRs with no formal political affiliation, the limited involvement of these so-called ‘independent’ FRs became even more obvious. Among the 30 FRs in LegCo, 13 were independents (see Table 21). There were only three independent FRs in the panel in 2000–2001, namely, Li Ka-cheung, Lo Wing-lok and Mak Kwok-fung, who represented the functional constituencies of Accountancy, Medical and Health Services respectively. In the Bills Committee, there were even fewer independent FRs, in fact, only one, Ho Chung-tai, the FR of the engineering sector. Although it might be the case that at the time of setting up the Bills Committee, the controversies on SBM were not as acute as in the later stage and that most of the legislators might have overlooked the sensitivity of the Bill, the involvement rate itself was undeniably low. It is probably fair to say that the involvement of the independent FRs in the consultation of the ACSBM proposal and the examination of the Bill had been minimal.

That the contingent of GRs outnumbered the FRs almost two to one in the panel and the Bills Committee is in fact broadly in tune with statistical findings in the preceding quantitative study. The FRs have been shown to be less active in the major indicators of participation in the deliberation processes of policy making, usually by a ratio of 1:2 compared to the GRs/ECRs. Given the total presence of 30 FRs in LegCo, and the fact that the panel was a standing committee in LegCo to monitor education matters in Hong Kong, it does appear education was not among the FRs’ priorities.

Apart from the involvement of the FRs in the consultation and deliberations on the ACSBM proposal and the Bill, we may also take a look at their voting patterns and participation in the Second and Third Readings of the Bill to see what roles the FRs in general performed in the present case. Three observations can be highlighted here.

Firstly, except for Cheung Man-kwong, the FR of the education sector, no other FR had put forward any amendment in the Second Reading of the Bill, as Table 19 shows.

<table>
<thead>
<tr>
<th>Name</th>
<th>No. of amendments</th>
<th>Political affiliation</th>
<th>Method of election</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lau Wai-hing, Emily</td>
<td>5</td>
<td>The Frontier</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Ho Sau-lan, Cyd</td>
<td>4</td>
<td>The Frontier</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Lee Cheuk-yan</td>
<td>1</td>
<td>HK Confederation of Trade Unions</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Cheung Man-kwong</td>
<td>1</td>
<td>Democratic Party</td>
<td>FC (Education)</td>
</tr>
</tbody>
</table>

There were in total 11 amendments moved by four LegCo members, 10 by GRs. One may wonder why Cheung Man-kwong had moved only one amendment. One possible reason might be that Cheung and the other three GRs moving the amendments were all democrats, the latter hence doing part of the job for Cheung. Meanwhile one may also wonder why there were no amendments from the rest of the FRs in the Second Reading. There are two possible answers: either they were in support of the democrats’ amendments and therefore saw no need to move any themselves, or they were in full support of the provisions of the Bill and therefore also saw no need for any amendment. As we shall see later in this section, for most FRs, the answer is definitely the latter rather than the former. In the present case, all the amendments were negatived under the split-voting system. It was a landslide victory for the government.

The second observation concerns the number of LegCo members who spoke in the Second Reading of the Bill. Delivering speeches is one manifestation of participation in the deliberations of an issue. It is a role that any LegCo member is expected to perform. As the Second and Third Readings of the Bill had lasted 13 hours, one would expect a legislator to have had the opportunity to speak if he or she so wished. Table 20 summarises the speech records.

As Table 20 shows, a total of 23 LegCo members spoke during the Second Reading of the Bill. While seven were FRs, 15 were GRs. In other words, 23 FRs chose not to say a word on the issue. Although for FRs with party affiliation, it could be that their party spokesperson on the issue spoke for them too, many of the GRs, similarly with political affiliations, chose to deliver personal speeches. One likely explanation for the inactivity of the FRs in the deliberation process is that most were in support of the government and were under no pressure to have to change the minds of fellow legislators as they were confident the government had sufficient votes to carry the Bill.

This observation appears to be substantiated by the third observation — the voting positions of the FRs. As noted in Section 3, the issue of SBM was extremely controversial in society on the eve of the Second and Third Readings. The Catholic Church was threatening to bring the government to court if the Bill was passed. The democrats in the Bills Committee also tried very hard to extract government concessions on the Bill. The government stood firm on the Bill, confident of sufficient supporting votes in LegCo. Tables 21 to 23 show where the support was coming from.

The support of the government came mainly from the FRs and the Election Committee representatives. Among the FRs, there were 19 supporting votes and five opposing, whereas among the GRs, there were only five supporting but 16 opposing. The majority view of the GRs thus were vetoed or ‘balanced’ by the FRs. Since the FRs occupied half of the seats in LegCo, they had a dominant influence if they adopted a uniform position on an issue. In the case of SBM, their support for the government successfully overrode the majority view of the directly-elected legislators.
Table 20. Member speeches in the Second Reading of the Education (Amendment) Bill 2002

<table>
<thead>
<tr>
<th>Method of election</th>
<th>Position on the Bill</th>
<th>Name</th>
<th>Political affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Support</td>
<td>Cheung Yu-yan Tommy</td>
<td>Liberal Party</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Chow Liang Shuk-yee, Selina</td>
<td>Liberal Party</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Leung Fu-wah</td>
<td>DAB</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ip Kwok-him</td>
<td>DAB</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Shek Lai-him, Abraham</td>
<td>Independent</td>
</tr>
<tr>
<td></td>
<td>Against</td>
<td>Cheung Man-kwong</td>
<td>Democratic Party</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ng, Margaret</td>
<td>Independent</td>
</tr>
<tr>
<td></td>
<td>Support</td>
<td>Tsang Yok-sing, Jasper</td>
<td>DAB</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Chan Kam-lam</td>
<td>DAB</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Lee Chu-ming, Martin</td>
<td>Democratic Party</td>
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<td>Ho Chun-yan, Albert</td>
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<td>To Kun-sun, James</td>
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<td>Yeung Sum</td>
<td>Democratic Party</td>
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<td>Cheng Kar-foo, Andrew</td>
<td>Democratic Party</td>
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<td>Szeto Wah</td>
<td>Democratic Party</td>
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<td>Lau Wai-hing, Emily</td>
<td>The Frontier</td>
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<td>Ho Sau-lan, Cyd</td>
<td>The Frontier</td>
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<td></td>
<td></td>
<td>Lau Chin-shek</td>
<td>HK Confederation of Trade Unions</td>
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<td>Lee Cheuk-yan</td>
<td>HK Confederation of Trade Unions</td>
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<td>Leung Yiu-chung</td>
<td>Neighbourhood and Workers’ Service Centre</td>
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<td></td>
<td>Eu Yuet-mee, Audrey</td>
<td>Independent</td>
</tr>
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<td></td>
<td></td>
<td>Chan Wai-yip</td>
<td>Independent</td>
</tr>
<tr>
<td>Election Committee</td>
<td>Support</td>
<td>Yeung Yiu-chung</td>
<td>DAB</td>
</tr>
</tbody>
</table>

(DAB = Democratic Alliance for Betterment of Hong Kong)

Table 21. FR voting positions in the Third Reading of the Education (Amendment) Bill 2002

<table>
<thead>
<tr>
<th>Voting position</th>
<th>Name</th>
<th>Functional constituency</th>
<th>Political affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>For</strong></td>
<td>Tien Pei-chun, James</td>
<td>Commercial First</td>
<td>Liberal Party</td>
</tr>
<tr>
<td></td>
<td>Ting Woon-shou, Kenneth</td>
<td>Industrial First</td>
<td>Liberal Party</td>
</tr>
<tr>
<td></td>
<td>Chow Liang Shuk-kee, Selina</td>
<td>Wholesale and Retail</td>
<td>Liberal Party</td>
</tr>
<tr>
<td></td>
<td>Leung Lau Yau-fun, Sophie</td>
<td>Textiles and Garment</td>
<td>Liberal Party</td>
</tr>
<tr>
<td></td>
<td>Young, Howard</td>
<td>Tourism</td>
<td>Liberal Party</td>
</tr>
<tr>
<td></td>
<td>Lau Wong-fat</td>
<td>Heung Yee Kuk</td>
<td>Liberal Party</td>
</tr>
<tr>
<td></td>
<td>Lau Kin-ying, Miriam</td>
<td>Transport</td>
<td>Liberal Party</td>
</tr>
<tr>
<td></td>
<td>Cheung Yu-yan Tommy</td>
<td>Catering</td>
<td>Liberal Party</td>
</tr>
<tr>
<td></td>
<td>Wong Yung-kan</td>
<td>Agriculture and Fisheries</td>
<td>DAB</td>
</tr>
<tr>
<td></td>
<td>Ip Kwok-him</td>
<td>District Council</td>
<td>DAB</td>
</tr>
<tr>
<td></td>
<td>Leung Fu-wah</td>
<td>Labour</td>
<td>DAB/FTU</td>
</tr>
<tr>
<td></td>
<td>Ho Chung-tai, Raymond</td>
<td>Engineering</td>
<td>Independent</td>
</tr>
<tr>
<td></td>
<td>Lui Ming-wah</td>
<td>Industrial Second</td>
<td>Independent</td>
</tr>
<tr>
<td></td>
<td>Chan, Bernard</td>
<td>Insurance</td>
<td>Independent</td>
</tr>
<tr>
<td></td>
<td>Wong Yu-hong, Philip</td>
<td>Commercial Second</td>
<td>Independent</td>
</tr>
<tr>
<td></td>
<td>Fok Tsun-ting, Timothy</td>
<td>Sports, Performing Arts, Culture and Publication</td>
<td>Independent</td>
</tr>
<tr>
<td></td>
<td>Shek Lai-him, Abraham</td>
<td>Real Estate and Construction</td>
<td>Independent</td>
</tr>
<tr>
<td></td>
<td>Wu King-cheung</td>
<td>Financial Services</td>
<td>Independent</td>
</tr>
<tr>
<td></td>
<td>Lau Ping-cheung</td>
<td>Architectural, Surveying and Planning</td>
<td>Independent</td>
</tr>
<tr>
<td><strong>Against</strong></td>
<td>Cheung Man-kwong</td>
<td>Education</td>
<td>Democratic Party</td>
</tr>
<tr>
<td></td>
<td>Sin Chung-kai</td>
<td>Information Technology</td>
<td>Democratic Party</td>
</tr>
<tr>
<td></td>
<td>Law Chi-kwong</td>
<td>Social Welfare</td>
<td>Democratic Party</td>
</tr>
<tr>
<td></td>
<td>Ng, Margaret</td>
<td>Legal</td>
<td>Independent</td>
</tr>
<tr>
<td></td>
<td>Mak Kwok-fung</td>
<td>Health Services</td>
<td>Independent</td>
</tr>
<tr>
<td><strong>Absent for voting</strong></td>
<td>Chan Kwok-keung</td>
<td>Labour</td>
<td>DAB/FTU</td>
</tr>
<tr>
<td></td>
<td>Hui Cheung-ching</td>
<td>Import and Export</td>
<td>HK Progressive Alliance</td>
</tr>
<tr>
<td></td>
<td>Li Fung-ying</td>
<td>Labour</td>
<td>Federation of Hong Kong and Kowloon Labour Unions</td>
</tr>
<tr>
<td></td>
<td>Li Ka-cheung, Eric</td>
<td>Accountancy</td>
<td>Independent</td>
</tr>
<tr>
<td></td>
<td>Li Kwok-po, David</td>
<td>Finance</td>
<td>Independent</td>
</tr>
<tr>
<td></td>
<td>Lo Wing-luk</td>
<td>Medical</td>
<td>Independent</td>
</tr>
</tbody>
</table>

(DAB = Democratic Alliance for Betterment of Hong Kong, FTU = Hong Kong Federation of Trade Unions)
Table 22. GR voting positions in the Third Reading of the Education (Amendment) Bill 2002

<table>
<thead>
<tr>
<th>Voting position</th>
<th>Name</th>
<th>Political affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>For</td>
<td>Tsang Yok-sing, Jasper</td>
<td>DAB</td>
</tr>
<tr>
<td></td>
<td>Chan Kam-lam</td>
<td>DAB</td>
</tr>
<tr>
<td></td>
<td>Lau Kong-wah</td>
<td>DAB</td>
</tr>
<tr>
<td></td>
<td>Tam Yiu-chung</td>
<td>DAB</td>
</tr>
<tr>
<td></td>
<td>Tang Siu-tong</td>
<td>HK Progressive Alliance</td>
</tr>
<tr>
<td>Against</td>
<td>Lee Chu-ming, Martin</td>
<td>Democratic Party</td>
</tr>
<tr>
<td></td>
<td>Ho Chun-yan, Albert</td>
<td>Democratic Party</td>
</tr>
<tr>
<td></td>
<td>Li Wah-ming, Fred</td>
<td>Democratic Party</td>
</tr>
<tr>
<td></td>
<td>To Kun-sun, James</td>
<td>Democratic Party</td>
</tr>
<tr>
<td></td>
<td>Yeung Sum</td>
<td>Democratic Party</td>
</tr>
<tr>
<td></td>
<td>Cheng Kar-foo, Andrew</td>
<td>Democratic Party</td>
</tr>
<tr>
<td></td>
<td>Szeto Wah</td>
<td>Democratic Party</td>
</tr>
<tr>
<td></td>
<td>Wong Sing-chi</td>
<td>Democratic Party</td>
</tr>
<tr>
<td></td>
<td>Lau Wai-hing, Emily</td>
<td>The Frontier</td>
</tr>
<tr>
<td></td>
<td>Ho Sau-lan, Cyd</td>
<td>The Frontier</td>
</tr>
<tr>
<td></td>
<td>Lau Chin-shek</td>
<td>HKCTU</td>
</tr>
<tr>
<td></td>
<td>Lee Cheuk-yan</td>
<td>HKCTU</td>
</tr>
<tr>
<td></td>
<td>Leung Yiu-chung</td>
<td>Neighbourhood and Workers’ Service Centre</td>
</tr>
<tr>
<td></td>
<td>Fung Kin-kee</td>
<td>Association for Democracy and People’s Livelihood</td>
</tr>
<tr>
<td></td>
<td>Eu Yuet-mee, Audrey</td>
<td>Independent</td>
</tr>
<tr>
<td></td>
<td>Chan Wai-yip</td>
<td>Independent</td>
</tr>
<tr>
<td>Absent for voting</td>
<td>Chan Yuen-han</td>
<td>DAB</td>
</tr>
<tr>
<td></td>
<td>Choy So-yuk</td>
<td>DAB</td>
</tr>
<tr>
<td></td>
<td>Wong Wang-fat, Andrew</td>
<td>Independent</td>
</tr>
</tbody>
</table>

(DAB = Democratic Alliance for Betterment of Hong Kong.
HKCTU = Hong Kong Confederation of Trade Unions)
Source: Legislative Council, Voting Results in Council Meetings,
To summarise this section, the FRs as a group of legislators were inactive in the Second and Third Readings of the Bill. Very few of them had either moved amendments or spoken on the issue. Yet the voting records show them as ardent and loyal supporters of the government. When voting time came, they either turned up in force to support the government or, at worst, did not show up for the vote. Against such records, it is tempting for one to label the FRs as pro-government and to lament their disinclination to engage in the deliberations to contribute their views. But this would be too hasty. Efforts should be made to examine what considerations the FRs might have in mind when they decided on what position to take. For instance, could they have been guided by sectoral considerations or were they expressing considered views rather than being blind supporters of the government? Or did they have in mind public interests? These questions are crucial and they are the focus of the next section.

5. Whose views? Whose interests?

To examine the underlying considerations of the FRs is not an easy task. As far as the present case is concerned, many of the FRs appeared to have been inactive and hiding from view — they did not join the panel or the Bills Committee; they did not put forward any amendments and hardly spoke during the Second Reading of the Bill; they rarely expressed their views on SBM in public. All these place great demands on the researchers to try to comprehend what might have been in the minds of the FRs. It might be that the FRs saw no immediate relation between SBM and their sectoral interests. On the face of it, the issue of SBM concerned only Cheung Man-kwong directly, the FR of the education sector. Even so, one would be interested to know what made the FRs take the positions they took. Whose views were they endorsing? Why? Whose interests were

Table 23. ECR voting positions in the Third Reading of the Education (Amendment) Bill 2002

<table>
<thead>
<tr>
<th>Voting position</th>
<th>Name</th>
<th>Political affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>For</td>
<td>Yeung Yiu-chung</td>
<td>Democratic Alliance for Betterment of Hong Kong</td>
</tr>
<tr>
<td></td>
<td>Lau Hon-chuen, Ambrose</td>
<td>HK Progressive Alliance</td>
</tr>
<tr>
<td></td>
<td>Chu Yu-lin, David</td>
<td>HK Progressive Alliance</td>
</tr>
<tr>
<td></td>
<td>Ma Fung-kwok</td>
<td>New Century Forum</td>
</tr>
<tr>
<td></td>
<td>Ng Leung-sing</td>
<td>Independent</td>
</tr>
<tr>
<td>Present (did not vote)</td>
<td>Fan Tsu Lai-tai</td>
<td>Independent (President of LegCo)</td>
</tr>
</tbody>
</table>

they safeguarding? A speech by Shek Lai-him, the FR for Real Estate and Construction, in the Second Reading debate of the Bill might indicate the line of thinking informing not a few FR positions. Shek started his speech in the following way:

Not being a member of the Bills Committee, I am not qualified to speak on the subject. Since so much efforts, hard work and time have been spent by members on this Bill, it is highly admirable. But as a citizen, I also feel an urge to speak out.38 (emphasis added)

It is puzzling to hear a legislator say he was not qualified to speak on a subject because he had not participated in the related committee. As a legislator, Shek could have commented at least on the broad principles of the issue under debate if not the technical provisions in the draft law had he wished to do so. However, the focal point here is not his opening, but what followed:

I ask myself: Should I speak or should I not speak? If I speak, what role should I assume? As a Catholic? Though I am not a good Catholic, I am still a Catholic. As a past student of a Catholic school? As a father of three daughters who attended an Anglican school — the St Stephen Girls’ School which is one of the best in Hong Kong? Or as a citizen and a pro-government legislator? I found these roles all so confusing, and that is why I only started to write while everybody was talking. As a Catholic, I only need to follow my church teachings in the matter of my religion. In the matter of the state, I abide by the state laws. This is no different from a bishop or a priest, or a layman or a bad Catholic like me because this is actually the teaching of God — render unto Caesar, the things that are Caesar’s, and to God, the things that are God’s. On this basis I would like to talk about this subject.39 [emphasis added]

The sharp conflicts between the government and the Catholic Church on SBM made Shek reflect on his identity in LegCo. He admitted openly his confusion as to what role he should assume. It seems that Shek finally decided to speak as an ordinary citizen, disregarding his religious dispositions, his official capacity as a sectoral FR, and his even broader capacity as a lawmaker of Hong Kong. In the passage above, not a word was said about the sector he was representing. It appears it did not occur to Shek that either his expertise or the sectoral interests he was representing was of any relevance to the issue under debate. His judgement on the issue was conceived in the capacity as an ordinary citizen, instead of a well-informed legislator or a representative of a functional constituency. In his speech, he warned Arthur Li, the Secretary for Education and Manpower to be ‘very careful’ when putting forward the Bill, since its effects on the education system would be irreversible. Here Shek did make reference to the general interests on education, but then he arrived at his conclusion on a largely different note:
As a pro-government legislator of this council for the last four years, I have no regrets. I will give you [i.e. Arthur Li] my support, believing that you have very good intent. I will also give you my support trusting that what you are doing is for the good of our children.\textsuperscript{40} [emphases added]

Shek explicitly affirmed his political commitment to the government and duly voted in support of the Bill. From his speech, several interesting points can be noted. Firstly, he thought he was not qualified to comment on the issue because he did not join the Bills Committee. Secondly, he had not intended to speak but when he changed his mind and spoke, he chose to speak in the capacity of an ordinary citizen rather than as an FR or legislator. Thirdly, although he showed awareness of the significant effects the Bill might have on the education system, when he determined on the position to take on the Bill, he professed to be a pro-government legislator and duly gave his support to the government based on his belief and trust of the government’s good intent.

It is not often that an FR would publicly profess to be a pro-government legislator in such a frank manner. On an issue that had generated so much controversy in society, at least one legislator had found no better grounds to base his position on than faith in the government’s good intent, despite the fact he was the representative of a functional constituency and also a lawmaker of Hong Kong. As an independent FR, he had to find resort in a role he professed to having performed in the preceding four years, that is, supporting the government on faith.

One should certainly resist the temptation to over-generalise from one specific speech. However, it is worth noting that the pro-government tendency of the FRs in LegCo has also been established in the quantitative study above (see Table 15). This appears to be particularly true of the independent FRs. As far as the present case is concerned, with the exception of Margaret Ng and Mak Kwok-fung, the representatives of the Legal and the Health Services sectors respectively, all independent FRs consistently voted for the government in the Second and Third Readings of the Bill. At worst, two of these, namely, Li Ka-cheung and Lo Wing-lok, representing the Accountancy and Medical functional constituencies respectively, stayed away from the vote. They did not turn up to oppose the government. While it will take a lot more evidence to establish the reasons behind individual legislators’ positions, the voting patterns at least confirm the pro-government tendencies of many of the FRs, especially when no sectoral interests were perceived to be directly at stake.

Mindful of not over-generalising, we proceed to examine the views expressed by other FRs in the Second Reading of the Bill. As Table 20 shows, seven FRs spoke during the Second Reading. They were Cheung Yu-yan (Catering), Chow Liang Shuk-ye (Wholesale and Retail), Leung Fu-wah (Labour), Ip Kwok-him (District Council), Margaret Ng (Legal), Cheung Man-kwong (Education) and Shek Lai-him (Real Estate and Construction). As the case of Shek has been
examined while the role of Cheung Man-kwong will be considered in the next section, in the following, we shall focus on the remaining five.

On the face of it, there seems to be no obvious or immediate relationship between SBM and the sectoral interests of the five FRs involved. As shall be seen in their speeches, none made recourse to their sectoral views when commenting on the issue. What then might be in the five FRs’ considerations when they argued for or against SBM and the Bill? There are several possible answers. They might follow the line of the party or political group they belonged to; they might have in mind public interests, the interests of the stakeholders, or the interests of SSBs; they might be guided by concerns for such political principles as democracy, accountability and check and balances; or they might simply toe the government line. These considerations are not mutually exclusive.

The speeches of Cheung Yu-yan and Chow Liang Shuk-yee will be looked at first. They both belonged to the Liberal Party. In the Second Reading, both Cheung and Chow were speaking on behalf of their party. They did not mention a word about the views of their own sectors. As Cheung propounded, the Liberal Party regarded the Bill as having struck a balance among different interests in society. For Cheung, the crux of the Bill was to allow stakeholders to participate in school management and he considered the powers reserved for the PSEM as appropriate since the schools were granted huge sums of public money every year. He could not see how the idea of participation and accountability could be rejected. His colleague, Chow Liang Shuk-yee, took a similar line in her speech. She especially stressed the importance of democratic participation of stakeholders in school management and attacked the democrats for being inconsistent because democracy and accountability were presumably their watchwords, yet here, in her view, the democrats were up in arms against a bill intended precisely to bring these to school management. She teased the democrats, saying that their inconsistency made her think of the idiom, ‘the shoe is on the other foot’.41

Ip Kwok-him and Leung Fu-wah, both members of the Democratic Alliance for Betterment of Hong Kong (DAB), also spoke in support of the Bill. In his speech, Ip did not explain why he supported the Bill. Rather, he launched a harsh attack on the Democratic Party and Cheung Man-kwong for their alleged inconsistencies over SBM. Ip’s speech was essentially political in nature and did not contain much substantive discussion of the Bill itself. Leung Fu-wah, on the other hand, did address the contents of the Bill in his speech, although he also fiercely attacked not only the democrats but the Catholic Church. In short, he supported the Bill because, as he said, he thought transparency and accountability were important and that students’ interests should always take priority.43

Margaret Ng was the only FR, apart from Cheung Man-kwong, to speak against the Bill in the Second Reading. Ng was an independent FR representing the legal sector. In her speeches, she mentioned little of the interests of the SSBs or stakeholders. She had rather perceived the Bill as an unjustified expansion of government powers in education. Her fundamental worry was that when the SMCs became independent incorporated entities, the government could easily
extend its manipulation whenever it wished. She argued the Bill would greatly undermine the freedom and autonomy of schools.45

From the above, one sees that the considerations of the five FRs were: (1) whether the Bill achieved a good balance amongst interests; (2) whether the Bill truly upheld the principles of democratic participation, transparency and accountability; (3) whether students’ interests had been given priority; and (4) whether the Bill would grant the government too much power. Since none of the five sectoral FRs made much reference to their own sectors, it is probably an indicator that they did not perceive the Bill as having any immediate relevance in that connection.

Thus, while Shek lay bare his commitment to the government above all, other FRs obviously had more diverse considerations, at least as far as their expressed views indicated. The range of opinions however was not confined to the five FRs, it featured in most other speeches made during the Second Reading of the Bill. Interestingly, within this range of opinions, a clear dividing line is visible between the supporters and opponents of the Bill. While the supporters, who were mainly FRs, stressed the importance of strengthening the accountability and transparency of SMCs, the opponents, who were mainly GRs, argued vigorously for the power of the government to be checked.

In addition, those among the five FRs who had political affiliations obviously gave vent to party lines a great deal, repeatedly stating their party positions and attacking political opponents in their speeches. That a line can be drawn using political affiliation becomes even clearer if the picture is broadened to include all FRs. The impact of ‘party line’ was not brief or contingent. It happened in every voting on every amendment of the Bill. The division is so clear and consistent that one could tell an FR’s vote just by knowing his/her political affiliation — while the Liberal Party and the DAB were all in support of the government, the Democratic Party was against. The voting records demonstrate that FRs with the same political affiliation took the same position without exception. In the case of SBM, thus, political affiliation appears to provide a much better clue than sectoral identity for predicting the vote of an FR.

The general picture that derives from the above concerning the considerations of FRs in the SBM episode thus appears variegated — at least one FR professed his pro-government stance explicitly, some toed the party line, some were concerned with strengthening the accountability and transparency of school management, still others were suspicious of the government’s motivations. What can be said in simpler terms is that there was no sign that FRs had taken SBM to be immediately related either to their sectoral interests or their respective expertise. As a consequence, FRs, especially the independents, had had great liberty to decide what position to take on the issue, so much so that at least one, namely, Shek, appeared to be at a loss as to what to do with that liberty. In the few FR speeches, but more conspicuously in their silence, there was little sign that FRs considered their sectoral perspective or any personal expertise as worth contributing to the policy debate under way.
The only exception to the above is Cheung Man-kwong. As the FR of the education sector, SBM was of direct and immediate concern. In fact, Cheung had participated from the very beginning of the Bill’s evolution. In the later stages he became a significant figure in attempting to resolve the conflicts between the SSBs and the government. Although he was not successful in his efforts, his role as the relevant sectoral FR deserves to be studied.

6. The roles of the sectoral FR

In the controversies surrounding SBM, Cheung was faced with a touchy situation. He was one of the pioneer advocates for teachers’ and parents’ representatives to be included and share decision-making powers in SMCs. He had also been critical of the lack of accountability and transparency on the part of SMCs. During the consultation on the ACSBM proposal in the Manpower Panel, Cheung’s role as advocate was outstanding both inside and outside LegCo. At the time, he was of the view that SSBs should occupy no more than 50% of SMC memberships and that the SMCs should be incorporated to clarify liability. Although the Catholic and Anglican churches had already made clear their objection to the ACSBM recommendations, such as the incorporation of SMCs and the inclusion of teachers and parents in SMCs, Cheung kept urging the government to introduce as soon as possible legislative measures to realise the idea of SBM. He opined in clear terms in a panel meeting that he saw no reason why there should be further delay in implementing SBM.46

At the same time as playing advocate for SBM, however, Cheung was performing multiple other roles such as protector of teachers’ interests, watchman of the potential dangers of the Bill, as well as conciliator and consensus-builder between the SSBs and the government. Let us elaborate on these roles in turn.

As the president of the Hong Kong Professional Teachers’ Union (HKPTU), the largest teachers’ union in Hong Kong, Cheung had a good sense of protecting the interests of school employees. In the examination of the Bill he showed great concern that it could pave the way for the introduction of the ‘Lump Sum Grant’.47 He also queried whether the Bill would empower the SMC to reduce the salaries and benefits of teaching and non-teaching staff.48 The government was pressed to clarify its intentions behind specific provisions of the Bill. On those queries, Cheung made good use of HKPTU’s newsletter to report developments on the Bill and reaffirm his priority in protecting the interests of school employees.49 He maintained good communication with his main constituents.

In the Bills Committee, Cheung took up the role of a watchman. As a member of the Democratic Party, he kept his eyes on any proposal made by the government. Under the close scrutiny of the Bills Committee, the government made more than 40 amendments to the Bill. Though the government was uncompromising on requests to curb the power of the PSEM, Cheung’s contributions in winning the other amendments have to be recognised. For example, it
was Cheung who suggested that the Bill should empower SSBs to determine the appointment of the chairperson of an SMC and the principal of a school. He, together with Cheung Yu-yan, put forward the proposal that an SSB should have full control of the use of funds other than government funds and assets owned by it. He also strongly urged the government to clarify the civil and criminal liabilities of a school manager under the Bill.

The most challenging job for Cheung though, was to help resolve the deadlock between the SSBs and the government. As mentioned above, during the consultation on the ACSBM proposal, the main SSBs such as the Catholic and Anglican churches were strongly and fundamentally against some ACSBM recommendations. Although the two churches had had no difficulty with engendering the accountability and transparency of SMCs, they flatly rejected the proposal to incorporate the SMCs and to render them independent of respective SSBs. They also disagreed with the proposal that all stakeholders should be given decision-making powers in the SMCs, lest the latter become politicised. The conflicts became even more intense when the government ignored the churches’ objections and moved the Bill for the Second and Third Readings in LegCo. In view of this impasse, Cheung put forward a compromise proposal to the SSBs and the government. In brief, he suggested the introduction of a grace period of five years, during which the legal bindings of the Bill would be temporarily suspended to allow experimentation and observation of its effects. If, by the third year, it turned out that the implementation of SBM was not as successful as intended and was causing troubles in school governance, LegCo would be in a position to pass a resolution to postpone the Bill for a further period.

With his proposal, Cheung made visits to the SSBs in the hope of gaining their support. The SSBs were not impressed however and insisted on the withdrawal of the Bill. The government also rejected Cheung’s proposal. The Secretary for Education and Manpower insisted on legislation of the Bill in its entirety and rejected any possibility of delaying its enforcement. Cheung’s effort of attaining a compromise between the conflicting parties was thus fruitless.

We have seen the different roles of Cheung in the SBM episode. As the FR of the education sector, Cheung was presumably the most suitable and legitimate representative to consider and comment on the Bill. However, his views did not appear to have weighed heavily on the government nor was his amendment to the Bill supported in LegCo. Sectoral relevance and presumed expertise thus do not necessarily carry extra weight in policy-making deliberations and political decisions. In the case of SBM, rather, it seems that what counted for the government was simply to ensure a sufficient number of legislators falling in line to secure the safe passage of the Bill, whereas legislators had an assortment of other political considerations apart from the policy issue itself.
7. Conclusion

As generally understood, one of the main intentions of functional representation is for the FRs to inject a range of sectoral viewpoints into LegCo to enrich legislative deliberations. In practice, both representatives and constituents of functional constituencies have also developed an outlook of FRs as the mouthpieces of sectoral perspectives and guardians of sectoral interests. Given the high diversity of issues in the legislative processes, however, it is clearly impossible for an FR to discern sectoral relevance in the deliberation of every issue. In reality, therefore, when the issue at hand has little to do with the expertise or immediate interests of the sector an FR is representing, alternative ‘guides’ for action enter the stage.

The case of SBM provides a good illustration of how FRs react in case of an issue of no immediate relation to either expertise or sectoral interests. In this case analysis, we have sought to illustrate the various reactions and considerations of the FRs in tackling the controversies of the Education Bill. These turn out to be diverse but nonetheless clearly patterned. When no sectoral expertise or interests were directly involved, it seems that the next clue for action was political inclination and party affiliation. Thus, while the FRs from the democratic camp were always cautious about every move of the government, the FRs from the Liberal Party, the DAB, and most of the independent FRs would provide it unfailing support. A rather stable ‘alliance’ between the pro-government FRs and the government became manifest. If this reading is correct, it casts doubt on the justification of the functional representation system on grounds of contributing diverse input to improve the quality of legislative deliberations and policy making. Judging from the dynamics revealed in the SBM episode, it appears that what speaks loudest is power and not expertise. When the government was confident of sufficient supporting votes in the legislature, the politics of dialogue and consensus-building appears to be relegated to a much lower priority, if any.

The Occupational Safety and Health (Display Screen Equipment) Regulation

1. Introduction

The Occupational Safety and Health (Display Screen Equipment) Regulation (hereinafter the Regulation) provides protection to employees whose job nature involves prolonged use of display screen equipment (DSE) on an almost daily basis. The policy-making processes of the Regulation are of interest to this research for a couple of reasons and these pertain to two major dimensions of the nature of the Regulation. Firstly, as the intention of the legislation was to provide new protections for employees, it is almost natural that it would be seen as heralding an increase in production costs and therefore earn the ire of
employers. As a matter of fact, from the government’s notice of intention to move a motion on the Regulation in the legislature in December 2000 to its passage in April 2002, legislative scrutiny of the Regulation had taken more than 15 months. A subcommittee (hereinafter the subcommittee) set up by the legislature to study the government’s draft Regulation in detail met a total of 15 times. The legislative deliberations involved were not without some unexpected turns of events and fireworks between legislators of business backgrounds and those of labour.

Secondly, apart from the business-labour, ‘interest’-based dichotomy that is usually used to look at labour protection issues, there is a ‘scientific’ dimension to the Regulation and this can be further divided into two specific aspects. To start with, as the subject matter relates to DSE, advances in information technology and the usual modes of IT application in everyday business and production activities become relevant in the consideration of how widespread health problems linked to DSE use might be. This leads on to the second scientific aspect, that is, medical estimation and proof that there is indeed substantial relationship between DSE use and specific health problems. In the subcommittee, it is noteworthy that out of a total of 14 members, 10 were functional representatives, there were only three GRs and one legislator from the Election Committee. Since the functional representatives came from different economic and professional sectors, one would expect to hear from them about IT application and perhaps even related health problems in their respective sectors, in other words, one would imagine the deliberations to be diverse and comprehensive. In addition, one would also be inclined to consider the three representatives of Medicine, Health Services, and Information Technology respectively as the ‘authorities’ in this relation and expectant of professional advice from them to enhance the scientific angle and objectivity of the discussions.

In the following analysis, therefore, the examination of the deliberation and decision-making processes associated with the passage of the Regulation will be conducted as outlined above. For consistency, the organisation of the analysis will follow the pattern of the first case study. Sections 2 and 3 will provide a description of the evolution of the Regulation and the major controversies involved respectively. Section 4 follows with an examination of the involvement of FRs in the deliberation processes and their votes on the Regulation. The patterns of involvement will pave way for a critical assessment in section 5 of the performance and positions of individual FRs in the episode. Unlike the first case study in which there was one obvious sectoral FR, namely, the FR of Education, the Regulation was poised to have cost and operational implications for almost all functional constituencies, especially those belonging broadly to the business sector. It follows that in this case, generally speaking, the FRs can all be treated as sectoral functional representatives, because their sectoral interests could be at stake, albeit to various extents. Notwithstanding, in terms of directness and immediacy of the potential impacts of the Regulation, the FRs for Labour and those for the four Commercial and Industrial constituencies probably stood out
among the rest and will therefore be taken as the immediate sectoral FRs for analysis. After the review of the positions of FRs in general, therefore, section 6 focuses on the participation and contribution of the immediate sectoral FRs and the three professional FRs of Medicine, Health Services, and Information Technology, for the reasons given above. In section 7, some concluding remarks complete the case analysis.

2. Background and development of the Regulation

The origin of the Regulation can be traced back to 1996 when the Labour Department submitted the Regulation for discussion to the Labour Advisory Board (LAB), a statutory body on labour issues with representation from employers, employees and the government. After submissions were invited from labour unions, commercial associations, the occupational safety profession and other interested organisations on some proposed standards under the Regulation, and subsequent to further consultations, the Labour Advisory Board gave the green light to the Regulation.

In November 2000, the SAR government gave notice of its intention to move a motion in the following month to seek the Legislative Council’s approval of the Occupation Safety and Health (Display Screen Equipment) Regulation made by the Commissioner for Labour under section 42 of the Occupational Safety and Health Ordinance (OSHO). In view of the growing use of computers at work, the Regulation was intended to protect the occupational safety and health of employees using DSE as a significant part of their work.

Upon the government notice, the House Committee decided to set up a subcommittee to study the Regulation in detail. At the request of the House Committee, the government withdrew its notice of moving the motion in the Legislative Council to allow time for the subcommittee to conduct its study of the Regulation. The subcommittee held its first meeting in December 2000 and concluded its deliberations in October 2001, after meeting with government officials 11 times. The decision was made for the chairman of the subcommittee to report its deliberations and conclusions to the House Committee, while at the same time for the government to give fresh notice to move a motion on the Regulation for the approval of the Legislative Council at its meeting on 21 November 2001.

In his report to the House Committee on 9 November 2001, the subcommittee chairman pointed out that, while the objective of protecting the occupational safety and health of DSE users was agreeable to all subcommittee members, members had had different views on various issues. Some members, broadly of business backgrounds, questioned whether an education and publicity campaign would not be more effective than legislative means in achieving the objective, some wondered if it was the best of times to be imposing additional responsibilities on employers given the state of the Hong Kong economy, and still others had had grave concerns about making non-compliance with certain stipulated
requirements in the Regulation offences of strict liability punishable with a substantial fine. On the other hand, some members, especially of labour backgrounds and the FR of the IT sector, were concerned about compliance standards not being set out in the Regulation itself but instead in an advisory health guide, non-compliance with which would not be subject to any penalty. Given such ambiguity, these members wondered how employers or other responsible persons at workplaces could discharge their responsibilities properly and in the final analysis, how the Regulation could be enforced effectively. The subcommittee chairman reported that although the government had proposed a number of amendments to the Regulation, the subcommittee had not been able to reach agreement on some of the more controversial issues. He therefore considered it appropriate to conclude the work of the subcommittee and for LegCo to make its decision on the fate of the Regulation.

At the House meeting, on top of the outstanding issues reported by the subcommittee chairman, a new concern was raised, namely, the cost implications of the Regulation for businesses. Legislators of the Liberal Party and representatives of some professional sectors indicated grave reservations about the wide scope and heavy penalties for non-compliance, they voiced special concern about the cost implications for small and medium enterprises to carry out improvement measures to comply with provisions of the Regulation. Questions about enforcement were also raised. The House Committee decided that the subcommittee should continue its work to address the new concern as well as the outstanding issues. The government was requested to withdraw its notice of moving the motion on the Regulation in the council a second time.

As the subcommittee resumed its deliberations, submissions from interested groups were received. The subcommittee met a further four times and eventually concluded its deliberations in March 2002. After two withdrawals at the request of the legislature, the government finally moved a motion on the Regulation for the Legislative Council’s approval on 22 April 2002. The Regulation was passed without division. On the other hand, two amendments, moved by legislators Lee Cheuk-yan and Andrew Cheng respectively on the definition of ‘user’ in order to provide protection under the Regulation to more employees and ‘periodic breaks or changes of activity’ to reduce the duration that employees have to work with DSE, while passed by the geographical and Election Committee members by majority, were vetoed by FRs.

3. The controversies

In explaining the introduction of the proposed Regulation, the government made reference to the fact of growing computer use at work and an increasing trend of employees who had to work long hours with computers developing health problems including upper limb pains and discomfort, back discomfort and eyestrain. The government reckoned that such problems were closely related to the design of workstations, working posture, working environment
and work organisation. Noting the ineffectiveness of public education, as well as Labour Department guidelines on computer use at work since the early 1980s in arresting health problems caused by improper use of DSE, the proposed Regulation was intended to legislate for measures to ensure the safety standards of workstations in offices and other workplaces. Workstations were taken to comprise DSE, items peripheral to the DSE such as chair, desk, work surface and printer, as well as the immediate working environment around the DSE including lighting, acoustics, temperature and humidity.

In the government’s initial draft Regulation, several central provisions were later to become major bones of contention in the deliberations of the subcommittee and the House Committee. These included:

**The definition of ‘users’**

It was proposed that the Regulation would only cover employees who had to use DSE as a significant part of their normal work and were highly dependent on the use of DSE in their job, for example, word processing operators, computer graphic designers, data input operators and financial dealers.

**Duties of employers**

Employers were to be required to perform multiple duties, to:

1. Conduct risk assessments of workstations used by users,

2. Review risk assessments upon significant changes in the workstations or in the conditions of previous assessments,

3. Record the results of risk assessments and keep such records for two years after the workstations involved have ceased to be used,

4. Produce risk-assessment records for inspection upon request by an occupational safety officer,

5. Take action to reduce the identified hazards to the lowest extent reasonably practicable,

6. Inform users about the findings of risk assessments and actions taken to reduce the risks,

7. Provide safety and health training to users, and

8. Ensure workstations are suitable for the safety, health and welfare of users as far as reasonably practicable.
Offences

Upon conviction for contravening the provisions of the proposed Regulation, an employer would be subject to a maximum fine of $50,000. Non-compliance with the duties listed above would constitute an offence of strict liability.57

To assist compliance, the government also drafted a sample computer workstation assessment checklist and an advisory health guide to illustrate the kind of standards required. This included the brightness and contrast controls on a computer screen, the size of work surfaces, the location of keyboards and the height of seats, illumination and reflections in the immediate surrounding of the workstation, and other detailed hardware requirements.58

In not setting out explicit or specific compliance standards against which risk assessment and hazard reduction could be measured, and opting instead for an advisory health guide outside of the statutory framework, the government explained that the Regulation was premised largely on the concept of self-regulation. It noted that across-the-board compliance standards would not be practical because of differing circumstances in different trades as well as physical differences at workplaces. In its view, it would be best if employers and employees could mutually agree on the improvement measures to be taken to reduce risks at their workplace. Furthermore, it considered that non-statutory guidelines would allow flexibility for amendments in view of rapid developments in information technology application. The Regulation would be scheduled to take effect 12 months after its enactment, in order to allow time for employers and employees to get to understand and prepare for their new obligations.

From the perspective of legislators of business and financial backgrounds, the proposed Regulation was most unsatisfactory in several regards. Firstly, the lack of clear compliance standards and guidelines meant that employers would be uncertain about the correct answers in completing the risk assessment checklist and answers to questions in the checklist would most likely be subjective. They wondered how risk assessment could be properly conducted. This group of legislators argued that employers would be unclear about their obligations, might unwittingly take insufficient risk reduction action and end up running foul of the Regulation. It was further noted that an overwhelming majority of firms in Hong Kong were small and medium enterprises operating in small offices, the physical layout of which might not allow certain required risk reduction actions to be taken.

To compound the problem, the government had proposed to make conviction of non-compliance with certain provisions in the Regulation strict liability offences without mandating a warning mechanism in the Regulation. Despite the government’s assurance that what was required was only to do what was reasonably practicable, and that, except in cases of serious breaches capable of leading to imminent risk of death or serious bodily harm to employees, employers would normally be served with warning and improvement notices before prosecution, these members remained unconvinced.
The cost implications for the business community was another issue bothering this group of legislators, again noting that the overwhelming majority of enterprises in Hong Kong were small and medium firms struggling merely to survive in the economic doldrums after the Asian Financial Crisis. It was argued that the Regulation would have significant cost implications for many trades and industries and one legislator pointedly reminded his colleagues that the chief executive had in his October 2001 policy address promised that the government would fully assess the impact on the business environment prior to the formulation of new policies and legislation.

All in all, this group of legislators was in favour of more education and publicity efforts on the proper use of DSE and good practices before the introduction of related legislation.

On the other hand, a group of legislators favouring better protection for labour was equally concerned about the vagueness in the Regulation as to what standards were required in safeguarding the occupational safety of employees, albeit for very different reasons. Without explicit standards, these legislators worried there would be plenty of loopholes for employers to evade their responsibilities to employees, for instance, carrying out risk assessment without closely following the guidelines or without due regard to the potential risks. Once employers had performed risk assessment, it would be difficult to bring prosecution even if the quality of risk assessment had been substandard. There was therefore a view that the health guide should be turned into a workplace code of practice. Lee Cheuk-yan further opined at the subcommittee meetings on 14 December 2000 and 17 January 2001 that although rest breaks and breaks to perform alternative duties after prolonged use of DSE were recommended in the health guide, because the guide was non-statutory, enforcement of the Regulation would rely heavily on the self-regulation of employers and thus be uncertain. This concern was supported by Andrew Cheng, the subcommittee chairman and the Democratic Party’s spokesman on labour issues.

Despite outstanding dissatisfaction with particular provisions in the Regulation, this group of legislators was in favour of passing the Regulation as soon as possible. For them, some legislative protection, albeit rudimentary, would be better than none at all.

A final major area of disagreement among legislators concerns the definition of the notion of ‘user’ of DSE as it affects the number of employees who would be protected. Members had at various stages of their deliberations taken issue with the definition proposed by the government and the definition went through several mutations. In the initial draft of the Regulation, the word was used to denote employees who had to use DSE as a significant part of their normal work and were therefore highly dependent on the use of DSE in their job. This was criticised as overly general and imprecise. A more exact definition was thus proposed in a revised draft of the health guide put to the subcommittee meeting in May 2001 to mean employees who would usually be highly dependent on the use of DSE to do their jobs, and ‘normally use the equipment for continuous
spells of an hour or more at a time and more or less daily’. This new definition drew vociferous protests from legislators, particularly those of business backgrounds, who insisted that this new definition would protect even employees who use the computer only intermittently and defeat the original intention of the Regulation, which was to protect those employees who work with a display screen for long hours on a daily basis. Eventually, upon the suggestion of Margaret Ng, the FR for the Legal sector, the definition took another transformation to become ‘an employee who, by reason of the nature of his work, is required to use display screen equipment for a prolonged period of time almost every day’ in the Regulation. This was not entirely to the satisfaction of legislators in favour of more protection for employees. As a compromise, the government agreed to spell out, in a code of practice that had previously been suggested to replace the health guide, the definition of ‘user’ to mean ‘an employee who is required, more or less daily, to use DSE continuously for at least four hours during a day, or cumulatively for at least six hours during a day’. This was to accommodate the argument that prolonged use of DSE should be taken to mean at least several hours of continuous use in order not to lose the original intention of the Regulation, while the ‘continuous use’ definition alone would in effect be so stringent that only employees spending almost all their working hours in front of a computer screen would qualify for protection.

By the time the Regulation was presented for LegCo’s approval in April 2002, the major contentious points were resolved as follows:

- A ‘user’ was defined as ‘an employee who, by reason of the nature of his work, is required to use display screen equipment for a prolonged period of time almost every day’.

- Practical guidance for compliance with the provisions of the Regulation were to be provided in a code of practice and a health guide for employers and employees, including an elaborated definition of ‘user’ to mean an employee required, more or less daily, to use DSE continuously for at least four hours during a day, or cumulatively for at least six hours during a day.

- For offences of strict liability, the government agreed to build in a defence of reasonable practicability and also undertook to issue an improvement notice before initiating prosecution against less serious breaches of the Regulation.

With such concessions, the government’s motion was supported. As noted above, two amendments to respectively define ‘user’ by the concept of cumulative use, and to institute mandatory rests breaks or alternative tasks by two legislators in favour of more protection for employees were defeated.
4. **FR involvement in the policy-making processes**

Following the framework used in the preceding case study, we start the examination of FR involvement in policy making on the Regulation by looking at their membership in relevant arenas. In this case, one major theatre of activity was the subcommittee. Unlike the picture in the last case, FRs were conspicuous by their presence in the subcommittee. As shown in Table 24, of the total of 14 members in the subcommittee, 10 were FRs. There were only three GRs and one Election Committee member.

All major political parties and groups were represented in the subcommittee. Of the 14 subcommittee members, two were Liberal Party members. The Democratic Party, the DAB, the Frontier, and the Hong Kong Progressive Alliance

Table 24. Membership of the Subcommittee on Occupational Safety and Health (Display Screen Equipment) Regulation

<table>
<thead>
<tr>
<th>Name</th>
<th>Political affiliation</th>
<th>Method of election</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sin Chung-kai</td>
<td>Democratic Party</td>
<td>FC (Information Technology)</td>
</tr>
<tr>
<td>Ting Woo-shou, Kenneth</td>
<td>Liberal Party</td>
<td>FC (Industrial (First))</td>
</tr>
<tr>
<td>Lau Kin-yee, Miriam</td>
<td>Liberal Party</td>
<td>FC (Transport)</td>
</tr>
<tr>
<td>Leung Fu-wah</td>
<td>DAB/ Hong Kong Federation of Trade Unions</td>
<td>FC (Labour)</td>
</tr>
<tr>
<td>Hui Cheung-ching</td>
<td>HK Progressive Alliance</td>
<td>FC (Import and Export)</td>
</tr>
<tr>
<td>Li Fung-ying</td>
<td>Federation of Hong Kong and Kowloon Labour Unions</td>
<td>FC (Labour)</td>
</tr>
<tr>
<td>Lo Wing-lok</td>
<td>Independent</td>
<td>FC (Medical)</td>
</tr>
<tr>
<td>Mak Kwok-fung, Michael</td>
<td>Independent</td>
<td>FC (Health Services)</td>
</tr>
<tr>
<td>Wu King-cheong, Henry</td>
<td>Independent</td>
<td>FC (Finance Services)</td>
</tr>
<tr>
<td>Ho Chung-tai, Raymond</td>
<td>Independent</td>
<td>FC (Engineering)</td>
</tr>
<tr>
<td>Cheng Kar-foo, Andrew (Chairperson)</td>
<td>Democratic Party</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Ho Sau-lan, Cyd</td>
<td>The Frontier</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Lee Cheuk-yan</td>
<td>Hong Kong Confederation of Trade Unions</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Yeung Yiu-chung</td>
<td>DAB</td>
<td>Election Committee</td>
</tr>
</tbody>
</table>

(DAB = Democratic Alliance for Betterment of Hong Kong)

(HKPA) were each represented by one member. As far as the FRs were concerned, of the 13 ‘independent’ FRs in LegCo, that is, those without formal political affiliation (see Appendix 15), four were in the subcommittee. In the words of one legislator, ‘the membership of the subcommittee was quite representative of the membership of the council’.

If one looks at the episode from a capital-labour dichotomy perspective and considers interest representation thereof, it explains why the Liberal Party, a pro-business party, was represented by two members although both had a second capacity as FRs, for the Transport and the Industrial (First) constituencies respectively. It might also account for the presence of two other independent FRs, namely, the FR for Financial Services and the FR for Engineering. These two and the FR for Import and Export (also representing the HKPA) might be taken to stand more for conservative interests and therefore more sympathetic to business concerns. On the other hand, labour’s cause was represented by two Labour FRs and one other unionist GR legislator, namely, Lee Cheuk-yan. Broadly speaking, the Democratic Party, the DAB and the Frontier can also be taken to be generally friendly to labour interests. As for the FRs for Information Technology, Medicine and Health Services respectively, as surmised above, their presence might have to do with the scientific angle pertaining to the subject matter.

Compared to their membership of panels and other committees in general, and specifically in the relevant panel and bills committee in the preceding case study, FRs appeared to be much more engaged in the present case. They constituted close to 72% of the subcommittee membership, representing one-third of the total FR membership in the legislature.

When it comes to making speeches in the debate to approve the proposed Regulation in the legislature, the records of the FRs, while not abysmal, are however less impressive. Table 25 shows that of the 13 legislators who spoke on the motion, nine were FRs, although it has to be noted that six were subcommittee members. If one agrees that the Regulation stood to impact on almost all functional constituencies and the FRs should therefore all be concerned, this is not obvious from their speech-making. Given a contingent of 30 in the legislature, only three of the FRs apart from those who were subcommittee members were concerned enough to participate in the debates on the Regulation. It is true that some would have been represented by their party spokesman or other party colleague so that they felt no need to make an individual speech, but it is also possible that most FRs had not seen the Regulation in the light of sectoral interests and had resolved to take a pro-government stance in any case. As it turned out, the Regulation was agreeable to most FRs, judging from records on amendments and the final votes.

One clear sign that the FRs had found the proposed Regulation wholly acceptable was that no FR moved any amendment to it at all. As shown in Table 26, there were only two amendments moved to the Regulation, both by GRs, and as a matter of fact, both were vetoed by the FRs. In other words, the
government’s proposed Regulation was approved intact. The voting records are shown in Tables 27 and 28.

In connection to Lee Cheuk-yan’s amendment, among the 28 GRs/ECRs present for the voting, 14 were in favour of the amendment and 13 were against; among the 25 functional representatives present, six were in favour and 19 were against. Since the amendment had to be subject to split voting by the two groups of legislators and since it failed to be passed by the functional representatives, it was in effect scuttled by the FRs.

As for Andrew Cheng’s amendment, among the 28 GRs/ECRs present, 14 were in favour while 13 were against; among 25 functional representatives present, five were in favour and 20 were against. By the same token, under the split-voting mechanism, Cheng’s amendment was sunk by the FRs.

Having rejected the amendments, legislators then voted on the government’s proposal. This was passed without division or opposing votes, the Regulation was thus approved unanimously.

Table 25. Member speeches in the debate to approve the Occupational Safety and Health (Display Screen Equipment) Regulation

<table>
<thead>
<tr>
<th>Method of election</th>
<th>Name</th>
<th>Political affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Functional Constituency</td>
<td>Young, Howard</td>
<td>Liberal Party</td>
</tr>
<tr>
<td></td>
<td>Tien Pei-chun, James</td>
<td>Liberal Party</td>
</tr>
<tr>
<td></td>
<td>Lau Kin-yea, Miriam</td>
<td>Liberal Party</td>
</tr>
<tr>
<td></td>
<td>Leung Fu-wah</td>
<td>DAB/Hong Kong Federation of Trade Unions</td>
</tr>
<tr>
<td></td>
<td>Sin Chung-kai</td>
<td>Democratic Party</td>
</tr>
<tr>
<td></td>
<td>Hui Cheung-ching</td>
<td>HK Progressive Alliance</td>
</tr>
<tr>
<td></td>
<td>Lui Ming-wah</td>
<td>Independent</td>
</tr>
<tr>
<td></td>
<td>Lo Wing-lok</td>
<td>Independent</td>
</tr>
<tr>
<td></td>
<td>Ng, Margaret</td>
<td>Independent</td>
</tr>
<tr>
<td>Geographical Constituency</td>
<td>Cheng Kar-foo, Andrew</td>
<td>Democratic Party</td>
</tr>
<tr>
<td></td>
<td>Lee Cheuk-yan</td>
<td>Hong Kong Confederation of Trade Unions</td>
</tr>
<tr>
<td></td>
<td>Leung Yiu-chung</td>
<td>Neighbourhood and Workers’ Service Centre</td>
</tr>
<tr>
<td>Election Committee</td>
<td>Yeung Yiu-chung</td>
<td>DAB</td>
</tr>
</tbody>
</table>

(DAB = Democratic Alliance for Betterment of Hong Kong)

5. Whose views? Whose interests?

In gauging the participation and policy positions of the FRs, this section will start with some general comments about the performance of FRs as a whole. These comments were based on the presumption made at the beginning of this case analysis that most FRs should or would be concerned at the possible impact of the Regulation on their respective constituencies and that they would likely contribute sectoral views on the issue. The examination will then focus on a few FRs whose positions could perhaps render some clue as to what the debate was really about and which might, in turn, help to explain the behaviour of the other FRs.

It has been pointed out that the major theatres of activity in this case were the subcommittee and the House Committee. For legislators who did not join the subcommittee, the main opportunities for them to participate in the deliberations on the Regulation were in the House Committee and the final voting debate. During the whole episode, the House Committee had had four meetings. There was not much substantive discussion in the first two or the last meetings. At the first meeting in November 2000, the House Committee was notified of the impending government motion on the proposed Regulation and decided to set up a subcommittee to study the issue. The second meeting heard the subcommittee chairman report that more discussions on the Regulation would be needed in the subcommittee. The last meeting in March 2002 heard the latest amendments to the proposed legislation before its introduction into the legislature. It was only at the third meeting, on 9 November 2001 upon the subcommittee’s conclusion of its first stage of work, that legislators discussed the issue and the subcommittee report at length.

The subcommittee had had 11 meetings by October 2001 and agreed to the government moving a motion on the Regulation in the legislature. But at the November 2001 House Committee meeting, legislators expressed all kinds of reservations about the proposed legislation. These included questions on

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Table 26. Member amendments to the Occupational Safety and Health (Display Screen Equipment) Regulation

<table>
<thead>
<tr>
<th>Name</th>
<th>No. of amendments</th>
<th>Political affiliation</th>
<th>Method of election</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cheng Kar-foo, Andrew</td>
<td>1</td>
<td>Democratic Party</td>
<td>Geographical Constituency</td>
</tr>
<tr>
<td>Lee Cheuk-yan</td>
<td>1</td>
<td>Hong Kong Confederation of Trade Unions</td>
<td>Geographical Constituency</td>
</tr>
</tbody>
</table>

Table 27. FR voting positions on Lee Cheuk-yan’s amendment to the
Occupational Safety and Health (Display Screen Equipment) Regulation

<table>
<thead>
<tr>
<th>Voting position</th>
<th>Name</th>
<th>Functional constituency</th>
<th>Political affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>For</strong></td>
<td>Cheung Man-kwong</td>
<td>Education</td>
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(DAB = Democratic Alliance for Betterment of Hong Kong)
Source: Legislative Council, Voting Results in Council Meetings
Table 28. FR voting positions on Andrew Cheng’s amendment to the
Occupational Safety and Health (Display Screen Equipment) Regulation

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<th>Voting position</th>
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<th>Functional constituency</th>
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(DAB = Democratic Alliance for Betterment of Hong Kong)
whether specific health problems might not be related to incorrect posture of users rather than prolonged use of DSE, whether public education might not be more effective than legislation in achieving the objective, concerns about offences of strict liability and practical difficulties in enforcement, and above all, the newly raised concern about the cost implication of the Regulation and its impact on the business environment in general. Apart from the last, the other concerns had also been aired in subcommittee meetings.

Most of the legislators who expressed these reservations were FRs of business or professional backgrounds.64 These views had the common concerns of the possible impact on the business environment and additional burdens on employers. There does not appear to have been comment about particular modes of IT application or idiosyncratic conditions pertaining to individual trades or sectors. This was despite the objection by the same group of legislators against uniformity and rigidity in terms of the standards required for reasons of varying conditions and problems of practicability in different trades.65 Indeed, it had to befall a fellow FR, Sin Chung-kai representing Information Technology, to remind his colleagues that ‘as the Regulation would apply to all workplaces in which DSE users worked, Members should consult the relevant trade association, professional bodies and other organisations concerned on the practical difficulties they envisaged in complying with the Regulation’.66 However, at the voting debate on the Regulation, legislators of similar backgrounds repeated largely the same general rather than sector-specific worries.

Against expectation, therefore, it appears the impact of the Regulation was not seen mainly from individual sectoral perspectives but rather taken as having generic implications for doing business in general. That the implications of the Regulation did not appear to be seen as sector-specific perhaps helps to explain the complete silence of about half of the FRs in the deliberation processes. Even for those who did participate, at different stages and in the different arenas of the subcommittee, the House Committee and the voting debate, not many sectoral views appeared to have been brought to bear on the deliberations of the Regulation.

In the absence of unique sectoral relevance, it is noteworthy that party positions and economic worldviews appeared to provide some FRs with an anchor for their positions on the issue. In this connection, the speeches of three of the four FRs who spoke at the voting debate were revealing. Leaving aside for the moment the immediate sectoral FRs, that is, for Labour and those for the four commercial and industrial functional constituencies, and the three professional FRs for Information Technology, Medical and Health Services, who would be examined in the next section, only four FRs chose to speak in the voting debate. These were Hui Cheung-ching of Import and Export and Miriam Lau of Transport, who were also subcommittee members, and Howard Young of Tourism and Margaret Ng of the Legal sector.

Hui Cheung-ching, FR for Import and Export, but also a member of the Hong Kong Progressive Alliance, made it clear as he rose to speak that he was
speaking on behalf of the HKPA. Significantly, he hardly made any reference to his sector at all. In his words, ‘[a]s the actual situation faced by different trades varies … law will make it impossible for officers in charge of enterprises to make work arrangements in a flexible manner. This will consequently affect the operation of individual trades and industries.’ All references were about the ‘operation of enterprises’ and ‘the administrative work and business costs of enterprises’.

Miriam Lau, FR for Transport and a member of the Liberal Party, similar spoke entirely in the capacity of a party member. Lau had throughout the whole deliberation process been very vocal, studying provisions of the proposed Regulation in great detail, and was persistent in seeking clarifications and concessions from the government in subcommittee deliberations. Again, rather than relating to her own sector, all Lau’s queries and concerns were about the implications of the Regulation for the business community and employer obligations. ‘The Liberal Party opposes the making of legislation and provisions that will have negative impact on the business environment given the present economic downturn and an increasingly difficult business environment. Subjecting employers to offences of strict liability arbitrarily will only increase the pressure on employers.’ She delivered the whole of her debate speech in the name of the Liberal party.

The case of Lau’s party colleague, Howard Young, FR for Tourism, is similarly revealing. While Young openly acknowledged his formal capacity as a functional representative of Tourism and commented on use of DSE in his sector briefly, it was obvious he saw his sector, the business community at large and his party having almost identical interests. He was at ease in sometimes speaking in the capacity of an FR, sometimes in the name of his party and sometimes both. Thus, ‘[a]s a representative of the tourism sector, which comprises travel agents and hoteliers, I shall simply admit that I am representing the industrial and commercial sector since my constituents belong to the industrial and commercial sector’, ‘I feel that regardless of businessmen or SMEs, a better business environment means lower costs’, ‘[i]f we rigidly require employers to arrange from time to time other assignments for employees who have been continuously using DSE for more than four hours, I think that is unrealistic and a waste of time, and eventually the draconian regulation will only add administrative pressure and operational cost to employers.’

Of the four FRs speaking at the voting debate who were not immediate sectoral FRs in this case, only Margaret Ng did not take an obvious ‘business versus labour’ course of argument. Ng’s conception of her role, though not explicitly stated, is illuminating. Recall that in the preceding case study, Shek Lai-him had doubted his own qualification to speak on the Education Bill as he was not a member of the Bills Committee and he eventually decided to make his comments in the capacity of a citizen. He also resolved to support the government on trust of the latter’s good intent. In this case, Ng, while also not a member of the subcommittee, had the following to say:
It is the obligation of all employers to ensure the occupational safety and health of their employees, which is why every civilised community should support the cause without hesitation. I very much agree that laws should be made to set down the minimum legal responsibilities of employers or responsible persons. I also agree that a policy should be formulated to encourage the cooperation of employees and employers in raising occupational safety and health standards, with a view to creating a good working environment.\(^7^0\)

Thus, ‘[a]lthough the occupational safety standards provided for in the Regulation are rather low, we have after all taken a solid first step’, and ‘[a]lthough I understand that the labour side may still be a bit worried, I nonetheless think that with a mechanism, there will always be room for development in the future’. Significantly and diametrically opposite to Shek’s position: ‘though I was not a member of the relevant subcommittee, I still think that I should also exert personal efforts to assist in passing the Regulation.’\(^7^1\)

Apparently, Ng had given considered thought to the substantive issues at stake and taken a position on reasoned grounds. In the remainder of her speech, she contributed her expertise as a legal practitioner and explained why she thought, with the elaborated meaning of ‘user’ in the code of practice, the two amendments by Lee Cheuk-yan and Andrew Cheng would instead muddle the clarity of the intention of the Regulation and were therefore unnecessary.

To briefly recapitulate on this section, let us summarise a few observations. Firstly, half of the FRs were completely silent in the deliberation processes on the Regulation. This was against an early expectation that given the potential implications of the Regulation for all functional sectors, most FRs would have had sector-specific input to make. Secondly, for those FRs who did participate in the deliberations, there was also not much sign that the Regulation was read in sector-specific terms, rather, it was considered to have generic implications for the business environment in general and very much in a business versus labour context. Thirdly, most FRs voted to support the government and against amendments introduced by two legislators to the Regulation.

In this section, views in favour of more protection for employees have not been discussed because these were very much left for the Labour FRs to promote. In other words, apart from the FRs for Labour, the other FRs had either not spoken on the issue, or when they spoke, they had largely taken the business and employer’s perspective as illustrated above. The next section will therefore examine the roles of the immediate sectoral FRs, namely, for Labour and the Commercial and Industrial constituencies. The section will also study the positions and input of the three ‘professional’ FRs, for Information Technology, Medicine, and Health Services respectively, whose expertise this study considers might have special relevance for the issues under debate.
6. The roles of the relevant FRs

The Commercial and Industrial FRs

Among the functional representatives, there were four to represent commercial and industrial interests, namely, Commercial First, Commercial Second, Industrial First, and Industrial Second. Notwithstanding the suggestion above that the Regulation stood to impact on all functional constituencies, it is possible that one reads it as having more direct and immediate impact on the four sectors and expects more conspicuous reactions from their FRs. The reality varies from FR to FR. The FR for Commercial Second, Philip Wong, never made an appearance in the episode and did not even turn up for the vote. The FR for Industrial Second, Lui Ming-wah, managed only a very brief speech in the voting debate, mainly to oppose the two amendments to the Regulation. The FR for Commercial First, James Tien, did make an effort to attend three subcommittee meetings after the House Committee asked the former to continue its work on the Regulation and also spoke at length in the voting debate. It is not clear, however, in what capacity he was making his speech. While Tien started his speech by making reference to the viewpoint of the business sector on the Regulation and voiced concern in particular for small and medium enterprises, he progressively merged the business sector’s views with those of the Liberal Party, of which he was chairman, and ended up talking more about his party’s position than that of his constituency.72 The last of the four FRs, the FR for Industrial First, Kenneth Ting, was a member of the subcommittee. There is however no strong sign that he had tried to advance a distinct sectoral view, if there was one. The FR did not speak in the voting debate. It seems fair to say, therefore, that the FRs representing commercial and industrial interests had neither considered their sectors to be specifically threatened by the Regulation nor found it necessary to advance sector-specific viewpoints, if any, distinct from general business perspectives.

The Labour FRs

On a Regulation to provide added protection to employees, the FRs for Labour naturally have to be the protagonists. There were three FRs for Labour, namely, Leung Fu-wah, Li Fung-ying, and Chan Kwok-keung. Leung and Li were subcommittee members; Chan never made an appearance in process, or voted, this may be because he had the same political affiliations as Leung, both belonging to the DAB and the Federation of Trade Unions.

While a subcommittee member, the participation and input of Li cannot be considered substantial. In the subcommittee’s first 11 meetings, there was no record of her speaking in three of the meeting minutes. Where she was indicated to have spoken in the other meetings, she might have spoken once or twice and only to endorse or clarify a view expressed by another member. She also did not speak at the November 2001 meeting where business-oriented legislators sought
to dilute the provisions of the proposed Regulation or in the voting debate. She did vote in support of the two amendments.

By contrast, Leung was altogether much more engaged throughout the whole process. During subcommittee meetings, Leung had more than once provided background information on the origin of the Regulation when it was first considered by the Labour Advisory Board, of which he used to be a member, explained the relationship between the Regulation and the umbrella legislation, the OSHO, counter-argued viewpoints expressed by business-oriented subcommittee members, and expressed impatience that the subcommittee was unduly dragging its deliberations on the Regulation. In his voting debate speech, he expressed relief that after all, the Regulation had survived pro-business legislators’ attempt to abort it and made its way to voting in the legislature. He pleaded for those against the Regulation to take a longer-term view and see the benefits of ensuring the occupational safety of employees as the latter were assets in doing business. Notwithstanding, he voted against the two amendments, seemingly on the grounds that the subcommittee had not dealt with the second amendment in detail while the first amendment would have to wait, pending more medical evidence to establish more direct relationships between a certain duration of DSE use and specific health problems.

Thus, while there were three FRs for Labour, as far as this particular case is concerned, only one can be seen as arguing the case for labour with some degree of diligence and vigour. In this connection, it is noteworthy that the members who appeared to champion the cause of labour the hardest in the whole process and in subcommittee meetings were two geographically-elected legislators, namely, Lee Cheuk-yan and Andrew Cheng, the former a long-time unionist and the latter, chairman of the subcommittee and spokesperson of the Democratic Party on labour issues. As a matter of fact, it was the two, not any of the Labour FRs, who moved amendments to the Regulation in an attempt to legislate for more protection for employees.

The professional FRs
Given the nature of the issue, involving a relationship between DSE use and specific health problems, this study surmises that three professional FRs, namely, for Information Technology, Medicine, and Health Services might have particular relevant expertise to contribute to the deliberations. As a matter of fact, all three FRs were members of the subcommittee.

Of the three FRs, the FR for Health Services, Michael Mak quite obviously had the least to contribute. Out of 15 subcommittee meetings, he was shown to be completely silent in 10 of the meeting minutes. For the other five meetings in which he did speak, it was mainly to seek clarification on certain provisions in the Regulation and related measures. He did not speak in the November 2001 House Committee meeting in which the disagreement between business-oriented and labour-oriented legislators came to a head. He also was silent in the voting debate but voted to support the two amendments.
The participation and input of the FR for Medicine, Dr Lo Wing-lok were a little more substantial but mainly concentrated in the latter part of the deliberation process. It is interesting to see how Lo defined his own role in the episode. In his voting debate speech, Lo said:

I was one of the first members of the subcommittee at the time of its formation. In the very long scrutiny process, I had the opportunity to witness how employers and employees expounded their respective concerns about the Regulation, how they negotiated and bargained, and how they finally arrived at a scheme acceptable to the majority of subcommittee members. I participated in the work of the subcommittee neither as an employees’ representative nor as an employers’ representative. Instead, I was there to study the Regulation from the professional and scientific perspectives, with at the same time a detached and objective standpoint.

In fact, Lo was absent twice from the subcommittee’s 15 meetings and was completely silent for another seven. His input was minimal before the November 2001 House meeting and did not include distinctly ‘medical’ advice. It was only after the House meeting that he pursued the definition of ‘user’ and solicited some medical research findings to support the definition pushed by pro-labour legislators. He had consulted a medical professor at the University of Hong Kong who pointed out that most relevant literature and records of other countries had adopted ‘a cumulative duration of four hours’ as the standard and that the government’s offer to use ‘a continuous duration of four hours’ was without scientific basis. Lo subsequently voted to support Lee Cheuk-yan’s amendment to revise the definition of ‘user’ in the Regulation on the basis of cumulative rather than continuous duration. He however vetoed Andrew Cheng’s amendment for mandatory rest breaks or alternative tasks ‘because the circumstances of different trades and industries vary greatly’.

In taking the expert, scientific, high ground and claiming to be speaking from a detached and objective viewpoint, one wonders however how Lo saw the substance of his role as a functional representative. To start with, one wonders if the issue of DSE use did not have any implication for the medical sector. Hospitals and clinics probably are one of the high users of DSE in various ways and medical doctors and trainees have as part of their jobs to input patient data into computer systems. In subcommittee meetings and in the voting debate speech, one does not hear Lo comment on DSE use in the medical sector. Secondly, the government and legislators had argued about the relationship between prolonged DSE use and specific health problems like upper limb pains and discomfort, eyestrain, fatigue and stress. There were concerns that these problems could develop into chronic health problems requiring long-term treatment which would be expensive to both employers and employees alike, and ultimately to the health care service at large. There was nonetheless not much sign of
Lo rendering any expert clarification or advice or arbitrating between conflicting views. It appears Lo’s main contribution to the whole episode was in relaying the medical professor’s view and in pursuing the same point in the rest of the policy-making process which, however, was drawing to a close.

Among the three professional FRs, it is probably fair to say that the IT FR was the most participatory in terms of both substance and frequency, although he was absent from five subcommittee meetings. The FR appeared to take a while to warm to the work of the subcommittee so that his participation and input became more frequent and substantive only after the first several meetings. Nonetheless, in subcommittee meetings, the FR more than once cited examples on IT applications to exhort care in making certain breaches of the Regulation criminal offences and to support the idea of mandatory rest breaks or alternative duties after prolonged DSE use. The FR was conscious he represented the information technology sector and said as much in the voting debate. He consulted his constituents and reported major sectoral feedback to the subcommittee, outlining the major queries and recommendations from his constituents on the Regulation. He even suggested to fellow legislators that they should consult relevant trade associations and professional bodies to gauge the practical difficulties of implementing the proposed Regulation in different trades and sectors. Being not entirely satisfied with the provisions of the Regulation, he voted to support both amendments.

7. Conclusion

In the last case study, FRs were shown to fall back on political inclination and party affiliation to guide their policy positions in the absence of sectoral relevance. The present case study yields further insights on their legislative behaviour. Firstly, it is not clear how and when FRs perceived sectoral interests. While the proposed legislation stood to impact on all functional sectors, albeit necessarily to different extents, half of the FRs had felt no need to get engaged at all. Secondly, for a number of FRs who did get engaged, there seemed to be a quick and easy identification of sectoral interests with broader business interests as well as party interests. Thus, Miriam Lau, while representative of the Transport functional constituency, openly boasted of the success of the Liberal Party’s ‘repeated lobbying efforts’ in winning concessions from the government. Thirdly, where sectoral interests were advanced, it was the employer’s perspective that was given more prominent articulation. Fourthly, as far as the pro-labour contingent is concerned, judging from the performance of the FRs for Labour, there seems to be no reason to believe that FRs will necessarily always be the most vigorous advocates of sectoral interests. In this case study, it seems it was two geographically-elected legislators who were more persistent than the Labour FRs in trying to promote more protection for employees. Lastly, but not least, to the extent that half of the FRs did not participate in the process, while not much professional advice per se was forthcoming from the
professional FRs either, it follows that the policy-making process was deprived of input from a significant portion of the legislature. This must elicit questions on one of the original intentions of the functional representation scheme, which was to tap the expertise and idiosyncratic knowledge base of different functional sectors.

**Part III. Conclusion**

**Findings of study**

It was pointed out in the introduction of this report that the institution of functional constituencies as a system of representation was informed by two major considerations: incorporating sectoral interests in formal policy making and tapping the idiosyncratic knowledge bases of different economic and professional sectors. As far as the findings of this study are indicative, however, it is not clear how far either rationale has been borne out in practice.

Let us start with the representation of sectoral perspectives and interests. Firstly, if there was an understanding, both on the part of the functional representatives and society at large, that the main responsibilities of these representatives were to advance sectoral perspectives and interests in the legislature, this study has indeed rendered evidence of ‘sectoral loyalty’, hence the ‘role-fixing’ behaviour of the FRs, at least as far as the ‘hard’, quantitative figures show. Where immediate sectoral interests were perceived, FRs were highly participative; where no such direct connection was in sight, the appearance is that FRs became much less interested and not infrequently disengaged from the deliberations altogether.

Secondly, an interesting question is how the representatives interpreted sectoral interests. Both the quantitative and qualitative studies in this research raise the possible spectre of sectoral interests being interpreted very narrowly by the FRs. Thus in the case study on DSE, although the Regulation stood to impact on all FCs, half of the FRs had not felt the need to become involved throughout the whole process. In the study on the Education Bill, many FRs were similarly silent. Whereas in the quantitative study, the four FRs thought to have closer relation to housing issues participated noticeably less in related deliberative processes than other sectoral FRs in their respective policy areas.

Thirdly, the DSE case study shows that sectoral representatives need not by definition be the most vocal advocates of sectoral interests. Many FRs were totally silent in the deliberative processes on the Regulation, whereas the most persistent defenders of labour protection appeared to be two geographical representatives rather than the Labour FRs.

Fourthly, when sectoral interests provided no guide to legislative behaviour, it transpires that FRs usually abstained from the deliberations, then either
followed the party line, for those with political affiliations, or toed the government line, especially for the so-called ‘independents’ when voting time came.

If we now turn attention to the second rationale for the functional representation system, that is, to tap the idiosyncratic knowledge base of different sectors and professions for policy making, the picture is also short of reassuring. Firstly, that many FRs appeared to find no relevance of their experience or expertise for policy making has already been referred to. It is postulated that this may be part of the reason why many were absent from the deliberations, as illustrated both in the quantitative and the qualitative studies. Secondly, where professional expertise appeared to be particularly pertinent, there was however no sign that this was profusely displayed. Thirdly, at least on the part of some FRs, especially those of business backgrounds, there seems to be a close identification of sectoral (usually employers’) interests with party positions and even a broader economic world view; there is not much sign therefore of distinct sectoral perspectives being advanced.

**Implications of study**

Following from the findings presented above, a few questions are worth asking:

1. If FRs do not see engagement and input in policy deliberations as obligatory unless sectoral interests are directly at stake, and if FRs incline to perceive sectoral interests more narrowly than broadly, how do the FRs spend their time in the legislature and what are the implications for policy making if legislative processes are frequently devoid of the concern and input of a significant portion of the legislators?

2. If FRs care most about and speak up mainly for sectoral interests, since FRs compose half of the legislature, do sectoral interests conflict with wider ‘public interests’ and if they do, how often, and how should such conflicts be resolved?

3. If, in the case of issues not perceived as directly sectorally relevant, distinct sectoral perspectives are seldom articulated, rather that party positions, relations with the government, or even broader world views appear to bear on the legislative behaviour of FRs more of the time, what is the need for sectoral incorporation, and by extension, the functional representation system?

4. If GRs could be equally persistent, if not better advocates of certain sectoral interests, is functional representation indispensable?
Limitations of study

As the focus of the study is on social policy alone, the validity of its findings must necessarily be taken with care if generalised to other policy areas.

For reasons of resource and time constraints, the scale of the study is of necessity modest. The quantitative study provides some hard data on FR participation in legislative activities, which however are silent on the nature and quality of substantive input that FRs might have made within meetings. This study has tried to make up for part of the deficiency through two case studies. In this connection, much of the case analyses has relied on official records and meeting minutes openly available, some of which are not entirely comprehensive or detailed. It is therefore possible that the pictures portrayed are only partial. More accurate understanding of the full dynamics of policy making can only be uncovered with investigation of more cases and processes.

For the same reasons of time and resource constraints mentioned above, this study is only a preliminary, fact-finding endeavour to describe FR legislative behaviour in the social policy arena. No attempt has been made to establish the causal factors for the patterns of behaviour observed. This should be a worthwhile direction for further research so that, for example, the impacts of institutional design on behaviour can be more adequately understood.
CHAPTER 8

The contribution of the functional constituencies to economic policy in Hong Kong, 2000–2004

Tony Latter

Introduction and summary

This chapter examines the influence of the 30 Legislative Councillors elected by functional constituencies on key elements of economic policy during the 2000–2004 session, as evidenced, mainly, by their stances taken in debates within the Legislative Council (LegCo) chamber.1

On balance, functional constituency (FC) members are found to have pressed, first and foremost, their constituency interests, and secondarily, in the case of those who were members of political parties, their party’s line, which was in many cases, especially in respect of the Liberal Party, close to the constituency position. Only a third of FC members appeared to express, to any significant degree, independent positions, separate from those determined by constituency or party.

The business sector, in the broadest sense, has a dominant representation among the FCs, while groups such as consumers or the elderly lack any explicit representation. As might be expected, the business sector representatives were the most vocal on economic issues, while some others that might have been expected to show an interest in economic policy, such as the labour group, tended, disappointingly, to focus on a rather narrower range of essentially parochial topics.

Under pressure of constituency interests and the weight of business representation, the FC system tended to deliver, in its opinions and recommendations, a bias towards more government intervention in the economy than has been traditional in Hong Kong. To the extent that the government may be judged to have become somewhat more interventionist, the FC system may have contributed in that direction.

There were a few FC members who made very little contribution on economic issues. In some instances this was probably because their time was fully pre-empted by constituency or personal LegCo-related interests in other fields, but in other instances it may simply have reflected the fact that, because the FC
system does not make them answerable to anyone beyond their constituencies, they saw little need to become involved in wider issues affecting the community.

**Aims and methodology**

By way of background, the FCs account for 30 of the 60 seats in LegCo. Their functional alignment is heavily skewed towards business interests in the broadest sense, as the following breakdown shows:

- Industry, agriculture, commerce, sales and tourism: 13 seats
- Finance, professions and business services: 9 seats
- Labour, and social and welfare services: 5 seats
- Other: 3 seats

Half of the elected FC councillors for the 2000–2004 session had formal party affiliations, as follows:

- Liberal Party (LP): 8
- Democratic Party: 3
- Democratic Alliance for the Betterment of Hong Kong (DAB): 3
- Hong Kong Progressive Alliance (HKPA): 1

Of the remainder, six were members of the so-called Breakfast Group, which was an informal alliance, essentially of representatives of some of the professions, formed in 1991.²

The method of this study has been to examine, from the official verbatim records of LegCo proceedings³ for the entire period, the views expressed on economic issues by each of the 30 FC members. The focus has been on the substance of their speeches. No account has been taken of voting records, since these tend to reveal only a very summary attitude to any particular topic — such as a single vote at the end of a long debate on the Budget or on the chief executive’s policy address.

The personal or constituency websites of those members who maintained such sites in English have also been explored, but in no instance were these found to offer any information or insights which were not already evident from the member’s contributions within LegCo.

In trawling through four years of records it was necessary to be somewhat selective. Most attention has been given to speeches during debates, and relatively little to contributions at question time, which tend to be geared more to fact-finding or executive matters than to policy issues; to the extent that question-time proceedings do reveal policy positions of members, these positions tend to be close to those rehearsed in more detail during debates at other times.
It is acknowledged that, by focusing almost exclusively on contributions made within the LegCo chamber, the picture may not be entirely complete, but it is reasonable to presume that the essentials of each member’s views on economic policy will have been revealed in the course of four years of LegCo sessions.

The focus of this study is economic policy, and the influence that the FC system may have brought to bear on it. Some members may receive rather little coverage in the study, for the simple reason that neither their constituency nor, one might infer, their personal interests, lay much in the economics field. This should in no way belittle significant contributions which some (though not necessarily all) of them may have made in other policy domains. Despite only meagre contributions from some of their number, many members from the FC bloc made substantial contributions to the economic policy debate.

The study concentrates on the key components of economic policy. These include broad questions of fiscal policy, including its role in cyclical adjustment and poverty alleviation, the structure of taxation, and the funding of deficits; the degree of government intervention in supporting particular sectors; economic aspects of immigration; macro strategies for infrastructure, housing and land policy. There are of course important economic considerations in other areas of policy, such as health, education and the environment, and it is therefore difficult to draw the line precisely. But, generally speaking, the focus here is on the ‘big picture’ direction of economic policy.

Finally, it should be emphasised that this study relates only to FC councilors. Nothing should be inferred about the attitudes or contributions of the other 30 members of the Council, of whom, for the 2000–2004 session, 24 were elected from the geographic constituencies and six by the Election Committee.

Findings

The annex to this chapter provides a brief portrait of each of the 30 FC councilors in respect of their contributions on economic issues. It attempts inter alia to identify how much of that input merely pressed the points of view or vested interests of the respective constituencies, and, in cases of membership of a political party, how much was a rehearsal of the party position. The summaries in the annex do not detail exhaustively the policy platforms of the functional constituencies or the parties, but, where relevant, they do record the fact that the member was active for such causes. The summaries also flag the instances where members contributed input which could not obviously be classified as either constituency or party-related, but rather displayed a degree of independent opinion.

Table 1 below brings together the findings in the form of a score-sheet of contributions to economic discussions. It is necessary to caution that this inevitably involves a significant degree of subjective judgement. The scoring indicates the extent to which constituency or party interests are deemed to have influenced members’ contributions, and the extent to which members are deemed to have expressed views that appeared to be independent of those interests.
Table 1. Inputs to economic policy

Columns (i), (ii) and (iii) measure, on a scale of 0–3, the intensity with which members, in their input to key economic policy issues, were observed (i) to press constituency interests; (ii) to press their party’s stance (a zero score is reserved for, and automatically assigned to, those without a formal party affiliation); and (iii) to express other, more independent views.

<table>
<thead>
<tr>
<th>Member</th>
<th>Constituency</th>
<th>Political party</th>
<th>(i) Constituency interests</th>
<th>(ii) Party line</th>
<th>(iii) Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chan, Bernard</td>
<td>Insurance</td>
<td>—*</td>
<td>1</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Chan Kwok-keung</td>
<td>Labour(1)</td>
<td>DAB</td>
<td>3</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Cheung Man-kwong</td>
<td>Education</td>
<td>DP</td>
<td>3</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Cheung Yu-yan, Tommy</td>
<td>Catering</td>
<td>LP</td>
<td>3</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Chow Liang Shuk-yeo,</td>
<td>Wholesale, Retail</td>
<td>LP</td>
<td>2</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Fok Tsun-ting, Timothy</td>
<td>Sports, Culture, etc.</td>
<td>—*</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Ho Chung-tai, Raymond</td>
<td>Engineering</td>
<td>—*</td>
<td>3</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Hui Cheung-ching</td>
<td>Import/Export</td>
<td>HKPA</td>
<td>3</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Ip Kwok-him</td>
<td>District Councils</td>
<td>DAB</td>
<td>1</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Lau Kin-yee, Miriam</td>
<td>Transport</td>
<td>LP</td>
<td>3</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Lau Ping-cheung</td>
<td>Architectural, etc</td>
<td>—*</td>
<td>3</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Lau Wong-fat</td>
<td>Heung Yee Kuk</td>
<td>LP</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Law Chi-kwong</td>
<td>Social Welfare</td>
<td>DP</td>
<td>2</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Leung Fu-wah</td>
<td>Labour (3)</td>
<td>—*</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Leung Lau Yau-fun,</td>
<td>Sophie Textiles,</td>
<td>LP</td>
<td>3</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Li Fung-ying</td>
<td>Labour (2)</td>
<td>—*</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Li Ka-cheung, Eric</td>
<td>Accountancy</td>
<td>—*</td>
<td>3</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Li Kwok-po, David</td>
<td>Finance</td>
<td>—*</td>
<td>2</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Lo Wing-lok</td>
<td>Medical</td>
<td>—*</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Lui Ming-wah</td>
<td>Industrial (2)</td>
<td>—*</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Mak Kwok-fung, Michael</td>
<td>Health Services</td>
<td>—*</td>
<td>2</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Ng, Margaret</td>
<td>Legal</td>
<td>—*</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
Table 2 gives an alternative presentation of those scores. The clustering in the bottom two rows demonstrates the strength of constituency interests — which is scarcely surprising in the general FC context. By comparison, for the half of FC councillors who were members of political parties, the strength of party influence was quite evenly spread (seen essentially by the distribution across columns 1–3). The majority of those with independent views were not affiliated to a party (thus appearing in column 0).

Table 2. Pattern of inputs to economic policy

<table>
<thead>
<tr>
<th>Influence of party line:</th>
<th>No party</th>
<th>weak ↔ strong</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Score under (ii) in table 1</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Score under (i) in table 1</td>
<td></td>
</tr>
<tr>
<td>Influence of constituency interests:</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>weak</td>
<td>d</td>
<td>a</td>
</tr>
<tr>
<td>↑</td>
<td>aaabb</td>
<td>ab</td>
</tr>
<tr>
<td>↓</td>
<td>aaaaa</td>
<td>aaaa</td>
</tr>
<tr>
<td>strong</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Each letter represents one councillor; indicating, as per column (iii) in table 1, whether he/she is judged to have provided:

- a little or no input beyond constituency interests or party line
- b occasional input beyond constituency interests or party line
- c more significant input beyond constituency interests or party line
- d substantial input beyond constituency interests or party line.

From the profiles in the annex and the tabulations above, the following points emerge:

- For all members bar three, constituency interests were a major influence (with a score of 2 or 3) on economic input. The exceptions — the District Council, Heung Yee Kuk and Insurance representatives — can probably be explained by the fact that their specific constituency agendas are either rather narrowly focused or not mainstream to macroeconomic issues.

- In some cases — notably several members of the Liberal Party — there was a very significant overlap between constituency and party influences on their positions on economic questions. Additionally, for several of these, personal business interests were virtually identical to those of the constituency.

- Members whose constituency concerns were most closely linked to the general health of the economy might, other things being equal, have been expected to be most active in contributions to economic debates. This was certainly true for many of those with broadly based industrial or commercial interests — for example, Selina Chow, Raymond Ho, Hui Cheung-ching, Lau Ping-cheung, Sophie Leung, Abraham Shek, Sin Chung-kai, James Tien, Kenneth Ting and Howard Young.

- Among those whose constituency interests did not necessarily draw them so directly into the broad economic debate, some were nevertheless significant contributors to it — Bernard Chan, Eric Li and Michael Mak, for example.

- A significant number, from across the whole spectrum, remained, with such contributions as they may have made to economic debates very narrowly focused on their constituency interests. This group included the three labour representatives — Chan Kwok-keung, Leung Fu-wah and Li Fung-ying — together with Timothy Fok (Sports and Culture), Miriam Lau (Transport), Lau Wong-fat (Heung Yee Kuk), Lo Wing-lok (Medical), Margaret Ng (Legal), Wong Yung-kan (Agriculture and Fisheries) and Henry Wu (Financial Services).
• The differing intensities with which members with party affiliations voiced the respective party lines was probably a reflection, at least in part, of the way in which parties allocated ‘spokesman’ responsibilities. For example, Sin Chung-kai for the DP and James Tien and Kenneth Ting for the LP were plainly frontline spokesmen (whether or not formally designated) for their respective parties on economic issues, whereas Cheung Man-kwong (DP) and Lau Wong-fat (LP) clearly were not. And, of the three FC members from the DAB, Ip Kwok-him appeared mostly to make the running on economic issues.

• Only ten members are assessed to have displayed independent opinions to any significant extent — views that were separate from any constituency or party positions. As might be expected, the majority (seven) of those had no party affiliation, and included four out of the six Breakfast Group FC members. The other three were Selina Chow, Hui Cheung-ching and Sin Chung-kai, who, despite exhibiting strong loyalties to their respective constituencies and parties, at least showed signs of being able to stand back and appreciate the bigger picture. None of this means that the other 20 councillors were necessarily bereft of vision, but rather that, as one might expect by dint of their decision to represent a constituency or join a party, their personal ideas were adequately encapsulated by the constituency or party position.

The fact that FC members fight for constituency interests is unsurprising and does not of itself detract from the system. Even in the case of geographic constituencies, and as is commonplace with legislators, congressmen or parliamentarians in other, more conventionally democratic, jurisdictions, the elected representatives may be strongly partisan to certain interest groups. The important distinguishing feature of Hong Kong’s system is that representatives of FCs may never be called upon to intercede for constituents on issues outside the FC realm, and may not therefore feel obligated to stay alert to the needs of the citizenry as a whole. As a result they may, if they choose, largely close their eyes to issues beyond their own constituency and play little role in the formulation of policy in other fields. That helps to explain why, as may be inferred from the portraits in the annex, some councillors appeared largely inert in matters of economic policy.

Only a minority of FC councillors emerge from this study as having what one might characterise as a holistic view of economic policy (as opposed to a narrower, more parochial outlook). Despite mainly espousing their respective constituency or party lines, Selina Chow, Hui Cheung-ching, Sin Chung-kai, James Tien and Kenneth Ting could be placed in that category. Meanwhile, among those without any party affiliation, some of the Breakfast Group from time to time offered original or refreshing views. For example, Bernard Chan, though he intervened less frequently than many others, plainly recognised both the need for a consistent overall framework for economic policy and the obvious
truth — though one that others seemed too often to ignore — that all spending has somehow to be funded, and he articulated those views concisely; Raymond Ho, though mostly devoted to engineering’s parochial interests, sometimes reached out beyond that; Eric Li was notable for his focus on the macroeconomic challenge of Hong Kong’s budgetary situation; and Abraham Shek would occasionally tender outspoken views on miscellaneous topics.

Impact on policy

The most significant impact of the FC system has been to promote the voice of business interests in LegCo. The main reason for this is the large, and arguably disproportionate, weight given to the business community by the system itself. It is notable that, apart from the District Council and Heung Yee Kuk seats (in neither of which the incumbents were particularly active on economic questions), the FCs represent exclusively producers of goods and providers of services. There is no dedicated representation of, for example, consumers, families or pensioners. The three labour constituencies may come closest to representing such interests, but their focus is primarily on people as employees rather than as consumers. Even such constituencies as health services, social welfare and education speak only for the providers of the services, not the recipients. Nor is there any explicit representation for environmental interests, which impinge quite closely on economic matters.

The comparative lack of engagement in ‘big picture’ economic issues by some members from non-business constituencies tended, by default, to reinforce the influence of business interests.

In this context it should also be noted that the Liberal Party, to which eight of the FC members belonged, is also regarded very much as a pro-business party. The FC system has tended to provide mutual reinforcement between the business lobby and the Liberal Party.

Within the business group in particular, most members were seen to press the case for government support in respect of their individual areas of interest. And it appears that, broadly speaking, business-orientated members seldom actively challenged one another’s pleas, perhaps for fear that they might then lose support for their own. The result was the accumulation of a lengthy wish-list directed at the government. This included pleas for more cooperation with the Pearl River Delta authorities; more help for business and professionals to access the Mainland market; more spending on infrastructure; development of a logistics park, a technology processing zone, a border industrial zone, and a design and fashion hub; better tourism facilities; support for the creative arts; and so on. Added to this were the calls, mostly from the labour side, for intervention to create jobs, especially for the low-skilled.

All of this suggests that, despite individual exceptions, in the overall flavour of its opinions and recommendations, the FC system delivered a distinctly interventionist bias. Some policy initiatives which the government has pursued —
such as Cyberport, Disneyland, science and technology parks, the proposed new cultural hub, consideration of a logistics park, Pearl River Delta and pan-Pearl River Delta cooperation, help for the creative arts, extra support for job creation and training — may be taken as evidence that government has responded positively, with perhaps a greater presumption than there was earlier in Hong Kong’s history that government needed to steer the structural direction of the economy. Of course, some of those steps may be regarded simply as the very normal preserve of government in providing hard and soft infrastructure, which government would have pursued anyway. Moreover, because of the overlap between the FCs and the Liberal Party, it would be difficult to separate conclusively the influence of one from the other. Even so, it is difficult to escape the conclusion that the effect of the FC system has, on balance, been to support and encourage government intervention in the Hong Kong economy.

One might reasonably follow that conclusion with an enquiry as to the consequences of such government intervention. This question would itself merit a separate research project. For the moment, the most that can safely be said is that there may have been pluses and minuses. On the one hand, for example, the government’s efforts, partly under pressure from the Hong Kong business community, to expand business opportunities with or on the Mainland (such as via the Closer Economic Partnership Arrangement) can probably be judged as beneficial to Hong Kong as a whole, while, on the other, it is debatable whether a project such as Cyberport can deliver a social rate of return to justify the public resources invested in it (or the revenues foregone).

Closing remarks

The chief impact of the FC system has been to give added voice in Hong Kong for business interests or, to characterise it another way, a voice for producers largely to the exclusion of consumers. But it has also admitted one or two quite independent members to LegCo who might not have chosen to enter politics by the more rumbustious route of the geographic constituencies.

A significant consequence of the business orientation has been an increased pressure for government to intervene to steer economic development. However, the extent of the FCs’ actual influence on policy is unclear, since many of the views of FC business members were coincident with those of the Liberal Party, and because the government may anyway have been minded to move in that direction.

What would happen to economic policy if FCs were abolished and the seats filled instead by universal suffrage? There would be two likely results. First, the weight of business interests would be diluted. Second, to the extent that universally elected councillors would need to pay more attention than FC ones to the needs of, at one extreme, Hong Kong as a whole and, at the other, individual citizens, there might be a more widely informed and purposeful discussion of the economy. But the exact direction which policy might take as a result of such changes is unclear.
Annex

Elected members from functional constituencies 2000–2004: Economic stances

<table>
<thead>
<tr>
<th>Name</th>
<th>Constituency</th>
<th>Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chan, Bernard</td>
<td>Insurance</td>
<td>None (but member of Breakfast Group)</td>
</tr>
</tbody>
</table>

Presses constituency interests when required, but that is not often. More generally, presents independent and coherent views on the economy. Fundamentally opposed to increased government intervention in economy unless strictly justified on cost/benefit basis. Realises that spending has to be paid for. Advocates broader tax base, ‘user pays’ (e.g. those who can afford to pay more for healthcare and housing should do so), ‘polluter pays’, better targeted and fairer social support system, leaner and more efficient civil service. Sceptical of government financial support to business sectors or homebuyers.

| Chan Kwok-keung     | Labour (1st rep) | Democratic Alliance for the Betterment of Hong Kong |

Focused mainly on concerns of constituency and Hong Kong Federation of Trade Unions. Also broad support for DAB line. Emphasis on job preservation and creation, training, combatting illegal workers, etc. Inclined to support any initiatives to help particular sectors, including SMEs. Urges measures to alleviate poverty.

| Cheung Man-kwong    | Education      | Democratic                              |

Predominantly focused on education issues and policy, particularly from standpoint of Hong Kong Professional Teachers Union. Otherwise follows the DP line, but seldom makes substantive contribution on economic matters (though moved a DP motion on tackling unemployment in 2002). Urges that education spending be sustained; and import of Mainland talents should be restricted to protect local jobs, but acknowledges need for education standards to rise to bridge skills gap.
Cheung Yu-yan, Tommy

**Constituency** | Catering  
---|---
**Party** | Liberal

Above all, a vigorous lobbyist for the interests of the catering and related (e.g. tourism) industries — in context, for example, of utilities charges, admission of Mainland chefs, lower wine duty, opposition to sales tax, improved training. Sees some need for help for business to create jobs but generally favours reliance on stronger overall economy to lift employment, rather than artificial measures. Called for suspension of rates and MPF payments during recession. Solid supporter of the LP line on most broad economic issues.

Chow Liang Shuk-ye, Selina

**Constituency** | Wholesale and Retail  
---|---
**Party** | Liberal

Mostly focused on issues relevant to constituents and to the related field of tourism (as chairman of Hong Kong Tourism Board) — e.g. attracting Mainland visitors and resolute opposition to sales tax. Sympathetic to idea of support for fashion/design sector, but also sceptical of efficacy of various government funds to support individual sectors. Urges attention to plight of middle class. Cautions against artificial job creation, preferring to rely on revival of the economy, though acknowledges importance of retraining. Follows LP line on most major economic issues.

Fok Tsun-ting, Timothy

**Constituency** | Sports, Performing Arts, Culture and Publication  
---|---
**Party** | None

Any contributions to debates on the economy tend to concentrate on constituency interests. Only comments in very general terms on wider issues — e.g. need for economic restructuring and to promote regional integration, and concern for quality of life.

Ho Chung-tai, Raymond

**Constituency** | Engineering  
---|---
**Party** | None (but member of Breakfast Group)

One of the most prolific contributors to economic debates, more often than not pressing constituency interests, with calls for more spending on infrastructural projects as a means of sustaining the engineering and construction sectors, to be funded increasingly by bonds or private finance initiatives. Tends also to support business interests more broadly — help for SMEs, housing policies to stabilise
property market, selective admission of Mainland professionals, support for logistics industry, support for professionals accessing Mainland, in favour of levy on foreign domestic helpers, opposition to competition law. But also sympathetic to unemployment insurance and minimum wage, and favours freeze rather than cut in civil servants’ pay. Recognises challenge faced by government in dealing with utilities (schemes of control, water supply agreement, etc).

<table>
<thead>
<tr>
<th>Hui Cheung-ching</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Constituency</strong></td>
</tr>
<tr>
<td><strong>Party</strong></td>
</tr>
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A substantive contributor to economic debates, either expressing the HKPA line or arguing for constituency interests. Urges stronger framework for cross-border cooperation, and smoother access for business, especially SMEs, with more government support where appropriate; improved border infrastructure; progress on logistics park; border industrial zone; new container terminal; etc. Favours containment of government spending — including cuts in civil servants’ pay — and wider tax base, plus tax rises if needed in view of deficit and its possible adverse impact on the currency. Recognises dilemma over regulating utilities. Wants to attract Mainland investment and talents, and raise education quality locally.

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Interventions on economic issues largely confined to espousing the DAB line. Blames negative equity problem on confusions of housing policy. Concerned for middle class. Calls for infrastructural projects to give priority to jobs for locals, and make better use of private market; smaller government and broader tax base; more spending on sport, culture and recreation facilities. Wants to promote employment of low-skilled. Urges government to help seize Pearl River Delta opportunities.

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<th>Lau Kin-yee, Miriam</th>
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Interventions are almost exclusively related to transport issues — fuel tax and vehicle licence fees, cross-border physical and bureaucratic bottlenecks, and transport and logistics infrastructure. Constituency roots among taxi and minibus operators often in evidence. In other matters, generally follows LP line.
Lau Ping-cheung
Constituency: Architectural, Surveying and Planning
Party: None

Principally an advocate of constituency interests: measures to ensure that locals have fair chance in bidding against international consortia for government contracts; assistance for professionals in accessing Mainland; more help for homeowners, including more generous mortgage interest relief; urban renewal; more market-orientated approach to provision of cultural and recreational facilities; expedite infrastructure investment to reduce unemployment. On other matters, tax relief for education to assist middle class, downsize civil service and cut pay, possible need for direct action to relieve poverty, and more market-orientated approach to provision of culture and recreation. Canvasses constituents and mainly aims to reflect their feedback.

Lau Wong-fat
Constituency: Heung Yee Kuk
Party: Liberal

Concerned mainly for constituency interests, rooted in village property rights, etc. By his own admission, not an economist. Rarely speaks on economic issues, and then only in general terms — e.g. in support of restraint in public spending, civil service pay cuts, stabilising property market or revitalising economy.

Law Chi-kwong
Constituency: Social Welfare
Party: Democratic

Concentrates on welfare and environmental issues. Supports DP line, but limits interventions mainly to constituency-related issues — protecting or raising expenditure on social welfare, education and medical services; freeze on fees and charges affecting livelihood; unemployment insurance; and general concern to relieve poverty. But accepts need for greater cost-effectiveness in welfare spending. Also advocate of green taxes, waste recycling, etc.

Leung Fu-wah
Constituency: Labour (3rd rep)
Party: None

Mostly pursues constituency interests (particularly Hong Kong Federation of Trade Unions) — concern to protect local workers’ jobs from immigration or illegal employment, creation of jobs for low-skilled by infrastructure projects, facilitation of ‘dual economy’ where certain industries would be developed for
grassroots workers, need to upgrade local talents. Caution over compression of civil service; wants to ensure that outsourcing gets value for money and workers are paid fairly.

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Mostly pursues constituency interests, but also generally pro-business and speaks to the LP line. Advocates policies to revive or nurture manufacturing in general and of textiles and garments more specifically. Hence support for border industrial zone, concept of ‘community economy’, establishment of fashion and design centre, more training for low-skilled (with emphasis on improved education and life-long learning), reduction in red tape.

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Focuses almost exclusively on labour and poverty issues, representing views of Federation of Hong Kong and Kowloon Labour Unions. Urges more training, especially on-the-job and for grassroots; review of immigration policy to protect local workers; improved social welfare; unemployment insurance; loan scheme for unemployed; protection of workers’ rights; curb on monopolies to protect small businesses; progressive profits tax so that SMEs not hit; freeze on downsizing during recession. Recognises that better education is long-term remedy. Wants non-interventionism to be abandoned and more action to close rich-poor gap. Sympathetic to civil servants. Doubts whether CEPA can help low-skilled.

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Persistent campaigner for more help to SMEs and professionals in accessing Mainland; calls for more negotiating expertise among HK officials. Continually expresses concern over underlying budgetary situation, need for broader tax base, tougher spending stringency, including civil service, and due attention to Basic Law’s stipulations on budget and how these should be interpreted.
Li Kwok-po, David

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Assiduous in conveying constituency views on proposed budget measures, and in pressing for specific actions to assist constituents — e.g. technical tax reform, resisting interference in banks’ commercial decisions, more help to banks in accessing Mainland. Otherwise, seldom speaks on economic issues, but tends to display independent line. Calls for larger cuts in civil service pay, reduced role of public sector, and need for fundamental review of role of government in the economy — but without being more specific.

Lo Wing-lok

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Contributions to economic debates focus almost exclusively on medical and healthcare aspects. No identifiable position on broader economic policy questions.

Lui Ming-wah

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Though seldom armed with detailed proposals, a strong and persistent advocate of activist policies to support ‘backbone’ industries, including manufacturing, enhance infrastructure and improve the business environment — attract investment, create jobs, improve vocational training, exploit CEPA, support logistics sector, develop nanotechnology, etc. Acknowledges that budget position must be rectified, but no proposals as to how industrial policies will fit into or be funded within overall strategy.

Mak Kwok-fung, Michael

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Primarily active on behalf of constituency — pressing for adequate resources for healthcare, improved health education, etc. Otherwise, generally sympathetic to plight of grassroots and middle class. Supports anti-poverty commission, measures to get unemployed back to work, study of minimum wage, freeze or cut in government fees and charges, extension of social security; opposes legislation to enforce civil service pay cut. Sees scope for small rise in profits tax and more progressive salaries tax (but broader bands) to fund assistance to poor.
Ng, Margaret

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Seldom contributes on economic issues, other than to oppose threatened fee increases or spending cuts which might affect judiciary. Wants more government support for lawyers’ access to Mainland. Qualified support for civil service pay cut (but should not become political crusade or justify draconian legislation). Supports idea of anti-poverty commission. Fears tight budget could make deflation worse.

Shek Lai-him, Abraham

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One of the most outspoken and independent-minded members. Primarily concerned for constituency matters and business sector more generally but prepared to chance his arm from time to time on wider issues. Wants to reduce red tape; improve cooperation with Mainland; speed up infrastructure spending, particularly during recession, with increased private sector participation and privatisation; improve vocational training; raise education standards. Cautions against too much interference in utilities; opposes competition law and minimum wage. Calls for review of welfare policy. Also wants reform of land policy with larger supply and less focus on maintaining revenue from high prices; to build more public rental housing while there is slack in construction sector. Critical of Cyberport and Science Park for poaching or pre-empting tenants from elsewhere.

Sin Chung-kai

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Divides his contributions between IT sector issues and his role of leading DP spokesman on economic affairs. In latter context, tendency to call for increased government action in many areas and generally to improve HK’s competitive edge, but without addressing funding thereof. Thus urges: better cooperation with Mainland; more help for HK business and professionals to gain access there; encouragement of import of talent; improvement in business environment; active steps to alleviate poverty and create jobs, especially for low-skilled; action to enhance port competitiveness. Wants assistance variously for SMEs, high tech and high-value-added activities; supports border industrial zone and formation of HK-Shenzhen development company to administer it. Opposes sales tax; suggests that elimination of budget deficit can be deferred; calls for fair competition legislation.
Tien Pei-chun, James

**Constituency**
Commercial (HK General Chamber of Commerce)

**Party**
Liberal

Mostly speaks explicitly for LP, but HKGCC views seemingly mostly the same. Thus, seeks government help for business, especially SMEs, in dealing with Mainland authorities. Supports freeze or cut in fees and charges during recession. Wants to attract Mainland talents and encourage wealthy to invest and reside. Calls for improved education as long-term solution to unemployment, measures to stabilise property market, and for closer Pearl River Delta links. Doubtful of case for border industrial zone — too late now. Supports a degree of budget stringency, including civil service pay cuts and search for other expenditure savings, but wants tax increases delayed, estate duty scrapped, wine duty and vehicle first registration tax lowered. Opposes sales tax on behalf of LP, though HKGCC supports continuing study. Opposes competition law.

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Ting Woo-shou, Kenneth

**Constituency**
Industrial (Federation of Hong Kong Industries)

**Party**
Liberal

Mostly presents the LP and usually coincident FHKI lines. Sees buoyant economy as best relief for unemployment. Calls for more aggressive spending cuts and more interventionist attitude to get banks to lower rates and help SMEs. Wants to switch training emphasis to on-the-job, improve business environment and cut red tape. Urges more interventionist stance to revive manufacturing and ‘backbone’ industries, including border industrial zone; more cooperation with Mainland, and government assistance to gain access under CEPA etc, and avoidance of harmful competition. Wants more flexible land usage. Opposes sales tax but would tolerate progressive profits tax.

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Wong Yu-hong, Philip

**Constituency**
Commercial (Chinese General Chamber of Commerce)

**Party**
None

Usually speaks on economic issues to CGCC brief. This is mostly strongly supportive of government, though usually in only very broad terms. Supports importance of training and education, need to tackle structural budget deficit, improvements to tourism infrastructure. Prepared to accept temporary rise in profits tax rate; urges wide consultation on sales tax and scrapping inheritance tax.
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Apart from general calls for such things as improved business environment, stronger Pearl River Delta cooperation, and greater efficiency in government, focuses exclusively on constituency issues or related matters (e.g. eco-tourism).

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Focuses almost exclusively on constituency interests — stamp duty, brokerage fees, training initiatives, access of relevant businesses and professionals to Mainland markets. Calls for civil service retrenchment and pay cuts, and supports cuts in social security payments. Contributes only in general terms on other economic topics.

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Chiefly confines himself to tourism-related issues, or acting as LP spokesman. Urged review of housing policy. Supports selected increase in Mainland professionals and more tourists, improvements in tourist infrastructure. Supports civil service pay cut and eradication of deficit as soon as possible, preferably by spending curbs rather than more tax on middle class. Opposes minimum wage; urges thorough consultation on sales tax.
CHAPTER 9

Non-positive interventionism: How functional constituencies distort the free market

Jake van der Kamp and Carine Lai

Introduction

The introduction of elections of chief executive and all seats of LegCo through universal suffrage amounts to abolition of the business sector’s rights to participate in politics.

Peter Woo, Chairman, Wharf (Holdings)¹

It is not the first time this sort of thing has been heard from Hong Kong’s tycoons. They say that Hong Kong is different from other places because it is an ‘economic city’² and, therefore, political models used elsewhere do not apply to Hong Kong. Those arguing this point of view insist that in Hong Kong, business must have an appropriate representation and any attempt to unseat the business constituency through universal suffrage is a dangerous distortion of the local political reality.

Hong Kong is about business, but this does not make it different from any other city. Every city is an economic entity. Take away the business and there would be no cities. No one would earn money and no one could buy his or her next meal. Every working person in every place engages in business at some level.

Hong Kong is more of a hub of financial and trading activity than many other cities, which puts it squarely in the camp of New York and London. Businessmen in those two cities do not protest that universal suffrage amounts to abolition of their rights to participate in politics. Hong Kong’s tycoons are certainly unique in that regard.

Let us assume, however, that there is justice in Mr Woo’s argument. The question then becomes whether it is only the business sector that should have extra rights to participate in politics. For example, Hong Kong has a medical sector too, an educational sector, a legal sector, a labour sector, a sports sector, and even a catering sector. Should they also not have representation?
Indeed, these sectors already have special representation in Hong Kong. They all have functional constituency (FC) seats in the Legislative Council (LegCo). If that were enough, then why should Hong Kong have general elections at all? If every adult can claim membership of some working constituency, then why not just hold elections by working, instead of geographic, constituency? It may be argued that many people have more ties to their careers than to the districts in which they live. Perhaps Hong Kong’s electoral arrangements should reflect this.

The difficulty here is that this idea has already been rejected by Beijing in 1995. Then governor, Christopher Patten (1992–1997), created nine large FCs where eligibility to vote was based on one’s work. The LegCo elected in 1995 was disbanded on 30 June 1997 and the Provisional Legislature was appointed to take its place. New election arrangements were passed into law by the Provisional Legislature and the elections held in 1998 reverted back to narrowly based FCs.3

When Woo refers to the business sector, he does not mean ‘business’ widely. His ‘business sector’ is a small number of wealthy magnates and professionals. In other words, Woo means the established business and professional elites. This relatively small group of people may speak for their industries but they are just as likely to speak for their own interests first. If the super-rich businessmen are seen to advocate a different view from that held by Beijing on such a sensitive subject as political reform, they fear that their business interests may be affected. Therefore, if Beijing is against opening up the electoral process more, then this narrow band of extremely wealthy individuals would be against it too.

There is another factor influencing their views. The elites see themselves as the natural rulers. They are likely to be brighter, more energetic and better educated and they certainly have more at stake than do public-housing tenants who have invested little money in Hong Kong. But who is to say that the public-housing tenant truly has less at stake? He has his life and that is a mighty big stake. What he wants with that life is opportunity and he is just as entitled to it as his boss. It is what he seeks with his vote, just as his boss does, and it gives him as much stake as his boss has.

But there is more to this debate than an abstract principle of fairness. Even if elite businessmen had a bigger stake in Hong Kong than do ordinary citizens, try to find the wealthy magnate whose idea of what is good for Hong Kong differs from his idea of what is good for himself. If there is one thing that a plutocracy (government by the wealthy) has proved certain to create, it is monopolies, cartels, and other market-rigging ideas for the benefit of the plutocrats. In short, it creates a less efficient economy. There is already evidence aplenty of it in Hong Kong. An economy that is dominated by cartels usually gets worse, not better, government. This chapter will show why that is so.
Challenging assumptions

On 26 April 2004 the Standing Committee of the National People’s Congress issued the ‘Decision of the Standing Committee of the National People’s Congress on issues relating to the methods for selecting the chief executive for the Hong Kong Special Administrative Region in the year 2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in the year 2008.’ The decision ruled that the chief executive should not be directly elected by universal suffrage in 2007. It also stipulated that the 50-50 ratio between geographical constituencies (GCs) and FCs in LegCo should remain unchanged for the 2008 election.

Thus, the central authorities definitively made known that they wished the FCs to remain in place for the foreseeable future, reflecting the view that FCs conform to the Basic Law principles that ‘consideration must be given to the interests of the different sectors of society and the structure [of the political system] must facilitate the development of a Capitalist economy in the Region’.4

In December 2004, the Hong Kong government’s Constitutional Development Task Force published its Fourth Report, the results of a five-month-long public consultation exercise. The views it recorded were diverse, some in favour of eventually abolishing the FCs and some in favour of retaining them.5 However, both sides (as documented in the report) seemed to share the underlying assumption that society consists of different ‘sectoral interests’ that, when appropriately ‘balanced’, would result in the best economic policies. Both sides also seemed to share the assumption that the FCs are good for the economy. Opponents of the FCs tended to argue mainly that they inadequately represented the population, and seemed to feel it incumbent upon them to show that abolishing them will not harm Hong Kong’s economic prosperity.

Both of these ideas need to be challenged. Below is an examination of two commonly held assumptions about the economic benefits of FCs.

I: FCs are appropriate for Hong Kong because we need a business-minded government to ensure economic progress

Either to Hong Kong or Macau, developing the economy is the eternal theme which is important to people’s livelihood. It is necessary to grasp it tight.

Zeng Qinghong
Vice President of the People’s Republic of China6

An economy is dynamic and its eternal theme is uncertainty. The only reasonable guarantee you have in economic matters is that if you try to steer this ship you will steer it the wrong way. That is why the world’s most successful economies are the ones that are not steered and their success is in proportion to how well the crew can resist the temptation of stepping into the wheelhouse.
Strange as it may seem, the best way to achieve order in an economy is to let chaos rule. It is this kind of disorderly, chaotic competition that has always proved to be the recipe for economic progress and has always produced the most well-ordered and efficient commercial arrangements.

However, in Hong Kong one frequently encounters the argument that the Tung administration was supposedly ‘business-minded’ and that the new Tsang administration must also remain so. A business-minded government is supposedly necessary to ensure economic prosperity. But there is a very good argument to be made that putting business interests in charge of an economy does not promote its overall health.

A businessman’s dream is to have a monopoly position or to have the public purse subsidise him. Having a free market is well and good in principle but, when it comes to that businessman’s own market, what he wants is to clear his competitors out of the way and set his prices high.

One way of doing this is to produce better goods more efficiently than anyone else can do. Another way is to complain to government officials of disorderliness in the market and plead that there will be a better deal for everyone if only one small regulatory measure is adopted or retained for the greater benefit of the economy. The average senior executive director of a large company spends a significant proportion of his time lobbying government officials for advantages and concessions to his company.

That second way is easier and more often rewarding than the first, and there is no faulting the businessman for taking this route. He has an obligation to his shareholders to do what will best serve their purposes. To ask a businessman to participate more directly in politics is to ask for divided loyalties.

That is why government officials must recognise that their role is to remain neutral. Government is the referee in business matters. It does not take sides on the field or seek to join forces with the business team. It is meant to be independent of the players and ensure that the game will proceed according to the rules. It should recognise that businessmen will seek their own advantage first, as will consumer groups and professional bodies, and that government officials must keep their distance from them all. Their job is not to build consensus. The only consensus on the field is that everyone wants to win. The best team will win, however, only if the referee takes no sides. Unfortunately, Hong Kong’s government has already taken sides. Half of the LegCo’s 60 members are returned by FCs, representing primarily business interests.7

People live best when they themselves decide what they will do and when the government restrains itself to maintaining the social framework on which they do it. The problem with Hong Kong is that at the moment, it does not have the necessary social framework in key areas of its economy. It is necessary, to use Zeng’s words, that Hong Kong has a tight grasp of a consistent and fair arrangement for the operation of the private sector in public services. It is an eternal theme of economic matters. Power, transport, communications, water, ports, and private development of public land all need it desperately.
Instead, Hong Kong has seen flawed direct initiatives such as the Cyberport, industrial subsidies and a host of other measures that are best described as corporate welfare. It has also seen flawed, vague or non-existent regulation in many parts of the domestic economy, keeping competition limited and prices high. The real, nitty-gritty questions of public policy are simply deferred by public officials who increasingly have no experience of public administration, no mandate, and no consensus.

Capitalism only works when capitalists cannot twist the rules for themselves. Hong Kong suffers from this restraint and it does the health of the economy no good at all. The invariable result is high prices, restricted choice, substandard workmanship, and unreliable supply for the consumer.

The assumption that democracy and economic health are in some way opposed to each other is wrong. They are not. They actually go hand in hand.

II: Eliminating FCs would result in irresponsible government spending

Some people, especially those in the business sector and the professional sector, have expressed grave misgivings. They fear that swift and hasty democratisation could turn Hong Kong into a form of welfare state. We don’t want to do anything that could undermine our competitiveness or scare off international investors.

Executive Councillor Selina Chow
RTHK’s Letter to Hong Kong

Concerns about the fiscal irresponsibility of elected politicians are understandable. Take the United States, where the smallest figure that can be found for a fiscal deficit is now HK$3.29 trillion annually, the equivalent of 3.6% of Gross Domestic Product (GDP). In democratic Europe, too, Britain now runs a fiscal deficit almost as great as a proportion of GDP and in Italy it is twice as large. There is certainly evidence to suggest that democracy is not always the ideal cure for fiscal irresponsibility.

There is also evidence that some of Hong Kong’s directly elected legislators are always for spending money and never for raising it. That is, however, a characteristic of legislators everywhere when they act in opposition to a government, which is all Hong Kong’s can do. In contrast to legislators in democratic countries, Hong Kong’s legislators have little hope of forming a government, and so have even less reason to behave responsibly than their foreign counterparts. Their lack of real power leads them to favour unrealistic policies designed to boost their popularity, in the full knowledge that they will never be implemented. There is a good chance that such irresponsibility would decrease if they are ever asked to form a government themselves.

The problem of fiscally irresponsible legislators has informed the work of various academics on the effects of excessive populism in government. Too much
public involvement in policy-making can sometimes be a bad thing. It has been argued, for example, that it is exceedingly difficult for the Californian state legislature to make sensible tax policy because every change must be approved by referendum. Therefore, insulating policy-makers from the influence of polls and special interest groups in the policy-formation stages is seen to be desirable. But even those who argue most strongly for this view do not think that the policies of technocrats should never be subject to the test of public approval. Nor does anyone ever say that policies should be formulated by industry representatives and business lobbyists who represent those who have a financial stake in the outcome, as Hong Kong’s FCs clearly do.

In any case, the fear of populism in Hong Kong is largely unfounded. Populism in developed countries is only a relatively minor problem — it only tends to produce major political instability and economic catastrophe in countries with per capita GDPs of less than HK$24,000, that is, in countries without a large middle class. Hong Kong, which has a per-capita GDP almost 10 times as large, at HK$230,000, clearly does not fall into this category.

Political scientists widely recognise that having a strong middle class is one of the most important elements in running a successful democracy. This middle class forms a big portion of a country’s tax base, so that many of the same voters who benefit from public services must also pay for them with taxes. This serves as a limiting influence on the inclination of politicians to enhance their own popularity by distributing social welfare. The world’s democracies may not report regular budget surpluses, but most have manageable and fairly stable (or slow-growing) levels of public debt.

On the current fiscal woes of the United States, there is a very good case to be made that its enormous deficit came about not as a result of too much democracy, but of too little. American commentators have long complained that business corporations, industry lobbies, and other special interest groups wield inordinate power in the form of enormous campaign donations to politicians. The politicians then repay their wealthy donors with concessionary policies.

About half of the American government’s decline from expected surpluses of HK$10.2 trillion to an accumulated debt of HK$6,630 billion between 2001 and 2004 is attributable to a poorly-performing economy. The other half was caused by policy decisions. Of the half caused by policy decisions, about 60% is attributable to President George W. Bush’s four big first-term tax cuts. This means that the tax cuts had an even bigger effect on the deficit than the wars in Afghanistan and Iraq put together. But what is especially striking about the tax cuts is that they were not aimed at a broad base of constituents — 36.7% of the first cut in 2001 went to the top-earning 1% of the population. And the cuts’ most significant provisions — the elimination of the inheritance and dividends taxes — benefit primarily the very wealthy. Whatever they were, Bush’s tax cuts were not an example of populism at work.

There is nothing inherently more fiscally responsible about unrepresentative forms of government. For every unelected government that is run by competent
technocrats, there is another where leaders use their power to amass enormous personal fortunes and to funnel public assets to friends and supporters through networks of political patronage. The governments of Indonesia under Suharto, the Palestinian Authority under Yasser Arafat or Russia under Boris Yeltsin are prime examples. In Hong Kong, there is little evidence to show that the current political arrangement stems wasteful government spending. Instead, it encourages it, and this chapter will later describe several examples in detail.

It would indeed be a regrettable state of affairs if Hong Kong were to become a form of welfare state, but it appears that it is already well on its way to becoming one. In matters of handouts from the public purse, the big danger to Hong Kong is not beggars on the street or elderly people who cannot make ends meet, but corporations in every field of business which beg the government behind closed doors for handouts, subsidies and free land.14

The Cyberport, small and medium-sized enterprise assistance, tourism expenditure, the technology initiative, the logistics initiative, are all types of corporate welfare.

It may be argued that it is all for good purpose, and therefore justified. This is what personal welfare recipients say, too, but they do not make the mistake of giving their handouts the wrong name. Good or bad, it is welfare.

Yet this should hardly be surprising. Plutocracy, which is essentially what Hong Kong has at present, may profess the general public interest, but inevitably meaning that the general public will benefit if the wealthy remain wealthy. The standard argument goes: If I make good money, then I can create employment and have room to raise my workers’ wages.

If this were true, then rule by the wealthy might be a desirable system of government. It always breaks down in practice, however. Income and wealth disparities generally grow larger. Despite having the 20th highest GDP per capita in the world,15 Hong Kong ranks approximately 84th (out of countries with available data) when it comes to income inequality, with a Gini coefficient of 43.4 in 2005.16 Plutocrats invariably take care of their own interests at the expense of everyone else.

Alternatively, there is scant evidence that democracy will undermine Hong Kong’s competitiveness and scare off international investors. Ignore for the time being that it is the pricing cartels so characteristic of plutocracy that actually undermine competitiveness, and that Hong Kong is hardly dependent on international investors when, dollar for dollar of economic size, it is probably the world’s biggest international investor.17 All the evidence indicates that the world’s wealthiest and most competitive countries are democracies. Out the 25 countries with the highest GDP per capita, only Hong Kong and Kuwait are not representative democracies.18 Kuwait has a high GDP only because of its vast oil wealth. Why should democracy be so bad for Hong Kong then?
How the FCs don’t work

So how precisely, do Hong Kong’s FCs distort the free market? Do they do so more than business elites in other countries? After all, powerful business lobbies are not unique to Hong Kong. Why should they not succeed in bringing about unwise and inefficient economic policies everywhere in the world, including democratic countries?

The fact is that business lobbies do manage to distort the economy in many countries. For example, in October 2004 the US Congress passed a corporate tax bill that gave tax breaks and subsidies to a whole host of industries including restaurant owners, filmmakers, brewers, distillers, bow-and-arrow manufacturers, tackle-box companies, native Alaskan whalers, race car track owners, and importers of Chinese ceiling fans. But whereas in other countries this political behaviour is often deprecated as ‘pork-barrel spending’, a form of corruption, in Hong Kong it is built into the very structure of the political system.

The FCs may not be the only, or indeed, the main channel through which businesses lobby government, but their presence in the legislature has the effect of hindering a key mechanism for curtailing unwise government spending.

Half of the 60 LegCo members are FC members. LegCo’s voting procedures are also set up so that the FCs have an effective veto over their geographically elected counterparts. According to Annex II Part II of the Basic Law, bills proposed by the government pass by a simple majority, but bills proposed by individual members must pass separately through both halves of LegCo. Therefore, if the government wished to veto any bill proposed by a legislator, it needs only to woo the support of 16 out of 60 legislators in either half of the house. Usually, this support comes from the FCs.

However, their role as a key voting block can be a double-edged sword. Whereas in other countries, business lobbies try to buy the support of politicians, usually through large campaign contributions, in Hong Kong, the situation is reversed. The government is put in the peculiar position of having to stay in the good graces of the business lobbies, or risk losing valuable political support.

This discourages the government from pushing any policies that the business lobbies will dislike, and it encourages the government to reward its supporters by giving them concessions and advantages at the expense of the economy’s efficiency and the community at large. It can do so because its bills (required to approve public funding) only need to pass by overall majority — so that even if the 30 GC members were unanimously against a bill (which is unlikely), they would still have to win over the support of at least one FC member in order to veto it.

And whereas in other countries, politicians’ impulses to please their campaign donors might be somewhat restrained by their unwillingness to risk angering their constituents at large, Hong Kong’s functionally elected legislators face no similar pressure. They feel themselves responsible only to their narrow professional bases.
It has been pointed out that the post-1997 government probably faces even more pressure than the colonial administration did to cater to the interests of the business elite. The colonial administration, as an alien regime, was primarily concerned with its own survival. While it did little to break up monopolistic practices that compromised the efficiency of the domestic economy, it also resisted the business lobbies’ demands for direct industrial subsidies. The colonial administration used the language of ‘non-interventionism’ to persuade the public that it was not acting in a predatory, exploitative fashion, but that it practised an astute laissez-faire ideology. It therefore had to practice largely what it preached.

The current government does not operate under quite the same constraints. The FCs (which, historically, grew out of British attempts to co-opt local elites) confer direct political influence on Hong Kong’s business elites. They are now meant not to represent the interests of Hong Kong people to a foreign regime, but to represent the interests of Hong Kong to itself. Thus now we see wealthy businessmen and women in LegCo arguing that they provide a counterweight to irresponsible popular politics, that Hong Kong is not ready for democracy, and that what is best for the economy and the public is only coincidentally what is best for themselves.

The Tung administration, for its part, had been more than willing to engage in economic initiatives involving direct subsidies to businesses — Cyberport, the technology initiative, the logistics initiative, tourism expenditure, and so on. Can it be argued that the distortions described here are the result of LegCo’s strange voting procedures, rather than the result of the FCs in and of themselves? Yes, it can. But it must be kept in mind that the entire FC system, including the voting procedures and the narrowness of their electorates were all set up with the same purpose in mind, which was to limit the power of popularly elected politicians in Hong Kong. As the voting procedures are part of the Basic Law, it would be very difficult to change them. A proposal to amend the Basic Law must gain the support of two-thirds of LegCo, two-thirds of the SAR’s deputies to the National People’s Congress, and the chief executive before being submitted to the national legislature for final approval.

It is possible that a legislature which had more broadly based FCs and which did not have an unusual two-tier voting system might produce more sensible economic policies, but that system does not exist at present. However, one can still anticipate that any system involving FCs would face the following problems:

How does one decide which sectors of the economy get representation in LegCo? There are only 30 seats available. How does one decide which, if any, sectors are deserving of more representation? How does one weigh their relative importance to society — by the number of people working in them, or by their contribution to GDP? Should the contributions of homemakers or volunteer workers, who do not earn any wage, be recognised? An economy is also a fluid thing. New sectors such as information technology can quickly emerge, rise and fall. Any arrangement for FC electorates, even if aimed at being broadly
based, would quickly go out of date. In contrast, GCs do not have these problems. People who live in one district versus another are not more or less ‘important’ to society. Nobody proposes, for example, to tie the amount of rent people pay to the amount of political influence they should have. The government need only tally the population of different districts through regular censuses to determine how many representatives a district should elect.

More importantly, an FC system requires the relative importance of different interests in society to be determined before an election, not during or after. The rationale behind FCs is that if every economic sector is represented, they will all somehow balance each other out and it would result in sound economic and fiscal policies. A more likely result is that the government might try to grant concessions and subsidies to as many of them as possible, in an attempt to placate them all. This is because the system of FCs assumes that people’s primary interests in politics are tied to their workplace, but this is not necessarily so. For example, employees may have better job security if the government subsidised their industries, but would this be good for them as taxpayers, consumers or investors? The FC system encourages politicians to consider only their voters’ first role and ignore the latter three. There is some evidence of that in LegCo now as may be seen from Chapters 7 and 8 of this book.

Still, any attempt to predict what effect an ideal FC system would have on the economy is mostly theoretical conjecture. It is the current system that must be analysed, and it is to that this chapter now turns.

Free market — or not?

Why are so many things in Hong Kong so expensive? Hong Kong is supposed to be a bastion of free enterprise, a model for the world on how open competition delivers consumers the goods and services they want at the lowest possible prices. At least, this is what its leaders frequently boast.

It is true enough in Hong Kong’s external arrangements. Its exporters operate in a very open market and offer buyers abroad truly competitive prices. But those who live in Hong Kong do not find it as true in its domestic arrangements. Take the obvious example of property with high rents, high prices and high fees paid to property managers. Take the basic groceries that cost far more in Hong Kong than in Shenzhen. Despite having an open border with the Mainland for the last 20 years, lower prices in Shenzhen have not had much impact on the prices of consumer goods in Hong Kong. If anything, the disparity with prices on the Mainland has grown. Take a long line of everyday necessities such as public transportation and heating fuel. Why do Hong Kong residents pay so much more than people do in other places?

The answer is that there is a lack of competition in Hong Kong’s domestic market. Hong Kong’s economy is a breeding ground for business cartels in energy, transportation, housing, ports and many domestic service industries.
Such businesses are called natural network monopolies and Hong Kong does not have a consistent policy on what their shareholders will be allowed to take from what are really public concessions granted to them. Instead, the government relies on a host of different rules for different industries, and not just rules but conditions, provisions, codes of practice and administrative means, all set arbitrarily and inconsistently by bureaucrats over the years. In some cases, such as for franchised buses, there are no set formulas, just opaque guidelines that may be subject to political influence both from bus companies and vocal public minorities.

Hong Kong’s lack of progress towards implementing a general competition policy can be directly attributed to the FCs in LegCo. A motion initiated by legislator Fred Li Wah-ming of the Democratic Party on 20 October 2004, asking the government to simply conduct feasibility studies on introducing fair competition laws, and to review the powers and operations of the Competition Policy Advisory Group,22 was defeated. This was due to opposition from the FCs.

This was a classic example of the FCs acting as a bloc to defeat member-proposed legislation that would harm the business interests of Hong Kong’s tycoons. The way in which the legislators voted was strongly correlated with the broadness of their electoral constituencies. Out of the 26 geographically elected legislators present at the debate, only two, James Tien and Selina Chow of the Liberal Party, voted against the motion. But 13 out of 23 FC legislators present rejected it, thus defeating the motion. Of those 13 members, six were returned uncontested in the 2004 election, and the rest were returned by constituencies consisting entirely of corporate voters or a mixture of corporations and individuals. But of the 10 FC legislators who voted for the motion, half were returned by constituencies consisting entirely of individuals belonging to certain professions, such as accountants, doctors and teachers.23 It is quite evident that the legislators who opposed the motion were those representing business sectors that would benefit from a continued lack of competition.

In his 2005 policy address, Chief Executive Tung Chee Hwa effectively ruled out the introduction of a general competition policy, expressing his preference for continuing to handle competition issues on a case by case basis:

We will endeavour to promote fair competition and adopt appropriate measures according to the circumstances. For example, we introduced competition for the telecommunications industry in 1998 and successfully promoted its development. Recently, we have been monitoring the situation in the local fuel supply market.24

The government’s sector-based approach, however, is inadequate. Even the World Trade Organisation questioned its effectiveness in 2002,25 and EU Trade Commissioner Pascal Lamy criticised Hong Kong’s lack of a general competition policy during trade talks in March 2004.26
It is true that competition was successfully introduced in telecommunications, though reform of the telecommunications industry was actually well under way before 1998. Hong Kong Telecom (now PCCW) used to be a complete monopoly and was for many years the biggest stock on Hong Kong's stock market, bigger even than HSBC. The industry is now highly competitive. Telephone service costs in 2005 are only 56% of what they were in 1995, while the consumer price index (CPI) was at about the same level in January 2005 as it was in May 1995.27 (See first graph in Figure 1.) Still, this is only one sector. What about so many others that still show evidence of ‘administered’ pricing?

- The property sector experienced declining competition and rising prices throughout the 1980s and 1990s. Government land policies in the late 1980s and 1990s have resulted in three big developers dominating the market. In 1987, nine large developers accounted for 48% of new private residential accommodation that year. By 1991–1994, just four developers accounted for 55% of new private residences.28 Between 1984 and 1994 the price of private residences rose by an annual average of 23%, compared to an overall inflation rate of 8%. A series of scandals involving illegal activities and price manipulation in the early 1990s caused the colonial government to depart from its official position of non-intervention in the property market in 1994 to try to slow the price spiral.29

- Fuel prices in Hong Kong have risen much more than the underlying crude oil prices since 1981. The grey line on the second graph in Figure 1 shows the fuel cost subcomponent of Hong Kong’s CPI. The black line shows crude oil prices over the same period.

Figure 1. Telephone and fuel prices
Despite Towngas’s claims that tariffs have not been raised since 1998, the CPI shows that the average unit price of Towngas has risen 26.6% between mid-1998 and 2005. This is over a period in which prices on the overall CPI declined by 16.1%. How could this be without a single tariff increase since 1998? The answer lies in that fuel-cost adjustment factor. The official tariffs remained the same but the extra fuel cost was added to the consumer’s bill. Towngas’s profit margin in 2003 was 42% after tax. It is not subject to a scheme of control like CLP Power or Hong Kong Electric because it is technically not a monopoly as consumers may use electricity or liquefied petroleum for their heating needs. However, its competition is very limited.

In the transportation sector, Kowloon Motor Bus (KMB) (a listed company) enjoyed a 35.9% return on shareholders’ equity in 2002. Franchised bus companies enjoy substantial concessions from the government. They do not have to pay licensing or registration fees or fuel duty. They can use the roads (even specially-designated bus lanes) for free. Government concessions were estimated to account for 13% of KMB’s revenue in 2003. By contrast, government-controlled transport operations did far less well. The publicly owned Airport Authority that manages Hong Kong’s airport only made 0.5% return on equity, and the MTR Corporation which is heavily government controlled lost money on railway operations. In 2004, the Kowloon-Canton Railway Corporation (KCRC), which is also publicly owned, substantially revised down its earnings and warned of future losses.

Hong Kong’s Terminal Handling Charges (THCs) at the Kwai Chung container port are the highest in the world. A 2002 research report raised the question of whether the THCs levied at Shenzhen ports are in turn maintained at higher levels than necessary in order to support the fee structure in Hong Kong. The report noted that there is evidence that terminal operators in Shenzhen, who have by and large the same interests as those running Hong Kong terminals, keep prices across the border artificially high, and so propping up their Hong Kong profit, which remains considerable. The underlying problem is that the Kwai Chung container port is run by a private sector cartel without any control of fees by government, and its monopoly is now working to the detriment of all exporters within its catchment area.

Business cartels may differ in their details but are the same in their essential characteristics so it makes sense to have a unified competition policy to deal with them. The best way to do this is to first define industries in which natural network monopolies easily arise. The next step is then to look for ways of opening the industries further to new entrants if possible. This approach has worked very well in telecommunications.
Where this is impossible or difficult, the next step is to introduce a framework for pricing. This has been done in the power industry through schemes of profit control, though only with limited success as they allow for large profits. In public transport, this has not been carried out, and, in fact, policymakers have retreated from such mechanisms in recent years. These mechanisms should be put in place before a competition law is even considered, because without them, a competition law cannot be enforced.

Some FC opponents of a fair competition policy such as Vincent Fang (Wholesale and Retail), Abraham Shek (Real Estate and Construction) and Raymond Ho Chung-tai (Engineering), argued that fair competition laws would impede the operation of the free market. Vincent Fang said:

Some Members proposing to enact a fair competition law would like to see fairness upheld because they notice some players are running with difficulty. However, how can fairness be upheld? Are we going to slow down the fast runners at the front by forcibly by enacting legislation rigidly or through administrative means? Are we going to push the slow runners forward?

Vincent Fang, FC representative for Wholesale and Retail, 20 October 2004

That sort of argument is fallacious. Fair competition policies may ban certain uncompetitive practices, such as collusion to rig prices, which Hong Kong does not currently have laws against, but they do not seek to identify winners and losers. All players must abide by the same rules. Additionally, schemes of profit control for monopolistic industries cannot impede a free market when there was no free market in the first place. Hong Kong needs an overall competition policy that establishes formal guidelines on financial returns in natural network monopolies. Not only will consumers benefit from lower prices; investors, who are needed to fund big infrastructure projects, will benefit from greater predictability. Investors in infrastructure projects want a clear financial framework on which they can build their calculations of return. Uncertainty adds costs. They will pay a premium for something on which they can build up a reliable spreadsheet of projected cash flows and this helps significantly to reduce the costs of big projects and speed up their completion. Schemes of profit control do not interfere with the free market. They contribute to it.

The FCs’ adamant opposition to a general competition policy is a direct illustration of how Hong Kong’s political arrangements are bad for the economy. They are bad for economic efficiency, they are bad for Hong Kong’s competitiveness, they are bad for investors, and they are bad for consumers. All they are good for are those businesses that benefit from oligopoly positions.
Economic development or corporate welfare?

From 1997, the Tung administration embarked on a variety of direct initiatives to assist chosen sectors of the economy. Tung announced programmes and projects to develop high technology, small and medium enterprises, logistics, and tourism. Some of these projects such as small and medium enterprise assistance involved direct subsidies in the form of grants and loans to businesses; many others, such as Cyberport, Science Park, Logistics Park, and cruise terminal proposals involved large government-funded infrastructure projects. Tung argued that assisting these sectors would create jobs and make Hong Kong’s economy more internationally competitive, but as we shall see, it was a misguided notion that has wasted billions of taxpayer dollars. The government’s direct intervention in the economy with projects such as Cyberport are best described as corporate welfare because they have accomplished little in the way of their stated goals, all while granting benefits to companies that may not even have anything to do with the targeted sectors. It also interferes with the functioning of the market economy because when favoured industries are given special concessions, investors tend to be cautious about investing their capital in fear that competitors may be given a pricing edge. Instead, they will try to minimise risk by investing only if they can gain government concessions for themselves. This leads to an economy where competition restricts itself. It is an uneven playing field.

The funding for many of these projects would not have been approved without the support of the FCs in LegCo. In each case, a crucial mechanism to block wasteful government spending failed, because too many of the legislators involved represented the sectoral interests that stood to gain. In other cases, legislators representing FCs actively lobbied for concessions and subsidies for their respective industries. The following section will concentrate on two case studies, Cyberport, and development at the Lok Ma Chau loop.

Cyberport

Hong Kong’s experiment with hi-tech manufacturing was a short one. It came in the early 1980s and by the early 1990s it had moved across the border to the Mainland. The first graph in Figure 2 shows the several categories of Hong Kong’s exports as a percentage of GDP in 2003. Hong Kong’s service exports were three times as great as its domestic goods exports.

A further breakdown of the goods exports category shows electronics exports accounting for just 1.6% of GDP. Additionally, a large proportion of these exports are Hong Kong’s exports in name only, as they fall under the ‘outward processing category’. This means that part of the manufacturing process is subcontracted to factories on the Mainland. The second graph in Figure 2 shows a significant decline in electronics production from its peak in the mid-1990s.
Hong Kong has gone back to doing what it has always done best: arranging, financing, marketing and shipping hi-tech wares rather than manufacturing them. There is nothing wrong with this and, in fact, Hong Kong has the most valuable part of the process. Its entrepreneurs have a very good name for quality management of industrial enterprises. They are world class in getting the goods that markets want to those markets in bulk, on time, to required standard and at world-beating prices. It is said that the way to make money in a gold rush is to open a saloon, not a gold mine, and Hong Kong has more or less followed that advice extremely successfully. But its policy makers cannot get away from the ideas that no economy can grow unless it has hi-tech, and that hi-tech is only about manufacturing. Hong Kong is to China as New York is to the United States. If New York sustains itself other than by making hi-tech gadgets, does that mean New York lags behind the rest of the United States?

Nevertheless, in 1999, Tung Chee Hwa announced a major project to build Cyberport, a 26-hectare ‘information infrastructure project which would serve as a flagship to put Hong Kong firmly on the global information technology and services map’. The project was to be built in partnership with Pacific Century Group (now Pacific Century CyberWorks or PCCW), a company owned by Richard Li Tzar-kai, son of renowned Hong Kong tycoon Li Ka-shing. The fact that the contract was awarded without an open tender process aroused public suspicions of cronyism, but that was not the only problem Cyberport had. The whole concept of Cyberport was based on extremely flawed assumptions.

Here it is important to note that it would never have been built without LegCo’s approval. Its Finance Committee, responsible for scrutinising all

![Hong Kong export categories as % of GDP](chart1.png)

![Industrial production of electrical and electronics products](chart2.png)

**Figure 2. Hong Kong’s export categories, electronics production**

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Here it is important to note that it would never have been built without LegCo’s approval. Its Finance Committee, responsible for scrutinising all
government proposals for public spending, voted 30 to 14 to approve HK$964 million of essential infrastructure for the project on 21 May 1999. The FCs provided crucial support for the measure, making up two-thirds of its supporters. Interestingly, the Information Technology (IT) sector’s representative Sin Chung-kai, a Democratic Party member, broke ranks with his party to approve the funding. All but two of the measure’s opponents were from the GCs, and they based their objections principally on the way the contract was awarded.

As more information about the project emerged over the next five years (mostly from non-government sources), the mainly GCs-elected pan-democrat camp in LegCo became ardent critics of Cyberport, describing it as a property development project in guise of a hi-tech project. Cyberport came to be the frame of reference they used to characterise later ambitious infrastructural projects, such as the proposed West Kowloon Cultural District. However, Sin Chung-kai continued to be quietly supportive of Cyberport although there is now relatively little mention of it on his website. Most recently he lauded the opening of a Digital Media Centre there, intended to provide small and medium digital arts companies with access to expensive equipment they might not otherwise be able to afford.

The problem with Cyberport as a project is that it will never produce a good return on investment doing what government officials claim it was built to do. Instead, the only truly profitable part of Cyberport is its ‘ancillary’ residential development, Residence Bel-Air.

The government’s argument for building Cyberport was that that housing hi-tech enterprises together in one sophisticated facility would generate enormous mutual benefits for the tenants. It was supposed to attract foreign hi-tech firms while kick-starting Hong Kong’s own hi-tech industry. These claims were dubious. The sharing of physical space is made redundant by the Internet, and in any case increases the risk of industrial espionage. Shared lab equipment cannot be tailor-made to the requirements of individual companies, and would soon become obsolete. Hi-tech companies would find little in Cyberport’s library that they could not already find on the Internet. In the end, Cyberport’s remote location in Pokfulam made it so unattractive that its target tenant base was expanded to include ‘IT support services’ such as finance, trading, advertising and entertainment.

Therefore, Cyberport does little to boost Hong Kong’s hi-tech industry apart from subsidising it with low rents, offered at just HK$11–$14 per square foot per month in April 2001. Local start-up companies were even offered up to 50% off on every 1,000 square metres of office space they leased. Any economist will tell you that the subsidisation of businesses does not make them any more competitive. More usually it simply enables less efficient businesses with weaker business plans to stay afloat for longer.

Moreover, the rents were so low that they seriously distorted the already slack office rental market, depressing prices by drawing tenants away from other office buildings such as Swire Pacific’s complex in Island East, where a cluster of
hi-tech companies had been evolving of their own accord. A government report published in December 2004 said that 18 of the 33 Cyberport tenants had simply moved there from offices elsewhere in Hong Kong, mainly Quarry Bay, undermining claims that Cyberport would create new jobs and attract foreign companies.41

Cyberport’s office rents are so low that they will never make a profit by themselves if kept at that level. Indeed, Cyberport has accumulated losses of HK$203 million over 2001–4 and is expected to be loss-making until 2009–10, losses that the government intends to absorb using a HK$500 million Development and Maintenance Fund set aside at the start of the project.42 Oddly, the fund seems to have more than doubled from its original size, with press reports from 1999 quoting it at just HK$200 million.43

To make money, Cyberport must depend on its ‘ancillary’ residential development which actually takes up 75% of the floor space.44 Residence Bel-Air is expected to net the government, which owns 64.5% of it, approximately HK$11.4 billion between 2004 and 2010. And while by December 2004 only about 42% of the office space had been leased, the luxury flats sold extremely quickly — all 544 Phase One flats were sold between February and October 2003.45 Financially speaking, Cyberport is a residential project with a small office component attached.

The government is therefore using the residential development to subsidise the operation of the office park. But does the taxpayer get a good return on his investment? Although the construction costs were borne by PCCW, the government provided the land on which to build Cyberport. Public land is a valuable and limited commodity in Hong Kong and when it is given away, an opportunity cost is incurred.

The Secretary for Commerce, Industry and Technology, John Tsang, claimed in a public-relations piece that Cyberport will bring an internal rate of return (IRR) of 9.43% to 11.2%.46 But his calculations are highly problematic. When calculating the IRR of the project, the government estimates its investment to have been worth HK$8.44 billion. The agreed price between the government and PCCW for the land under residential portion of Cyberport, which according to the government takes up just a third of the land,47 was HK$7.8 billion. The infrastructure LegCo approved for the project cost HK$964 million. So the government appears to have entirely left out the value of two-thirds of the land, the portion the office park was built on.

This must affect the estimated IRR. If the investment was in fact much higher than HK$8.44 billion, then the IRR must be lower, and is probably deeply in the negative.48 Additionally, the revenue stream from the sale of flats will eventually run out, but the government will indefinitely shoulder the operating and depreciation costs of the Cyberport office park, which it now wholly owns.

If Cyberport had not been built at all, and the government had simply sold the entire 26-hectare site to developers for residential development, it would have fetched at least HK$23.4 billion.49 Corporate governance activist David
Webb makes estimates as high as HK$37.8 billion if the site had been auctioned in stages, at a plot ratio of five times with an accommodation value of HK$2,700 per square foot.50

Cyberport brings questionable benefits to Hong Kong’s economy. Its range of beneficiaries is a very narrow one, consisting of PCCW which received free land to build a residential complex in which it has 35.5% ownership, and the small number of IT companies currently occupying its offices. The opportunity cost of not selling that land was therefore enormous.

Why did the FCs authorise Cyberport, then? IT companies control only one seat, and PCCW is not the only company with representation in LegCo. Why did those companies that were excluded from the contract not pressure LegCo representatives to vote against Cyberport? Perhaps it is because when government officials appear to display favouritism, a businessman’s best course of action is not to complain, but to strive to improve relations with officials. And the best way to improve relations with government officials is to go along with what officials want even if it is detrimental to one’s short-term interests. Then, a businessman can try to ensure that the next time government officials decide to give out concessions, it will be to him. He can argue after all, that his loyalty deserves to be rewarded.

**Industrial subsidies at the Lok Ma Chau Loop**

One project that some FC representatives have been heavily lobbying for is the development of the Lok Ma Chau loop near the border with Shenzhen. This is a 96-hectare plot of land on the border, created by a realignment of the Shenzhen River, which at the moment is home to reeds, birds and a million cubic metres of contaminated mud dredged from the river.

Numerous legislators, particularly those representing the FCs, such as Sophie Leung (Garment and Textiles), Sin Chung-kai (IT), Hui Cheung-ching (Import and Export), Kenneth Ting (Industrial, First), have expressed their support for developing this land,51 in some cases, quite impatiently. Take, for example, this quote from Sophie Leung at a LegCo meeting on 11 February 2004:

> Madam President, the border industrial zone proposed by me is not a new topic. The discussion on this topic started more than a decade ago, and we have repeatedly pursued this with the government in the Chamber. However, the government has never been proactive on this issue.52

The idea also has the backing of various influential members of the community, including tycoon Li Ka-shing.

Proponents argue that development of the loop would bring numerous economic benefits to Hong Kong while fostering closer economic integration with the Mainland by taking advantage of the supposed incentives provided by
the Closer Economic Partnership Agreement (CEPA) with China for factories to return to Hong Kong. The idea is to locate factories there as an extension of the industrial zone across the border and to allow them to employ Mainland workers if they also employ some Hong Kong ones. Alternatively, there is the suggestion that it can be used as a vehicle exhibition site. This section will address the development’s purported economic benefits.

Working Paper No. 32, a Planning Department study on the development potential of the frontier closed area for the Strategy 2030 initiative, contains plenty of material to suggest that the costs of developing the Lok Ma Chau loop would far outweigh the benefits. It points out there are problems with locating industry anywhere in the frontier closed areas. Among these is the fact that there is already sufficient space in vacant industrial buildings, so development at the loop would affect revitalisation of existing industrial areas. Hi-tech industry is also best integrated with universities. In addition, if low-paid workers from across the border were employed there, it may lead to further unemployment among Hong Kong industrial workers who are barely holding on to their jobs at present. The paper spends somewhat more time addressing the idea of an exposition site but points out that the market demand for such a facility has yet to be established when product-specific exhibition sites already exist across the border and when nobody has established whether Mainland visitors would be admitted without special permits. It would also be far from Hong Kong’s population centres and exacerbate what is already a surfeit of hi-tech parks and exhibition centres in Hong Kong when the government’s professed aim is to centralise these through initiatives such as Cyberport, which already has trouble in finding enough suitable tenants.

The other counts against the idea are even more telling. First, there is the matter of the toxic mud. It cannot simply be scooped out and dumped elsewhere. There is too much of it and re-excavation would contravene the spirit of the London Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter (1972). With the contaminated mud still there, development is a non-starter. Just the decontamination costs, says Working Paper No. 32, may be enough to render development of the site financially unviable. Then there is the matter of sewerage. There is none at the site, none planned, it would take eight years to put it in and, even then, there would be an adverse environmental impact on the Mai Po wetlands. Similarly, it would take four to seven years to upgrade the water infrastructure and more expense to upgrade the roads to the necessary standard.

There should thus be no surprise that the government’s own report on a public consultation in January stated: ‘Non-development of the Lok Ma Chau Loop was the mainstream of views expressed at the meeting.’

If developing the site will be environmentally hazardous, prohibitively expensive, have neutral-to-negative impact on Hong Kong’s job growth, and probably face weak demand, why is there so much enthusiasm for the idea in LegCo? The answer is that the costs of development will be borne by the
taxpayer and the general public, not by the industries the FC legislators represent. From their point of view, the modest profitability of a developed border area may still be worth pursuing, though one notes that the legislators show considerably more enthusiasm for an industrial park (where cheap Mainland labour can be employed) than an exhibition site.

Perhaps the crucial point, which nobody has mentioned in LegCo, is the fact that certain interests in Hong Kong own considerable swathes of agricultural land in the vicinity. If the Lok Ma Chau loop gets water, sewers, roads and other services, there will be little extra effort needed in linking up this agricultural land too, and then worthless land could be turned into lucrative property developments. The pressure for development at the Lok Ma Chau is the clearest-cut case of FC representatives demanding large amounts of corporate welfare.

**FCs distort town planning**

When a city (or country) decides to build public infrastructure, it is assumed there is a direct and pressing need for it. Roads, tunnels, bridges and railways are supposed to make travel across the city faster and more efficient. Public housing is supposed to house people who have trouble affording their homes. But when sectoral representatives in Hong Kong’s FCs try to influence town planning, what they typically have in mind is whether or not a particular infrastructure project will benefit their own sector’s economic prospects. This creates a serious distortion of the government planning priorities.

Hong Kong’s building industry has strong representation in LegCo, with three seats total for the closely related sectors of Engineering; Real Estate and Construction; and Architecture, Surveying and Planning. The representatives for these seats frequently support large infrastructure projects simply because they would create more employment within their respective sectors rather than of any inherent benefits that this infrastructure would bring to Hong Kong.

Hence we see Abraham Shek (Real Estate and Construction) calling for the government to ‘promptly identify more large-scale public works projects which could involve more private participation’ because the ‘annual HK$29 billion [in public funds] allocated for infrastructural and public works is simply not adequate’ and ‘the industry needs more work’.

In a December 2003 letter, legislator Raymond Ho Chung-tai (Engineering) also asked his ‘fellow engineers’ to join him in pressing the government for more expenditure on infrastructure projects and building works. Ho argued that the unemployment rate in construction is 20% and the government must bring this down by substantially boosting its spending on construction, and threatened a ‘large-scale demonstration to protest against the government’s indifference to the plight of practitioners of the construction industry’ if it failed to do so.

On the surface of it, Ho and Shek seem to have a point. As the first chart in Figure 3 shows, the unemployment rate in construction has indeed soared to much higher levels than the overall unemployment rate since the Asian financial
crisis of late 1997. And, as the second chart makes clear, overall government spending on construction in real (inflation-adjusted) terms declined markedly from the equivalent of 6.3% of gross domestic product in late 1996 to only 3.5% in 2003. But is it the government’s responsibility to guarantee low unemployment rates in construction trades and spend more public money whenever these are deemed to have risen too high?

![Unemployment rate %](chart1)

**Figure 3. Unemployment, construction spending**

It is true the government can occasionally speed up its building schedule to tide the construction industry over a slow patch, but devising infrastructure projects for the sole purpose of creating jobs is not a prudent use of public funds. There is also growing evidence that Hong Kong has already over-invested in public infrastructure. The chart in Figure 4 below compares population forecasts from the Census and Statistics Department, with those from the Planning Department’s 2030 Study (2003), and the Transport Department’s Third Comprehensive Transport Study (CTS-3) commissioned in 1997. It shows that government planners have consistently over-estimated population growth. Yet the CTS-3 study is the basis on which Hong Kong is now building transport infrastructure, even though it assumes as many people in 2016 as a straight-line extension of the latest population projection would yield in 2048. And the 2030 study, which forecasts 880,000 more people than the C&S Department does by mid-2030, will form the basis on which Hong Kong will plan future urban development.

While the government is no longer in fiscal deficit (in 2004–05 it posted its first surplus in five years, at HK$11.7 billion), that improvement was due in large part to a boost in land premium income, which came it at more than 2.5
times the original estimate. However, land premiums are not a reliable source of income. New building construction in the private sector is headed to a near record low for many years, and Hong Kong’s best public land has already been allocated to infrastructure development or projects such as Cyberport, Science Park, and the West Kowloon Cultural District. It would not be a good idea for the government to embark on any new large spending programmes.

Putting more money into construction would only mean taking more money out of something else and the employment gained in construction, unless the government wants to drive itself back into a terminal fiscal deficit, would only be lost in something else. It would do no good to pay for the creation of construction jobs by laying off an equal number of teachers, medical staff, or social workers. When creating employment becomes the purpose of spending money, the result is an inefficient economy that produces less employment, not more.

The FC legislators do not see themselves as representing the public (or even certain demographic sections of the public), but very particular industries. When they address a problem such as unemployment, they do not think of what should be done for all unemployed people in Hong Kong, just those in a particular line of work. It is significant that Ho and Shek were not asking for larger unemployment benefits or government programmes to help the unemployed learn new skills, but for more construction projects to create work for construction workers and construction workers only. The public policy implications — that Hong Kong might end up with more infrastructure than it will ever need — was not important to them.

![Hong Kong population forecast](image-url)

**Figure 4. Population forecast**
In some cases, it is not just a matter of which sectors are represented in LegCo but of who gets to vote for their sector’s representative that is important in examining how public policy is distorted. The transportation seat in the FCs provides a very clear-cut case study in how the composition of its electorate can seriously hamper the government’s ability to implement its own stated transportation policy, with adverse impacts on the efficiency of the city’s transportation system and the quality of life for its citizens.

Transport policy

In 1997, the government’s CTS-3 study laid out a rail-led transport policy. CTS-3 stated that railways should be the focus of transport development for a dense and crowded city such as Hong Kong, where available land to build new roads is becoming increasingly scarce. Yet is it difficult to see how the government can implement it. To put the public transport picture into perspective, see the charts below. The first bar chart in Figure 5 shows the average daily passenger journeys over the first three months of 2004, split by transport operator. KMB is the biggest, followed by the MTR Corporation and then minibuses and taxis. The rankings here should be no surprise. The surprise is in the second chart. It shows a breakdown of the number of eligible voters to the LegCo FC seat for transport. They are all corporate entities and there are 191 in total, of which 151 actually registered to vote for the 2004 election. They are classified by the same categories as in the first chart.

![Passenger journeys (millions) and Registered voters in Transport FC](chart)
KMB, which carries 2.86 million passengers a day, had one vote. The MTRC, with 2.39 million passengers a day, also got just one vote. Minibus operators had 23 votes and the taxi constituencies, with less than half the passenger count of the bus company, got 35 votes. There was a vote for almost every taxi lobby group in the territory. There was the Chuen Lee Radio Taxis Association, the Fraternity Association of NT Taxi Merchants, the Happy Taxi Operator’s Association and the list goes on. The same applied for minibus lobbies. This is not to mention at least 24 more votes for various vehicle lobby groups, excluding goods vehicles. These included organisations such as the HK Right Hand Drive Motors Association, the Maritime Affairs Research Association and the Merchant Navy Officers’ Guild Hong Kong.

In fact, if one treated the issue as one of road versus rail lobbies, then there were at least 88 votes for road (excluding goods vehicles) in the Transport constituency and only two for rail — one for the MTRC and one for the KCRC. Of greater significance, the same list of voters is found in the committee that elects the chief executive, a much weightier one than for the LegCo Transport seat.

The way the vote has been stacked in the Transport FC is one of the best arguments that could ever be mustered against this strange political concoction we call the functional constituencies. It demonstrates the difficulty of deciding how to represent a sector — allocating one vote per transport company/association has obvious problems, but would allocating votes according to ridership, or number of employees necessarily be any better? Most importantly, it means that when the government comes to making transport planning decisions, it is as likely to be swayed by the road transport operators’ economic interests as by considerations of what would best serve the public. This illustrates the wrongness of the notion that if all economic interests are represented, good policies will somehow emerge.

Transport operators do in fact actively lobby LegCo. For example, at a LegCo Transport Panel meeting on 28 May 2004, franchised bus companies lobbied against plans by the MTR Corporation to build rail services to the south side of Hong Kong Island, claiming that it could result in up to 3,000 jobs being lost. They said that there would no longer be the same demand for bus services in the area and bus operators would have no option but to cancel routes and lay off employees. At the same time, about 50 public transport workers staged a protest outside the LegCo building, largely representing taxi and minibus associations. With minibus and taxi associations carrying a combined total of 58 votes, it would be a mistake to think of the protest outside as the less significant of the two. So any debate among Hong Kong’s politicians about whether commuters on Hong Kong Island are better served by rail or road, or whether an efficient economy can make up for job losses in one sector with job gains in another, is likely to be stifled even before it begins.

Another example of how road transport lobbies might distort transport planning decisions is to examine one of the main reasons why the KCRC cut its
2004 forecast of its earnings to HK$300 million from HK$900 million and warned that it may incur losses in the future. The problem for the KCRC is increased competition from cross-border bus companies. The KCRC subsidises daily commuters by charging passengers extra to travel to the border crossing at Lo Wu: An East Rail trip from Hung Hom to Sheung Shui, one stop before the end of the line, costs only HK$9, but costs HK$33 if the passenger stays on for that final short hop to Lo Wu. This is no small consideration for the railway. Its East Rail cross-border service contributes 46% of its total recurrent revenue.

This of course, makes it easy for cross-border bus companies to compete with the KCRC and their business has consequently grown strongly. The KCRC estimated it would earn HK$250 million less from its East Rail passenger service in 2004. If the Hong Kong government wants the KCRC (a government-owned corporation) to subsidise commuters by charging high fares to cross-border passengers, then it must stop these cross-border buses from eating into the KCRC’s business, or be prepared to let the KCRC raise commuter fares. Yet considering the way the Transport FC is weighted, one might imagine that any move to restrict the operation of cross-border buses would be met with strong political opposition.

The story goes further, however. Consider the new 1.6 km Stonecutters Bridge. The stated functions for this bridge are to provide new road linkages to the Kwai Chung container port and cut travel time from Sha Tin to the airport from one hour to 25 minutes. However, existing roadways already allow the 25-minute journey to the airport, and the biggest obstacle in travel to the container port is congestion at the border, not at Kwai Chung. If buses did not add to the congestion at the border, perhaps the new bridge to the container port (which in any case will soon be in decline) would not be necessary.

Unfortunately, it is unlikely that the government will ever find the political support needed to implement its stated policy of rail-led transport. Expanding Hong Kong’s railways beyond the current network will require additional public funding. The old model of granting rail companies property development rights to finance railways will be no longer viable once railways are extended to less densely-populated areas. If LegCo refuses to grant funding for rail expansion, road building will continue at its present rate, resulting in a less efficient transport system for all.

**Conclusion**

The FCs are an odd political institution that have proved to be incompatible with responsible government. Their stated purpose, which was to bring a wider variety of economic and social expertise to government may have been laudable, but the concept is flawed in many ways. Firstly, it disregards the fact that such expertise already exists within the government bureaucracy out of pure necessity, because the civil service is responsible for the government’s role in regulation. Secondly, legislators with a narrow interest in public service will naturally
take a narrow view of the public’s interest. Thirdly, legislators who represent vested interests simply cannot be expected to give objective, dispassionate, technical advice to the government, when the government relies on them for political support.

More than that, however, the concept was suborned in the handover of sovereignty to Beijing to make it easier for Beijing to exert control over LegCo. Despite attempts pre-1997 to widen the electoral base of the FCs, it was deliberately returned to a narrow base in 1997. The FCs as they stand today allow Beijing to claim that LegCo is a much more democratic institution than it really is.

The result was that vested interests retained a greater influence over the workings of government than they would have had in any assembly elected according to universal suffrage. They have not been hesitant to use this influence and, as a quid pro quo, have generally been happy to follow the line on issues of interest to Beijing, irrespective of where Hong Kong’s interests may lie.

Good governance in general has suffered, as concessions costly to the public purse are too often made to private interests in order that an unelected administration can retain the loyalty of legislators elected by FCs. Careful scrutiny of spending proposals has been given short shrift by legislators who have more reason to care about showing loyalty to the administration than about whether public money is being well-spent. And public policy is warped to suit individual sectors whose interests are not the same as the general public’s. The FCs also perpetuate policies that distort the free market to benefit these narrow sectoral interests, competition remains restricted and the economy remains inefficient, to the detriment of both consumers and investors.

Ultimately, the FCs are a colonial relic. They were devised to co-opt Hong Kong’s elites and to give the colonial administration some appearance of legitimacy in the local community. They have preserved in almost exactly the same form by the post-1997 government and its superiors in Beijing for very similar reasons. As this chapter has shown, FCs actually work against economic efficiency in myriad ways. The reason for their existence is political, not economic, and those in favour of retaining them should not be able to claim otherwise.
CHAPTER 10

‘One person, one vote’: The US electoral system and the functional constituencies

The Association of the Bar of the City of New York

Introduction

We, the Association of the Bar of the City of New York, view certain developments in the Hong Kong Special Administrative Region of China (HKSAR) with great concern, in particular, the regressive interpretations of the Basic Law by the central government of China in April 2004 by which it pre-empted the question of whether there is a ‘need to amend’ the Basic Law regarding the election of the chief executive in 2007 and the Legislative Council in 2008, the manner in which such interpretations were delivered, and the barrage of intimidating personal attacks by the central government against the pro-democracy supporters of universal suffrage which accompanied these interpretations.

As the debate over constitutional reform in Hong Kong intensified in 2003 and 2004, voices supportive of maintaining the electoral status quo in Hong Kong raised, at certain points, the example of the United States and its electoral system as they argued to reject the rising call in Hong Kong for the more immediate fulfilment of the Basic Law’s promise of ‘universal suffrage’. It is this reference to the US electoral system and the historical experience of the United States with the democratic ‘one person, one vote’ principle as it has evolved and expanded over the past 215 years that we will address.

For many years, numerous New York law firms and hundreds of our members have been working as lawyers in their Hong Kong regional offices, and many are permanent residents. We believe they contribute significantly to the economic, commercial, and financial life of Hong Kong. In addition, many of our members have regional headquarters in Hong Kong or do extensive business there and often seek our advice regarding the benefits of locating in, relocating from, or doing extensive business in and from Hong Kong. Over the years, we have commented favourably on its independent and highly qualified judiciary, free press, active lawyers’ associations, conditions of transparency, absence of corruption and its adherence to the rule of law and common law principles that protect civil, political and commercial rights. Our experience confirms what
economists can now demonstrate — that only societies with such freedoms attain and maintain economic prosperity and viable capital markets.\textsuperscript{1}

Through the 1984 Joint Declaration,\textsuperscript{2} the United Kingdom and the People’s Republic of China (‘China’ or ‘PRC’) entered into a solemn compact: the return of sovereignty to China in exchange for continued maintenance of Hong Kong’s political, social, economic, and legal institutions accompanied by a high degree of autonomy, and the promise that universal suffrage would be instituted for the election of the chief executive and members of the Legislative Council. Expressly stipulated in the Basic Law implementing China’s obligations under the Joint Declaration is the commitment by China and the Hong Kong Special Administrative Region government that the fundamental rights of free speech, free press, freedom of assembly, freedom of association and freedom of religion, as well as due process, would not only continue but flourish and that the ‘ultimate aim’ of universal suffrage would be implemented for the election of both the chief executive and the Legislative Council.\textsuperscript{3} It is therefore incumbent on all interested parties, the United Kingdom (through the Joint Declaration), China (through the Joint Declaration and the Basic Law) and the HKSAR government (through the Basic Law), to maintain these basic principles in action as well as words.\textsuperscript{4} The benefits of such freedoms will accrue not only to the people of Hong Kong but to Hong Kong’s economy, as a society which safeguards such rights and freedoms is the most secure foundation upon which to build a prosperous economy.

Freedom of speech, freedom of the press, freedom of assembly and freedom of association are not abstract principles embodied in the Basic Law for cosmetic purposes. Rather, they are the foundations for an informed public to choose those who would govern, assure transparency in government, and determine who would be accountable for their actions. To support these four freedoms but deny universal suffrage to the citizens of Hong Kong is to weaken or frustrate the attainment of a truly democratic society.

Until these recent developments, and with certain exceptions,\textsuperscript{5} we have been gratified that Hong Kong and the People’s Republic of China generally have fulfilled their obligations under both the Joint Declaration and the Basic Law. However, the Association is particularly concerned with the unsolicited (by the Hong Kong government, the Court of Final Appeal, or any other Hong Kong actor) 6 April 2004 and 26 April 2004 interpretations of the Basic Law and pronouncements by the central government that freeze in place the functional constituency system and thus blatantly frustrate the goal of universal suffrage in the foreseeable future. Our concerns are not academic, but reflect matters that have an immediate impact on Hong Kong’s economic prospects. Foreign investors with whom our members work as legal advisors — both those investors with a long history in Hong Kong and those just now entering the Asian markets — are unsettled by the implications of such unilateral actions which directly frustrate Hong Kong’s development as a free and open democratic society. This is of critical importance for the relative attractiveness of Hong Kong as a regional business and financial centre and the ongoing economic prosperity of Hong Kong.
Concerns have been expressed by the major debt and currency rating agencies regarding the central government’s actions impeding universal suffrage in a manner that undermines Hong Kong’s autonomy in what is essentially a local matter. At the core of those concerns was the swift, unilateral, and unsolicited action of the central government in its interpretations of the Basic Law in response to the very civil and thoughtful public appeals for greater democracy as called for in the Basic Law itself.

This chapter will summarise recent comments raising the example of US electoral arrangements in the context of Hong Kong’s electoral debate. Then it will detail the ‘one person, one vote’ tradition within the US system and give a brief historical background of the US Electoral College and Senate. Following that it will discuss Hong Kong’s functional constituencies in light of the US historical experience.

The US electoral system in the context of Hong Kong’s electoral debate

Since early 2004, the central government, through intimidating pronouncements, interpretations and virtual amendments to the Basic Law, has unilaterally imposed impediments to consideration of amendments to the Basic Law which would provide for election of the chief executive through universal suffrage rather than through the Election Committee composed of 800 representatives from various business, financial, professional, labour and governmental groups known as ‘functional constituencies’. In seeking to justify the present Election Committee structure, it has been suggested that its indirect nature is no less democratic than the Electoral College in the United States.

In March 2004, Sir David Akers-Jones, now retired, but previously serving in Hong Kong’s colonial government, stated that ‘one-man-one-vote . . . is not the only democratic method of election. Each democratic country has a very different democratic system. . . . [For example, t]he US president is actually selected through indirect election.’ Just a month later, Zhu Yucheng, director of the Institute of Hong Kong and Macau Affairs, a voice for the central government of China, stated that, ‘[t]he development of democracy cannot be achieved in just one step. . . . The election system in the United States, for instance, is not “one-person one-vote” although it has a history of about 150 [sic] years.’ Even further back, after the occasion of the 2000 US presidential election, Shiu Sin-por, the then and current executive director of the One Country, Two Systems Research Institute, a Hong Kong think tank with strong links to the central government and certain sectors of the Hong Kong business community, in an article entitled ‘Popular Elections Cannot Secure Good Governance’ criticised the electoral system of the United States and used it as an example to justify non-direct and restrictive elections in Hong Kong.
Such comparisons to the US Electoral College are inappropriate for several reasons, not least because, unlike the Election Committee whose members are selected by a limited and self-perpetuating number of special interest groups and represent only 163,500 residents of Hong Kong, the 538 members of the US Electoral College are elected by universal suffrage exercised by the citizens of each state and who, in casting their state’s electoral votes for the presidential nominees of the political parties, are essentially acting as proxies for the universal constituency of voters who selected them.

More directly, however, the comparison is not useful because of the particular circumstances that brought the Electoral College into existence. The Electoral College structure was one of many compromises among the original 13 states necessary in order to adopt a unique constitutional government in which the people of both large and small states with varied economic, social, and cultural interests, and stretching over thousands of square miles with primitive means of communication, would agree to surrender a large degree of sovereignty and be bound by a federal constitution.

Fundamentally, comments such as these incorrectly characterise both representative democracy generally within the United States and the unique nature specifically of the Electoral College through which the US president is elected. They therefore deserve a direct response from an institution such as the Association, which has ample experience of direct democracy in the United States and a thorough knowledge of the nation’s political and constitutional history. We hope that the following discussion of both the history and operation of the Electoral College and of representative democracy through universal suffrage on a ‘one person, one vote’ basis in the United States will conclusively rebut the inappropriate and plainly wrong commentary that now features in the democratisation debate in Hong Kong, and add to the force of argument put forth by those insisting on the present implementation of the Basic Law’s express commitment to universal suffrage and thus a more democratic Hong Kong.

**Representative democracy in the United States**

*Introduction*

For the English subjects who, in the 18th century, separated themselves from the British Empire and set to the task of forming a union of states out of the former British colonies in America, settling on a manner of popular sovereignty through representation for the national government was fundamental. ‘For the guiding political theorists of the Revolutionary generation, the English system of representation, in its most salient aspects of numerical inequality, was a model to be avoided, not followed.’

Representation in the American colonies early on developed in a markedly more democratic direction than in England in several interrelated ways. The
franchise in colonial America tended to be far more extensive because the abundance of land in America rendered landholding requirements less restrictive. Colonial apportionment likewise followed population shifts to an extent that was nearly unthinkable for parliamentary elections. By contrast, the ‘rotten boroughs’, which characterised the English system of representation, grew from a system of apportioning representatives among the local governmental entities, towns or counties, rather than among units of approximately equal population. Nor did the colonies import the practice of voting for local representatives through occupational guilds, the closest historical equivalent of Hong Kong’s functional constituencies. The American colonists not surprisingly came to oppose the British idea of ‘virtual’ representation — the idea that Parliament could reflect all significant functional groupings in the empire — in favour of ‘actual’ representation — the notion that representatives should reflect the views of those who elect them. As the eminent historian Bernard Bailyn states, ‘there were no “functional groupings” in this English sense in pre-Revolutionary America’.

As the group of men that would draft the US Constitution gathered in Philadelphia in 1787, certain principles emerged from the debates that shaped the Constitutional Convention: an insistence upon election ‘by the people’ in the selection of the president and the Congress and, in the case of Congress, that democratic representation would be equal, that is, ‘the proportion of the representatives and of the constituents [would] remain invariably the same’. These democratic ideals, however, were diluted over the course of the Constitutional Convention as the delegates struggled to reach acceptable compromise positions between the large states favouring representation based on population and the smaller states favouring equal representation among the states in Congress in order to protect them from oppression by the larger states. In order to avoid the abandonment of the constitutional project altogether, compromises, such as are embodied in the Senate and the Electoral College, were forced into the original US constitutional structure.

**One person, one vote and the expansion of the electorate**

In 1789, creating a federal government that would be elected by white males over 21 and owning a relatively modest amount of land or other property was a revolutionary concept, or in the words of one American colonist, ‘a leap in the dark’. Over the next two centuries the franchise was expanded to all citizens regardless of race, sex, property or educational status. In the words of another early colonist, ‘the course of things in this country is for the extension and not the restriction of popular rights’. Property requirements were, generally, abandoned by 1855; the 15th Amendment to the Constitution adopted in 1870 assured that the right to vote would not be denied on the basis of race; the 17th Amendment adopted in 1913 provided that senators would be elected in each state by direct, general election rather than by each state’s legislature; the 19th
Amendment adopted in 1920 granted women the right to vote; the 24th Amendment adopted in 1964 prohibited poll taxes or any qualifications based on wealth or property; and the 26th Amendment adopted in 1971 lowered the voting age to 18. In 1970, Congress enacted a nationwide ban on literacy tests, which was upheld by the Supreme Court.

Beginning in the early 1960s the US Supreme Court ruled on a series of cases addressing vote dilution and districting controversies which established clearly, as Justice Douglas writing for the Supreme Court in an early vote dilution case stated: ‘The concept of “we the people” under the Constitution visualises no preferred class of votes but equality among those who meet the basic qualifications.’18 As Chief Justice Warren, writing the majority opinion on behalf of the Supreme Court in the 1964 case of Reynolds v Sims, observed, ‘history has seen a continuing expansion of the scope of the right of suffrage in this country. The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government’.19 He went on to say, ‘neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation. Citizens, not history or economic interests, cast votes’.20 In addressing the ‘one person, one vote’ principle that underlies representative democracy in the United States, the Supreme Court in 1963 noted that the Electoral College and the allocation of senators in a non-population based manner are the only constitutionally-sanctioned deviations from the ‘one person, one vote’ principle.21

Exceptions to the one person, one vote principle in the US electoral system

While the Constitution embodies the fundamental democratic value of equality of representation, there exist certain exceptions to this principle, the most notable of which are the Electoral College and the Senate. With regard to the Senate, Chief Justice Warren, again in Reynolds v Sims, held that: ‘The system of representation in the two Houses of the Federal Congress is one ingrained in our Constitution, as part of the law of the land. It is one conceived out of compromise and concession indispensable to the establishment of our federal republic. Arising from unique historical circumstances, it is based on the consideration that in establishing our type of federalism a group of formerly independent states bound themselves together under one national government.’22 And, with regard to the Electoral College, the Supreme Court in Gray v Sanders found that: ‘The inclusion of the Electoral College in the Constitution, as the result of specific historical concerns validated the collegiate principle despite its inherent numerical inequality. . . ’23 The following two sections will discuss each of these deviations and the context out of which they arose.
The case of the US Senate

The importance that the framers of the Constitution placed on fashioning the form of the national legislature cannot be overstated. As such, it was the first item, outside of general procedural resolutions, to be addressed by the delegates of the convention. The debate that ensued over the nature of representation in Congress was fought between delegates from the large states, on the one hand, and those from the smaller, on the other. Equality of representation based on population was the democratically principled argument of the larger states that faced the intransigent argument of the smaller states that each state must have an equal number of representatives in the Congress regardless of population. It quickly became clear that a compromise was necessary to keep the smaller states from abandoning the convention and the Constitution with it. John Dickinson, a Delaware delegate to the convention and proponent of the small-state position, speaking to James Madison, an adherent of population-based representation in the legislature, warned: ‘[W]e [small states] would sooner submit to a foreign power than . . . be deprived of an equality of suffrage in both branches of the Legislature, and thereby be thrown under the domination of the large states.’24 The ensuing compromise was fashioned through agreement on a bicameral legislature where one body, the House of Representatives, would apportion representatives based on population and the other body, the Senate, on the basis of equality among the states, where each state would be apportioned two senators.25 The establishment of a bicameral legislature would provide a system of checks and balances preventing the majority population from dominating the minority. Thus, the non-population-based apportionment of senators in the US Congress was entrenched in the Constitution as a key compromise necessary to form a lasting union of states. The debates surrounding the choice of a mode of presidential selection were equally hard fought as they involved issues of representation similar to those that the large and small states had fought over in the context of the Congress.

Selecting the US president through the Electoral College

The Constitutional text

Article II of the Constitution, as amended by the 12th Amendment, outlines the form of the Electoral College.26 Section 1 of that article provides each state of the union with the power to appoint, in a manner to be determined by such state’s legislature, a number of presidential electors equal to the number of its representatives in both the House of Representatives and in the Senate. It also defines how the electors, once appointed, shall cast their ballots for president and vice president, how the votes shall be counted and finally provides for a contingency procedure should the electoral tally fail to produce an absolute majority for any of the candidates in the case of either.

The contingency procedure provides that, in the case where the electors fail to agree on a presidential candidate by an absolute majority, the top three
vote-winners will be submitted to a vote in the House where each state’s delegation will cast only one vote. The contingency procedure in the case where the electors fail to agree on a vice-presidential candidate is nearly identical but that the decision passes to the Senate for vote.

In addition, Article II, Section 1 provides that ‘no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector’. By contrast, the composition of Hong Kong’s Election Committee includes the 60 members of the Legislative Council and 36 members of the National People’s Congress of China. Such a composition sets up exactly the type of conflict of interest that the framers of the US Constitution sought to avoid in the process of electing the president.

**Birth of the US Electoral College — Constitutional Convention (1787)**

The record of the convention left behind by the delegates, James Madison principal among them, makes clear that the Electoral College was born of political compromise and not of any abstract theoretical arguments in its favour. The delegates, having just resolved the large state–small state conflict over apportioning representation in the Congress that had threatened to dissolve the entire constitution-making exercise, were not eager to bring the convention to another crisis and, therefore, were ready for compromise in order to keep the Union alive. In fact, the delegates proposing the Electoral College’s form had nothing to recommend in it other than that it acted as a middle ground between the two modes of presidential selection initially proposed by various delegates to the convention: 1) direct election by the people and 2) election by the national legislature. Or, as one prominent historian has noted: ‘Its principal merit was to avoid the greater disadvantages that weighed against the other modes of election.’

The option of election of the president by the national legislature was objected to on several principled grounds, the separation of powers being first among them. Most of the delegates wished to keep the president outside of congressional control as far as possible, particularly outside the reach of the Senate, an institution that already had several checks on the proposed presidential powers. On the other hand, while a number of the delegates to the convention voiced fears that direct election by the people would lead to demagoguery, there was no agreement on this point and its rejection seemed to rest largely on several practical objections. These practical objections included: the numerical disadvantage the southern states would suffer as their population included a high percentage of non-voting slaves, and the belief that the Union would be too decentralised and far-flung to produce anything but a dispersion of votes among each state’s ‘favourite sons’, with no candidate receiving anything close to a majority of the popular vote. While the proposal for direct election had strong support from several of the most respected delegates to the convention, James Madison, James Wilson (a leading constitutionalist of the time and playing a role second only to Madison’s at the convention)39) and Gouverneur Morris, among them, they were unable to rally agreement among the delegates.
The delegates, in choosing the Electoral College mode of presidential election as a compromise between the two other options, believed that after the conclusion of George Washington’s term, with no other individual having his status, electors would no longer be able to provide electoral vote majorities and that the president would most often be chosen by the House contingency mechanism described above. The accepted conception, therefore, was that the electors would in effect serve as a nominating body, in most cases failing to vote in a candidate by an absolute majority, and thereby throwing the process to the House where the members of that body would cast their votes with one vote per state delegation. It satisfied proponents of both the direct election plan and the legislative election plan: the people, through the Electoral College, nominate and the House elects on a state unit basis.

The arguments made in support of the Electoral College during the ratification debates that followed the conclusion of the convention subsequently imbued the Electoral College with theoretical content not present at its inception, with such post facto justifications continuing to be repeated — erroneously — even into the modern age. In the Federalist No. 68, Alexander Hamilton asserts that ‘if the manner of [the Electoral College] be not perfect, it is at least excellent’ and proceeds to list the variety of desirable attributes that combined in the form of the Electoral College. Hamilton’s essay, in part, is the most likely source of the common and incorrect perception that the Electoral College was created out of a philosophical mistrust of the people’s deliberative capabilities. While Federalist No. 68 states that it was ‘desirable . . . that the immediate election should be made by men most capable of analyzing the qualities adapted to the station’ , the records of the convention show that such a concern did not prevail during the debates and eventual selection of the Electoral College as the mode of electing the president.

Due to the lack of a convincing theoretical basis to support it, the Electoral College remains an oddity unique to the United States’ system. The anomalous historical considerations existing in the 18th century giving rise to our Electoral College no longer apply, and the Electoral College concept has not been copied in any state of the United States or — as far as we can tell — by any other democratic society. Rather, the generally accepted principle of ‘one person, one vote’ prevails in democratic states, and is embodied in the International Covenant on Civil and Political Rights — in particular, Article 25 — which is incorporated into Hong Kong law through Article 39 of the Basic Law. As such, references to the US electoral system in arguments supporting maintenance of the electoral status quo in Hong Kong are unfounded.

**Current operation of the Electoral College**

The Electoral College never operated as contemplated by the framers and very quickly evolved away from its originally conceived design. The rise of the two-party political system in the US, in particular, has done much to shape its functioning. As the political parties served to solidify national support for their
preferred candidate, the framers’ speculation that the contingency mechanism would determine the selection of the president ‘nineteen times out of twenty’ was proven wrong. Popularly-based political parties, instead, became the vehicle for nominating presidential candidates, and the election was determined by the electors with the House contingency mechanism rarely being invoked.

Further, as the framers left the details for the selection of electors in the hands of the individual state legislatures, the manner in which electors would be chosen was left open to inconsistencies across the nation. Nonetheless, by 1796, three modes of choosing electors predominated: popular election of individual electors by districts, popular election of a statewide slate, and appointment by a popularly elected state legislature. The operation of the Electoral College, however, in the selection of electors did very quickly become largely standard across the nation and, by 1828, South Carolina was the only state where electors were appointed by the state legislature. Everywhere else winner-take-all, popular voting prevailed.

The current operation of the Electoral College is largely characterised by: the direct election of electors through universal suffrage in each state; the winner-take-all award of a states’ electoral votes by which all states, other than Maine and Nebraska, award the totality of their slate of electors to the candidate winning the popular vote within such state; and the ‘automatic’ role of the electors whereby the electors perform the role of proxy for the people, with only the very rare appearance of a ‘faithless elector’ who votes against the instructions of the state’s voters. This last convention illustrates a further aspect of evolution toward control by the electorate. Although it was originally contemplated that the electors chosen would exercise their independent judgment in selecting a president, very early on, again with the emergence of political parties, this concept of elector independence gave way to the proxy concept of the elector. In fact, approximately one-third of the states have laws requiring electors to vote in accordance with their pledge.

Notably, in 215 years of operation, on only three occasions in exceedingly close elections has a candidate who did not win a plurality of the popular vote go on to become president due to the mechanics of the Electoral College. The likelihood of a candidate losing the popular vote by a wide margin, but winning a majority of the electoral votes, remains remote.

Functional constituencies and the one person, one vote principle in Hong Kong

The functional constituencies in Hong Kong exist both in the selection of the chief executive and in the election of the Legislative Council. They are a form of government by special interests that provides inequitable distributions of power not only between local Hong Kong business and social constituencies, but also between them and foreign commercial actors. Our American experience, both
since the founding of our republic and as English colonies, has shown that constituent arrangements that deviate from the ‘one person, one vote’ principle should be disfavoured as they tend towards a system of patronage, which is at odds with a free market, both in the political and in the economic context. A democratically elected executive and legislative branches of government provide greater responsiveness to the people and, therefore, a more balanced and equitable distribution of resources. Such a government has greater support, stability and credibility that contributes to the economic and social growth of the community and acts as an attraction for foreign investors. Thus, universal suffrage is more than a lofty ideal, it is a powerful incentive for better, more equitable government.

Although various economic groups had sought representation in pre-revolutionary colonial assemblies or councils, there were no ‘functional groups’ in America as originated in the medieval guild system and practiced in England in the 18th century. The medieval system in which ‘local men, locally minded, whose business began and ended with the interests of their constituency’ were sent to parliament to do their constituents’ bidding and spoke for no group larger than the one that had specifically elected them was repudiated by the framers of the US Constitution. In fact, the use of ‘functional groups’ for voting purposes was never considered during the debates at the Constitutional Convention in 1787. Special-interest groups and hereditary prerogatives, such as England’s ‘rotten boroughs’, were deemed to have no place in a democratic society.

Chris Patten, the last colonial governor of Hong Kong, has described Hong Kong’s functional constituencies as ‘an abomination’. He added that, ‘[w]hoever had devised them must have had a good working knowledge of the worst abuses of British 18th-century parliamentary history, and had presumably concluded that such a system would appeal to the business barons of Hong Kong as it had to those of Britain two centuries before’. Such a system tending towards corruption on its own, as it has in the distant and recent past, in conjunction with the arguably otherwise eroding rule of law in Hong Kong, if unchecked, can be expected to lead inevitably to a destabilising effect on Hong Kong society and, with it, Hong Kong’s prosperous economy and financial markets.

**Conclusion: The Basic Law, the rule of law and democracy — guarantees for stability and prosperity in Hong Kong**

The genesis, structure and continued existence of both the Electoral College and the US Senate do not provide any theoretical foundation upon which to build arguments antithetical to the democratic ideals of universal suffrage and equality, both of which, in the context of electing Hong Kong’s leaders, are being called for today and both of which, beyond forming the bedrock of the most prosperous and stable of modern polities, are securely embedded within the Basic Law.
Those seeking to stagnate democratic development in Hong Kong should not seek justification of their position in historical foreign political anomalies, such as the US Electoral College and Senate. As explained above, they are inapplicable to the situation of Hong Kong and, in practice, are decidedly more democratic in nature than the corresponding Hong Kong institutions that have been put in place only since 1997. Instead, those challenging the growing democratic tide should take heed, if not of the promise of ‘universal suffrage’ in Articles 45 and 68 in the Basic Law, then of the HKSAR’s obligations under Article 109: ‘The Government of the Hong Kong Special Administrative Region shall provide an appropriate economic and legal environment for the maintenance of the status of Hong Kong as an international financial centre.’ The true lesson from the American experience is that a government not elected by the people lacks the credibility and responsiveness to address the needs of its citizenry and, therefore, threatens the social and political stability of the region.

While business leaders, such as Gordon Wu, the Princeton-educated chairman of Hopewell Holdings, have publicly argued against the current push towards democratic progress, claiming that such moves will only lead to a welfare state in Hong Kong, the counterpoint is made clearly by foreign businesses in Hong Kong. Both the American and British Chambers of Commerce in Hong Kong have indicated that an erosion of democratic principles and the rule of law in Hong Kong would unsettle the international business community that has heretofore chosen Hong Kong as its Asian base. Frank Martin, the former president of the American Chamber of Commerce in Hong Kong, stated that: ‘In order to ensure Hong Kong’s continued role as an international financial centre, it is absolutely essential that we have no erosion of the rule of law and no erosion of free press principles.’ In the 2003 Annual Business Confidence Survey commissioned by and conducted in part by the British Chamber of Commerce in Hong Kong, one can find the following under the heading of ‘What’s Not So Good About Business in Hong Kong’: ‘Members are increasingly dissatisfied with government leadership (9% decrease) and a stable government and political system (20% decrease).’ The stymied development of democratisation in Hong Kong as promised will only add to these anxieties and concerns.

As China moves to a more open and pluralistic society, with a higher level of education and improved economic conditions for all citizens, the call for greater democracy and participation will increase. Hong Kong, having reached this stage, is more than ready for implementation of the democratic provisions contemplated in the Basic Law. China, by helping Hong Kong realise these goals, will be better able — when the time comes — to implement its own democratic government with Chinese characteristics. In this way, Hong Kong, it is hoped, will be the laboratory for China’s eventual moves to a pluralistic society, universal suffrage and a government responsible to its citizens.

It would indeed be ironic if, in matters of self-government and democracy within the ‘one country, two systems’ framework, Hong Kong will not be the model for Taiwan, but instead Taiwan a model for Hong Kong. China may well
keep in mind the statement of John Dickinson, an American colonist writing in 1765 against the Stamp Act imposed on the American Colonies by the English Parliament: ‘many states and kingdoms have lost their dominions by severity [but] . . . I remember none that have been lost by kindness’.
CONCLUSION

Functional constituencies: The way forward

Christine Loh

Quality of government

Governments are indispensable for all societies. They form an important framework within which we all live and work. The quality of government affects the quality of our lives and well-being. Governments have power to make laws, collect taxes, issue money, defend the territory, conduct foreign relations, keep public order, punish crime, arbitrate, allocate resources, provide public services, and regulate all kinds of social and economic activities. It is often said that a government has the monopoly on coercive power. However, no government could operate effectively if coercion was needed to conduct daily public affairs. Stable governments require a solid foundation resting on public trust in the system that produces the government of the day, as well as trust in power holders to act rationally, predictably, and observe the rule of law. To a great extent, the legitimacy of a government depends on the means by which power holders are brought into positions of authority. Changing political leadership in a regular and orderly manner is one of the greatest challenges of contemporary politics. Legitimisation by election based on universal and equal suffrage at fixed intervals is the modern answer for most governments as well as regional and local authorities around the world.

Democratic characteristics

Despite the many debates about the meaning of democracy, political scientists generally agree that for a political system to qualify as ‘democratic’, the system must be politically accountable to voters through periodic, free and fair elections; there must be free political competition with the winners allowed to take office; and all citizens must enjoy civil liberties and have the equal right to participate in the political process. Some scholars summarise these elements using such terms as sovereignty of the people, universal and equal suffrage, free society and majority rule, while others define the characteristics as accountability, competition, freedom and equality. Although these terms and words are commonly used, how to interpret and implement them are highly contentious. Political structures
around the world differ significantly in terms of size, complexity, centralisation, openness and responsiveness.

**Economic inequalities, political tension and ‘good government’**

Economic inequalities cannot be ignored. Those who are rich are generally much more politically influential than those who are poor. They have more resources to apply to influence public policy and they can usually get closer to the power holders. This greater influence creates tension in society and is frequently the source of division as political actors compete to have their policies and preferences, often influenced by their supporters’ interests, adopted and implemented. The issues of greatest contention are usually those related to government spending and distribution of taxes. Naturally, whenever debates arise as to how to reform the political system, passions are greatly stirred as restructuring is likely to lead to redistribution of power. These are all recurring themes for Hong Kong.

While endorsement through the ballot box legitimises a government, it does not necessarily follow that democratic government results in good government. Whatever may be said of the electoral process, the success of a government in maintaining authority and remaining in power is greatly affected by its real as well as perceived ability to create employment and a strong economy. However, a society cannot be managed like a commercial business. Managing a society is much more complex than operating even very large companies. No minority group can be considered unimportant. Fairness may be more important than efficiency. The opposition cannot be ignored. Dissent cannot be dismissed. Citizens cannot be ‘fired’. Businessmen are not necessarily knowledgeable about economics, fiscal matters, public policy or politics. In today’s world, there is no social group distinguished by ethnicity, family background or economic status whose members are consequently inherently more fit to govern. The art and science of politics must be learnt and practised for breadth and depth to develop.

**Hong Kong and political legitimacy**

It may be said that Hong Kong is on a path from a colonial political system prior to 1997 to something that should be increasingly democratic as a Special Administrative Region. Hong Kong has enjoyed remarkable prosperity and stability over the course of transition that started in 1984 with the signing of the Sino-British Joint Declaration. One of the great issues of today for the city is the pace and direction of further political reform, the role of elections in legitimising the HKSAR government, the maintenance of freedom and how to ensure good government within a nation that operates under a very different set of political values but has agreed that Hong Kong can enjoy ‘a high degree of autonomy’ within ‘one country’.
The Hong Kong public is visibly mature, pragmatic and well-informed. It is hard to think of a community that is more ready for the democratic transition than Hong Kong. The statistics to back this up can be found in the regular surveys of Hong Kong people’s attitudes carried out by the Hong Kong Transition Project that now span over 12 years.\(^1\) There is however a greater willingness today to acknowledge that the real issue is not that Hong Kong people are politically immature or unready but that Hong Kong cannot move ahead faster than Beijing leaders feel is appropriate.\(^2\) Donald Tsang, the new chief executive, has chosen to speak in terms of a ‘Hong Kong-style of democracy’ and ‘involving more people in decision-making’.\(^3\) In introducing the Constitutional Development Task Force’s *Fifth Report*, Tsang nevertheless acknowledged ‘universal suffrage was the common wish of the Hong Kong people’.\(^4\)

The HKSAR government has raised doubts about the availability of local ‘political talent’ and the ‘maturity of political groups’ to take the reins of power.\(^5\) This is a Catch-22 issue. Without providing the opportunity for aspiring politicians to be involved in policy making at the highest level, to exercise power and be publicly accountable for their decisions, it is hard to attract talent and for political groups to mature. Currently, the chief executive must have no political affiliation, which shows Hong Kong’s systemic bias against politics and political parties.\(^6\) The task force in its *Fifth Report* has, however, decided to maintain this position for the 2007 selection, even though there have been suggestions that the current arrangement is biased against party politics.\(^7\)

The legitimisation of the head of government in the HKSAR is effectively through endorsement by the central authorities through Chinese leaders making known via various stage-managed events who they favour to lead Hong Kong.\(^8\) Nevertheless, an elaborate indirect election process using functionally-based subsector elections to create the Election Committee is provided for in the Basic Law. The subsectors and the structure of the Election Committee reflect the composition of Hong Kong’s political and economic establishment in the 1980s and early 1990s when the electoral arrangements were finalised.\(^9\)

**Executive-led government**

While in many other parts of the world, whether on a national or local basis, the primary organ of government is the elected legislature, in the case of Hong Kong, the office of chief executive is much more powerful and constitutionally important than LegCo. It is referred to as an ‘executive-led’ system. As the Article 45 Concern Group points out, ‘in a sense, all governments are executive led’.\(^10\) What is more telling about the Hong Kong version is how Chinese leaders understand the term. They contrast it with ‘legislative-led’ systems and have made it clear that a ‘legislative-led’ system is unsuitable for not only the HKSAR about also for China as a whole. The notion of separation of powers is also not accepted by China, which operates a one-party system led by the Chinese Communist Party.\(^11\) Essentially, the central authorities do not favour a system
where there is a legislature with strong powers that can check the powers of the executive. Using Mainland logic, LegCo’s role should be to support the executive authorities. Whilst it has the power to question policies and legislative proposals, and approve public expenditure, LegCo has little role in formulating policies, hardly any opportunity to propose bills, and no ability to amend government spending. The Basic Law reflects this logic.

Political structures and legislatures

History is important for explaining why political systems are structured as they are. It is beyond the ambit of this chapter to go into detail except by providing the most basic contrast. In the case of the United Kingdom, which operates the oldest parliamentary system, the executive and the legislature are fused, with the government having substantial control over the legislative agenda. Parliament has two houses, the House of Lords, which is descended from a hereditary assembly where noblemen and clergy met separately from the House of Commons, the other house made up of commoners. Since the common people were asked to finance the sovereign’s wars, and with the House of Commons controlling the purse strings, it eventually acquired greater powers than the House of Lords. In a parliamentary system the key function of a parliament is to express the results of elections and place the winning party in office. The leader of the parliamentary majority becomes the prime minister and forms a government.

In the case of the United States, which operates the oldest presidential system, where the legislature and the chief of administration are elected separately, neither is answerable to the other in the way that the entire executive is answerable to the legislature under a parliamentary system. Each has substantial independent powers and neither controls the agenda of the other. The legislature is made up of the House of Representative and the smaller Senate. The bicameral solution was adopted, as shown in Chapter 10, as a compromise to ensure that small states would not be disadvantaged within a federal system. France has a semi-presidential system combining elements of presidential and parliamentary systems, where the executive and legislature are not wholly separate, and the executive dominates parliament. The French legislature is composed of the National Assembly and Senate with the former elected by single-member constituencies and is more powerful while senators are chosen by mayors and town councillors from each administrative district. The German legislature is made up of the Bundestag, and the upper Bundesrat. Bundestag members are directly elected, where voters choose both individual district representatives and the political parties that represent their interests. The Bundesrat is made up of representatives from the regional authorities, and its role is to make the federal system work by distributing power between the state and regional governments.

Bicameralism is a common feature with over 70 countries having two houses in their legislatures. Generally speaking, the forms of bicameralism found in the world today are usually there either to enable a less-powerful upper house act as
a check on possible hasty actions by the lower chamber, or to balance power between the centre and the regions. Bicameralism is seen as a means to improve governance and not as a way to lessen the popular legitimacy of the lower house.

What is noteworthy about Hong Kong’s case is that while it has a unicameral LegCo, when it votes on motions, bills, and amendments to motions and bills raised by legislators, the voting is bicameral and split on a functional versus geographical basis. The original design was premised on the basis that directly-elected politicians were on the whole in favour of a faster pace of democratic reform, and they are at the same time viewed by the business and professional elites, as well as by senior civil servants, as ‘populist free-lunchers’ who, if given the opportunity, would turn Hong Kong into a business-unfriendly welfare state. The bicameral voting system was put there as a safety valve for Beijing to ensure Hong Kong’s democratic aspirations do not run ahead of its readiness for reform and to maintain ‘capitalism’.

**Good for capitalism and social stability?**

In 2002, the former vice-premier, Qian Qichen, said: ‘The past practices have shown that the model based on functional constituency elections is an effective way to ensure that people from various walks of life can have balanced participation in political life. As a result, this should be kept intact.’

The HKSAR government’s Constitutional Development Task Force specifically raised the issue of how the further development of political structure could ‘facilitate the development of the capitalist economy’, paraphrasing statements made by Mainland officials in the past.

Influential political figures have used similar language to argue that reform must be aimed at producing a system that can ‘maintain investors’ confidence’ and ‘Hong Kong’s competitive edge in business’.

However, various chapters in this book have raised doubts as to whether the functional constituency election system is the best way to maintain a competitive, open, market-based capitalist system in Hong Kong, or merely gives undue influence to the vested interests of some dominant capitalists in order to retain their monopolies, oligopolies and cartels. Those who are willing to keep functional constituencies and insist that they are the best way for the Hong Kong economy to be competitive are probably focussing on the interests and biases of established business and professional elites rather than taking into account how to make Hong Kong as a whole more attractive to local and foreign investors. It may be that the dominant capitalists who enjoy oligopolies would prefer to invest only if their special positions can be kept rather than if the market is opened up. But it is hard to argue rent-seeking habits are good for Hong Kong as a whole. Indeed, the Hong Kong public of today is unlikely to agree that if the rich get richer, everyone else will benefit somewhere along the line through a trickle-down effect. The fact that many scholars and influential bodies, including the Hong Kong Consumer Council, have highlighted the uncompetitive nature of Hong Kong’s domestic markets does not appear to have been taken note of.
by those who think functional constituencies are necessary to maintain Hong Kong’s competitiveness. In fact nothing could be further from reality.

Furthermore, functional constituencies and the behaviour of their representatives in LegCo may well be a contributing cause of the persistent political tension in society as the public feels the system favours ‘big business’. Chapter 6 provides data to support this argument. By analysing the demographic characteristics of functional voters, evidence shows that voting within the functional constituency structure magnifies systemic volatilities rather than reducing them. It is no wonder that when the LegCo and chief executive elections systems are taken together, both functionally based, to produce Hong Kong’s key power holders, that the failed Tung Chee Hwa administration never managed to rid itself of constant public accusation of ‘black-box politics’ and collusion with big business interests.16

Functional elections and the middle class

The proponents of functional constituencies are not wholly unaware of the sensitivities of what are popularly referred to as ‘small-circle elections’. To counter this, some of them have put forward the argument that the middle class should be given more say in the governing of Hong Kong in order to ease social tension.17 As to how this could be achieved, one suggestion is to keep functional constituencies and give ‘preference . . . to the middle class when considering which new functional constituencies should be added to the Election Committee’ for selecting the chief executive.18 But who are members of the ‘middle class’ in their minds?

Chapter 6 shows that current functional voters are among the highest income earners in Hong Kong (over $60,000 per month). If by ‘middle class’ the proponents are in fact referring to those who earn above the median income (approximately HK$10,000 in 2004), or those who have at least completed secondary education, who earn at least the median income in Hong Kong and who see themselves as having the potential to improve their earning capacity, the middle class would be quite sizable. On this basis, we can make two observations. Firstly, this categorisation will include many of the younger generation in early careers who are likely to support economic liberalisation. As such, they are unlikely to look favourably on the current functional system. Secondly, if this categorisation is accepted, then the proponents of functional elections might as well accept direct election as a better way to expand inclusiveness, otherwise they are really only thinking of expanding the vote to more higher-income earners thereby perpetuating a deep socio-economic division in Hong Kong’s political system. In other words, they are back to square one.

The chapters in this book have showed that one of the key justifications for functional constituencies — to maintain capitalism — cannot stand up to scrutiny. The HKSAR government has not been willing to openly discuss the
criticisms to date. It has only been willing to acknowledge that ‘some views expressed by the public have brought out some deeper issues of principle’.

A devil’s bargain?

The real reason for keeping functional constituencies has to do with the central authorities’ need to have enough politically conservative forces in place to act as a bulwark against demands for a quicker pace of democratic reform. This may never be admitted explicitly of course. It is therefore couched in indirect language. It is said that ‘any proposed amendments must enable different sectors of society to be represented in the political structure, and to participate in politics through various channels . . . should ensure that consideration would continue to be given to the interests of different sectors of society; and . . . must not bring about any adverse effect to the systems of economy, monetary affairs, public finance’. To maintain the force of conservatism within the political system, the implicit bargain is that the interests of these sectors have to be satisfied in return. Beyond functional representation, this bargain includes providing political access to leaders in Hong Kong and the Mainland, appointments to various consultative bodies and invitations to important events.

Trade-offs and design goals

Given this backdrop, it is unsurprising that none of the HKSAR government’s Constitutional Development Task Force reports provided detailed discussions on the philosophy, principles and goals of how to design a new political system that will create better governance. Other critical issues of how the chief executive’s office and the Executive Council function, and their relations and links with LegCo have not been openly and extensively discussed.

The First Report published in March 2003 dealt with issues of ‘legislative process in the Basic Law relating to Hong Kong’s political structure’, while the Second Report published in April 2004 dealt with issues of ‘principle in the Basic Law’. The Third Report published in May 2004 explained the areas where reforms might be possible, within the SCNPC decision declared the month before ruling out universal suffrage in 2007 and 2008, and called for public views within the allowable parameters. Taken together, the aim of these reports was to emphasise the power the central authorities have in determining the timing and direction of the HKSAR’s political reform. The Fourth Report published in December 2004 summarised the views received, noted that ‘the community holds divergent views’ and that Hong Kong needed to strive to ‘reach the broadest possible consensus’. By asking for further proposals ‘that are considered acceptable to all parties concerned’, the HKSAR government gave the game away that it has limited appetite for change. It would not consider any proposals that were ‘inconsistent’ with the SCNPC decision.
The task force’s *Fourth Report* noted that in arriving at a package that would cover ‘all the areas of amendments and which could command the support of various parties… Much trade-off may be required’. What it did not say was how this trade-off would be determined. The HKSAR government announced what it considers to be an acceptable package with the task force’s *Fifth Report*, which presumably represents the necessary trade-offs. Unfortunately, the public does not have the benefit of a full discussion by the government on what it takes to create a modern political system for good governance for Hong Kong as the *Fifth Report* is devoid of a comprehensive discussion, as were the previous reports.

Without a substantive analysis of the problems related to the current system from the HKSAR government, the risk is that the decisions will be made based on opinion rather than knowledge. The design of political structure is a rich area of study but to date, neither the central authorities nor the HKSAR government have been willing to engage the public to deliberate the issues openly.

‘Not acceptable’ to Beijing

The booklet *2012: A Bicameral System for Hong Kong* put forward by the influential Business and Professionals Federation of Hong Kong in July 2005 indicates how some elites who can command the attention of Beijing think reform might proceed. The paper acknowledged that there were strong public calls for universal suffrage, but insisted that to have a fully directly elected LegCo in 2012 and to abolish functional constituencies ‘would be to leap into an unpredictable future’. While it did not explain what that ominous statement meant, the federation thought a fully directly-elected LegCo by 2012 ‘would not meet the gradual and orderly criteria and would not be acceptable to the Central Authorities’. The federation emphasised that there was need to ‘provide a necessary check to extremism’ although it did not clarify what kind of extremism it had in mind. It then raised the idea of a bicameral legislature and how it might be structured to lead to greater efficiency and expedition in the conduct of government business. The first chamber could be fully directly-elected by universal suffrage while the second chamber might have vocational or functional members as well as possibly appointed members of distinguished persons, and it might be given a special veto in some constitutional matters which impinge on the powers of Beijing.

The challenge for the federation is to consider whether the second chamber of functional members would behave any differently than they currently do in LegCo, which already has a bicameral voting system. The evidence and conclusions in this book suggest that this may be difficult. It needs to also take into account that, by making the functional representatives occupy the second chamber to check the ‘extremism’ of the elected first chamber, the federation’s idea of bicameralism may be turning the usually understood structure upside down. The modern idea of having an upper house is to introduce a broader vision to restrain the lower house in case it takes important decisions that are too
narrowly or parochially focussed. The evidence in Hong Kong is that functional legislators vote much more parochially to press their sectors’ interests than directly elected ones.²⁹

It is also clear from their own choice of words that the business and professional elites are prepared to continue to play a role to slow constitutional reform whenever necessary, although it is also significant that they noted a genuine desire among Hong Kong people for the system to be made more democratic.

Civic Exchange’s proposal

Appendix 27 provides a summary of selected reform proposals put forward in recent months on the chief executive and LegCo elections from both influential bodies and individuals, and from those who have put forward innovative ideas. We hope this book will help readers to judge the various proposals that have been put to the task force, as well as how the task force has framed its third, fourth and fifth reports.

Civic Exchange has tried to consider options for reform within the SCNPC decision that minimise the current system’s more adverse and undemocratic features, even though we would have much preferred to apply our minds to designing a system based on universal and equal suffrage. In thinking how we could move forward in light of the constraints, we focussed on ways to eliminate and minimise the existing anomalies and deficiencies that have been highlighted in great detail in Chapters 3 and 4. Thus, corporate voting should be abolished. Our aim has also been to reduce the likelihood of functional elections being abused for the benefit of narrow vested interests. We believe our proposals reduce the likelihood of uncontested seats (a regular phenomenon to date), make the elections harder to manipulate, offer functional voters broader choice in the kind of candidate who would not be too narrowly focussed, and better facilitate political party participation in functional elections.³⁰

The architects of the Basic Law saw the current functionally-based systems as a way to include participation from many sectors of society in indirectly selecting the chief executive and half of LegCo. Those entitled to vote in the Election Committee subsectors are almost the same as those for functional constituencies. The current base of the various subsectors amounts to approximately 163,500 potential individual/corporate voters.³¹ The 2004 voter base for the functional constituencies was 199,539 voters (individual and corporate), with an estimated potential base of 295,534 (individual and corporate) according to the HKSAR government. Our proposal aligns the two elections since they are so similarly based and there is already significant overlap between the two groups of voters.

Our proposal has three essential features:³²
Large generic constituencies

There needs to be a number of very large, generic constituencies. We suggest that the subsector base for the Election Committee and the voter base for the functional constituencies be increased to 400,000–500,000 voters for the next round of elections.33 This proposal is not so radical since it is in fact only doubling the size of the current base. On the basis that there are currently approximately 150,000 potential individual voters for the Election Committee subsectors,34 and that the HKSAR government believes the potential number of individual functional constituency voters for the LegCo election to be 280,751 for the 2004 election, it seems quite politically possible to boost total numbers to 400,000–500,000 for the next round of elections. Should the HKSAR government wish to put a cap on the total number of potential voters at, say, 500,000, then it can encourage people to register within a certain time and priority will be given to the qualified individual voters who registered first. It can also put a cap on numbers by requiring a number of years of engagement in a sector or constituency but this should be kept relatively low, such as five years’ relevant experience.

By way of illustration, the Election Committee subsectors could include:

I. **Production**: This sector includes individuals engaged in manufacturing, power generation, farming, fisheries, mining, etc.

II. **Services (1)**: This sector includes individuals engaged in banking and financial services institutions, and including insurers and stockbrokers.

III. **Services (2)**: This sector includes individuals engaged in trading and commercial services organisations (e.g., agency, import/export, whole/retail).

IV. **Services (3)**: This sector includes individuals engaged in the publications sector (publishers, writers, distributors, media, etc.), communication (marketing, public relations, etc.) and arts and cultural organisations (artists, arts administrators, designers, etc.).

V. **Services (4)**: This sector includes individuals engaged in all types of transport, food and beverage, catering, tourism, hospitality and personal services organisations.

VI. **Services (5)**: This sector includes individuals engaged in or are members of social welfare organisations and community groups (registered charities).
VII. Technology: This sector includes individual engaged in all the technology fields, including information technology.

VIII. Education & Training: This sector includes all those related to the teaching profession including those employed by primary, secondary, tertiary and other types of registered educational and training institutions, as well as those who sit on their boards and councils.

IX. Professionals (1): This sector includes individuals engaged in all types of medical and healthcare professionals, including doctors, TCM practitioners, nurses, hospital/clinic employees, naturopaths, chiropractors, and other types of wellbeing practitioners.

X. Professionals (2): This sector includes individuals engaged in all types of built environment professions, including planners, architects, surveyors, engineers, landscape architects, electricians, plumbers, contractors, builders, consultants, etc.

XI. Professional (3): All practitioners in the legal, accountancy and audit professionals, including clerks and employees working in these fields.

XII. Labour & Employers: This includes those who are individual members of trade unions, and individual employers who employ at least five employees.

According to the example above, where there are 12 subsectors, another needs to be added to reflect the Ex Officio and Nominated Sector (XIII), which includes all the individuals who are the current office holders of the Hong Kong Legislative Council, District Councils, Hong Kong Deputies to the National People’s Congress, Chinese People’s Political Consultative Conference, and the nominated members from the religious subsector.

The LegCo functional constituencies could be similarly re-organised to include 14 constituencies with even wider participation. The difference here is that we propose adding one more constituency to include Home Economics; and splitting up Services (5) into two separate constituencies by adding Services (6). Every constituency will return two legislators except Labour, which will return three seats as is currently the case, and we propose giving Education and Training also three seats, thereby making up in total 30 seats.

The SCNPC decisions require the ratio of directly and functionally elected seats to be the same. There were functional bodies lobbying for either splitting up current functional constituencies into even smaller ones (e.g., Real Estate and Construction, and Sports, Performing Arts, Culture and Publications) or be
given one of their own (Employers’ Federation, Traditional Chinese Medicine, SMEs, etc.). This was not surprising as with the current system, it made sense for vested interests to increase their influence. However, it has always been extremely doubtful that any such reform would ‘enhance the representativeness and legitimacy’ of the system. In our view, this would instead further entrench certain interests in the electoral system. By allocating the five new seats to the District Councils, this particular problem has been avoided.

We had proposed leaving the number at 60 seats for the 2008 election in order not to allow functional constituencies to grow since we strongly believe that they should be replaced by 2012. Thus, our proposal for the 2008 election would do away with some of the worst aspects of the system and to introduce some measures that points towards universal and equal suffrage. We believe our proposal to create large generic constituencies would eliminate the problem of every narrow interest group fighting for their sectoral interests in LegCo and that those elected to represent a large sector would need to have wide experience to win and thus this would improve legislative capacity.

Thus, the functional constituencies for the 2008 election could be:

I. Production: This sector includes individuals engaged in manufacturing, power generation, farming, fisheries, mining, etc.

II. Services (1): This sector includes individuals engaged in banking and financial services institutions, and including insurers and stockbrokers.

III. Services (2): This sector includes individuals engaged in trading and commercial services organisations (e.g., agency, import/export, whole/retail).

IV. Services (3): This sector includes individuals engaged in the publications sector (publishers, writers, distributors, media, etc.), communication (marketing, public relations, etc.) and arts and cultural organisations (artists, arts administrators, designers, etc.).

V. Services (4): This sector includes individuals engaged in all types of transport, food and beverage, catering, tourism, hospitality and personal services organisations.

VI. Services (5): This sector includes individuals engaged in or who are members of social welfare organisations.

VII. Services (6): This sector includes individuals engaged in or who are members of community groups (registered charities).
VIII. Technology: This sector includes individuals engaged in all the technology fields, including information technology.

IX. Education & Training: This sector includes all those related to the teaching profession, including those employed by primary, secondary, tertiary and other types of registered educational and training institutions, as well as those who sit on their boards and councils.

X. Professionals (1): This sector includes individuals engaged in all types of medical and healthcare professionals, including doctors, TCM practitioners, nurses, hospital/clinic employees, naturopaths, chiropractors, and other types of wellbeing practitioners.

XI. Professionals (2): This sector includes individuals engaged in all types of built-environment professions, including planners, architects, surveyors, engineers, landscape architects, electricians, plumbers, contractors, builders, consultants, etc.

XII. Professional (3): All practitioners in the legal, accountancy and audit professions, including clerks and employees working in these fields.

XIII. Labour: This includes those who are individual members of trade unions.

XIV. Home Economics: This includes individuals who work at home to care for family well-being.

Large number of potential ‘qualified individual voters’

To qualify as a voter, the individual has to be a member, owner, partner, director, council member, officer, or employee as the case may be, of one of the above subsectors or constituencies plus be a registered voter in a geographical constituency in order to register. If an individual qualifies for more than one subsector and constituency, s/he must choose only one to register in both cases.

No delegation of any part of electoral process

The HKSAR government must be involved in setting rules for the direct registration of voters just as it does for the registration of geographical constituencies voters. Organisations can assist as they already do by encouraging qualified individuals to register but not to be delegated any part of the electoral process. The
task force’s *Fifth Report* made no mention of this matters, which presumably means the existing system remains for the 2008 election.

**Election process**

While LegCo’s functional elections can then remain substantially the same as they are organised today, the process for electing the Election Committee is more difficult.

**Size of Election Committee**

Many submissions in response to the task force’s *Fourth Report* supported expanding the size of the Election Committee indicating there is general acceptance that the current system is too narrowly defined. In suggesting that the numbers could be increased from 800 to 1,200 or 1,600, it would appear that the suggestions were based on the present construct of 200 per sector in four sectors. While this may appear to be the easiest way forward it is still narrow, can be easily manipulated, and therefore will not reduce cynicism about Hong Kong being allowed to achieve universal and equal suffrage in the next election, if ever. The task force’s *Fifth Report* opted for increasing the size to 1,600 with each of the sectors being given 300 seats, except for the political sector, which would go from 200 to 700 seats, most of whom would be District Councillors.

Instead, we proposed to increase the size of the Election Committee to 4,000–5,000 members. Thus, the Election Committee would effectively be 1% in size of the electorate of 400,000–500,000 voters. It needs to also be noted that by this expansion the ratio between electors and the general population would be the same as the current ratio in the Macau Special Administrative Region. Using such a ratio, we believe the actual numbers are sufficiently large to satisfy the public’s desire that the process be a useful step towards achieving universal and equal suffrage.

**E lecting the Election Committee**

For the 12 subsectors illustrated above, the HKSAR government could consider having the same number of members for each of the subsectors. Equal numbers for the 12 sectors can be justified as no one sector can dominate. Assuming that the total number of Election Committee members is 4,000, and taking out say 500 members for sector XIII, by dividing 3,500 by 12, each sector would elect say 290 members to the Election Committee.

This is a very large number for a subsector to elect and may appear quite complicated for candidates to campaign and voters to choose so many members. However, the problem can be ameliorated through political parties and interest groups self-organising to create lists to make it easier for both candidates and voters. These lists, which may have sizable batches of candidates, are most likely
to be based on political or interest lines. Admittedly, having to elect a large number of people to subsectors is problematical. It should be noted that the design of the current system itself poses many inherent problems that are also hard to resolve without major surgery or total abandonment.

The above problem can be solved by simply using the 400,000–500,000 functional voter base to elect the chief executive. This retains the idea of functional election and at the same time widens public participation. This also does away with the Election Committee. However, if an election committee has to be kept at around 1,600 people in size, then this body could be made a nominating committee and whatever is the size of the voter base (which is already at 150,000 individual voters today and can easily be increased to the potential size for functional constituencies), all the functional voters can elect the chief executive.

Conclusion

China is the only world power that is a one-party communist state still claiming allegiance to Marxist-Leninist ideology. It has reabsorbed Hong Kong as a special administrative region operating under a capitalist system, where multi-party elections to the legislature has been practised since 1991 with the proportion of directly elected seats on the basis of universal and equal suffrage having grown to produce half of Hong Kong’s legislators. Beijing has had to dampen Hong Kong people’s aspiration to directly elect their chief executive in 2007 and legislators in 2008 by explicitly ruling it out using the SCNPC to give an interpretation of the Basic Law. Nevertheless, it has had to leave a window open for modest reforms in the next two years. Public attention is increasingly focussing on functional elections, which is the basis for the selection of the chief executive and 30 of the 60 legislators. The oddities, anomalies and unfairness of functional elections are slowly being exposed. It is also becoming increasingly clear that the unfairness may well be the cause of constant political tension in Hong Kong. Even the conservative business and professional elites are now engaging in the public debate on possible reforms for the next round of elections beyond 2008. Even if Hong Kong does not achieve universal and equal suffrage by 2012, some of the worst aspects of the current functional election elements need to be replaced. The idea of bicameralism has been put forward by the business and professional elites as a possible way out of the functional mess. We hope this book will help all sectors to engage more meaningfully in that debate.
# ACRONYMS AND ABBREVIATIONS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACSBM</td>
<td>Advisory Committee on School-based Management</td>
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<td>BL</td>
<td>Basic Law</td>
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<td>BLCC</td>
<td>Basic Law Consultative Committee</td>
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<td>BLDC</td>
<td>Basic Law Drafting Committee</td>
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<td>BORO</td>
<td>Hong Kong Bill of Rights Ordinance</td>
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<td>CATI</td>
<td>Computer-Aided Telephone Interview</td>
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<td>CE</td>
<td>Chief Executive</td>
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<td>CEPA</td>
<td>Closer Economic Partnership Agreement</td>
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<td>CFA</td>
<td>Chartered Financial Analyst</td>
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<td>CPI</td>
<td>Consumer Price Index</td>
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<td>CPPCC</td>
<td>Chinese People’s Political Consultative Conference</td>
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<td>CTS-3</td>
<td>Transport Department’s Third Comprehensive Transport Study</td>
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<td>DAB</td>
<td>Democratic Alliance for the Betterment of Hong Kong</td>
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<td>DP</td>
<td>Democratic Party</td>
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<td>DSE</td>
<td>Display Screen Equipment</td>
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<td>DSS</td>
<td>Direct Subsidy Scheme</td>
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<td>EC</td>
<td>Election Committee</td>
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<td>ExCo</td>
<td>Executive Council</td>
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<td>FC</td>
<td>Functional Constituency</td>
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<td>FR</td>
<td>Functional Representative</td>
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<td>FTU</td>
<td>Hong Kong Federation of Trade Unions</td>
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<td>GC</td>
<td>Geographical Constituency</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>GR</td>
<td>Geographical Representative</td>
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<td>GST</td>
<td>Goods and Services Tax</td>
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<td>HKGCC</td>
<td>Hong Kong General Chamber of Commerce</td>
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<td>HKPA</td>
<td>Hong Kong Progressive Alliance</td>
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<td>HKPTU</td>
<td>Hong Kong Professional Teachers’ Union</td>
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<td>HKSAR</td>
<td>Hong Kong Special Administrative Region</td>
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<td>HKTP</td>
<td>Hong Kong Transition Project</td>
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<td>ICAC</td>
<td>Independent Commission Against Corruption</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>IRR</td>
<td>Internal Rate of Return</td>
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<td>ISFS</td>
<td>Information Security and Forensics Society</td>
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<td>IT</td>
<td>Information Technology</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>KCRC</td>
<td>Kowloon-Canton Railway Corporation</td>
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<td>KMB</td>
<td>Kowloon Motor Bus</td>
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<td>LAB</td>
<td>Labour Advisory Board</td>
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<td>LP</td>
<td>Liberal Party</td>
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<td>LegCo</td>
<td>Legislative Council</td>
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<td>MBA</td>
<td>Master of Business Administration</td>
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<td>NPC</td>
<td>National People’s Congress</td>
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<td>NPCSC</td>
<td>National People’s Congress Standing Committee</td>
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<td>NT</td>
<td>New Territories</td>
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<td>OFTA</td>
<td>Office of the Telecommunications Authority</td>
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<td>Omelco</td>
<td>Office of the Members of the Executive and Legislative Councils</td>
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<td>OSHO</td>
<td>Occupational Safety and Health Ordinance</td>
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<tr>
<td>PRC</td>
<td>People’s Republic of China</td>
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<td>PSEM</td>
<td>Permanent Secretary of Education and Manpower</td>
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<td>REIT</td>
<td>Real Estate Investment Trust</td>
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<tr>
<td>SARS</td>
<td>Severe Acute Respiratory Syndrome</td>
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<td>SBM</td>
<td>School-based Management</td>
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<tr>
<td>SCA</td>
<td>Secretary for Constitutional Affairs</td>
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<td>SCNPC</td>
<td>Standing Committee of the National People’s Congress</td>
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<td>SCOPG</td>
<td>Standing Committee on Pressure Groups</td>
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<tr>
<td>SMC</td>
<td>School Management Committee</td>
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<tr>
<td>SME</td>
<td>Small or Medium-sized Enterprise</td>
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<td>SSB</td>
<td>School Sponsoring Body</td>
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<td>THC</td>
<td>Terminal Handling Charge</td>
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<tr>
<td>UMElco</td>
<td>Unofficial Members of the Legislative Council</td>
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<tr>
<td>UNHRC</td>
<td>United Nations Human Rights Committee</td>
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NOTES FOR CHAPTERS

These endnotes can also be found in the HTML file ‘notes.html’ on the accompanying CDROM, providing direct links to referenced websites.

Notes to Introduction


6 Edited transcript of an interview with Qian Qichen reported in ‘Chinese vice-premier warns against democratic elections in Hong Kong’, BBC Monitoring Asia Pacific — Political, 26 June 2002, originally reported in South China Morning Post (Business Post supplement), 26 June 2002.


8 Donald Tsang, Election Platform, was available at http://www.donald-yktsang.com but it has been removed since the selection.

9 The number of registered FC voters in 2004 (199,539) represented approximately 6% of total GC voters (3.207 million). Of the FC voters, 184,756 were individual voters and the rest were corporate voters. The Education FC representing teachers is by far the largest FC with 77,696 registered voters (38.94% of all FC voters). The various Appendices provide detailed information on the size of each FC and other pertinent information.


Raymond Ho’s campaign material. See also Raymond Ho’s ‘Achievements’ noted in his website, such as *Motion of Maintaining Infrastructure Investments, A bumper year for PWSC, and Pressing the government to keep its commitment in infrastructure investments*, http://www.raymondhochungtai.org.hk/english/e_achievement/e_achieve.html.


Under the Oaths and Declarations Ordinance, the LegCo oath or affirmation that all legislators must take before assuming office requires each member to ‘uphold the Basic Law, bear allegiance to the HKSAR and serve the HKSAR conscientiously, dutifully, in full accordance with the law, honestly and with integrity’.

See Chapter 9 for a full discussion.

Assuming all 60 members were present, a simple majority would mean 31 votes out of 60, and a super majority would mean 32 votes (16 from each bloc) out of 60 to pass.


The Selection Committee also selected the members of the Provisional Legislature. See Chapter 3 for a detail discussion of the events of the time.

The six designated bodies of the religious subsector that may nominate electors are the Catholic Diocese of Hong Kong (7 nominees), Chinese Muslim Cultural and Fraternal Association (6), Hong Kong Christian Council (7), The Hong Kong Taoist Association (6), The Confucian Academy (7), and The Hong Kong Buddhist Association (7).

The other 35 subsectors are Heung Yee Kuk (21 electors) Agriculture and Fisheries (40), Insurance (12), Transport (12), Education (20), Legal (20), Accountancy (20), Medical (20), Health Services (20), Engineering (20 nominees), Architecture, Surveying and Planning (20), Labour (40), Social Welfare (40), Finance (12), Financial Services (12), Sports, Performing Arts and Publication (40), Import and Export (12), Textiles and Garments (12), Wholesale and Retail (12), Information Technology (20), Higher Education (20), Hotel (11), Catering (11), Chinese Medicine (20), Chinese People’s Political Consultative Conference (41), Employers’ Federation (11), Real Estate and Construction (12), Tourism (12), Commercial 1st (12), Commercial 2nd (12), Industrial 1st (12), Industrial 2nd (12), Hong Kong and Kowloon District (21), New Territories District (21), Hong Kong Chinese Enterprises (11). In examining the members of the Election Committee as a whole, almost all of Hong Kong’s tycoons were members, Businessmen and professionals were also representing ‘grassroots sectors’, such as Sports, Performing Arts and Publishing but there was no sportsman representing sports. Many members of the NPC/CPPCC also came from among the business and professional elites.
Notes to Chapter 1

24 Our researchers have tried to ensure as far as possible that the job descriptions of the Election Committee members are contemporaneous with the years in which the Election Committee subsector elections were held. Any inaccuracies may stem from the fact that information from that particular time period could not be found, in which case the researchers used available information from the nearest period in time.

Notes to Chapter 1

2 In this paper, the terms ‘central authorities’ or ‘Beijing’ refer to the Central People’s Government and Chinese Communist Party.
3 Edited transcript reported in ‘Striving in a pragmatic spirit to find the right path to political development’ of the speech given by Qiao Xiaoyang, the SCNPC’s deputy secretary-general, in Hong Kong on 28 April 2004, reported in South China Morning Post, 29 April 2004, p. A4.
7 Basic Law, Articles 45 and 68.
10 Ibid., ¶ 1.08 (1).
11 For a full discussion of the subject, see Chapter 3.
12 Explanations on ‘The Basic Law of The Hong Kong Special Administrative Region of the People’s Republic of China (Draft)’ and Its Related Documents, delivered by Ji Pengfei, chairman of the Drafting Committee of the Basic Law, on 28 March 1990 in his address to the 3rd Session of the 7th NPC.
13 Edited transcript of interview with Qian Qichen reported in ‘Chinese vice-premier warns against democratic elections in Hong Kong’, South China Morning Post, 26 June 2002.
14 Edited transcript reported in ‘Striving in a pragmatic spirit to find the right path to political development’ of the speech given by Qiao Xiaoyang, the SCNPC’s deputy secretary-general, in Hong Kong on 28 April 2004, reported in South China Morning Post, 29 April 2004, p. A4.


17 Colonial Office papers showed that Hong Kong was ‘occupied not with a view to colonisation, but for diplomatic, commercial and military purposes’, CO129/2, Lord Stanley, Secretary for State for the Colonies to Sir Henry Pottinger, 3 June 1843.


19 Ibid., p. 35.

20 Ibid., pp. 374–378.


23 The most important colonial constitutional documents were the Letters Patent and the Royal Instructions. Other British colonies were constructed in essentially the same way.

24 In practice, this was how the system functioned. However, the actual constitutional position needs to be noted. Even in the UK today, legislation is enacted by the Queen with the ‘advice and consent’ of Parliament, as is stated at the start of every statute. This reference to ‘advice’ has been used by Mainland officials to argue that the pre-1997 LegCo only had advisory powers, which was in practice not the case. No financial measure or ordinance could be passed without the support of a majority in LegCo.


26 CO 129/13, p. 31, minute from James Stephen, 25 February 1846. In 1856, Governor Sir John Bowring proposed to enfranchise 2,000 ratepayers that included ethnic Chinese out of a population of 75,000 although LegCo membership was to be restricted to British subjects. Britain was sensitive enough to realise that a foreign minority could not be seen to have powers over the Chinese majority. See Steve Tsang, A Modern History of Hong Kong, IB Tauris, London, 2004, pp. 26–27.

27 The Hong Kong Civil Service List and General Orders 1904, op. cit., p. 7.

28 The government devised five principles governing the control and availability of land in 1843: (i) all land was Crown land and was leased by the Crown; (ii) land leases were disposed of via auction; (iii) a minimum expenditure on building was specified; (iv) the government reserved the right to re-enter if the lease conditions were not fulfilled; and (v) allocation of land should be in response to public demand and in the public interest, which allowed the government to make free
land grants to hospitals and schools. See Ian Scott, *Political Change and the Crisis of Legitimacy in Hong Kong*, Oxford University Press, Hong Kong, 1989, p. 54.

29 By the 1870s, the port of Hong Kong had become one of the world's busiest. See Christopher Munn, *Anglo-China: Chinese People and British Rule in Hong Kong, 1841–1880*, Curzon, London, 2001, Chapter 2 provides a good account of the colony in its early days.

30 Ian Scott, *Political Change and the Crisis of Legitimacy in Hong Kong*, Oxford University Press, Hong Kong, 1989, p. 54–60. In 1845, Hong Kong's first political crisis had to do with the merchants petitioning London objecting to the Crown's monopoly over land and for payment of rates. In 1849, the merchants also demanded that the government cut costs.

31 Wu Tingfang, alias Ng Choy, was born in Singapore, educated in England and called to the Bar there. His appointment to LegCo was initially on a reversible basis as the Colonial Office in London was sceptical whether a Chinese person could be trusted to keep a British secret from the Chinese authorities in the event of a breakdown in Anglo-Chinese relations. See Steve Tsang, *A Modern History of Hong Kong*, IB Taurus, London, 2004, p. 27.


34 Leo F. Goodstadt, Chapter 1 in *Uneasy Partners: The Conflict Between Public Interest and Private Profit in Hong Kong* notes that the British was aware of Chinese antagonism to colonial rule, which led to a self-imposed segregation of the rulers from the people, Hong Kong University Press, Hong Kong, 2005, pp. 19–29.

35 Elizabeth Sinn, *Power and Charity: A Chinese Merchant Elite in Colonial Hong Kong*, Hong Kong University Press, Hong Kong (2003 edition) discusses the relationship between the local merchants and the colonial regime; and Beatrice Leung Kit-fun and Shun-hing Chan, *Changing Church and State Relations in Hong Kong, 1950–2000*, Hong Kong University Press, Hong Kong, 2003, discusses the Church-State relations in Hong Kong's history.


41 Alexander Grantham, Hong Kong Hansard, Hong Kong Government, 1949, p. 59.


45 Speech by Mark Young on 1 May 1946.


47 Alexander Grantham, *Via Ports. From Hong Kong to Hong Kong*, Hong Kong University Press, Hong Kong, 1965, p. 112.


54 Ian Scott, *Political Change and the Crisis of Legitimacy in Hong Kong*, Hong Kong University Press, Hong Kong, 1989, p. 77.

55 CO 129/629/8, p. 6 by C.J. Jeffries, Deputy Under-Secretary of State, Colonial Office, 4 January 1950.

60 David Faure, *Colonialism and the Hong Kong Mentality*, Hong Kong University Press, Hong Kong, 2003, pp. 1–3.

61 Ibid., p. 33.

62 For a succinct account of the post-war years and the 1966 riots, see Ian Scott, *Political Change and the Crisis of Legitimacy in Hong Kong*, Oxford University Press, Hong Kong, 1989, pp. 66–96. The quotation is taken from page 94.

63 UMELECO was the office of the Unofficial Members of the Legislative Council, set up in 1963. In 1970, the office was expanded to enable unofficial members to investigate public complaints and receive public representations. The decision to expand UMELECO was a result of the government’s decision to refuse the establishment of an Ombudsman.


66 Lennox A Mills was impressed with the British policy of conciliation and cooperation, *British Rule in Eastern Asia: A Study of Contemporary Government and Economic Development in British Malaya and Hong Kong*, Oxford University Press, London, 1942; and Milton Friedman and Rose Friedman were impressed with Hong Kong’s laissez-faire policy, *Free to Choose*, Penguin, England, 1980.


68 Tak-Wing Ngo, ‘Colonialism in Hong Kong Revisited’, *Hong Kong History: State and society under colonial rule*, edited by Tak-Wing Ngo, Routledge, London, 1999, p. 1. The best analysis of the politics of laissez-faire in Hong Kong is provided by Leo F. Goodstadt, Chapter 6, *Uneasy Partners: The Conflict Between Public Interest and Private Profit in Hong Kong*, Hong Kong University Press, Hong Kong, 2005, pp. 115–133.


72 Lau Siu-kai, *Society and Politics in Hong Kong*, Chinese University of Hong Kong, Hong Kong, 1982, coined the term ‘boundary maintenance’.


74 Leo F. Goodstadt points out that despite the central role that laissez-faire played in government policy, the doctrine was never officially defined. Both the government and the public appeared to have believed that the essential features of such a system was self-evident and included free trade, no import and currency restrictions, low taxes, small government, negligible state borrowing, regular budget surpluses, minimal market intervention, no state planning, no development subsidies and no investment disincentives, *Uneasy Partners: The Conflict Between Public Interest and Private Profit in Hong Kong*, Hong Kong


77 Xu Jiutun, *Hong Kong Memoirs* (Xu Jiutun Xianggang huiyilu), Lianhebao, Taipei (1993) in two volumes. Xu was the pre-1989 head of Xinhua News Agency, Beijing’s de facto office in Hong Kong.


79 Annex I (I), Sino-British Joint Declaration on the Question of Hong Kong, signed December 1984 and ratified 27 May 1985.

80 For details about the background leading to the formation of the FCs, FC elections, and the FC legislators, see Chapters 3 and 4.


83 Basic Law, Articles 118 and 119.


86 As Beijing did not accept the results of the 1995 LegCo Election, where nine of the FCs were created as very large constituencies, the ‘LegCo through train’ was derailed in 1997 and a Provisional Legislature was set up instead for the first year of Chinese rule. Thus, the first post-1997 LegCo election took place in May 1998.

87 There was in fact no selection in 2002 as Tung Chee Hwa had no one standing against him. There was also no selection in July 2005 for the by-election as Donald Tsang was the only candidate nominated. The other two potential contenders, legislators Chim Pui-chung who represents the Financial Services FC, and Lee Wing-tat, who is chairman of the Democratic Party, both failed to get the minimum 100 nominations necessary from Election Committee members to be a nominee.


93 Small and Medium Enterprises Committee, A Report on Support Measures for Small and Medium Enterprises, HKSAR Government (2001), Chapter 5, and Progress Report on the Four Funding Schemes for Small and Medium Enterprises, report to LegCo CB(1)1670/01-02(03), 13 May 2002. It appears from these reports that the various schemes achieved minor results to help SMEs.

94 C.H. Tung, A Future of Excellence and Prosperity for All, speech at the ceremony to celebrate the establishment of the HKSAR on 1 July 1997.


97 In the end, the Tung administration spent approximately HK$700 million on the post-SARS economic re-launch effort, see LegCo Paper CB(1)14/03-04(02) ‘Update on the campaign to relaunch Hong Kong’s economy’, October 2003. The government sponsored the American Chamber of Commerce to organise HarbourFest in the Fall of 2003.

98 See Lok Sang Ho, ‘Policy Blunder of the Century Threatens Hong Kong’s Economic Future’, on the 85,000 flats initiative; ‘Chronology’ March 1999 on Cyberport, both from The First Tung Chee-hwa Administration: The First Five Years of the Hong Kong Special Administrative Region, edited by Lau Siu-kai, Chinese University of Hong Kong, Hong Kong (2002), pp. xx and 175–197.


102 Anti-reclamation groups continue to challenge the government for not observing the Protection of the Harbour Ordinance in the case of Central Reclamation Phase III and Wanchai Development Phase II, as well as over its post-reclamation development plans to sell land for commercial usage while its duty under law is to first protection and preserve Victoria Harbour – see, Winston Ka-Sun Chu, ‘Legal Control of Harbour Reclamation’, Hong Kong Law Journal, Vol. 32, Part 2, 2002,
The West Kowloon Cultural Development is a 40 ha site and controversy arose over whether it should be developed by a single developer. This model resulted in only large developers having the resources to develop the site thereby perpetuating the existing status quo in this sector of business (http://www.hplb.gov.hk/wkcd/eng/public_consultation/intro.htm). On 6 July 2005, LegCo’s Subcommittee on the West Kowloon Cultural District Development published a highly critical report on the project after having reviewed the executive decision-making process. Not only had the government bypassed LegCo, it effectively also did not conduct thorough consultation within ExCo. See http://www.legco.gov.hk/yr04-05/english/hc/sub_com/hs02/reports/hs02cb1-rpt-e.pdf. Hunghom Peninsula is a low-end residential estate built under the government’s Private Sector Participation Scheme. When the scheme was set aside, the government sold the as yet unoccupied estate to the developer who built it. When the developer announced that it would pull the blocks down to build high-end apartments, questions arose as to whether the government knew the developer intended to do so at the time of sale, whether the terms were too lax and whether the government knew what profit the developer could make, see LegCo Paper CB(1)1160/03-04(01), http://www.legco.gov.hk/yr03-04/english/panels/hg/papers/hgplw0217cb1-1160-1e.pdf, February 2004, and CB(1)651/04-05(01), http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg1206cb1-651-1e.pdf, 6 January 2005. The intensity of the public outcry was such that the developer withdrew its knock-down plan. In the Link REIT case, the initially failed to privatise the Housing Authority’s substantial ownership of retail property and car park spaces in public housing estates after a successful challenge in court, see LegCo Paper CB(1) 276/04-05(02), http://www.legco.gov.hk/yr04-05/english/panels/hg/papers/hg1122cb1-276-2e.pdf, 19 November 2004, and HKSAR Government press release, http://www.info.gov.hk/gia/general/200412/20/1220027.htm, 20 December 2004. The government appealed to the Court of Final Appeal and won subsequently.


105 John Tsang wrote a 1,800 word article entitled ‘A decent proposal’ which appeared in several newspapers including South China Morning Post, 26 January 2003, p. A14. John Berthelsen, the managing editor of The Standard wrote ‘We are no mouthpiece’ on 27 January 2005 in the newspaper’s opinion page, saying that the publication did not run Tsang’s article because it came with the condition that the whole piece had to be run without abridgment or comment. See also Chapter 9 noting the government’s continuing refusal to release full financial information about Cyberport.


108 Sir Gordon Wu, Managing Director, Hopewell Holdings, claimed he faced obstacles in trying to get planning approval to build a hotel/commercial complex in Wanchai and that he was a victim of collusion, see Chloe Lai and Quinton Chan, ‘I’m a victim of collusion in HK, says Gordon Wu’, *South China Morning Post*, 3 February 2005, p. A3.

109 A 2004 survey conducted by the World Economic Forum of 50,000 people worldwide, including 8,000 in nine Asian locations, noted that more people in Hong Kong (63%) than elsewhere in Asia saw their business leaders as dishonest. Moreover, 56% thought business leaders had too much power and 68% thought they responded to pressure from people more powerful than them, see Martin Wong, ‘Hong Kong leads Asia in distrust of business leaders’, *South China Morning Post*, 19 November 2004, p. A2.

110 The legal and medical FC members, however, have often pushed for greater reform both on the social and political fronts.


112 Jimmy Cheung, ‘Campaign for reform “will bring HK chaos”’, where Henry Cheng, managing director and major owner of New World Development was quoted, *South China Morning Post*, 1 May 2004, p. A2.

113 K.S. Li as reported by Jonathan Tam, ‘Li favours slow reforms’, *The Standard*, 20 March 2004.


116 Peter Woo, ‘Democracy is bad for business’, *South China Morning Post*, 16 December 2003.

117 *The Economist*, ‘Tung-tied Hong Kong’, 20 April 2004, noted Gordon Wu, chairman of Hopewell Holdings; Peter Woo, chairman of Wharf Holdings; and Ronnie Chan as main advocates for protecting business against political reform.

118 See also Jake van der Kamp’s article about Vincent Lo’s (Chairman, Shui On Group) comments on Hong Kong ‘welfare mentality is very strong’, ‘Tycoon’s concerns all a bit rich when his reality gap is widening’, *South China Morning Post*, 8 March 2005, p. B18.


Razack also accused the government of discriminating unfairly against controlling shareholders as opposed to regular investors, and claimed that plugging the loophole would ruin ‘Hong Kong’s economic foundations just for a trivial amount of revenue’.

Ibid., p. 6921, speech by Eric Li, the accountancy FC member.


Lau Siu-kai discusses Tung Chee Hwa’s unsuccessful attempt to depoliticise Hong Kong in ‘Tung Chee-hwa’s Governing Strategy: The Shortfall in Politics’, *The First Tung Chee-hwa Administration: The First Five Years of the Hong Kong Special Administrative Region*, edited by Lau Siu-kai, Chinese University Press, Hong Kong, 2002, pp. 3–7. See also Civic Exchange’s Opinion Survey, prepared by Wirthlin Worldwide Asia, 26 June 2004, which showed that respondents wanted improved economic conditions but at the same time they also wanted universal suffrage and for their views to be heard by the authorities, http://www.civic-exchange.org/publications/2004/SCNPC20survey%20E.doc.


Gary Cheung, ‘I lied when I said property would recover, tycoon admits’, *South China Morning Post*, 18 June 2003, p. A3. Property and gambling tycoon, Stanley Ho, reportedly said: ‘I have been forced to tell bare-faced lies in the past seven years that the property market would rebound soon so that the public could set its mind at ease . . . quite the contrary, I believe Mr. Tung’s policy would certainly have a disastrous effect on Hong Kong’s economy.’

Notes to Chapter 2

1 India and Ceylon (now Sri Lanka) in the 1930s and Malaya (now Malaysia) and Singapore in the 1950s.
3 But not exclusively of ‘pure British descent’ because the justices of the peace felt free to nominate worthies of Asian race. Endacott, *Government and People in Hong Kong*, pp. 98–104.
4 Norman Miners, *Hong Kong under Imperial Rule* (Hong Kong: Oxford University Press, 1987), pp. 132–8. As his account shows, there was a subsequent attempt by expatriates to seize control of the colonial administration which failed and was never revived after 1922.
8 Philip Snow, *The Fall of Hong Kong. Britain, China and the Japanese Occupation* (New Haven: Yale University Press, 2003), pp. 107–18, 281–2, 424–5. In particular, Young blocked a bid to affirm Sir Robert Kotewall, the leading public figure involved, and his wartime record. HKRS 163-1-159 ‘Executive Council Procedure and appointments’, Governor ‘Most Secret’ minute to Colonial Secretary, 3 May 1946; Colonial Secretary minute to Governor and Governor minute to Colonial Secretary, both 4 May 1946.
9 HKRS41-1-802 ‘Taxation Committee 1. Setting up of . . . .’, Governor’s minute, 7 September 1946; Colonial Secretary minute to Governor, 8 September 1946.
10 Grantham elaborated simultaneously both on how ‘apathetic’ the community was about public affairs and the Legislative Council and how satisfied it was with the existing arrangements for Hong Kong’s administration. *Hong Kong Hansard*, 31 July 1947, pp. 256–7.
11 On the role of these appointees, see Leo F. Goodstadt, *Uneasy Partners: The Conflict between Public Interest and Private Profit in Hong Kong* (Hong Kong: Hong Kong University Press, 2005), pp. 32–4, 98–104.
12 Steve Yui-sang Tsang, *Democracy Shelved: Great Britain, China and Attempts at Constitutional Reform in Hong Kong, 1945* (Hong Kong: Oxford University Press, 1988), pp. 18, 27, 59, 89–90, 134–40, 196–9. Lo deserves to be viewed as more committed to reform in 1947 than Dr Tsang suggests. It is significant that Lo’s almost sentimental observations on the subject were made in the context of a very realistic presentation of the case for direct personal taxation in Hong Kong in the face of considerable opposition to the retention of this war-time measure. *Hong Kong Hansard*, 1 May 1947, pp. 135–40.
13 The account which follows is based on Hong Kong Public Records Office material. HKRS163-1-634 ‘Public Utilities Companies Proposed control of the charges and dividends levied by . . . .’, Deputy Financial Secretary minute to Financial Secretary, 6 August 1948; Colonial Secretary minute to Governor, 10 August 1948; note by Governor, 11 August 1948; Governor minute to Colonial Secretary, 13 August 1948; Colonial Secretary minute to Governor, 18 August 1948; Financial Secretary minutes to Governor, 17 August 1949, 4 November
and 27 December 1950. The confidential government records contain evidence of malpractice as well as profiteering.

The average annual number of man-days lost through industrial disputes in the four years 1946–50 was 166,000. By comparison, the annual average for the comparable period in the 1970s was a mere 22,000, although the total population was almost twice as large. *Annual Departmental Report by the Commissioner of Labour for the Financial Year Ended March 31, 1951* (Hong Kong: Government Printer, 1951), p. 22; *Census and Statistics Department, Hong Kong Annual Digest of Statistics 1982 Edition* (Hong Kong: Government Printer, 1982), p. 56.

HKRS1017-3-4 ‘Unemployment Relief’, (1) Spinners Club letter to Commissioner of Labour, 6 January 1951; Taikoo Dockyard and Engineering Co. letter to Commissioner of Labour, 13 January 1951. A note on this file shows that an informal committee (including appointed members of the Legislative and Executive Councils) was set up in late 1951 to study schemes to relieve unemployment.

Even at this period in Hong Kong’s history, officials could not ignore how public opinion invariably opposed monopolies and the high profits of public utilities. HKRS163-1-634, Deputy Financial Secretary minute to Financial Secretary, 23 January 1950.

This prospect was spelt out plainly (and approvingly) in ‘The Hongkong & Yaumati Ferry Company Limited: Duty of Government to Scrutinise Accounts of Public Utility Companies’, *Far Eastern Economic Review*, 19 May 1948.

As illustrated in Sir Alexander Grantham’s dispatch to the Secretary of State for the Colonies, CO1030/292 ‘Periodic Reports on Colonial Affairs: Hong Kong’, 22 December 1954. See also Sir Robert Black’s sensible observations on the very confused developments of 1958 (the ‘Great Leap Forward’) in his dispatch to the Secretary of State for the Colonies in CO1030/596 ‘Relations of China and Hong Kong’, 21 January 1959 and the well-informed analysis in his dispatch to the Secretary of State in CO1030/1590 ‘Periodical Reports on Colonial Affairs’, 16 March 1964.

The account which follows is based on London Public Records Office material. CO1023/41 ‘Constitutional Reform Hong Kong’, minute, 12 March 1952; J.B. Sidebotham minute to J.J. Paskin, 25 January 1952; Paskin note, 10 March 1952; Sir Charles Jeffries notes, 12 March and 16 May 1952; Sir Alexander Grantham letters to Paskin, 7 November 1950 and 8 January 1952.


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Colonial Secretary, 16 March 1956; (33) Agenda Item for Finance Committee Meeting, 11 July 1956; M.210 note by Financial Secretary, 20 July 1962.


29 Letters Patent & Royal Instructions to the Governor of Hong Kong laid down: ‘X. In the execution of the powers and authorities granted to the Governor . . . he shall in all cases consult with the Executive Council, excepting only in . . . cases which may be of such a nature that, in his judgment, Our service would sustain material prejudice by consulting the Council thereupon . . . ‘. The Foreign Office kept tight control over MacLehose’s visit and the talks with Deng. Robert Cottrell, The End of Hong Kong: The Secret Diplomacy of Imperial Retreat (London: John Murray, 1993), pp. 48–57; Cradock, Experiences of China, pp. 164–8.

30 The new Governor, Sir Edward Youde, warned that this policy would prove unworkable. Cradock, Experiences of China, p. 196.

31 Chung, Hong Kong’s Journey to Reunification, pp. 56–62.


33 Technically, the association was denied registration under the Societies Ordinance, which made it an unlawful organisation. (On this draconian law, see Roda Mushkat, ‘Freedom of Association and Assembly’, in Raymond Wacks (ed.), Civil Liberties in Hong Kong (Hong Kong: Oxford University Press, 1988, p. 161.) The details of this sordid affair are preserved in CO1030/324 ‘Association to Study “Democratic Socialism” Hong Kong’, Commissioner of Police note, 27 April 1954; I.H. Harris minute to Sir S. Abrahams and Sidebotham, 10 July 1954; J.B. Johnson letters to S. Rose (Labour Party), 4 August 1954 and 14 February 1955.

34 See, for example, CO1030/1715 ‘Allegations of Bribery in the Hong Kong Police’ and CO1030/1719 ‘Disciplinary Proceedings and Colonial Regulations Hong Kong’.


36 Such outside appointments would be permitted only in ‘exceptional’ cases. CO1030/1666 ‘Administration of Justice Report on the Rule of Law — Hong Kong’, Secretary of State for the Colonies to the Officer Administering the Government, 15 August 1965.


39 With the addition of a representative from the ‘pro-Beijing’ Chinese General Chamber of Commerce and two from the Urban Council.

40 CO1030/1299 ‘Brief for Mr Melville’s Visit to Hong Kong October 1960’.

41 The account of Trench’s views which follows is based on CO1030/1591 ‘Personal Reports from the Governor of Hong Kong’, Sir David Trench letter to W.L.J. Wallace (Colonial Office), 27 April 1964; Wallace letter to Trench, 21 May 1964.


43 Dr David Faure discusses Trench’s views on constitutional reform and reproduces several of the confidential documents in *Colonialism and the Hong Kong Mentality* (Hong Kong: Centre of Asian Studies, 2003), chapter 7.


46 See the observations of Kathleen Cheek-Milby, *A Legislature Comes of Age: Hong Kong’s Search for Influence and Identity* (Hong Kong: Oxford University Press, 1995), p. 62.


49 As legislators openly admitted. See, for example, Hilton Cheong-leen and Peter C. Wong, *Hong Kong Hansard*, 27 and 28 October 1976, pp. 93, 141–2.

50 For a useful account of these views, see Brian Hook, ‘From Repossession to Retrocession: British Policy towards Hong Kong 1945–1997’, in Li Pang-kwong (ed.), *Political Order and Power Transition in Hong Kong* (Hong Kong: Chinese University Press, 1997), pp. 20–2.

51 *South China Morning Post*, 6 December 1984.


Xiaoping was firmly opposed to direct elections either in Hong Kong or the Mainland. *On the Question of Hong Kong* (Hong Kong: New Horizon Press, 1993), pp. 55–6.

54 *Hong Kong Hansard*, 9 January 1985, p. 467.

55 The principal debates are recorded in *Hong Kong Hansard*, 9 and 10 January 1985. A similar reluctance to embrace democracy and a preference for the traditional system was also evident in the previous year’s discussion of constitutional development. *Hong Kong Hansard*, 2 August and 25 October 1984.


57 The ministerial pledge given by Richard Luce to the House of Commons stated: ‘We all fully accept that we should build up a firmly-based, democratic administration in the years between now and 1997’. *Hansard* (UK), 5 December 1984.


62 The colonial administration tried to argue that there was no clear consensus on the issue but this claim was discredited by polling evidence which officials deliberately ignored. Norman Miners, ‘Moves Towards Representative Government 1984–1988’, in Cheek-Milby and Mushkat (eds), *Hong Kong. The Challenge of Transformation*, p. 29.


65 Indeed, Patten withdrew the British government’s pledge to seek from the Chinese side an increase in the number of directly-elected seats, a promise which had angered Beijing. He did so as a unilateral goodwill gesture soon after his arrival and before he had formulated his own reform package. For the official British position before his arrival, see Stacy Mosher, *Far Eastern Economic Review*, 2 July 1992.


72 For a lucid explanation of the Mainland’s legal views, see Elsie Leung, Secretary for Justice, GIS, 12 March 2005.


74 Christopher Patten, Governor, *Hong Kong Hansard*, 24 October 1992, p. 430.


76 Dr Patrick Ho, Secretary for Home Affairs, GIS, 18 October 2004; Elsie Leung, Secretary for Justice, GIS, 5 January 2005.

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**Notes to Chapter 3**

1 The authors would like to thank Lison Harris, Jonathan Luk, Nigel Kat, Gladys Li SC, Yash Ghai, Christine Loh, Chris Chaney, and Carole Petersen, for their assistance and comments on the chapter.


6 Edited transcript reported in ‘Chinese vice-premier warns against democratic elections in Hong Kong’, *BBC Monitoring Asia Pacific – Political*, 26 June 2002, originally reported in *South China Morning Post (Business Post supplement)*, 26 June 2002.


8 The Election Committee consisted of 800 members selected from specific socio-economic and business sectors in the community. See Annexes I and II of the Basic Law. It is the same committee that elects the chief executive.


12 Lee Mui Ling v Attorney General, ibid. 591–5 (CA).

13 Note that these figures refer to the potential electorate and not the number of persons on the Final Register, which is substantially less. See Appendix 5 for the data on Final Register figures.


15 The LegCo leading up to the 1985 changes was composed of 17 appointed members who were government officials and 30 unofficial appointed members. See generally, Norman Miners, The Government and Politics of Hong Kong, 5th ed. (Hong Kong: Oxford University Press, 1995), p. 116.

16 See Basic Law, Annex II: Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedure.


18 2004 Interpretation, ibid., clause 3.

19 Ibid. Article 68 of the Basic Law provides, *inter alia*, that ‘The Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election. The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.’

20 Ibid. See also Annex II, clause 3 of the Basic Law.

21 2004 Interpretation, ibid., clause 4.


23 Ibid.

24 See Annex II, part II of the Basic Law.

25 In the LegCo 2000–2004 term (up to March 2004), 99% of all government-proposed amendments to bills were passed, whereas only 17% of all

26 Basic Law, Annex II, part II.

27 The Heung Yee Kuk is a statutory advisory body representing the interests of indigenous persons in the New Territories. For more information, see the text accompanying n. 82 below.

28 District Council members are themselves elected by a system of direct elections using geographical constituencies. For more information, see the text accompanying n. 83 below.


30 See ibid.; Annex II of Constitutional Affairs Bureau, ‘Administration’s Responses to Points raised on 14 and 15 April by Members of the Bills Committee on the Legislative Council (Amendment) Bill 1999’, paper for the Bills Committee on Legislative Council (Amendment) Bill 1999, May 1999. The data for the estimated potential electorate size in 2000 was provided by the Registration and Electoral Office.

31 See Select Committee on Foreign Affairs, Third Report on Hong Kong (London: House of Commons Foreign Affairs Committee, 1998), ¶ 10, Table 1.


33 Ibid., ¶ 19–26.


36 Official appointed members were also civil servants.

37 Ibid., § 37, 43.


39 See ibid., Part I of Annex I.


41 Ibid.


44 Ibid., pp. 15, 20–28. See also Annex II of the Basic Law and the Decision of the National People’s Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region, adopted by the Seventh National People’s Congress at its Third Session on 4 April 1990 [hereinafter ‘Decision on First LegCo’].


46 Ibid., ¶ 17.

47 Christopher Patten, Our Next Five Years: The Agenda for Hong Kong — Address by the Governor The Right Honourable Christopher Patten at the Opening of the

48 Ibid., ¶ 134.
49 Ibid., ¶ 136.
50 Ibid., ¶ 135, 137.
54 Christopher Patten, Hong Kong: Today’s Success, Tomorrow’s Challenges: Address by the Governor The Right Honourable Christopher Patten at the opening of 1993/94 Session of the Legislative Council, 6 October 1993 (Hong Kong: Government Printer, 1993), pp. 37–41.
55 Hong Kong Legislative Council, Official Reports of Proceedings, Hong Kong Hansard, 29 June 1994.
56 The three tiers referred to the District Boards at the base, the Urban and Regional Councils in the middle, and LegCo on top. For a historical overview of the three-tiered system, see Simon Young, ‘The Meaning of the Right to Vote in Hong Kong’ (1997) 42 McGill Law Journal 649, pp. 653–671.
57 Qiu Yuan, Collections of Important Documents in the Transitional Period of Hong Kong (Xiang Gang Guo Du Shi Qi Zhong Yao Wen Jian Hui Bian) (Hong Kong: Joint Publishing (HK) Co. Ltd, 1997) 98.
58 See Decision on First LegCo, above n. 44.
64 The municipal councils were abolished by the Provision of Municipal Services (Reorganization) Ordinance (Cap 552).
66 Ibid., App. XVI.
67 EAC 2004 LegCo Report, above n. 10, App V.
68 The issue of uncontested FC seats is discussed in the next chapter.
70 Ibid., ¶ 5.16.
71 Ibid., ¶ 5.17.
72 Ibid., ¶ 5.18–5.19.
73 Ibid., ¶ 5.19.
75 See Legislative Council (Electoral Provisions) (Amendment) Ordinance, Ord. No. 57 of 1994, ¶ 22.
76 Ibid., Note (10) to Schedule 2 contained in ¶ 22.
77 Ibid., ¶ 22.
78 See Legislative Council (Amendment) Ordinance 1999 (Amendment) Ordinance 2000, Ord. 15 of 2000, ¶ 2.
80 See Basic Law, Annexes I and II.
81 Ibid.; Chief Executive Election Ordinance (Cap 569), Sch.
82 Heung Yee Kuk Ordinance (Cap 1097), ¶ 9(c).
83 District Councils Ordinance (Cap 547), ¶ 61(a).
84 See text accompanying above n. 45.
85 See task force Fifth Report, above n. 71.
86 In 1985 and 1988, the electoral college was comprised of all members from the district boards and municipal councils. In those years, the proportion of directly elected members to those bodies was slightly above 60%. In 1995, as a result of the Patten reforms, the electoral college comprised of only members from district boards, which returned 93% of its members by direct elections. See generally, Young, above n. 56, pp. 658–667. In 2005, approximately 81% of all District Council members are elected, see District Councils Ordinance (Cap 547), Sch 3.
88 Hong Kong General Chamber of Commerce, ‘Memorandum and Articles of Association’, adopted 16 March 1934, as amend. to 27 April 1999, ¶ 4, which can be found online at http://www.chamber.org.hk/about_the_chamber/memorandum_and_articles_of_association1.asp [hereinafter ‘Memorandum and Articles of Association’].
89 Lee Miu Ling v Attorney General, above n. 11, p. 192 (HC).
90 Ibid., p. 590 (CA).
91 Ibid., p. 591 (CA).
92 See Young, above n. 56.
93 See Constitutional Affairs Bureau, ‘Amendment to Constitution of Organisations under Functional Constituencies’, LC Paper No CB(2)2075/02-03(01) for the Legislative Council Bills Committee on Legislative Council (Amendment) Bill 2003, 14 May 2003 [hereinafter ‘Amendment to Constitutional of Organisations’].
94 Basic Law, Art. 74.
96 See Hong Kong Trade Development Council website list of HKSARG Departments, Trade Associations and Consulates at http://www.tdctrade.com/hksar/general.htm.
97 See Hong Kong Trade Development Council website list of HKSARG Departments, Trade Associations and Consulates at http://www.tdctrade.com/hksar/order.htm.
98 See Legislative Council Ordinance (Cap 542), § 3(2A). It is only changes to the objects of the body, the criteria and conditions of membership of the body, or the eligibility of members of the body to vote at a general meeting of the body that will require a formal approval by the Secretary for Constitutional Affairs. Section 3(2B) makes clear that this approval process is only for the purpose of defining the composition of the relevant functional constituency.
99 See Legislative Council Ordinance (Cap 542), § 25(5) and (6).
100 See Amendment to Constitutional of Organisations, above n. 93.
102 Ibid., ¶ 56–66.
103 See Legislative Council Ordinance (Cap 542), Sch. 1D, Part 2.
104 Ibid., § 20V(1)(e).
105 See Memorandum and Articles of Association, above n. 88, ¶ 4.
107 Constitutional Affairs Bureau, ‘Sports, Performing Arts, Culture and Publication Functional Constituency’, LC Paper No. CB(2)2324/02-03(02) for Legislative Council Bills Committee on Legislative Council (Amendment) Bill 2003, 3 June 2003, ¶ 5.
108 See EAC 2004 LegCo Report, n. 10 above, App. XIII.
110 Insurance Companies Ordinance (Cap 41), § 65.
111 Ibid., § 67.
113 Legislative Council Ordinance (Cap 542), § 20U.
114 See Legislative Council Ordinance (Cap 542), § 25(1)(b).
115 Ibid., § 25(2).
116 Ibid., § 25(6).
117 Ibid., § 31.
118 Ibid., § 27.
119 Ibid., § 28(1)(a).
120 Ibid., § 28(1)(b).
121 Ibid., § 29.
122 Ibid., § 30.
123 Hong Kong Bill of Rights Ordinance (Cap 383), § 8.
125 Legislative Council Ordinance (Cap 542), § 25(2).
126 Ibid., § 25(3)(c).
127 Ibid., § 25(3)(d).
128 Ibid., § 25(6).
129 Ibid., § 31.
130 Ibid., § 27, 28.
131 Ibid., § 28(3).
132 Ibid., § 3.
133 Task force Fifth Report, above n. 69, ¶ 5.32.
134 Ibid.
135 See Salomon v Salomon & Co. Ltd [1897] AC 22 (HL); Tesco Supermarkets Ltd v Nattrass [1972] AC 153 (HL); Interpretation and General Clauses Ordinance (Cap 1), § 3 (definition of ‘person’).
138 Legislative Council Ordinance (Cap 542), § 26(1).
139 Ibid., § 25(2).
140 Ibid., § 25(4) and (5).
141 Ibid., § 26(2)(a).
142 Ibid., § 26(2)(b).
143 Ibid., § 26(2)(c).
144 Ibid., § 26(3).
145 Ibid., § 26(2)(d).
146 Ibid., § 27.
147 Ibid., § 28(1)(a).
148 Ibid., § 28(1)(b).
149 Ibid., § 29.
150 Ibid., § 30.
151 Ibid., § 26(4).
152 Legislative Council Ordinance (Cap 542), § 3(2)(a).
153 Ibid., § 47(1), 60(1).
154 Ibid., § 60(2). But even if the choice was revealed, it could never be confirmed.
155 We say ‘almost’ here because in small electorate constituencies, the results may sometimes reveal for whom the agent voted, e.g. where agent was instructed to vote for X, but X received not a single vote.
157 See Gren Manuel, ‘Hong Kong Firms Gather Up Votes — Some Companies Use Unique Electoral System to Get More Ballot Rights’, Asian Wall Street Journal, 29 May 2000. In his article, Manuel reports that Sun Hung Kai Properties Ltd had 16 companies registered, up from 13 in the last election. Hang Lung Development Co. had 15 companies registered, 50% more than in 1998. Cheung Kong Ltd had 12 voting companies, 50% more than the number in 1998.
160 A formal request to the Electoral Registration Office for a copy of the names of the registered electors in specific FCs was rejected in April 2004 on the ground that it was not for an election-related purpose.
161 See Memorandum and Articles of Association, above n. 88, ¶ 5(d).
162 For example, if the total number of members was 2000, then 1% of this figure is 20, which is the allowable number of controlled entities one could have partaking in the vote.
163 See Mosher, above n. 159, p. 19, reporting on alleged ‘ballot-stuffing’ in the 1991 Commercial (First) FC election. See also Manuel, above n. 157 reporting on the ‘battle of the tycoons’ in the 2000 Real Estate and Construction FC election.
164 No Kwai-Yan, “‘No vote buying’ through loophole; Shelf companies registered for commercial or trade activities, ‘not for elections’”, South China Morning Post, 25 Feb 1998.
165 Legislative Council Ordinance (Cap 542), § 25(5).
167 See Provisional Legislative Council Secretariat, ‘Minutes of the meeting held on Tuesday, 9 September 1997 from 2:30 pm to 6:30 pm in the Chamber of the Legislative Council Building’, PLC Paper No. CB(2)1277 for the Bills Committee on Legislative Council Bill, 25 Nov 1997, ¶ 9.
168 See unofficial statistic reported in Gurung Kesh Babadur v Director of Immigration [2001] 3 HKLRD 32, pp. 43–44 (CA).
169 Legislative Council Ordinance (Cap 542), Sch. 1A. For more information on these public authorities, see Airport Authority Ordinance (Cap 483), Kowloon-Canton Railway Corporation Ordinance (Cap 372) and Mass Transit Railway Ordinance (Cap 556). The HKSAR Government owns 76.32% of all the ordinary shares of the MTR Corporation (as at 31 Dec 2003): MTR Corporation Ltd Annual Report 2003, p. 51. The other two are wholly owned by the Government.
171 See Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap 541B), § 41.

Notes to Chapter 4

1 I am grateful for the research assistance I received from Anthony Law, Jonathan Luk, and Alex Cheng. I would also like to thank Lison Harris, Carole Petersen, Roda Mushkat, and Christine Loh for their comments on an earlier draft of this chapter.
2 See Legislative Council Ordinance (Cap (542)), § 37(2)(a).
3 Ibid., § 37(2)(b).
4 Ibid., § 37(2)(c).
5 Ibid., § 37(2)(d).
6 Ibid., § 37(2)(e).
7 Ibid., § 37(2)(f) & 37(3).
8 Ibid., § 40(1)(a).
9 Ibid., § 40(1)(b) & 40(2).
10 Ibid., § 41(1).
11 Ibid., § 37(1).
12 Ibid., § 37(1)(e).
13 Basic Law, Arts. 44 & 71.
14 Legislative Council Ordinance (Cap 542), § 37(2)(b).
15 Ibid., § 3(2)(b).
16 Ibid., § 3(1).
17 Ibid., § 39(4).
18 Under § 3(2)(a) of ibid., ‘the circumstances in which a person has a substantial connection with a body include, but are not limited to, being a member, partner, officer or employee of the body’.
19 See § 20M of ibid.
20 Section 3(2)(b) of ibid. prefaces the two-part definition with the following clause, ‘the circumstances in which a person has a substantial connection with a functional constituency include, but are not limited to’ [emphasis added].
21 Originally in Ord. No. 134 of 1997, part (ii) of the definition included persons ‘belonging to a class of persons specified as being corporate electors of the constituency’. This definition did not make much sense as only individuals could be candidates. It was amended to its current form in 1999, see Ord. No. 48 of 1999, § 2.
22 See, for example, Legislative Council (Electoral Provisions) Ordinance 1985, Ord. No. 13/85, § 2(4).
23 It may have been argued, however, that employees were included by virtue of being a ‘member’ of the body.
25 Legislative Council Ordinance (Cap 542), § 27.
26 Ibid., § 28(1)(a).
27 Ibid., § 28(1)(b).
28 Ibid., § 29.
29 Ibid., § 30.
30 Ibid., § 31.
31 Ibid., § 39(1)-39(3).
32 Ibid., § 39(1)(e)(ii).
34 See HKSAR government press release, ‘Candidature of Mr HO Wai To, Kowloon East GC LegCo candidate’, 24 August 2004. It was reported that the returning officer for the constituency was satisfied that Mr Ho’s candidature remained valid.
35 See Gurung Kesh Bahadur v Director of Immigration (2002) 5 HKCFAR 480 at ¶ 24 (CFA) and HKSAR v Ng Kung Siu & Another (1999) 2 HKCFAR 442 at 457 (CFA).
36 Legislative Council Ordinance (Cap 542), § 39(1)(a)(i).
37 Ibid., § 39(1)(a)(ii). Subsection (5) lists the prescribed public officers as the Chairman of the Public Service Commission, the Commissioner and Deputy Commissioner of the Independent Commission Against Corruption and the holder of any other office under the Independent Commission Against Corruption Ordinance (Cap 204), the Ombudsman and the holder of any appointment under section 6 of The Ombudsman Ordinance (Cap 397), a member of the Electoral Affairs Commission, the chief executive of the Monetary Authority and any member of the senior management of that Authority, including divisional heads, executive directors, managers and counsel employed by that Authority, the Privacy Commissioner for Personal Data and any person employed or engaged by him or her under the Personal Data (Privacy) Ordinance (Cap 486), the Chairperson of the Equal Opportunities Commission and any person employed or whose services are engaged by the Commission under the Sex Discrimination Ordinance (Cap 480), any person holding an office, whether permanent or temporary, in a government department or bureau and employed in the department or bureau.
38 Ibid., § 39(1)(a)(ii).
40 Ibid., § 39(1)(e)(i). Following from the Department of Justice’s opinion in the Alex Ho case, above note 34, this condition would not disqualify a person who has been administratively detained on the Mainland for more than three months.

41 Ibid., § 39(1)(f).

42 Ibid., § 39(1)(g).

43 Ibid., § 39(1)(h). In Re Legislative Council Election for the Hong Kong Island (East) Electoral College Constituency Held 22nd September 1988 [1989] 2 HKLR 194 (CA), Justice Liu found that an accountant employed by the New Zealand Commission was not a salaried ‘functionary’ of a government of a place outside Hong Kong. He interpreted the word ‘functionary’ to mean ‘official’ and not a mere employee.

44 Ibid., § 39(1)(i).

45 In Chim Pui Chung v The President of the Legislative Council [1998] 2 HKLRD 552 (CFI), the Court had to decide whether the disqualifying condition in Article 79(6) could apply after the member was convicted but before all avenues of appeal had been exhausted. The applicant had been elected the legislator for the Financial Services FC in May 1998. On 1 August 1998, he was convicted of conspiring to forge documents and sentenced to three years imprisonment. The Court held that Article 79(6) could apply after conviction by the court of original jurisdiction even before all avenues of appeal had been exhausted.


48 Above n. 46 at 64–65.


51 See Legislative Council Ordinance (Cap 542), § 37(3).

52 See Legislative Council (Subscribers and Election Deposit for Nominations) Regulation (Cap 542C), § 2.

53 Legislative Council Ordinance (Cap 542), § 40(1)(b)(i).

54 See Leung Kwok Hung v Clerk to the Legislative Council [2004] HKEC 1203 (CFI).

55 Ibid. at ¶ 22–7.

56 Ibid. at ¶ 5.

57 Ibid. at ¶ 29.

58 Before taking the oath, Mr Leung reportedly stated in Cantonese: ‘I am here to loudly declare that I swear allegiance to the Chinese people and residents of Hong Kong, oppose collusion of officials and businessmen, defend democracy and justice and uphold human rights and freedom.’ After taking the oath, it is reported that he stated in Cantonese: ‘Long live democracy! Long live the people! Elect the chief executive and LegCo by universal suffrage!’ See A. Leung and K. Lee, ‘Long Hair takes the oath but swears defiance’, South China Morning Post, 7 October 2004, 1.

59 Legislative Council Ordinance (Cap 542), § 40(1)(b)(ii).

60 Ibid., § 40(1)(b)(iii).


63 Ibid.

64 Ibid. at 315.

65 Constitutional Affairs Bureau, ‘Administration’s Responses to Points raised on 28 and 31 May 1999 by members of the Bills Committee on the Legislative Council (Amendment) Bill 1999’, Hong Kong Legislative Council Bills Committee, 2 June 1999.


70 Ibid. There is an inconsistency here because the task force also proposed that the total number of LegCo seats be increased by 10 to 70. To allow for the 20% exception would require that 14 FC seats be specifically designated for the purposes of the allowance rule.

71 Calculated from data contained in Table 2 of Research and Library Services Division, ‘Fact Sheet: Women in the Legislative Council, the District Council, the Government of Hong Kong and other Legislatures’ (Hong Kong: Legislative Council Secretariat, 19 March 2004) and Electoral Affairs Commission, *Report on the 2004 Legislative Council Elections Held on 12 September 2004* (Hong Kong: Hong Kong SAR Government, 2004) 193–194 [hereinafter ‘EAC 2004 LegCo Report’].

72 Research and Library Services Division, ‘FACT SHEET: Profiles of Legislative Council Members (as of 21 October 2004)’, Hong Kong Legislative Council Secretariat, FS02/04–05, 23 October 2004.

73 It is expected that the new party will be formed in the middle of 2005, see G. Cheung, J. Cheung and A. Leung, ‘Pro-government parties prepare for merger by middle of the year’, *South China Morning Post*, 6 Jan 2005, 8; ‘Bands of brothers’, *South China Morning Post*, 25 Feb 2005, 15.

74 *Reference re Provincial Electoral Boundaries (Sask)* [1991] 2 SCR 158 at 183 (SCC).
75 No email addresses were provided by the 2000 Industrial (First) FC and Heung Yee Kuk FC members. No email addresses were provided by the 2004 District Council FC and Heung Yee Kuk FC members. See Appendices 16 and 17.


77 In January 2005, Hong Kong’s Office of the Telecommunications Authority (OFTA) reported an estimate of 2.47 million registered customer accounts for both dial-up and broadband Internet access and a household broadband penetration rate of 60.3% (statistics dated Oct 2004). The penetration in June 2004 was 54.9%. See ‘Key Telecommunications Statistics’, OFTA Website (http://www.ofta.gov.hk), 4 Jan 2005 and Sept 2004.


79 Some anomalies appear. The Architectural, Surveying and Planning FC legislator, Lau Ping-cheung, did not provide a webpage link even though this FC had exclusively individual electors, and the Wholesale and Retail FC legislator, Selina Chow, provided an updated webpage link even though the proportion of registered corporate and individual electors was roughly equal. Note that Mr. Lau Ping-cheung was not re-elected in 2004. He came in third out of four candidates, after capturing only half the number of votes obtained by the elected legislator. On the other hand, Selina Chow took one of the GC seats in New Territories West. See HKSAR Government, ‘Election Results’, at http://www.elections.gov.hk/elections/legco2004/eindex.html.

80 Qualitative performance is analysed and discussed in other chapters in this volume, e.g. see chapters by Rowena Y.F. Kwok and Chow Chiu Tak (Chapter 7), Tony Latter (Chapter 8) and Jake van der Kamp and Carine Lai (Chapter 9).

81 See earlier discussion above with respect to ‘A.3.d. Stated occupation’.

82 The issue of corporate voting in FCs is discussed in the previous chapter, see S.N.M. Young and A. Law, ‘Privileged to vote: Inequalities and anomalies of the FC system’ in this volume.

83 As an indicator of the popularity of James Tien, the Commercial (First) FC legislator from 1998–2004, he ran in the GC elections in 2004 and won his seat with a sizeable share of the vote count for his constituency. See EAC 2004 LegCo Report, above n. 69, App. XI.

84 See Young and Law, Chapter 3 in this volume and Appendix 5.


87 This is not to suggest that Mr Li has not been outspoken or critical of the government on non-banking related issues. For example, see his views expressed in relation to Article 23 and the non-reappointment of Anna Wu to the Equal Opportunities Commission: M. Hon and R. Shamdasani, ‘Regina Ip thought I was lying: banker’, South China Morning Post, 12 February 2003, 2; R. Shamdasani,
‘David Li hits out at scandals probe’, South China Morning Post, 21 September 2004, 3.

88 The methods for determining FC electors are discussed in Young and Law, Chapter 3 in this volume.

89 See Legislative Council Ordinance (Cap 542), § 20X.

90 See task force Fifth Report, above n. 69.

Notes to Chapter 5


2 The reservation was as follows: ‘The Government of the United Kingdom reserves the right not to apply sub-paragraph (b) of Article 25 in so far as it may require the establishment of an elected Executive or Legislative Council in Hong Kong’.

3 ¶ 464 of the Initial Report on Hong Kong by the PRC submitted to the UNHRC Committee under the ICCPR by the PRC.

4 ¶ 19 of the UNHRC concluding observations on the UK 4th periodic report relating to Hong Kong under the ICCPR.

5 ¶ 9 of General Comment No. 24 CCPR/C/21/Rev.1/Add.6.

6 See Manfred Nowak UN Covenant on Civil and Political Rights CCPR Commentary at p. 441.

7 Nowak, above at p. 439.

8 UNHRC, ¶ 6 and 7 of General Comment 25.

9 Nowak, above at p. 447–8.

10 UNHRC General Comment No. 18: Non-discrimination.


13 General Comment of the UNHRC 25, ¶ 10.


15 Broeks v Netherlands; Zwaan de Vries v Netherlands (ECHR cases).

16 Ramirez v Uruguay; Sin Yau Ming and Lee Kwong Kut.

17 General Comment of the UNHRC 18(37) (Non-Discrimination) adopted at its 948th meeting on 9 November 1989. See in particular, ¶ 7, 8, 12 and 13. Nowak at p. 455.

18 UNHRC Communications concerning Uruguay, 1997/98; Miqmak (2nd) UNHRC 205/1986.

19 Nowak, § 42 p. 456.

20 ¶ 19 of the UNHRC’s concluding Observations on the UK Government’s 4th periodic report relating to Hong Kong.

21 See Keith J in Lee Miu Ling at p. 189.
Notes to Chapter 6

1. Funding for LegCo 2004 election campaign research was provided by the Research Grants Council under several competitive earmarked research grants for the Hong Kong Transition Project, as well as by the Civic Exchange independent think tank led by Christine Loh, and the US-based National Endowment for Democracy and the National Democratic Institute. My thanks to my redoubtable Research Assistant Cheung Puiki and to Linda Mak and Dr Sing Ming for their statistical assistance in sampling and analysing the FC data. This is the ‘we’ sometimes referred to.

2. The Labour FC has three seats in one constituency, hence 30 FC seats but only 28 FCs.

3. The GC voter database also includes 359 of the FC voters who were reached wholly randomly in the general surveys. The HKTP surveys are the only surveys conducted in Hong Kong that do not exclude respondents over 65. Other surveys avoid older respondents and results as pertaining to the 15–65 age group. Our age range is 18 (age of voter rights) and above.


5. 14,783 FC voters cast votes for corporates, that is, many businesses and organisations have been allotted a vote per organisation rather than votes for all members or officers. Some FCs are wholly corporate in nature, making contact with such ‘voters’ after the election extremely problematic. Only individuals, i.e., persons, are allowed to register also as GC voters.

6. 3,207,227 registered GC voters minus 184,756 individual FC voters (disregarding corporate voters) for 3,022,471 GC voters without a second vote, divided by the 184,756 individual FC voters gives an overall average power ratio of 16.4:1 in favour of FC voters. Of course, as Table 2 shows, the real power ratios for some FC voters is considerably higher.

7. The effect of the inability to ascertain their own voter’s views reliably can be seen in Kathleen Cheek-Milby’s study of FC and GC legislators in A Legislature Comes of Age (Hong Kong: Oxford University Press, 1995).

8. For an explanation of standard HKTP survey methods see the project website and attached reports, at http://www.hkbu.edu.hk/~hktp.

9. Procedures to withdraw a stratified sample from the FC merged dataset were as follows:
   1. Calculate the proportion of samples in each FC in the total FC population.
   2. Calculate the number of stratified samples to be drawn from the FC merged dataset with the following conditions fulfilled:
      a) The proportion of stratified samples in each FC is to match as closely as possible to the proportion of FC-registered voters in each FC as listed in the FC registration list.
      b) At least 1 case from each FC was randomly taken from the FC merged dataset whatever the proportion to all FCs (a necessity in extremely small-franchise FCs).
      c) Note the number of stratified samples generated can only approximate the specified percentage of cases specified by the maths. E.g. If 1.3% of samples are needed from Finance FC, in which 58 samples are available, 1.3% of 58 will mean 7.58 samples should be randomly withdrawn. Rounding to zero decimal places is applied. In this case, 7.54 cases will mean eight cases are randomly taken. Or 7.49 cases will mean seven cases. Any number less than 0.5 will be...
rounded up as one case.

d) Sampling is performed without replacement, i.e., the same case cannot be selected more than once.

3. We calculate actual number of stratified samples which should be withdrawn from the FC merged dataset after rounding decimal places and after adjusting for insufficient cases.

4. A stratified sample is randomly withdrawn from the available samples FC merged dataset.

10 Table 9 in the Annex shows the GC random surveys tended to oversample Hong Kong Island and undersample New Territories West. In the 2004 election, 57.62% of Hong Kong Island voters cast ballots, the highest turnout among the five GCs, while 53.48% of NT West registrants voted, the lowest turnout. Over- and under-sampling may also have been affected by this difference among the GCs in propensity to vote.

11 Corruption has been a particularly difficult issue in Hong Kong’s history and a major problem on the Mainland. The Independent Commission Against Corruption was created and given extraordinarily powers when corruption and public outrage over it threatened to bring down the British colonial government. See T. Wing Lo, Corruption and Politics in Hong Kong and China (Buckingham: Open University, 1993); Martin Booth, The Triads (London: HarperCollins, 1990); and Rance p. L. Lee, ed. Corruption and its Control in Hong Kong (Hong Kong: Chinese University, 1981).

12 See Hong Kong Transition Project reports at http://www.hkbu.edu.hk/~hktpt.

13 The random sample group was contacted by telephone numbers drawn randomly, then further randomised by random generation of the final four digits and entered in a database of over 20,000 potential telephone numbers. These numbers formed the universe of numbers from which, 20 at a time, they were randomly drawn into a CATI survey system station and then sequentially dialled by interviewers. Qualified respondents, permanent residents aged 18 and above, were identified from a Kish Table, which randomises which household member is interviewed according to ages and number of members. That person was requested for interview or, if not at home, then a time to return call was requested. Up to five callbacks were made to contact the randomly selected respondent. Interviews were conducted in Cantonese, Mandarin, English, or Hakka, depending on interviewee’s preference. FC-registered voters and active voters were taken from 169 FC-registered voters contacted randomly, then supplemented by further random dialling of a registered FC-voters database compiled from May to September 2004 during a series of previous surveys of FC voters prior to the 2004 LegCo elections.

14 Non-permanent residents, that is, immigrants and foreign workers with less than seven years’ residency, were excluded.

15 Please note, this 37% is the basis for still all-too-common assertions that ‘Hong Kong people’ are apathetic about politics. This is by no means a majority, and these people while not registered and/or not voting, are not by any means uninformed about politics. Most give replies indicating an opinion, often based on information and experience, about issues of the day. Further, among those who did not vote are those unable to vote on the day of elections. Hong Kong has no absentee ballot provisions. On any given day nearly 150,000 Hongkongers are abroad on business or other travel. Over 250,000 live on the Mainland, either as retirees or as residents. With long working hours and limited border hours, residents in Shenzhen and outside Hong Kong find it more difficult than average
voters to vote. Those who are sick and shut-in also find voting difficult. This 37% of non-participants in politics are not always willingly so. While our sample over-represents groups which tend to be more politically active, the over-representation is not excessive in terms of demographic features of the sample measured against census data. Political apathy, in the sense of don’t know and don’t care about politics and current issues, is actually prevalent only among a minority. About 10% claim they do not discuss politics with friends, do not vote, have not registered and more often answer don’t know to politics-related questions.

16 See http://www.hkbu.edu.hk/~hktp for patriotism-related reports.

17 Testing by housing and residency abroad shows a very high proportion of villa occupants and those who have lived in UK for a year or more as opposing rather than supporting direct election of the CE. Rural NT residents tend to live in villas and also to have lived in UK for a time, following a large diaspora of NT residents to the UK in the 1950s and early 1960s.

Notes to Chapter 7

1 For a list of acronyms used, see page 341.


5 There are other ways through which the legislature can and does influence government operations, for example, through the Finance Committee and resolutions/subsidiary legislation. These are not included for the current study. The government’s annual budgetary proposals are presented for the scrutiny of the legislature in the form of Appropriation Bills, the Finance Committee’s decisions are largely made under the umbrella of the Appropriation legislation. Resolutions, on the other hand, while having legislative effects, have not been included for this study because the wordings in the related records are very vague; in the absence of in-depth examination of the contents of each resolution, which is beyond the scope of this study, it is not possible to isolate social policy resolutions from other policy resolutions.

intention of the authors to engage in this debate except to suggest that all political processes and negotiations prior to formal voting are in essence deliberative processes, formal decision making takes place only when the vote is taken.

7 *The Basic Law*, Annex II. During the first two legislatures between 1998 and 2004, however, there had been a third category of members, namely, Election Committee (EC) members, 10 in 1998–2000 and six in 2000–2004. Together with the geographical representatives, they composed half of the legislature during the six years under study. Election Committee members were elected on electorates largely similar to those of the functional constituencies plus representation for stipulated political bodies. See *The Basic Law*, Annex I. Election Committee members will be referred to as ‘ECRs’ in this report.


9 Anson Chan (former Chief Secretary of Administration), ‘Hong Kong Gears Up for a World Without Walls’, in Information Services Department, Hong Kong SAR Government, *Hong Kong 1999*. Hong Kong: The Printing Department, pp. 1–7.


11 There is no common consensus on the definition and scope of ‘social policy’. It is however said that there exists some consensus among authorities that social policy is mainly concerned with collective interventions to promote individual welfare; social policies are often distinguished from ‘economic policies’ to highlight their ‘integrative functions’ and concerns with the non-economic aspects in human relations. See Alan Walker, ‘Social Policy, Social Administration and the Social Construction of Welfare’, in Martin Loney et al., eds., *Social Policy and Social Welfare*. Milton Keynes: Open University Press, 1983, pp. 127–150. A local edited volume on social policy in Hong Kong has similarly taken the five policy areas examined in this study as constituting the major established components of social policy, see 李健正，《社會政策》，1999，第二部分。

12 Functional representation was introduced to Hong Kong in 1985 by the former British colonial government on the basis of two major considerations. Firstly, after the Sino-British *Joint Declaration* of 1984 provided for the return of Hong Kong, then a Crown colony, to Chinese sovereignty in 1997, the colonial administration decided to develop a system ‘to represent authoritatively the views of the people of Hong Kong’. It was considered paramount to give ‘full weight…to representation of the economic and professional sectors of Hong Kong society which are essential to future confidence and prosperity’. Secondly, it was considered that the functional representation system would allow the government to continue to tape expert advice for policy making from major socio-economic and occupational strata, as it had done under the appointment system, only on a more regular and formal basis. See *A Draft Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Future of Hong Kong*, 26 September 1984; *White Paper: The Further Development of Representative Government in Hong Kong*. Hong Kong: Government Printer, November 1984.

13 The focus of this study is the role of functional representatives in social policy making, there is therefore no attempt to ascertain the degree of importance that FRs attach to social policy relative to other policies like political or economic policies; furthermore, in order for the findings on the FRs to be better
understood in their context, the corresponding performance of GRs/ECRs is brought in for natural comparison where appropriate since the latter composes the other half of the legislature.

14 Unless otherwise specified, the explication below on questions to the government is based on the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region (hereafter Rules of Procedure), Part E.

15 The Labour constituency has three functional representatives, one of whom was re-elected to the second legislature, hence the number here is five rather than six.

16 For this reason, in the following tables, calculations will be entered for Housing as it is done here, but the substantive discussion will not include the housing area. A speculative reading of Housing-related statistics in the tables will be made in the conclusion of this part.

17 For rules governing the movement of debate motions and amendments, see Rules of Procedure, Part G. The statistics in this section do not include the final votings on the amended debate motions because these were more of a formal procedure as all substantive amendments would have already been voted on.

18 The law-making process in Hong Kong involves three Readings of a draft law. The First Reading is only a formal procedure of reading out the title of a bill, followed by the Second Reading at which the government will explain the main points. The Second Reading is then adjourned for legislators to consider and conduct consultations. During this intermission, if legislators deem necessary, a Bills Committee may be set up to scrutinise the bill in detail, sometimes even to receive submissions from different lobbies or to conduct public hearings. Upon resumption of the Second Reading, amendments can be moved to specific provisions either by the government or legislators. Such amendments will be voted on one by one, sometimes after heated debate. When all the amendments have been voted on, the bill passes to the Third Reading at which a final vote is taken on the whole draft law. The bill becomes law if passed by the legislature. Before the resumption of the Second Reading, it is possible that the government and legislators will negotiate over particular provisions. If no satisfactory resolution is found, legislators may then have to conduct ‘open warfare’ on the floor of the legislature by moving amendments to the government motions.

19 Labour issues were within the terms of reference of the Manpower Panel.


21 The Basic Law, Annex II.

22 This number contains five motions falling not under the social policy bills studied but under the Mass Transit Railway Bill, included because their contents explicitly pertained to labour rights and welfare. In other words, as far as the 29 social policy bills examined for this study are concerned, there were only 24 Division votings. A voting is the collective act of legislators taking a vote, the result of which is determined by the sum of legislators’ individual votes. The figure excludes votings on motions which were solely procedural in nature, such as suggesting the suspension of certain rules of procedures or for voting to proceed after a certain duration.

23 All amendments to bills motions involving Division votings were moved by GRs and only FR and GR voting patterns are compared.

24 There may be different possible reasons for this: (1) policy differences could have been resolved before resumption of the Second Reading; (2) some members could have persisted in moving amendments but were resigned to their amendments being defeated and therefore did not ask for a Division; or (3) some bills motions
and amendments were relatively minor or technical in nature and therefore were not controversial.

25 At present there are mainly three kinds of schools in Hong Kong, namely, aided schools, schools under the Direct Subsidy Scheme (DSS), and government schools. Very briefly, aided schools are schools fully funded by the government but managed by school sponsoring bodies under the Codes of Aids. DSS schools also receive funding from the government but on a student per capita basis. DSS schools recruit students on their own and enjoy greater freedom than aided schools, for example, they can charge their students approved amounts of school fees, they are also free to design the school curriculum and use either Chinese or English as the medium of instruction. Government schools are funded and managed by the government. Aided schools have constituted a large portion of schools in Hong Kong.


28 The Board of Education was established in 1920. Its role was to advise the then Director of Education on the practice of education policies. Its members included professionals in the education sector, community leaders, representatives of parents’ groups and government officials. As the Education Department was merged with the Education and Manpower Bureau in 2003, the Board of Education was also merged with the Education Commission, which is also an advisory body on education policy. Unlike the Board of Education, which focused more on specific practices of education policies, the Education Commission advises on the comprehensive and long-term development of education policy in Hong Kong.

29 The Bishop had been very critical of the way the government attempted to legislate for state security in 2003 as well as its inaction in tackling poverty problems.

30 “校本條例無新增罰則，李國章稱條例所賦予權力已存在”，《文匯報》，2004年5月23日，A13；“特設代課教師將檢討存廢”，《星島日報》，2004年5月23日，A07。”

31 *Hansard*, 8 July 2004 (Floor), p. 798.

32 For example, it would be a criminal offence if a school allows a student who has been expatriated to enter and stay in school premises without the permission of the PSEM; it would also be a criminal offence if more than one student per two square metres stands in the corridor, playground or balcony of a school.

33 *Ming Pao* 17 December 2004.

34 Panel membership is basically on a yearly basis. A LegCo member may, for different reasons, join and leave a Panel at any point during a legislative session. In this particular case, the membership was relatively stable in the whole term of the LegCo.

35 There were 11 members at the outset of the Bills Committee. Yeung Sum left the Bills Committee after its second meeting on 17 March 2003.

36 Among the 11 amendments, four were not put to the vote because they conflicted with preceding amendments moved by the government which had been passed.

37 According to the Basic Law as well as the LegCo Rules of Procedure, a private member’s motion requires a majority in each of the two ‘chambers’ created by the split-voting system to pass. This split divides LegCo into the 30 functional
representatives on one hand, and the 24 geographical representatives and six Election Committee members on the other. Even if a bill is passed in one chamber, if it is not passed in the other, the bill will be negatived. Confer Part I, ‘Voting patterns’ above.

38 *Hansard,* 8 July 2004 (Floor), p. 779.
46 Hong Kong Legislative Council, LegCo Panel on Education, minutes of meeting held on 20 November 2000, LC Paper No. CB(2)668/00–01, p. 5.
47 The idea of Lump Sum Grant was put into practice in the social welfare sector in 2000. Under this system, the staffing levels of aided welfare agencies are not standardised, agencies are given a lump sum to spend as they choose, including idiosyncratic staffing and structures. The teachers’ association worried that the system would sooner or later be introduced to the education sector and teachers would probably face a wage cut as a result.
48 Hong Kong Legislative Council, Bills Committee on Education (Amendment) Bill 2002, minutes of meeting held on 12 February 2004, LC Paper No. CB(2)1491/03–04, pp. 5–6; and 21 April 2004, LC Paper No. CB(2)2305/03–04, pp. 4–5.
49 For example, 張文光，『教育修訂條例新進教師職業保障現轉機』，《教育》2003年6月9日。
50 Hong Kong Legislative Council, Bills Committee on Education (Amendment) Bill 2002, minutes of meeting held on Thursday, 30 October 2003, LC Paper No. CB(2)302/03–04, p. 2.
51 *Ibid.*, minutes of meeting held on 3 March 2004, LC Paper No. CB(2)1676/03–04, p. 3.
52 *Ibid.*, minutes of meeting held on 27 May 2004, LC Paper No. CB(2)3109/03–04, p. 3.
53 The Regulation was not in itself a bill as such but was made under the Occupational Safety and Health Ordinance. So instead of a bills committee, it was scrutinised by a subcommittee. Confer Note 54.
54 In November 1999, the government had consulted the legislature’s Panel on Manpower on the Regulation and members resolved that controversial and technical aspects of the Regulation could be further discussed when it was brought forth for the Council’s examination. As much of the subsequent debate and political wrestling on the Regulation had taken place in the legislature’s House Committee and the Subcommittee it set up for the purpose, the Panel had not been a main theatre of activity and therefore will not be referred to again. The House Committee comprises all legislators except the President of the Council. It prepares for meetings of the Council and considers matters relating to the Council’s business. It may form bills committees to scrutinise bills, or appoint subcommittees to study some subsidiary legislation in greater detail. See the minutes of the Manpower Panel meeting on 25 November 1999 at http://www.legco.gov.hk/yr99-00/english/panels/mp/minutes/mp251199.pdf.
55 These included submissions from the Hong Kong Information Technology Federation which was against the introduction of the Regulation, and from the
Recall that motions moved by legislators have to be subject to the split-voting mechanism. See Part I, section H above.

As a general principle, strict liability would be imposed on regulatory offences related to issues of social concern, of which employee occupational safety was considered as one. In such offences, the requirement of mens rea (namely, knowledge, recklessness or negligence) before a person could be convicted of a criminal offence would be displaced. Employees would also be liable to offences for non-compliance with the Regulation but the provision had not attracted strong disagreement in the deliberations.

The above has only highlighted those provisions of the Regulation that were to subsequently attract controversy. For the initial proposed Regulation and the related risk assessment checklist and advisory Health Guide, see ‘Legal Service Division Report on Motion under section 42 of the Occupational Safety and Health Ordinance (Cap 509)’, paper for the House Committee Meeting of the Legislative Council on 24 November 2000, http://www.legco.gov.hk/yr00-01/english/hc/papers/ls-23.pdf, and Education and Manpower Bureau, ‘Occupational Safety and Health (Display Screen Equipment) Regulation’, Legislative Council Brief, November 2000, EMBCR 3/3/3231/95.

The request was made by Lee Cheuk-yan, a unionist legislator, at the Subcommittee meeting on 29 May 2001. Under section 40 of the Occupational Safety and Health Ordinance, the Commissioner for Labour is empowered to issue codes of practice for the purpose of providing practical guidance to employers and employees. According to section 41 of the Ordinance, while a person does not incur a civil or criminal liability for contravening a provision in a workplace code of practice, the code is however admissible in evidence in court proceedings. See Subcommittee meeting minutes of 29 May 2001, p. 9, ¶ 33.

See speech by the Secretary for Education and Manpower, Hansard, 24 April 2002, pp. 5808–9.

See for example, Miriam Lau in the Subcommittee meeting on 18 June 2001 and James Tien in the voting debate. In this connection, there have been a couple of exceptions. Henry Wu of Financial Services did repeatedly advise in Subcommittee meetings that in his sector, small work surfaces for finance, securities and foreign exchange dealers or the use of notebook computers would pose practical difficulties for employers to comply with the requirements for DSE workstations. Howard Young of Tourism in the voting debate also made mention that, in the tourism industry, front-line employees of travel agents, airlines and hotels would not normally use computers for continuous prolonged periods of time and that it would only cause unnecessary impediment and affect efficiency if the Regulation was imposed on such industries.
Notes to Chapter 8

1 Author’s note: Interpretation of the material inevitably involves a degree of subjective judgement. I have tried to be fair to all the persons involved. If, however, by reason of omission or mistaken interpretation, I have given any unjustified offence, I apologise. I am personally responsible for the views expressed here, and no blame or attribution should attach to the Civic Exchange or the University of Hong Kong.

2 Following the 2004 LegCo elections the Breakfast Group has mutated into a somewhat more formal grouping, referred to as The Alliance, but it still does not claim to be a fully fledged political party.

3 Official Record of Proceedings, Hong Kong Legislative Council.

Notes to Chapter 9

1 Peter Woo, ‘Democracy is Bad for Business’, South China Morning Post, 16 December 2003.

2 The description of Hong Kong as ‘an economic city’ was first coined by Lu Ping, a former director of the Hong Kong and Macao Affairs Office. Lu also said that Hong Kong was ‘not a political city’. He never defined these terms explicitly, but according to Michael Yahuda in his book Hong Kong: China’s Challenge, Chinese officials, when asked in private, said that they feared the ‘emergence of many quarrelling parties who would prevent the passing of government bills in the Legislative Council. That would diminish the effectiveness of government and cause foreign investors to doubt the territory’s political stability. Hong Kong

3 Patten expanded the size of the FCs’ electorate from 100,000 to 2.7 million. He also did away with corporate voting. After the handover, a Preparatory Committee set up by the National People’s Congress revised the FC electorate size down to approximately 230,000 individuals and corporations for the 1998 election. See Chapter 3, Simon Young & Anthony Law, *A Critical Introduction to Hong Kong’s Functional Constituencies*.


7 For a detailed analysis of the FCs’ electorate, see Chapter 3, *A Critical Introduction to Hong Kong’s Functional Constituencies*, Simon Young & Anthony Law.


11 Political scientists note that successful democratisation tends to take place in countries with a per capita GDP above HK$24,000. For example, see the interview with Francis Fukuyama in *New Perspectives Quarterly*, volume 21 #3, Summer 2004. [http://www.digitalnpq.org/archive/2004_summer/fukuyama.html](http://www.digitalnpq.org/archive/2004_summer/fukuyama.html).


14 The government’s concessions to corporations often come in the form of free land, e.g. Cyberport, West Kowloon Cultural District, cruise terminal proposals, Lok Ma Chau development proposals. Public land can be given away without registering on the government’s expenditure accounts, giving the superficial impression of fiscal restraint.


19 In previous elections in 1998 and 2000, the proportion of geographically elected legislators was even smaller due to the presence of legislators elected by an election committee that also selected the chief executive. The composition of the election committee was similar to that for the FCs. In 1998, there were 10 election committee elected members and in 2000, there were six. For a discussion of the election committee, see Chapter 2.

20 Leo Goodstadt, Uneasy Partners: The Conflict Between Public Interest and Private Profit in Hong Kong, p. 120–21, 132–35, Hong Kong University Press, 2005.

21 Article 159 of the Basic Law states the following: The power to propose bills for amendments to this Law shall be vested in the Standing Committee of the National People’s Congress, the State Council and the Hong Kong Special Administrative Region. Amendment bills from the Hong Kong Special Administrative Region shall be submitted to the National People’s Congress by the delegation of the Region to the National People’s Congress after obtaining the consent of two-thirds of the deputies of the Region to the National People’s Congress, two-thirds of all the members of the Legislative Council of the Region, and the Chief Executive of the Region. Before a bill for amendment to this Law is put on the agenda of the National People’s Congress, the Committee for the Basic Law of the Hong Kong Special Administrative Region shall study it and submit its views. No amendment to this Law shall contravene the established basic policies of the People’s Republic of China regarding Hong Kong.

22 This is an internal advisory group within the government with no legal power. Since 1998, COMPAG has investigated and reported on alleged anti-competitive business practices, but was unable to force the government to take any action against them. Moreover, it appears to have inconsistent definitions of what constitutes anti-competitive behaviour. For example, it denied that a 1998 agreement between property developers owning adjacent sites to share information and coordinate marketing constituted anti-competitive behaviour. See Peter Roth QC et al., Is Hong Kong Anti-competitive?, p. 21, 10 February 2003, http://www.civic-exchange.org/publications/2003/Competition.doc.

23 Six out of 28 FCs have electorates composed entirely of individual people belonging to certain professions, such as medicine, law, and social work. Most other FCs are composed of a mixture of corporations or recognised associations and individuals, or just corporate bodies.


27 Note, however, that increased competition was not the only factor in reducing prices in telecommunications. Economies of scale and lower equipment costs have also played a role in reducing telecommunications prices around the world as well as in Hong Kong.

28 Ibid.

29 Leo Goodstadt, Uneasy Partners — The Conflict Between Public Interest and Private Profit in Hong Kong, p. 129, Hong Kong University Press, 2005.
cert_othercodoc_outward_1.html.
49 If we take the agreed figure of $7.8 billion for the residential portion which comprises one-third of the total area, the entire site would have sold for three times that amount, which is $23.4 billion.
/Legco_biz_e.pdf.


4 As Justices Brandeis and Holmes stated in their concurrence to the majority opinion in Whitney v California, 274 U.S. 357, 375 (1926): ‘Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.’
5 We have had previous concerns, such as the controversy surrounding the right of abode in Hong Kong and, most recently, the controversy over the proposed Article 23 Legislation, which this Association addressed separately in its Legal Analysis of Certain Provisions of the National Security (Legislative Provision) Bill, Letter from E. Leo Milonas, President of The Association of the Bar of the City of New York, to the Clerk of the Bills Committee, Legislative Council of the Hong Kong Special Administrative Region (25 April 2003), http://www.abcny.org/pdf/report/lINTERN.pdf, attaching Legal Analysis of Certain Provisions of the National Security (Legislative Provision) Bill Pending Before the Legislative Council of the Hong Kong Special Administrative Region, http://www.abcny.org/pdf/report/30637027.pdf. The controversy surrounding Articles 45 and 68 of the Basic Law, and the unsolicited interpretation by the Standing Committee of the NPC in connection therewith, however, represent the first overt instances of direct interference by the central government in the matter of Hong Kong governance without a request from the HKSAR government, the Court of Final Appeal, or any other Hong Kong actor.

6 See Moody’s Investors Service, Global Credit Research Issuer Comment 1 (30 April 2004) and Standard & Poor’s Ratings Report 2, 3, 5, 6 (11 May 2004).


10 Baker v Carr, 369 U.S. 186, 267, 307 (1962) (Frankfurter, J., dissenting). Frankfurter does document, however, that American practice departed from a strict adherence to numerical equality to facilitate local governance, as in apportioning representatives among local government entities such as towns or counties, rather than abstract units of approximately the same population. Id. This practice nonetheless did not depart from the idea of numerical equality nearly to the extent it did in 18th-century England. See infra, text accompanying notes 11–14.


12 As population shifted, this system of apportionment led to severe and stark examples of disproportionate representation between various boroughs, the most notorious example being that of Old Sarum, a town deserted in the 16th century and continuously unpopulated but which continued to elect a representative to Parliament until the early 19th century when the system allowing ‘rotten boroughs’ was abolished. See J.R.M. Butler, The Passing of the Great Reform Bill 236–38 (1964 ed.).

13 Reliance on medieval guilds in this way was the practice in 18th-century London. See George Rude, Wilkes and Liberty, 149–53 (1970).

14 Bailyn, supra note 11, at 100–101 (1968). For a more recent general study, see Edmund S. Morgan, Inventing the People (1988). See also Gordon S. Wood, The Creation of the American Republic, 1776–1787, at 170 (1969) (‘None of [the] electoral safeguards for the representational system, however, was as important to Americans as equality of representation; “in other words,” said John Adams, “equal interests among the people should have equal interests” in the legislatures. More than anything else this equality would prevent the “unfair, partial, and corrupt elections” and the “monstrous irregularity” of the English representational system whereby over three hundred members of the House of Commons, as the English radicals never ceased broadcasting, were elected by only
a handful of the English population concentrated in numerous “beggarly
boroughs”.

15 Reynolds v. Sims, 377 U.S. 533, 564 (1964) (quoting James Wilson, a leader in
thought and argument, with James Madison and Gouverneur Morris, of the
delegates present at the Constitutional Convention). See also Jack N. Rakove,
Original Meanings: Politics and Ideas in the Making of the Constitution, 224
(1996) (“Madison had long since concluded that equitable reapportionment of
representation was an essential requirement of republican government. . . .”).

16 See John Ferling, A Leap in the Dark: The Struggle to Create the American

(quoting notes from the Report of the Debates of the New York Convention of
1821).


19 Reynolds, 377 U.S. at 555.

20 Id., at 579.

21 Gray, 372 U.S. at 380.

22 Reynolds, 377 U.S. at 574.

23 Gray, 372 U.S. at 378.

24 Max Farrand, ed., I The Records of the Federal Convention of 1787, at 242 (1937)
(emphasis added).

25 Id. at 468–469 (quoting Oliver Ellsworth [delegate from Connecticut], as
reported by James Madison on 29 June 1787): ‘The proportional representation
in the first branch was conformable to the national principle and would secure
the large states against the small. An equality of voices [in the second branch] was
conformable to the federal principle and was necessary to secure the small states
against the large. He trusted that on this middle ground a compromise would take
place. He did not see that it could on any other. And if no compromise should
take place, our meeting would not only be in vain but worse than in vain. . . .’

26 While the body of electors for which Article II, Section 1 provides is commonly
and historically referred to as the ‘Electoral College’, that term is not found
anywhere in the Constitution itself.


28 Jack N. Rakove, ‘The E-College in the E-Age’, in The Unfinished Election of

29 Adrienne Koch, Introduction to James Madison, Notes of Debates in the Federal
Convention of 1787, at xii (Adrienne Koch, ed. 1966).

30 The Federalist No. 68 (Alexander Hamilton).

31 Id.

32 For just these reasons, the Association — along with many other institutions —
has repeatedly called for a constitutional amendment to the Constitution
supporting direct election of both the president and vice president. Committee on
Federal Legislation, Association of the Bar of the City of New York, Proposed
Constitutional Amendment Providing for Direct Election of the President and Vice
President of the United States (1992). See also 24 Record of the Association of the

33 Article 25(b) establishes that every citizen shall have the right ‘[t]o vote and to be
elected at genuine periodic elections which shall be by universal suffrage and shall
be held by secret ballot, guaranteeing the free expression of the will of the
electors’. International Covenant on Civil and Political Rights, G.A. Res. 2200A
35 See *The Unfinished Election*, supra note 28 at 220.
36 Longley and Peirce, supra note 34, at 24.
37 In the 1876, 1888 and 2000 presidential elections, Samuel J. Tilden, Grover Cleveland and Albert Gore, respectively, won a plurality of the popular vote yet lost the election as their respective challengers secured a majority of the electoral votes. Some believe that this category of electoral college reversals of the popular vote should include the 1960 presidential race between Republican Richard M. Nixon and Democrat John F. Kennedy. In that election, Nixon lost to Kennedy by 84 electoral votes. Different methods of analyzing the election results in the state of Alabama under its complex voting procedure give rise to the debate over who actually won the popular vote nationally. In one view, Kennedy is credited with 318,303 Alabama votes, giving him the plurality of the votes nationally. In another view, based upon the split between the Alabama Democratic electors (five electors casting their vote, as per their pledge, for Kennedy and six unpledged electors casting their vote for Senator Harry Flood Byrd), Kennedy is credited with 5/11 of the Alabama Democratic vote (147,295 popular votes), thereby giving Nixon the popular vote nationally.
40 Despite his apparent preference for getting rid of the functional constituencies altogether, Patten did note those based on a wider franchise were preferable to those that were not. As he put it: ‘On the whole, the larger the number of voters and the more open the voting process the more defensible the functional constituency became. Other constituencies were tiny, which led to corruption (the representative of 1991’s smallest constituency, covering a handful of voters from the Regional Council, went to prison for his electioneering methods) . . .’ *Id.*
41 See *supra*, text accompanying notes 3 and 5.
42 The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, arts. 25, 26, 39, 45 and 68.
43 ‘Tycoons Prefer the Status Quo’, *Financial Times* (London), 31 May 2004, at 13. (‘The voting thing is an evolutionary process. If you try to take it as a revolutionary process . . . economically it produces very, very bad results.’)
Notes to Conclusion


6 See LC Paper No. CB(2) 1774/00–01(01) for an explanation by the HKSAR Government of its proposal in the Chief Executive Election Bill that the chief executive should not have any political affiliation, http://www.legco.gov.hk/yr00-01/english/bc/bc63/papers/b1774e01.pdf. See also Hansard, LegCo debate on the Chief Executive Election Bill for interesting comments about why the chief executive should not be affiliated to any political party, 11 July 2001. The HKSAR government’s proposal that a party member who wins the election must resign his party membership was based on what was described as Hong Kong’s ‘unique constitutional order’ and to serve the purpose of ensuring ‘proper functioning of the current political order’, to ‘encourage pluralism’, and the measure was described as ‘rational’ and ‘proportional’.

7 *The Fourth Report of the Constitutional Development Task Force*, ¶ 3.19 summarised public views against the current arrangement. Bearing in mind that the Chief Executive Election Ordinance was only passed in 2001 and in light of the government’s thinking just a few years ago, there has clearly been a change of heart, http://www.cab.gov.hk/cd/eng/report4/.

8 An example was Tung Chee Hwa being given a long and friendly handshake by the then president, Jiang Zemin on a high-profile occasion in 1996.


11 Deng Xiaoping, ‘Speech at a Meeting with the Members of the Committee for Drafting the Basic Law of the HKSAR’, *On the Question of Hong Kong*, New Horizon Press, Hong Kong, 1993, pp. 54–56.

12 Edited transcript of interview reported in ‘HK democracy must forge its own path, not emulate others’, *South China Morning Post*, 26 June 2002.


15 See Chapter 9 for many useful references.

16 See Chapter 1 for a full discussion.

17 Tung Chee Hwa highlighted the need to engage the middle class in his 2004 policy address, http://www.policyaddress.gov.hk/pa04/, and Rita Fan also made this point in ‘Democracy is More Than Just Direct Election’, *Hong Kong Business*, September 2004, p. 45.
18 Rita Fan also made this point in ‘Democracy is More Than Just Direct Election’, *Hong Kong Business*, September 2004, p. 47.


25 Ibid., ¶ 5.05.

26 Ibid., ¶ 1.05.

27 Ibid., ¶ 5.02.


29 Historically, upper houses have frequently been created to protect narrow interests that were usually moneyed or geographic-regional interests. For example, in the case of Australia, all colonial (now state) upper houses were established in order to protect property interests (usually rural bias). This phenomenon still exists in Western Australia’s upper house.

30 Civic Exchange is especially grateful to Simon N.M. Young, as well as the Hong Kong Democratic Foundation for sharing ideas. Together, we presented our views on 6 November 2006 at a conference organised by Civic Exchange, SynergyNet, and Hong Kong Policy Research Institute, see http://www.hkpri.org.hk/conference.html and http://www.civic-exchange.org/publications/2004/nov6-%20e.pdf.


33 This represents approximately 13% to 15.5% of all registered voters in the geographical constituencies (3.2 million).

34 *The Third Report of the Constitutional Development Task Force*, ¶ 2.05.

35 There have been consistent calls, as can be seen in *The Fourth Report of the Constitutional Development Task Force*, to create constituencies for either women or home-makers. We believe creating a Home Economics Functional Constituency where two legislators are returned would satisfy these calls.

36 We believe that registered charities represent a large group of non-government organisations that contribute substantially to the economy as shown in the Central Policy Unit’s study of the Third Sector, http://www.cpu.gov.hk/english/research_reports.htm.

37 Unlike for the chief executive subsector election, we believe there is no need to reduce the number of seats of the Labour Functional Constituencies and to give one to employers as their voices and interests are adequately represented in the Executive Council as well as LegCo.


39 Ibid., ¶ 3.03.