



**Civic Exchange's Views and Proposals
on
Methods for Selecting the Chief Executive and for
Forming the Legislative Council in 2008**

I: Our Standpoint

1.01 While we note the explicit restriction in Paragraph 1.05 of the Fourth Report of the Constitutional Development Task Force (4R), we wish to say that for the people of Hong Kong to have to continue with indirect elections and functional elections as an alternative to universal and equal suffrage is most regrettable. No other community as prosperous, stable, well-informed and pluralistic as Hong Kong in today's world is denied the right to elect their political leaders.

1.02 Nevertheless, Hong Kong people cannot afford the luxury of dismissing the invitation from the HKSAR Government, which has the backing of the Central Authorities, to review the Chief Executive election system for 2007, as well as the Legislative Council (LegCo) election system for 2008, within the confines of the 2004 Decision of the Standing Committee of the National People's Congress (SCNPC Decision).

1.03 Given these constraints, the real challenge is to examine how the respective election systems can be reformed in order to serve the public interest rather than various sectoral interests.

1.04 We would much prefer a system of direct election based on universal and equal suffrage. However, we offer our views in this Submission to address the practical issue of how can the respective election systems for the Chief Executive and LegCo be improved so as to minimise their more adverse and undemocratic features. We make no apologies that the proposals are complicated but the existing system is no less so. Our aim is to find ways to reduce the worst problems of the current system.¹ We believe our proposal complies with the 9 factors stated in the Report submitted by the Chief Executive to the SCNPC in April 2004 (4R paragraph 5.06).

1.05 We also wish to reiterate, as many others have (4R paragraph 3.20), and as we have done in our previous Submission that there should be a clear commitment for Hong Kong to elect its Chief Executive and LegCo by universal and equal suffrage.

1.06 Together with this Submission, we include relevant, new research studies commissioned by Civic Exchange.

II: Method for Selecting the Next Chief Executive

SCNPC Decision and next election

2.01 Arguably, the selection of the Chief Executive is the most important periodic political event for Hong Kong because the Chief Executive is both the head of the HKSAR and of the government. The Basic Law provides the Chief Executive with enormous powers to lead and govern the territory. Hong Kong people have yet to participate directly in the election of the Chief Executive and while the first constitutional opportunity was to be in 2007, the SCNPC Decision ruled it out with no commitment to whether this could be achieved at the next available opportunity after the 2007 election. In view of the fact that the next election remains a constitutional possibility for achieving universal suffrage, any new arrangements made for the next selection must ensure that Hong Kong will be closer to achieving that "ultimate aim".

¹ We build upon the suggestions made in our previous submission to the Third Report dated 30 September 2004. <http://www.civic-exchange.org/publications/2004/Response3TaskForce.pdf>. In our previous submission, we had suggested that Election Committee members could be chosen at random based on each of the District Council geographical constituencies. On this basis, people from all walks of life, including those from the Annex I sectors, will be included, in addition to the ex officio sector.

Task Force must state principles

2.02 As such, the Task Force in its Fifth Report needs to state the principles upon which it will base the HKSAR Government's preferred options for reform for the next selection, which it has not done in its Fourth Report. The Fourth Report has merely summarized the main issues mentioned by those who submitted views to its previous consultation.

Fifth Report needs to critique current system

2.03 The Task Force made no attempt to critique the current selection system via the Election Committee and its subsector elections. We expect the Fifth Report to contain a substantive analysis of the problems related to the current system, as this will provide the necessary foundation for how best to reform the system within the ambit of the SCNPC Decision.

Limit of functionally-based subsector election

2.04 The composition of the 800-persons Election Committee is made up of various subsectors - 96 ex officio members composed of the 60 LegCo members and the 36 Hong Kong deputies of the National People's Congress; 40 members nominated by 6 designated bodies in the religious sector;² and 664 members from 35 other sub-sectors.³

2.05 The architects of the Basic Law saw the current design as a way to include participation from many sectors of society in indirectly selecting the Chief Executive. Those entitled to vote in these other sub-sectors are almost the same as those for Functional Constituencies. It could be said, therefore, that the foundation of the Chief Executive selection is functionally based. The key problem with functionally-based, indirect selection as supposed to direct election by universal and equal suffrage is that participation is restricted to a small number of people for selecting the Chief Executive, who holds the highest office in the HKSAR. As could be seen from the research on Functional Constituencies which we include in this submission, no clear logic has ever been presented to justify why certain bodies and individuals were given an additional vote on a functional basis. A similar criticism could be made of the subsector elections to generate the members to the Election Committee. We will not repeat the extensive problems related to Functional Constituencies here but we believe it is for the reasons stated in the Attachments that the Task Force has received public views on the need to allow wider participation by various means (4R paragraphs 3.02-3.11).

2.06 The current base of the various subsectors amounts to approximately 163,500 potential individual/corporate voters.⁴ In the most recent Election Committee election (1 May 2005), the voter turnout rate to fill vacancies was unimpressive,⁵ which indicates that even those who are privileged to have a role in indirectly selecting the Chief Executive were unenthusiastic in participating.

² The 6 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).

³ 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).

⁴ HKSAR Government's Task Force on Constitutional Development Third Report, paragraph 2.05.

⁵ Only 7,094 people turned out to vote in the 9 subsectors that had contested vacancies. The Accountancy subsector had 12.14% turnout rate and the Textile and Garments subsector had a 12.72% turnout rate.

Need to reduce public cynicism

2.07 It may be said that voters were unenthusiastic in 2005 because they did not expect a contested selection to take place since there is a widespread belief that the Central Authorities have already made up its mind on who would lead Hong Kong for the next two years. It is hard to deny that there is general cynicism that the Central Authorities will make the decision on who will become Chief Executive and that the cumbersome Election Committee election system is merely there for show. We expect the Task Force to address this issue in its Fifth Report. We hope the Task Force will make it clear that the reforms for the next selection will be designed to lessen the degree of public cynicism.

Size of Election Committee and subsector voting base

2.08 We believe many submissions supported expanding the size of the Election Committee (4R paragraphs 3.03-3.04) because there is a general acceptance that the current system is extremely narrowly defined. In suggesting that the numbers could be increased from 800 to 1,200 or 1,600, it appears that the suggestions were based on the present construct of 200 per sector in 4 sectors (4R paragraphs 3.05 and 3.17). We find such requests understandable as they appear to be the easiest way forward. However, they do not deal with the problems revolving around functionally-based, indirect selection and will not reduce cynicism that Hong Kong will not be allowed to achieve universal and equal suffrage in the next election, if ever.

Abolish corporate voting

2.09 One of the most serious problems with functional voting is the corporate vote. It has never been clearly explained why non-humans should be given a vote, and we urge the Task Force to explain this in its Fifth Report. We are unsurprised to see that many others have recommended that corporate voting be replaced by individual vote (4R paragraph 3.18). We strongly urge the Task Force to abolish corporate voting for the formation of the Election Committee.

Alternative approach within SCNPC parameters

2.10 Within the confines of the SCNPC Decision, it is important to allay the public's cynicism by ensuring that the reforms for the next selection are such that they are designed to make the result harder to manipulate. We propose that the size of the Election Committee subsector voting base should be increased to 400,000-500,000 people⁶ and that the size of the Election Committee should be increased to 4,000-5,000 members.

2.11 We wish to emphasize that this proposal is in fact not so radical a departure from what others have proposed in terms of numbers since it is in fact only doubling the size of the current subsector electorate and making the Election Committee effectively 1% in size of the electorate. However, we believe the actual numbers are sufficiently large to satisfy the public's desire that the process is a useful step towards achieving universal and equal suffrage.

2.12 The other advantages of the outline proposal below is that it takes nothing away from those who currently have an individual vote in the Election Committee (4R paragraph 3.07), it includes all District Councillors, elected and appointed, since the size of the Election Committee is sufficiently large to make manipulation more difficult (4R paragraph 3.08), which would probably also satisfy those who prefer not to include District Councillors in the first place (4R paragraph 3.09), and it includes many more people to increase representation (4R paragraph 3.10). Our proposal also deals with issues raised in Paragraph 3.18 in the Fourth Report.

⁶ This represents approximately 13%-15.5% of all registered voters (3.2 million).

1. Election Committee subsectors election

2.13 There are THREE features:

- Large generic subsectors

To create 400,000-500,000 people as the voting base for the Chief Executive election at the next election, the best way is to create a number of very large, generic subsectors.⁷ By way of illustration, these 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 includes insurers and stockbrokers.
- III. **Services (2):** This sector includes individuals engaged in trading and commercial services organizations (e.g. import/export; whole/retail; agency).
- IV. **Services (3):** This sector includes individuals engaged in the Publications sector (publishers, writers, distributors, media etc), Communications (marketing, public relations etc) and Arts & Cultural organizations (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 organizations.
- VI. **Services (5):** This sector includes individuals engaged in or are members of social welfare organizations and community groups (registered charities).
- VII. **Technology:** This sector includes individual engaged in all the technology fields, including Information Technology.
- VIII. **Education and Training:** This sector includes all those related to the teaching profession ranging from 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 5 employees.

⁷ See also our proposal for reforming Functional Constituencies in this Submission. We are essentially proposing that the two systems are already very similar and that they could be merged.

- Large number of potential "Qualified Individual Voters"

Qualification

2.14 To qualify as an Election Committee subsector 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 in the case of subsector VI, be a member of a qualified group (i.e. in the cases of registered charities); plus be a registered voter in the Geographical Constituency.

Choose one subsector only

2.15 Furthermore, the individual has to register separately to be a voter for the Election Committee subsector. If an individual qualifies for more than one subsector, s/he must choose one subsector to register in.

Possible numbers of qualified individuals

2.16 On the basis that there are currently approximately 150,000 potential individual voters for the subsectors,⁸ and on the basis that the HKSAR Government believes the potential number of individual Function Constituency voters (for LegCo election) to be 280,751 for the 2004 election, it seems quite viable to boost total numbers to 400,000-500,000 for the next election.

First come first serve registration basis

2.17 Should the HKSAR Government wish to put a cap on the total number of subsector voters at say 500,000, then it can encourage people to register within a certain time and give priority to the Qualified Individual Voters who registered first.

- Government to register subsector voters

2.18 The HKSAR Government will be involved in direct registration of subsector voters just as it does for the registration of Geographical Constituencies voters. Organizations can assist as they already do by encouraging qualified individuals to register.

2. Election Committee election

Number of Election Committee members per sector

2.19 The subsectors will elect 4,000-5,000 Election Committee members whose sole duty is to select the Chief Executive. According to the example above, where there are 12 subsectors, and adding another sector (XIII) to reflect an Ex Officio and Nominated Sector, 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 HKSAR Government could consider having the same number of people for each of the 12 sectors and then adding on those from sector XIII. Equal numbers for the 12 sectors can be justified as no one sector becomes dominant. Assuming that the total number of Election Committee members is 4,000, and dividing the remaining 3,500 by 12 leaves each sector electing 290 members taking out say 500 members for sector XIII, to the Election Committee.

⁸ HKSAR Government's Task Force on Constitutional Development Third Report, paragraph 2.05.

Campaigning and voting

2.20 This is a very large number for a subsector to elect and it 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-organizing 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.

2.21 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. In particular, these include the small size of some of the subsectors and corporate voting. We believe there are benefits to giving this aspect of our proposal more thought to see how to make campaigning and voting easier. Civic Exchange is prepared to spend more time on thinking through this aspect if our overall proposal is of interest to the Task Force.

2.22 An alternative idea that would solve the complication stated above is to allow the enlarged Functional Constituency voter base to vote for the chief executive. The advantages of this formula would be the functional principle is observed for the chief executive selection, the need to widen the functional franchise is already accepted by many sectors of society, and the new larger electorate would not be so open to manipulation.

Political affiliation of the Chief Executive

2.23 We believe that politics is a necessary part of society and therefore, we also have no objection to the Chief Executive being affiliated to a political party (4R paragraph 3.19).

Candidacy qualification

2.24 The current qualification for any individual wishing to stand for election to be an Election Committee member can essentially be retained.

3. Number of Election Committee members required for nominating a candidate for Chief Executive

2.25 What needs to be achieved is to ensure that a candidate genuinely has wide support but not to make it so difficult or open to manipulation that few can successfully stand for election. For a body of 4,000-5,000 members, we believe a candidate needs to have nomination from at least 5% of the members.

4. Transparency needs to be substantially improved

2.26 As a policy research organization, we wish to make it known that researching the members and behaviour of the Election Committee and its subsectors is extremely difficult. 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. 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 publicizing the results of the Election Committee subsector elections.⁹ 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

⁹ Electoral Affairs Commission www.info.gov.hk/eac/en/ecse/function.htm and www.elections.gov.hk/elections/legco1998/result.htm.

National People's Congress. We urge the Task Force in its Fifth Report to explain why there is such a lack of transparency in the current system and commit to changing it.¹⁰

III: Method for Forming the Legislative Council in 2008

3.01 Our chief issue has to do with the Functional Constituencies and its election system. For this Submission, we will focus on how to improve upon the current problems, which are amply noted in the Attachments to this Submission.

SCNPC Decision, 2008 and beyond

3.02 The election of LegCo members is an important periodic political event for Hong Kong because Legco is the sole body empowered to pass legislation and approve public expenditure. It is also the most important political debating forum. Hong Kong people have yet to participate directly in the election of all their legislators and while the first constitutional opportunity was to be in 2008, the SCNPC Decision ruled it out with no commitment to whether this could be achieved at the next available opportunity in 2012. In view of the fact that 2012 remains a constitutional possibility for achieving universal suffrage, any new arrangements made for the 2008 election must ensure that Hong Kong will be closer to achieving that "ultimate aim".

Task Force must state principles

3.03 As such, the Task Force in its Fifth Report needs to state the **principles** upon which it will base the HKSAR Government's preferred options for reform for 2008, which it has not done in its Fourth Report. The Fourth Report has merely summarized the main issues mentioned by those who submitted views to its previous consultation.

Fifth Report needs to critique current system

3.04 The Task Force made no attempt to critique the current selection system, especially in view of the large number of objections received to the Functional Constituency election system save for a statement in Paragraph 5.04 that "some deeper issues of principles have been brought up". We expect the Fifth Report to contain a substantive analysis of the problems related to the current system, as this will provide the necessary foundation on how best to reform the system within the ambit of the SCNPC Decision.

Limit of functionally-based election

3.05 Thirty of the 60 LegCo seats are derived from 28 Functional Constituencies.¹¹ The 2004 voter base for the Functional Constituencies was 199,539 voters, with an estimated potential base of 295,534 according to the HKSAR Government.

3.06 The architects of the Basic Law saw the current design as a way to include participation from many sectors of society in indirectly selecting legislators. As already noted in 2.05 above, those entitled to vote in the Chief Executive election subsectors are almost the same as those that form the base for Functional Constituencies. The key problem with functionally-based, indirect selection as supposed to direct election by universal and equal suffrage is that participation is restricted to a small number of people. As could be seen from the research on Functional Constituencies we include in this submission, no clear logic has ever been presented to justify why certain bodies and individuals

¹⁰ See also Paragraphs 3.23-3.24 of this Submission as the same problem also relates to Functional Constituencies.

¹¹ Heung Yee Kuk, Agriculture and Fisheries, Insurance, Transport, Education, Legal, Accountancy, Medical, Health Services, Engineering, Architecture, Surveying and Planning, Labour (3 seats), Social Welfare, Finance, Financial Services, Sports, Performing Arts, Culture and Publication, Import and Export, Textiles and Garments, Wholesale and Retail, Information Technology, Catering, Real Estate and Construction, Tourism, Commercial 1st, Commercial 2nd, Industrial 1st, Industrial 2nd, and District Councils.

were given an additional vote on a functional basis. We will not repeat the extensive problems related to Functional Constituencies here as it is provided in the Attachments.

Number of seats in LegCo

3.07 Since the SCNPC Decisions requires the ratio of directly and functionally elected seats to be the same, this has generated mixed views from the public submissions received by the Task Force. There are clearly functional bodies that are 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, Chinese Medicine, SMEs etc). This is not surprising as with the current system, it makes sense for vested interests to increase their influence. However, it is extremely doubtful that any such reform will "enhance the representativeness and legitimacy" of LegCo (4R paragraph 4.06-4.08). In our view, this will only further entrench public distrust of the system as a whole.

3.08 We believe our proposal to create large generic constituencies will eliminate the problem of every narrow interest group fighting for their sectoral interests in LegCo and that those elected to represent a large sector will need to have wide experience to win and thus will improve legislative capacity.

3.09 We continue to prefer 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. Furthermore, there should be a total rethink of the political system by then as the current system has many problems that needs fixing and we are doubtful that they can be fixed by merely tinkering at the edges. Thus, the 2008 election should simply be an occasion to do away with some of the worst aspects of the system and to introduce some measures that points towards universal and equal suffrage.

Abolish corporate voting

3.10 One of the most serious problems with functional voting is the corporate vote. It has never been clearly explained why non-humans should be given a vote, and we urge the Task Force to explain this in its Fifth Report. We are unsurprised to see that many others have recommended that corporate voting be replaced by individual vote (4R paragraph 4.16). We strongly urge the Task Force to abolish corporate voting for the formation of Functional Constituencies.

Alternative approach within SCNPC parameters

3.11 Within the confines of the SCNPC Decision, it is important to allay the public's cynicism by ensuring that the reforms in 2008 are such that they are designed to make the result harder to manipulate. We propose that the size of the Functional Constituencies' voting base should be increased to 400,000-500,000 people.

3.12 We wish to emphasize that this proposal is in fact not so radical a departure from the current system as its main focus is to increase the voting base by approximately doubling the potential base, and it is a mid-way compromise to involve more members of the general public.

3.13 The other advantages of the outline proposal below is that it takes nothing away from those who currently already have a vote, but it dilutes the influence of the current narrowly based vested interests, which is the most objectionable aspect of the system.

1. Functional Constituencies voting base

3.14 There are THREE features:

- Large generic voting bases

3.15 To create 400,000-500,000 people as the voting base for the LegCo election in 2008, the best way is to create a number of very large, generic bodies. We propose that they be very similar to that for the Election Committee save that we propose adding one more constituency to include Home Economics,¹² and splitting Services (5) into Services (5) and (6).¹³ Each of the 14 constituency will return 2 seats each (i.e. 28) except the Labour will return 3 seats as is the case today,¹⁴ and we propose also returning seats for the Education and Training Constituency making up in total 30 Functional Constituencies seats for the 2008 election.

3.16 To have the Chief Executive and LegCo functional elections on a similar basis will also make administering the election systems for both simpler. We feel since both elections are functionally based, merging them makes sense.

3.17 By way of illustration, the LegCo Functional Constituencies could include 14 constituencies:

Production: This sector includes individuals engaged in manufacturing, power generation, farming, fisheries, mining etc.

Services (1): This sector includes individuals engaged in banking and financial services institutions, and includes insurers and stockbrokers.

Services (2): This sector includes individuals engaged in trading and commercial services organizations (e.g. import/export; whole/retail; agency).

Services (3): This sector includes individuals engaged in the Publications sector (publishers, writers, distributors, media etc), Communications (marketing, public relations etc) and Arts & Cultural organizations (artists, arts administrators, designers, etc).

Services (4): This sector includes individuals engaged in all types of Transport, Food and Beverage, Catering, Tourism, Hospitality and Personal Services organizations.

Services (5): This sector includes individuals engaged in or are members of social welfare organizations.

Services (6): This sector includes individuals engaged in or are members of community groups (registered charities).

Technology: This sector includes individual engaged in all the technology fields, including Information Technology.

¹² There have been consistent calls as could be seen in the Fourth Report to create constituencies for either women or home-makers. We believe by creating a Home Economics Functional Constituency where two legislators are returned that this would satisfy the calls.

¹³ We believe that registered charities represent a large group of non-government organizations that contribute substantially to the economy of Hong Kong as shown in the Central Policy Unit's study of the Third Sector. <http://www.info.gov.hk/cpu/english/new.htm>

¹⁴ 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.

Education and Training: This sector includes all those related to the teaching profession ranging from 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.

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.

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.

Professional (3): All practitioners in the legal, accountancy and audit professionals, including clerks and employees working in these fields.

Labour: This includes those who are individual members of trade unions.

Home Economics: This includes individuals who work full-time at home to care for family well-being.

- Large number of potential "Qualified Individual Voters"

Qualification and number of potential voters

3.18 The current system of who qualifies to vote in Functional Constituencies can be easily adapted to suit the proposed system.

3.19 On the basis that there are currently 295,534 potential voters of which 280,751 of them are individual voters, there seems to be little problems to increase the voting base to 400,000-500,000 for the 2008 election by expanding the pool.

First come first serve registration basis

3.20 Should the HKSAR Government wish to put a cap on the total number of voters at say 500,000, then it can encourage people to register within a certain time and priority will be given to those who registered first. In the case of the Home Economics, there could be many potential voters and a first come first serve basis can solve the problem of a large number of individuals wishing to register as voters.

3.21 A further way to limit the potential size of the constituencies may be to impose a length of experience requirement. For example, to qualify as a functional voter, except for those who already qualify under the current system, the HKSAR Government may require them to show they have at least 5 years of relevant working experience.

- No delegation of any part of the electoral process

3.22 The HKSAR Government will be involved in direct registration of voters just as it does for the registration of Geographical Constituencies voters. Organizations can assist as they already do by encouraging qualified individuals to register but there should be no delegation of the tasks of any part of the electoral process to private sector bodies.

2. Transparency needs to be substantially improved

3.23 As a public policy research organization, we wish to bring to the Task Force's attention that researching the Functional Constituencies is extremely difficult because of the lack of transparency and for this issue to be addressed in its Fifth Report.

3.24 The primary information provided by the HKSAR Government of Functional Constituencies is a list of recognized umbrella organizations whose members are eligible to vote in a functional 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 (nor even the candidates) have little, if any, way of knowing how these bodies decide whom to vote for, nor even whether their designated voters vote as their organizations wish them to. Any attempt at polling functional voters would be an arduous task indeed.¹⁵ While members of the public are allowed to inspect the register of electors for the Functional Constituencies at the Registration and Electoral Office, since 2001, they have been 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 offense under the Electoral Affairs Commission Ordinance sections 22(3) and 42(3) (L.N. 2001), and can be punished by up to 6 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 Functional Constituencies. 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".

31 May 2005

Enclosures:

Kwok, YF Rowena & Chow, Chiu-tak. 2005. *The Dynamics of Social Policy-making in Hong Kong: The Role of Functional representatives 1998 – 2004*. Hong Kong: Civic Exchange.

Latter, Tony. 2005. *The Contribution of the Functional Constituencies to Economic Policy in Hong Kong, 2000-2004*. Hong Kong: Civic Exchange.

Ming, Sing. 2005. *To What Extent Have Members of the Functional Constituencies Performed the "Balancing Role" in Hong Kong (1998 – 2004)?* Hong Kong: Civic Exchange.

Van der Kamp, Jake & Lai, Carine. 2005. *Non-Positive Interventionism: How Functional Constituencies Distort the Free Market*. Hong Kong: Civic Exchange.

Young, NM Simon. 2005. *Hong Kong's Functional Constituencies: Legislators and Electors*. Hong Kong: Civic Exchange.

¹⁵ See Michael DeGolyer, *The Challenges of Researching Functional Constituencies*, July 2004, www.hku.hk/ccpl/events/otherevents/documents/DeGolyer.doc.