



29 April 2005

Mr Donald Tsang  
Acting Chief Executive  
Head, Constitutional Development Task Force  
Constitutional Development Task Force Secretariat  
Constitutional Affairs Bureau  
3/F Main Wing  
Central Government Offices  
Lower Albert Road  
Hong Kong

Dear Mr Tsang,

**The Fourth Report of the Constitutional Development Task Force**

We are pleased to enclose our submission to the Fourth Report of the Constitutional Development Task Force. We shall be happy to meet with the Task Force to discuss our proposals.

Sincerely yours,

(Signed)

George W H Cautherley  
Vice Chairman  
Hong Kong Democratic Foundation

Cc: Mr Stephen Lam, Secretary for Constitutional Affairs



**HONG KONG DEMOCRATIC FOUNDATION  
RESPONSE TO  
THE FOURTH REPORT  
OF THE  
CONSTITUTIONAL DEVELOPMENT TASK FORCE**

The majority of the questions posed in the Fourth Report of the Constitutional Development Task Force have already been fully covered in the Hong Kong Democratic Foundation's (HKDF) response to the Third Report of the Constitutional Development Task Force. Therefore, in responding to the Fourth Report, the HKDF will mainly be making reference to the relevant paragraph's, or their further amendments, in its response to the Third Report, which will be included in the relevant sections of this response for ease of reference.

**METHOD OF SELECTING THE CHIEF EXECUTIVE IN 2007  
(1) The Number of Members of the Election Committee**

As stated in its response to the Third Report, the HKDF is of the strong view that the number of members of the election committee should be substantially increased and recommended increasing the number of members to 6,400, paragraph 1.1.2 as follows. but with the further amendments to increase the total number of members to 6,800 facilitate the inclusion of half the total seats by direct election using the Single Transferable Vote proportional representation system (STV):

1.1.2 We therefore recommend the EC is expanded to 6,400 members allocated amongst the Four Sectors as follows:

First Sector:	Industrial, commercial and financial sectors	1,000
Second Sector:	The professions	500
Third Sector:	Labour, social services, religious and other sectors	1,500
Fourth Sector	Members of the Legislative Council, representatives of district-based organizations, Hong Kong Deputies to the National People's Congress and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference	400
Directly Elected Sector:		3,400

It is the HKDF's view that any significantly lesser number than 6,800 will not materially improve the present election process, the objective of which should be to enable the process to take place free of the possibility of any pressure or coercion on members to vote for candidates other than on the basis of their personal preference. We would emphasize our view that an increase in members to even as many as 2,000 would not materially change the dynamics of the present system.

The methodology for increasing the size of the Election Committee has already been set out in paragraphs 1.1.2 – 1.1.5 of the HKDF response to the Third Report, as follows:

- 1.1.3 Our starting basis for expanding the EC is to take the current number of seats each sector has, which is 200 and multiply these by a factor of 10. The HKDF believes any expansion of the EC should deliver an electorate of a size large enough to both encourage the need for candidates to engage in genuine and active campaigning and minimize the possibility of "fixing" the result.
- 1.1.4 However, we also felt other factors needed to be taken into consideration. Firstly, the total number of voters for the Fourth Sector is currently only 656 and therefore it is impractical for this sector to have 2,000 seats. Under our proposals for the expansion of the electorate for the Fourth Sector set out later in this paper, the number of voters in the Fourth Sector would be increased to a total of 1,112 electors. On this basis we felt an allocation of 400 EC seats, approximately one third of the electorate, would be reasonable.
- 1.1.5 The second factor the HKDF felt needed to be taken into consideration was that it is not equitable that all four sectors have an equal number of EC seats. Therefore we re-allocated the total 6,000 seats for the First, Second and Third sectors among them, to more practically reflect the relative balance of these sectors within the community as a whole.
- 1.1.6 Subsequent to the issue of the Fourth Report, the HKDF decided to include provision for half the seats of the EC to be returned by direct election and so as not to reduce the seats for the Fourth Sector, the HKDF proposes that the total number of seats now be increased to 6,800.

## **(2) The Composition of the Election Committee**

The HKDF's proposals for the composition of the Election Committee was set out in paragraphs 1.2.1 – 1.2.10 of its response to the Third Report and the HKDF has nothing further to add to this. With regard to the number of District Council members, this is covered under section (4).

- 1.2.1 The HKDF proposes some fine-tuning of the Election Committee sectors.

1.2.2 With regard to the First Sector (Industrial Commercial & Financial Sectors), our proposal is that these are consolidated into just three groups, Commercial, Industrial/Production and Financial Services, with the existing constituents being allocated to whichever of these three groups is most relevant to their occupation.

1.2.3 We also propose that the Agriculture and Fisheries sector and the Publication segment of the Sports, Performing Arts, Culture and Publication sector, both of the Third Sector be transferred into the First Sector under the Industrial/Production group, as we believe this is a more appropriate grouping for them than being part of the Third Sector.

1.2.4 As a result of this consolidation we propose the 1000 seats on the Election Committee for the First Sector be allocated as follows:

Commercial	500
Industrial/Production	250
Financial Services	250

We believe this allocation represents a reasonable level of proportionality between the three groups in terms of their economic contribution to the community and in this respect we have taken into account the contribution of the Industrial/Production group that is derived from its activities outside Hong Kong.

1.2.5 For the Second Sector (The Professions) the HKDF recommends that the number of members of the Election Committee that each of the 10 constituent bodies can elect be generally proportional to share of total voters for this Sector each constituent body holds.

Therefore, the proposed membership allocation for the Second Sector would be as follows:

Accountancy	50
Architectural, Surveying and Planning	15
Chinese Medicine	10
Education	220
Engineering	20
Health Services	110
Higher Education	15
Information Technology	15
Legal	15
Medical	<u>30</u>
<b>Total</b>	<b>500</b>

1.2.6 With regard to the Third Sector (Labour, Social Services, Religious and Other Sectors), the HKDF proposes this is renamed as Social and Religious Sector. We believe this is more appropriate after the transfer of Agriculture and Fisheries and Publication to the First Sector and that the Labour sector can reasonably be regarded as a “social” sector as can Sports, Performing Arts and Culture.

1.2.7 Based on this re-structuring we propose the membership allocation of the Election Committee for the Third Sector be as follows:

Labour	825
Religious	225
Social Welfare	225
Sports, Performing Arts & Culture	225

1.2.8 Furthermore, the number of members to be nominated by each of the six designated bodies of the religious sub-sector is proposed as follows:

Catholic Diocese of Hong Kong	40
Chinese Muslim Cultural Fraternal Association	30
Hong Kong Christian Council	40
The Hong Kong Taoist Association	35
The Confucian Academy	40
The Hong Kong Buddhist Association	40

1.2.9 Apart from the number of EC members to be elected, the HKDF proposes no changes to the Fourth Sector.

1.2.10 The HKDF recognizes that the above proposals are somewhat arbitrary in nature and as far as we are concerned the precise EC seat numbers for the constituent members of the various Sectors should be open for discussion. Our purpose is to propose the general principle that the allocation of seats be based, as far as possible, on an objective assessment of the relative representativeness of each constituent member within its Sector.

### **(3) The Number of Members of the Election Committee Required for Nominating Candidates for the Office of the Chief Executive**

The HKDF’s position regarding this question was set out in paragraph 1.3.1 of its response to the Third report as follows:

1.3.1 The HKDF considers 100 members of the Election Committee to be an adequate minimum nomination requirement and furthermore recommends that 500 members be the maximum number of nominees any candidate can retain, based on the proposed increased electorate of 6,400.

#### **(4) The Delineation and Size of the Electorate of the Election Committee**

The HKDF's views on this issue were set out in paragraphs 1.4.1 – 1.4.7 of its response to the Third Report as follows:

- 1.4.1 The HKDF is strongly in favour of the abolition of corporate voting and therefore proposes that the directors or office bearers, as appropriate, of corporate members and organizational members should be enfranchised. This would also have the benefit of widening the electorate for membership of the Election Committee.
- 1.4.2 With regard to Corporate members of a Sector, all directors of the company duly registered with the Companies Registry at a certain date before the compilation of the electoral roll for the Election Committee should be entitled to be voters in the election of members of the Election Committee.
- 1.4.3 Similarly, for Organizations (including partnerships and societies that are members of a Sector, all registered office bearers holding office at a certain date before the compilation of the electoral roll for the Election Committee should be entitled to be voters in the election of members of the Election Committee.
- 1.4.4 As far as the Religious Sector is concerned, the Third Report of the Constitutional Development Task Force provides no details on the voter composition for this sub-section. The HKDF recommends that the voters in the Religious Sector comprise all members of the constituent bodies who are employed in the capacity of priest, clergy, monks, nuns and equivalent positions, depending on the particular constituent body.
- 1.4.5 In respect of the Fourth Sector, the HKDF recommends the EC electorate be as follows:
- |  |     |
|--|-----|
| Hong Kong Deputies to the National People's Congress     | 36  |
| Hong Kong Members of the National Committee of the CPPCC | 122 |
| Members of the Legislative Council                       | 60  |
| Heung Yee Kuk  | 417 |
| Hong Kong & Kowloon District Councils                    | 245 |
| New Territories District Councils                        | 259 |
- 1.4.6 The Heung Yee Kuk electorate would consist of the Executive Committee members, including the Chairmen and Vice Chairmen of the 27 Rural Committees. The electorate of the Hong Kong & Kowloon District Councils and the New Territories District Councils comprises all elected appointed and ex-officio members.

1.4.7 The HKDF also recommends that a thorough review is carried out to ensure that all relevant constituents of the First, Second and Third Sectors have been included and that any constituents currently included that are no longer relevant to their Sector are deleted. Regrettably, the HKDF does not have the resources to carry out such a review and submit its own recommendations on this issue.

#### **(5) Others**

On the question of whether the Chief Executive could have or maintain a political affiliation the HKDF is strongly of the view that this would be beneficial on the following grounds:

1. This would enable a Chief Executive candidate to display a political manifesto with which the community would already be familiar and on which it would have already been able to have taken an informed view.
2. An elected Chief Executive with a known political affiliation would be able to benefit from the strength of that affiliation in terms of support for legislation in the Legislative Council.
3. It is the HKDF's view that a system, which enabled the election of a Chief Executive with political affiliations, would only serve to enhance the political party system. Furthermore, it is the HKDF's view that a healthy political party system is the bedrock of effective governance.

With regard to the setting out of a timetable for selecting the Chief Executive by universal suffrage, since this seems to be the strong wish of a substantial majority of the community, in the view of the HKDF establishing such a timetable, providing it is realistic in terms of the already expressed aspirations of the community, can only have a beneficial effect on the stability of the community.

The HKDF would like to draw the Task Force's attention to paragraphs 1.5.1 – 1.5.3 of its response to the Third Report, set out below, on other issues relating to the selection of the Chief Executive.

- 1.5.1 The HKDF proposes that compulsory voting be introduced for the election of the Chief Executive. To facilitate this, provision would need to be made for Postal Voting (PV). Furthermore, in view of the greatly increased size of the electorate it would be necessary to set up a number of polling stations throughout the SAR to enable convenient access to voting for the electors.
- 1.5.2 Should this proposal not be adopted, the HKDF recommends that the election of the Chief Executive can only be considered to be valid provided a minimum of number of the members of the Election Committee have cast valid votes and it is our proposal that this be set at 75% of the electorate.

- 1.5.3 Secondly, the successful candidate must receive a minimum of in excess of 50% of the votes cast. If this is not achieved in the first round of voting a second round of voting and any necessary subsequent rounds of voting must be held until a winning candidate achieves in excess of 50% of the votes cast. Should more than two candidates have stood in the first round of voting, only the first two by magnitude of votes secured would be eligible to proceed to the second and any subsequent round of voting.

## **THE METHOD OF FORMING THE LEGISLATIVE COUNCIL IN 2008**

### **(1) The Number of Seats in the Legislative Council**

### **(2) The Number of Seats Returned by the Geographic Constituencies**

The HKDF set out its views regarding the number of seats in the Legislative Council in paragraphs 2.1.1 – 2.1.4 of its response to the Third Report as follows:

- 2.1.1 The HKDF believes there is a need to increase the number of seats in the Legislative Council (LC) in order for its work to be carried out efficiently and to encourage the development of a pool of experienced legislators.
- 2.1.2 One of the justifications for an increase in LC seats is that a number of legislators, principally from the Functional Constituency sector (FC), do not participate to a sufficient extent in the routine work of the LC, thus putting an extra burden on other legislators.
- 2.1.3 It is the HKDF's view that the size of the LC be increased on an incremental basis as follows:
- 80 seats in 2008 {10 additional seats in the Geographical Constituencies (GCs) and 10 additional seats in the FCs}  
100 seats in 2012 (all 20 additional seats to be for the GCs)
- 2.1.4 If experience demonstrated a need, the number of seats could be increased to 120 in 2016 or a later date, with all 20 additional seats to be for the GCs.

Since its response to the Third Report of the Task Force, the HKDF has further considered its position regarding the expansion of seats in the Legislative Council and has decided that while it still believes there is a need to expand the size of the LC, this should not be done until such time as all seats are returned by direct election through Geographical Constituencies.



### **(3) The Number of Seats Returned By Functional Constituencies**

### **(4) The Delineation and Size of the Electorate of Functional Constituencies**

Since the HKDF made significant proposals regarding the Functional Constituencies in its response to the Third Report, the follow-up questions for the above two sections were covered in paragraphs 2.2.1 – 2.3.1 of that response as follows:

- 2.2.1 Extensive examination of the FC system has shown it has a host of anomalies and since these constituencies will continue on for the 2008 LC elections, the HKDF is of the strong opinion that the Government carry out a thorough review of the FC system with the objective of bringing a more coherent rationale to the whole system.
- 2.2.2 The current FCs should be evaluated to see if they comply with the following basic criteria:
- (1) FCs should be substantial and of importance in the community
  - (2) Constituencies should not be based on ideology, dogma or religion
  - (3) Particular groups or bodies should not be represented in more than one FC
- 2.2.3 Additionally, any review should address the issue of disproportionate representation, which results in each FC having one seat in the LC, irrespective of its size relative to other FCs, with the exception of the Labour FC, which returns 3 seats. The review should examine the feasibility of allocating more seats to the larger FCs, to more realistically reflect their relative size. The precedent is already there with the Labour FC. On the assumption that the number of GC and FC seats in the LC will be increased, this could be an appropriate way of allocating the extra FC seats. Also, where it would be rational, there may be a case for combining some of the smaller FCs into a single FC, such as Finance with Financial Services and Real Estate and Construction with Architectural, Surveying and planning.
- 2.2.4 The HKDF is also concerned that no elections take place in a number of FCs and that in respect of the 2004 LC election, 11 FC members will be returned unopposed. Such a situation makes a mockery of the democratic process and to have one third of the FC seats returned in this way underlines fundamental flaws in the current FC system.
- 2.2.5 There appears to be an increasing tendency over the years for FCs to develop into sectoral lobby groups rather than to work for Hong Kong as a whole, as legislators pledge in their oath of allegiance. It is distressing, for instance, that the platforms of all the candidates in Financial Services sector in the 2004 LC election are strongly partisan and contrary to the interests of the investing public as a whole, thus detrimental to Hong Kong's presumed desire to be a responsible financial centre.

- 2.2.6 The HKDF would propose that a separate consultation paper be issued by the Constitutional Development Task Force in the course of 2005 on the issue of the reform of the FC system.
- 2.2.7 The HKDF believes many of these issues could be effectively addressed by folding the existing FCs, with the exception of the Education, Labour, Heung Yee Kuk and District Council FCs into seven composite, multi-seat constituencies as set out in the attached Appendix. The Labour and Education FCs would be retained as separate FCs, with the Labour FC expanded to 7 seats and the Education FC expanded to 3 seats. The Heung Yee Kuk and District Council FCs would be disbanded, as these are political in nature and contradictory to the occupational concept on which the FCs are generally based.
- 2.3.1 The HKDF most strongly supports the abolition of “Corporate Voting” in the FCs and proposes that for all FCs which now have corporate or organizational electors, the entitlement to vote on behalf of the member be transferred to its directors, partners or office-bearers as individuals. It is our recommendation that in respect of an FC corporate member all directors of the company duly registered with the Companies Registry, or all partners registered at the Business Registration Office, or all office-bearers registered under the Societies Ordinance at a certain date before the compilation of the electoral roll for the FCs should be entitled to be FC voters. In the case of the Labour FC, the electorate should be all registered members of the constituent Trade Unions.

The HKDF would further comment, that while we have proposed a thorough review of the Functional Constituency system in preparation for the 2008 Legislative Council elections, we are not in favour of extending the existence of Functional Constituencies beyond 2012. We believe that any detailed and objective review of the contribution that Functional Constituencies have made to Hong Kong’s system of governance since their inception would conclude that they continue to be an anachronism in the context of a democratic society and bring no positive benefits to a system of democratic governance. It should be remembered that Functional Constituencies have their ideological origins in the guild system of medieval European cities, the pre-revolutionary Tsarist Russian Duma and the Fascist government of Benito Mussolini.

#### **(4) Provisions Regarding Nationality of Legislative Council Members**

The HKDF set out its views on this question in its response to the Third Report as follows:

- 2.4.1 The HKDF would support the maintenance of the provision that 20% of the membership of the LC could comprise members who are not of Chinese nationality or who have the right of abode in foreign countries. For the 2008 LC elections, on the assumption that the size of the LC is increased, half the extra seats should be within the FCs. Once the additional FC seats have been allocated, the Government should implement a public consultation on the FCs that can return members who are not of Chinese nationality or who have the right of abode in foreign countries.

#### **(6) Others**

With regard to the issue of the long-term future of Functional Constituencies, the HKDF view on this is covered in section (3) above.

Concerning the question of exploring different forms of universal suffrage, it is the HKDF's view that there is only one practical form of universal suffrage and that is the right of every qualified adult in a society to vote in the election of its government through a system of geographical constituencies. While in theory it might be possible to conceive of a system where every qualified adult could be assigned a Functional Constituency instead, a rigorous examination of such a proposition would identify too many anomalies for it to be fairly regarded as a practical alternative.

As expressed in the HKDF view on the setting out of a timetable for the selection of the Chief Executive by universal suffrage, since it also seems to be the strong wish of a substantial majority of the community that there be a timetable for electing all the members of the Legislative Council by universal suffrage, in the view of the HKDF establishing such a timetable, providing it is realistic in terms of the already expressed aspirations of the community, can only have a beneficial effect on the stability of the community.

The HKDF would like to draw the Task Force's attention to paragraphs 2.5.1 – 2.7.2 of its response to the Third Report, set out below, on other issues relating to the method of Forming the Legislative Council.

- 2.5.1 The HKDF has always been a supporter of proportional representation for the GCs. However, we consider the "list" system that is currently in use, while a valid form of proportional representation, has inadequacies. The HKDF's preference is for the Single Transferable Vote (STV) system, where the voter ranks all the candidates in a constituency in order of preference, as we believe the STV voting

system is better because it maximizes the voter's choice while preserving the optimum balance between parties, accountability and proportionality.

- 2.5.2 Irrespective of our preference, we are of the view that since different voting systems will deliver different outcomes for candidates in the same constituency and would therefore have a material impact on the composition of the legislature and its representativeness, the question of the voting system merits further examination and public debate. Apart from the various systems of proportional representation, consideration should also be given to the smaller size, single seat constituency with First Past the Post (FPTP) outcome as well as double seat constituency with FPTP outcome. We therefore propose that further public consultation takes place on this before any final decision on the voting system for the GCs for the 2008 LC elections is made. However, we believe that it would be desirable to change from the "list" system, though possibly this might be left until the LC has been further enlarged and any change should be regarded as a "long term" change, hence the prudence in more detailed examination of this issue.
- 2.6.1 The disenfranchisement of electors through the absence of a PV facility needs to be rectified and the HKDF strongly urges PV be introduced for the 2008 LC elections, in addition to our earlier proposal for this to be introduced for the 2007 Chief Executive election.
- 2.6.2 As a territory with a highly international business focus, large numbers of our citizens are absent from Hong Kong on business travel or work assignments in other countries, particularly in the Mainland at any one time. Without the facility of PV these responsible citizens are effectively forcibly disenfranchised if an election takes place while they are absent from the territory and PV is a simple way of rectifying this serious anomaly.
- 2.6.3 Many elderly are also disenfranchised when they become too frail to visit the polling stations and a PV facility would return to them their right of full participation in the democratic process.
- 2.6.4 Similarly, the disabled who are confined to wheelchairs are hampered in their attempts to vote by the general lack of facilities at polling stations for wheelchair access and it is possible a proportion of this sector of our society do not vote because of this.
- 2.6.5 Comment has been made on the relatively low voter turnout in Hong Kong compared with many other territories for elections and if the incidence of "lost" votes due to absence from the territory or physical inability to reach the polling stations is taken into account, Hong Kong voter participation is probably much more healthy than the actual number of participants show.
- 2.7.1 At the present time there is no such thing as a Political Party (PP) as a specific legal entity. PPs are either registered as "companies" or as "societies".

- 2.7.2 The HKDF believes this situation sends out a message that the Government is ambivalent over the role of PPs and discourages the public at large from joining PPs due to confusion over their legitimacy.
- 2.7.2 Therefore the HKDF strongly urges that the role of PPs be properly formalized within our constitutional system. We propose that the Government carries out an evaluation as to how best to achieve this, either through specific PP legislation or through the mechanism of the Electoral Affairs Ordinance. We would hope such legislation or mechanism could be in place by the end of 2006, so that the campaign for the 2008 LC elections and the elections themselves can be conducted with the participation of PPs operating as such within an appropriate framework.

### **Conclusion**

Since this is the final consultation by the Task Force before it produces its “mainstream” proposals, the HKDF would like to make its position clear. While the HKDF is anxious to see progress in the pace of constitutional development, unless the “mainstream” proposal advances the reforms for the 2007 and 2008 elections towards the goal of election by universal suffrage for both the CE and the LegCo and towards the elimination of the FCs significantly, the HKDF would support the retention of the current status quo.

## APPENDIX I

### PROPOSED FUNCTIONAL CONSTITUENCIES FOR 2008 LEGISLATIVE COUNCIL ELECTIONS

<b>Production Enterprises FC</b>	<b>3 seats</b>
Agriculture & Fisheries	
Industrial (First)	
Industrial (Second)	
Publications (from the present Sports, Performing Arts, Culture and Publication FC)	
Real Estate & Construction	
Textiles & Garments	
<b>Commercial</b>	<b>4 seats</b>
Commercial (First)	
Commercial (Second)	
Import & Export	
Wholesale & Retail	
<b>Technology</b>	<b>3 seats</b>
Architectural, Surveying & Planning	
Engineering	
Information Technology	
Transport	
<b>Financial</b>	<b>3 seats</b>
Finance	
Financial Services	
Insurance	
<b>Services</b>	<b>2 seats</b>
Catering	
Tourism	
<b>Professions</b>	<b>4 seats</b>
Accounting	
Legal	
Medical	

<b>Social</b>	<b>4 seats</b>
Health Services	
Social Welfare	
Sports, Performing Arts & Culture	
<b>Labour</b>	<b>5 seats</b>
<b>Education</b>	<b>2 seats</b>