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Dear Task Force,

Please find attached my submission on how the functional constituencies should be reformed.

Regards,

**Simon N.M. Young**

Associate Professor

Faculty of Law  
University of Hong Kong

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**The University of Hong Kong**

**Faculty of Law**

4/F KK Leung Building, Pokfulam Road, Hong Kong

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Sent by Email: [views@cab-review.gov.hk](mailto:views@cab-review.gov.hk)

Constitutional Development Task Force Secretariat  
Constitutional Affairs Bureau  
3/F, Main Wing  
Central Government Offices  
Lower Albert Road, Central  
Hong Kong

Dear Task Force:

**Re: Reform of the Functional Constituencies**

In our study of Hong Kong's functional constituencies (FCs), we have found numerous flaws and anomalies with the current arrangement of FCs and the methods of elector determination.<sup>1</sup>

In view of these findings, I express the following views on how the FC system should be reformed for the 2008 elections:

1. The design of the existing FCs has not changed in its basic structure from its original form introduced in 1985. While new constituencies have been added, most of the original ones still exist, in one form or another, and the methods of determining individual and corporate voters have essentially remained unchanged. However, much has changed in the economic, socio-political and constitutional makeup of Hong Kong over the past twenty years. It is high time that the basic design of the FCs be reconceived on a principled basis in light of the present day circumstances of Hong Kong.
2. The ultimate question is how can the system of FCs be optimized to further Hong Kong's socio-economic and political goals while adhering to the fundamental

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<sup>1</sup> See SNM Young & A Law, "A Critical Introduction to Hong Kong's Functional Constituency" (Hong Kong: Civic Exchange, July 2004), which can be found at [www.civic-exchange.org/n\\_pub\\_cont\\_04.htm](http://www.civic-exchange.org/n_pub_cont_04.htm).

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values of a modern civil society? It is proposed that reform proceed in accordance with the following principles:

- i. The FC system should return legislators who will promote the stability, prosperity and social wellbeing of Hong Kong.
  - ii. There must continually be gradual and orderly change to the FC system towards the ultimate aim of universal suffrage.
  - iii. The FC system should be capable of being representative of all functional sectors in Hong Kong society.
  - iv. The FC system should promote openness and inclusiveness rather than exclusivity. It should not artificially restrict the electorate size and draw lines that give rise to anomalies.
  - v. The criteria for qualifying as an elector or candidate should be certain and clearly stated in legislation.
  - vi. The principle of fairness requires that each elector (and his or her vote) is treated in the same way as any other elector. No opportunities should exist that allow one elector to have a greater capacity to determine the election results than that of other electors.
  - vii. The government must assume sufficient responsibility and control over the FC system to prevent abuse of the system and manipulation of election outcomes.
3. With the exception of the Labour FC, the existing arrangement attempts to allocate a single FC seat to a discrete sector. This approach of having discrete sector constituencies is flawed for the following reasons:
- i. Some sectors are necessarily excluded as it is practically impossible to reserve a seat for every sector.
  - ii. Grouping of discrete sectors within a FC becomes strained if not impossible as individual sectors will inevitably want separate recognition.
  - iii. Having discrete sector constituencies gives rise to a gross disparity in constituency size, which in turn leads to a systemic inequality in voting power.
  - iv. Discrete sector constituencies will also generate small sized constituencies, which are undesirable as they restrict the
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competitiveness of elections, the pool of candidates of potential legislators, and ultimately the electoral choices of voters.

- v. Discrete sector constituencies also produce single-issue legislators who will often place the sector interest above the public interest. Legislators should serve the community and not only their narrow constituency.
4. If discrete sector constituencies are flawed, it is proposed that the only viable alternative is to have a small number of broad sector constituencies with each returning multiple legislators. It is proposed that the system of FCs consist of the following five broad sector constituencies:
1. **Commercial and Industrial FC:** Ideally, there should not be any corporate voting in FCs as it holds too much potential for abuse.<sup>2</sup> But if corporate voting does remain, I propose that it be confined exclusively to this FC, which would consist of only corporate voters.
  2. **Financial Sector FC:** All individuals who are engaged in the finance and financial services sector will be entitled to vote in this FC. This sector has been specifically emphasized because of the great importance of this sector to Hong Kong's economy and international competitiveness.
  3. **Professionals FC:** All individuals with advanced educational qualifications and/or specialized training and perform professional service-orientated work should be entitled to vote in this FC. It should not be confined to the traditional professions, such as law, medicine, health services, etc.
  4. **Skilled Labourers FC:** All non-professional skilled labourers would fall within this FC. The potential size of this FC will likely be great, but judging from the 1995 experience, it will be extremely challenging to register even a simple majority of this potential electorate.
  5. **Non-profit FC:** All individuals engaged in non-profit activities (eg sports, arts, cultural events) or charitable work would be included in this FC. Consideration can be given to whether bodies should also be included in this FC.
5. It is envisaged that the allocation of seats to these five FCs will be the product of a democratic decision that is taken only after thorough consultation and debate on the relative importance of each of the different sectors. However, one factor to consider that should be treated as a mandatory one is the need to achieve a relative equality in the size of the constituencies (per elected legislator). While this factor may in some instances be overridden by the democratic decision, it is nevertheless an important factor that cannot be ignored.

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<sup>2</sup> See *ibid.* at paras 123-159, App. 13.

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6. As for the total number of FC legislators, this question does not become an issue under the above proposal. However, there is merit to the proposal of increasing the number of legislators generally as this will help to spread the increasing amount of work that must be done by the legislature.
  7. Under these proposals, there must also be a move away from using only the existing methods of determining electors. As outlined in our report, the use of umbrella organizations and representative organizations has many inherent problems.<sup>3</sup> There should be a move towards general criteria based determinations of sector engagement made directly by the government. It will be up to the applicant to produce evidence to show that they have met the criteria for qualification as an elector. Membership in certain organizations may be only one way of becoming an elector. Other evidence showing engagement in a particular sector should also be accepted for purposes of qualification.
  8. At present, only 5% of the geographical constituency electorate is registered to vote in the FCs. If progress is to be made towards universal suffrage, this figure must be significantly increased in the 2008 election. It is not unrealistic to target for 60-80%, recognizing that the actual registration rate will probably be much lower.

I encourage the Task Force to read our report and would be pleased to discuss these and other ideas further.

Yours truly,

(Signed)

Simon N.M. Young  
Associate Professor  
Deputy Head, Department of Law  
Deputy Director, Centre for Comparative and Public Law

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<sup>3</sup> See *ibid.* at paras 80-122.