

A Critical Introduction to Hong Kong's Functional Constituencies



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July 2004

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Functional Constituency Research Project 2004

A research project commissioned by Civic Exchange

A Critical Introduction to Hong Kong's Functional Constituencies

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This report is part of a series of studies conducted by Civic Exchange on the functional constituencies in Hong Kong.

Preface

Civic Exchange embarked on a research project to study functional constituencies in 2004 with the aim to help the public understand more fully an important part of Hong Kong's political and electoral systems. Between June 2004 and January 2005, Civic Exchange will publish a series of papers and reports related to our research project on functional constituencies.

Although functional constituencies were first created in 1985, they remain under-researched despite a considerable amount of information about them is now available for analysis. 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 dominated by 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, with the Basic Law providing that the "ultimate aim" is "universal suffrage", the functional constituencies will need to be replaced by geographical constituencies in the future. Thus, there is a growing need to understand what has been the value of functional constituencies in considering when they should be replaced.

This paper by Simon N.M. Young and Anthony Law of the Centre for Comparative and Public Law, University of Hong Kong, is the first in the series. We are grateful to Yip Yan Yan of Civic Exchange who managed this project for us, as well as Peter and Nancy Thompson for having funded a number of the papers in the series.

Christine Loh
Chief Executive Officer
Civic Exchange
June 2004

Overview

In February 2004, Civic Exchange commissioned the Centre for Comparative and Public Law to prepare two information papers related to the functional constituency (FC) system in Hong Kong's Legislative Council (LegCo). This is the first of the two commissioned papers.

This paper explores the FC system from the perspective of the constituencies and electors. It is divided into three parts. In the first part, the FC arrangements for the forthcoming 2004 election and those for previous elections are examined. It begins by looking at the official justification of the system as articulated by various parties over the years. Next, when the FC system is considered in the context of the geographical constituency (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. The report takes a critical look at which functions and sectors are recognized and which are not. It also questions the manner of grouping functions together into constituencies. Finally, the great disparity in constituency sizes is examined to draw out the deleterious effects on voting power.

In the second part, the FC electorate is examined. Of the three methods used to determine electors, the most common method is membership in a recognized umbrella organization. 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 paper ends in the third part with a summary of findings and conclusions.

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A. The arrangement of the functional constituencies

1. Definition and rationale

1. 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 recognized social, economic, industrial, commercial, political advisory, professional body or sector. Geographical affinity within the region plays no role in determining the electorate in FCs. 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 will be used to elect the other half of the members in LegCo.

2. FCs have existed for almost 20 years in Hong Kong, preceding the introduction of GCs by six years. Before FCs were introduced, 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, without representing, the views of Hong Kong people and contributing their “specialist knowledge and valuable expertise” to LegCo.¹ The FCs evolved this practice into a formal one using elected representatives.

3. 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*², 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.

¹ See Hong Kong Government, *Green Paper: The Further Development of Representative Government in Hong Kong* (Hong Kong: Government Printer, 1984), ¶ 24, 37 [hereinafter “1984 Green Paper”].

² See Hong Kong Government, *White Paper: The Further Development of Representative Government in Hong Kong* (Hong Kong: Government Printer, 1984) [hereinafter “1984 White Paper”].

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.³

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.⁴

³ Sir Charles Philip Haddon-Cave, *Official Report of Proceedings of the Hong Kong Legislative Council*, 9 January 1985, pp 461-2.

⁴ See Constitutional Affairs Bureau, "Administration's Responses to Points raised on 7 May by Members of the Bills Committee on the Legislative Council (Amendment) Bill 1999", paper for the Bills Committee on the Legislative Council (Amendment) Bill 1999, May 1999, p A2.

5. Justifications by Chinese officials for the system of FCs tend to emphasize 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 of the People's Republic of China, 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. [emphasis added]⁵

6. The HKSAR Government's 2004 Constitutional Law Task Force has 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 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.

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.⁶

7. Since the transfer of sovereignty in 1997, the prevailing justification for maintaining the FC system has highlighted its close link to preserving prosperity and stability. This justification can be reduced to two assumptions: (1) unless the FC system exists, business and other sectoral interests will not find substantial representation in LegCo; and (2) substantial representation of such interests in LegCo is integral to safeguarding Hong Kong's prosperity and stability. Whether these assumptions hold true in present day Hong Kong is very much open to debate.

2. Functional and geographical constituencies

a. The 'one person, one vote' principle

8. In the 2000 LegCo election, 30 members were elected by FCs, 24 by GCs, and 6 by the Election Committee.⁷ Under the system of GCs, the elector votes for a list of candidates in one of five geographical districts. Each GC returned between 4 and 6 representatives by a system of proportional representation. There were 3,055,378 individuals registered to vote in the GC election. Of this number, 5.25% (or 160,487 individuals) had an additional right to vote in the FC election.⁸ While all 24 GC seats were contested, 9 of the 30 FC seats were returned uncontested.⁹ The voter turnout rate (as a percentage of total registered voters) for the GCs was 43.57%, while the turnout rate for FCs was 56.5%.¹⁰

9. 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 disentitled to vote in the FCs.¹¹ She challenged this disenfranchisement 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

⁶ Constitutional Development Task Force, *The Second Report of the Constitutional Development Task Force: Issues of Principle in the Basic Law Relating to Constitutional Development* (Hong Kong, April 2004), ¶ 5.18-5.19 [hereinafter "*Task Force Second Report*"].

⁷ The Election Committee consisted of 800 members selected from specific socio-economic and business sectors in the community. See Annexes I & II of the Basic Law. It is the same Committee that elects the Chief Executive.

⁸ See Electoral Affairs Commission, *Report on the 2000 Legislative Council Elections Held on 10 September 2000* (Hong Kong, 8 Dec 2000) Apps. VI & VII [hereinafter "*EAC 2000 LegCo Report*"].

⁹ See *ibid.*, App. XVI.

¹⁰ See *ibid.*, App. XIV.

¹¹ See *Lee Miu Ling & Another v Attorney General* (1995) 5 HKPLR 585 (CA), aff'g *Lee Miu Ling & Another v Attorney General (No 2)* (1995) 5 HKPLR 181 (HC), leave to appeal to PC was refused by the CA on 14 Dec 1995.

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.

10. 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.¹² 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.

11. 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.

12. There has yet to be a challenge to the FC system under the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (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.

13. 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.

14. 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.¹³ In June 2003, the Constitutional Affairs Bureau reported that the potential

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.

electorate size for individuals in the 2004 FC election was estimated to be only 254,676.¹⁴

15. 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 People's 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.

b. Proportion of FC seats to GC seats

16. 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.¹⁵ The proportion of FC seats in LegCo gradually increased from 21% in 1985 to 50% in 1995 (see Appendix 1). 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 will reach its highest proportion so far of 50% in the 2004 elections. Thus in comparative terms, from 1985 to the 1991 election, the ratio of FCs seats to GC seats was 100:0, since there was no directly elected member in this period (see Appendix 1 for the numerical development of the different types of LegCo seats). From 1991 to 2003, the ratio fluctuated from 54:46 to 60:40 and down to 56:44 following the 2000 election. In 2004, for the first time, the ratio will be 50:50 as each system will be responsible for electing 30 members.

17. The Basic Law makes no express provision for the proportion of FC and GC seats in the 2008 LegCo term.¹⁶ 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 three 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

¹⁴ See "Estimated Electorate Size of Functional Constituencies" table in Constitutional Affairs Bureau, "Delineation of Functional Constituency Electorate", LC Paper No CB(2)2436/02-03(01) prepared for Legislative Council Bills Committee on Legislative Council (Amendment) Bill 2003, 11 June 2003 [hereinafter "CAB 2004 FC Potential Electorate"]

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.

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.]

18. On 6 April 2004, the NPCSC adopted an Interpretation of this clause.¹⁷ Under this Interpretation, where the Chief Executive of Hong Kong submits a report to the NPCSC, a decision would be made by the NPCSC on whether there is a “need to amend” the method of forming LegCo after 2007.¹⁸ The NPCSC would make this decision 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.”¹⁹ 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.²⁰ 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 one prescribed for the third term.²¹

19. Following receipt of the Chief Executive’s report on 15 April 2004, the NPCSC gave its Decision eleven 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.”²² 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...

¹⁷ See The Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, adopted by the Standing Committee of the Tenth National People's Congress at its Eighth Session on 6 April 2004, Eng. trans. published in L.N. 54 of 2004 [hereinafter “2004 Interpretation”].

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.

²² See Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of 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, adopted by the Standing Committee of the Tenth National People's Congress at its Ninth Session on 26 April 2004, Eng. trans. published in The Government of the Hong Kong Special Administrative Region Gazette, S.S. No. 5 (Extraordinary), No. 8/2004, p E9.

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.”²³

20. While adhering to these limitations, gradual and orderly changes initiated by Hong Kong 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 changes to the number of FCs will most likely follow.

c. Voting methods in LegCo

21. 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.²⁴ If such motion, bill or amendment is to pass, it must obtain 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.²⁵ Bills and amendments to bills introduced by the government only require a simple majority vote of all members of LegCo present.²⁶

3. Arrangements for the 2004 election

22. In September 2004, Hong Kong will hold its seventh FC election. There will be 28 FCs, each electing a single representative, except for the Labour FC which will elect three representatives. Appendix 2 shows the list of FCs. The constituencies cover a broad range of different sectors including commercial (2 FCs), industrial (2 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 Kuk²⁷

²³ *Ibid.*

²⁴ See Annex II, clause 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 member proposed amendments were passed. See Chris Chaney, “Beyond Executive-Led: How LegCo’s Functional Constituencies and Legislative Voting System Give the Government a Monopoly on Legislative Authority”, paper given at *Seminar on Functional Constituencies: Public Perception and Influence on Legislation*, 27 March 2004, University of Hong Kong.

²⁶ Basic Law, Annex II, clause 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 75 below.

and the other composed of District Council members.²⁸ Appendix 3 provides a brief historical description of each constituency.

23. The arrangement of the constituencies for the 2004 election is the same as that for the 2000 election (see Appendix 2). Nonetheless, there have been 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 are other changes, mostly made on a rolling basis to update the composition according to legislative and organizational changes (e.g. name changes, listed bodies ceasing to exist, new bodies added).

24. These composition changes are expected to result in a less than half percent increase in the potential FC electorate (from 298,138 potential electors in 2003 to 299,215 in 2004).²⁹ When compared to the 1998 potential FC electorate size (i.e. 233,739) and 2000 potential FC electorate size (i.e. 260,331), the expected 2004 figure will represent an increase of 28% and 15% respectively.³⁰

4. Historical development of functional constituencies

25. 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 current FCs 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 stabilized 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.

26. The important political and constitutional backdrop to the historical development of FCs is summarized below. The most significant developments to note include, first, 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,³¹ and secondly, the subsequent dismantling of these reforms in 1997 by the NPCSC, the Beijing appointed Preparatory Committee,

²⁸ District Council members are themselves elected by a system of direct elections using geographical constituencies. For more information, see the text accompanying n 76 below.

²⁹ See CAB 2004 FC Potential Electorate, above n 14.

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.

and the Provisional Legislative Council. The model of FCs restructured by the Preparatory Committee and Provisional Legislative Council remains the one on which the 2004 LegCo election is based.

a. Pre-1995 developments

27. 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*.³² 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 recognized--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.

³² See 1984 *Green Paper*, above n 1.

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 pre-occupations, 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.³³

28. 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.”³⁴ 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.³⁵ Those who were to be returned by the 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)³⁶ and members returned by an electoral college (the predecessor of the Election Committee).³⁷

³³ *Ibid.*, ¶ 19-26.

³⁴ 1984 *Green Paper*, above n 32, ¶ 7.

³⁵ *Ibid.*, ¶ 9.

³⁶ Official appointed members were also civil servants.

³⁷ *Ibid.*, ¶ 37, 43.

29. 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.³⁸ The Joint Declaration contained the policy that the “legislature of the Hong Kong Special Administrative Region shall be constituted by elections.”³⁹ How those elections were to be conducted was not specified.

30. 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 democratization 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”.⁴⁰ The White Paper provided the following guidelines by which to consider whether a group or groups should become a 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.⁴¹

31. In the 1988 LegCo election, there was no change as to 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.

32. Following the signing of the Joint Declaration, China commenced a process to draft a legal framework for the 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

³⁸ The Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong, 19 Dec 1984, UKTS 1984 No. 26, reprinted in (1984) 23 ILM 1366. The treaty was signed a few months before the enactment of the Legislative Council (Electoral Provisions) Ordinance 1985.

³⁹ See *ibid.*, Part I of Annex I.

⁴⁰ Hong Kong Government, *White Paper: The Development of Representative Government: The Way Forward* (Hong Kong: Government Printer, 1988), ¶ 41 [hereinafter “1988 White Paper”].

⁴¹ *Ibid.*

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.

33. 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.⁴² 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.⁴³

34. 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 40:40:20 in 1997. By 2001, there would only be GC and FC members in the ratio of 60:40.

35. 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 1990.⁴⁴

36. 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 & 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

⁴² Ming Chan, "Democracy Derailed: Realpolitik in the Making of the Hong Kong Basic Law, 1985-1990", in Ming Chan and David Clark, eds., *The Hong Kong Basic Law: Blueprint for 'Stability and Prosperity' under Chinese Sovereignty?* (Hong Kong: Hong Kong University Press, 1990), pp 7-29.

⁴³ *Ibid.*, pp 14 -15, 22-23

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"].

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.⁴⁵ 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.”⁴⁶

b. The Patten reforms and 1995 LegCo election

37. In 1992, British politician Christopher Patten came to Hong Kong to become the new Governor, replacing David Wilson, who was often criticized for being too deferential to Chinese interests. Shortly after his arrival, without consulting Beijing, he put forward a controversial constitutional reform package aimed at developing greater democracy in Hong Kong in the transitional period. 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.

38. 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.”⁴⁷ The main proposed changes to the FC system were the following:

- the replacement of corporate voting via authorized representatives with voting by individual members or employees in all the FCs, and⁴⁸
- the creation of nine new FCs to include all the working population.⁴⁹

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.⁵⁰

⁴⁵ *1988 White Paper*, above n 40, ¶ 40.

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 1992/93 Session of the Legislative Council, 7 October 1992* (Hong Kong: Government Printer, 1992), ¶ 147.

⁴⁸ *Ibid.*, ¶ 134.

⁴⁹ *Ibid.*, ¶ 136.

⁵⁰ *Ibid.*, ¶ 135, 137.

39. China immediately objected to Patten's constitutional reform package. China believed 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."⁵¹ 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 GC in disguise. This was said to violate the spirit if not the letter of the Basic Law.⁵² 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.⁵³

40. 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 to Beijing a concession to cut down the size of the electorate of the new nine FCs by a third to 900,000.⁵⁴ 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.⁵⁵

41. 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,⁵⁶ including the 1995 LegCo, on 30 June 1997.⁵⁷ In other words, there was to be no 'through train' for the LegCo members returned in the 1995 LegCo election.

⁵¹ Christopher Patten, *East and West: The Last Governor of Hong Kong on Power, Freedom and the Future* (London: MacMillan Press, 1998), p 65.

⁵² Hong Kong Social Culture Affairs Bureau of the Hong Kong-Macau Affairs Office of the State Council, *A Reference Text of Hong Kong Issues (Xiang Gang Wen Ti Du Ben)* (Beijing: Central Chinese Communist Party School Press, 1997), pp 197-199.

⁵³ See, e.g., Feng Lin, "Electoral Reform in Hong Kong: A Comment", (1994) 3 *Asia Pacific Law Review* 73, Bryan Gregory, "Envisioning Futures: The Battle over Democracy in Hong Kong", (1993) 19 *North Carolina Journal of International Law and Commercial Litigation* 175, and Yash Ghai, "The Constitutional Framework" in Peter Wesley-Smith, ed., *Hong Kong's Transition: Problems & Prospects* (Hong Kong: Faculty of Law, University of Hong Kong, 1993).

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.

42. The 1995 LegCo election was the last territory-wide election in 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 9 new FCs (see Appendix 2). The Labour FC returned two members while the remaining FCs returned one member each.

c. Post-1997 LegCo elections

43. 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.⁵⁸ 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.

44. 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 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.⁵⁹

45. 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.⁶⁰ 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.⁶¹

46. 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. Re-introduction of corporate electors was one of the proposals insisted upon by China. The

⁵⁸ See Decision on First LegCo, above n 44.

⁵⁹ Alvin So, *Hong Kong's Embattled Democracy: A Societal Analysis* (London: John Hopkins University Press, 1999) 223.

⁶⁰ See Albert Chen, "The Provisional Legislative Council of the SAR", (1997) 27 *Hong Kong Law Journal* 1, pp 5, 11, referring to the Decision of the Preparatory Committee on the Establishment of a Provisional Legislature of the Hong Kong Special Administrative Region, 24 March 1996.

⁶¹ Documentary Research Centre of the Central Committee of the Chinese Communist Party, *A Sourcebook of Important Documents on One Country, Two Systems (Yi Guo Liang Zhi Zhong Yao Wen Xian Xuan Bian)* (Beijing: Central Committee Documentary Press, 1997), pp 319-325.

HKSAR Government adopted most of the proposed changes.⁶² With little opposition, the Provisional LegCo accepted these proposals and passed the Legislative Council Ordinance (Cap 542) in October 1997.

47. 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 FCs replacing the ones introduced by Patten (see Appendices 1 & 3). The Labour FC returned three members while all the others returned one member each. The most significant impact of the post-1997 changes was the reduction in the potential electorate size from 2.6 million individuals to 233,739 corporate bodies and individuals (see Appendix 5). Of this number, only 59.5% registered to vote. Of the number of registered voters, only 56.0% turned out to vote (i.e. 77,813 voters) for the 20 contested seats.⁶³ Ten of the FC seats were returned uncontested.

48. In the 2000 LegCo election, the total number of LegCo members, including the FC 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.⁶⁴ A new FC for the catering industry was formed (see Appendix 3). The Labour FC returned three members while the remaining 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 voter turnout rate of 56.5% was only marginally greater than the rate for the 1998 election.⁶⁵ Nine of the 30 FC seats were returned uncontested.⁶⁶

5. The recognition and grouping of functions

49. Why are some functions and not others recognized 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 single coherent theory. The creation of FCs was very much a product of historical and political necessity. Changes in the system of FCs over the past two decades have been driven more by political forces and constitutional developments than by principled and informed decision-making.

⁶² Siu-kai Lau, "The Making of the Electoral System" in Hsin-chi Kuan, Siu-kai Lau, Kin-shuen Louie and Timothy Ka-ying Wong, *Power Transfer & Electoral Politics: The First Legislative Election in the Hong Kong Special Administrative Region* (Hong Kong: The Chinese University Press, 1999), pp 23-24.

⁶³ See Election Affairs Commission, *Report on the 1998 Legislative Council Elections* (Hong Kong, 24 August 1998) Apps. IV, X [hereinafter "EAC 1998 LegCo Report"].

⁶⁴ The municipal councils were abolished by the Provision of Municipal Services (Reorganization) Ordinance (Cap 552).

⁶⁵ See *EAC 2000 LegCo Report*, n 8 above, ¶ 10.14.

⁶⁶ *Ibid.*, App. XVI.

a. The recognized functions

50. In the *1984 White Paper*, it was stated that the “economic and social constituencies” should be “based on well-recognized major organizations, associations, and institutions with a territory-wide coverage”, whereas the “professional constituencies” should be “based on membership of those professions with well-established and recognized qualifications.”⁶⁷ Using this criteria, the system of FCs began conservatively with only 11 constituencies in 1985 (see Appendix 2).

51. The system of FCs 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.⁶⁸ These industry groups were taken from a classification scheme known as the Hong Kong Standard Industrial Classification.⁶⁹ Besides the alteration in the scheme of corporate voting, however, no attempt was made in Governor Patten’s reforms to rationalize or alter the delineation of the 20 FCs used in the 1991 election. Thus, his reforms were remedial rather than a comprehensive re-thinking and reformulation of the system. The Government has apparently never undertaken a comprehensive review of the FCs system.

52. 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, major industry groups such as storage, communications, sanitary and environmental services, and others, were not represented.

53. The functions recognized 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 organizations, and cultural services.⁷⁰ Post-1997, this FC was

⁶⁷ *1984 White Paper*, above n 2, p 6.

⁶⁸ See Legislative Council (Electoral Provisions) (Amendment) Ordinance, Ord. No. 57 of 1994, s. 22.

⁶⁹ *Ibid.*, Note (10) to Schedule 2 contained in s. 22.

⁷⁰ *Ibid.*, s. 22.

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.⁷¹

54. Religious organizations are not included in the current arrangement of FCs, although in 1995, people working in such organizations 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”.⁷² No particular reason is given for this general rule. The implication is that the views of religious organizations 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.⁷³ The same Election Committee also elects the Chief Executive.⁷⁴ 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.

b. Political advisory bodies as FCs

55. 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.⁷⁵ 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.⁷⁶ As these political advisory 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.

⁷¹ See Legislative Council (Amendment) Ordinance 1999 (Amendment) Ordinance 2000, Ord. 15 of 2000, s. 2.

⁷² *1988 White Paper*, above n 40, pp 12-13.

⁷³ See Basic Law, Annexes I & II.

⁷⁴ *Ibid.*; Chief Executive Election Ordinance (Cap 569), Sch.

⁷⁵ Heung Yee Kuk Ordinance (Cap 1097), s. 9(c).

⁷⁶ District Councils Ordinance (Cap 547), s. 61(a).

56. 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 used prior to 1991 as 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.⁷⁷

57. After the handover and the reorganization of district organizations which abolished the three tiered structure of representative government, the justification for keeping these FCs is 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 will be returned from 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.

58. More research should be done on whether there remains any value and benefit in maintaining the Heung Yee Kuk and District Council FCs, in particular, whether having these seats makes any appreciable impact in improving the quality of representative government in Hong Kong.

c. Unrecognized functions and persons

59. 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 of functional activity (particularly those that were non-profit making) 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 recognized sector at the time of registration, could very well be entering a recognized sector or have just exited a recognized sector after years of engagement. It seems arbitrary not to recognize their obvious connected interest in the sector.

60. 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 recognized. Yet, given the importance of the function and the numbers of persons engaged in the function, it is worth asking why this non-profit making

⁷⁷ See text accompanying above n 45.

essential activity should not be recognized alongside health and medical services, education, social welfare, sports, and arts and culture.

61. Peripheral or supporting professions to registered professions often go unrecognized. 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 excluded include legal secretaries, barristers' pupils, solicitor trainees, court reporters, court clerks, court interpreters, bailiffs, and police officers.

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

d. Grouping of functions

63. The grouping of functions in FCs is another area that seems to defy explanation. It appears to be driven more by political force and bullying by existing FCs than by principles of fairness and reason. The recent issue over the inclusion of Chinese medicine is a case in point. The suggestion to include Chinese medicine as part of the Medical FC was strongly resisted by doctors and dentists. The alternative solution 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.⁷⁸ This decision by the Administration is bound to frustrate Chinese medicine practitioners, especially since this sector has already been recognized in the Election Committee of the 1998 and 2000 LegCo elections and of the 2002 Chief Executive election.

64. The name given to a FC has an importance that is often overlooked. A FC's name is its definition. 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 realizes 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.

⁷⁸ See Legislative Council Secretariat, "Report of the Bills Committee on Legislative Council (Amendment) Bill 2003", LC Paper No. CB(2)2637/02-03 to the House Committee, 25 June 2003, ¶ 45-7 [hereinafter "BC Report on 2003 Amendment Bill"].

65. There are two ways in which functions or sectors are grouped in the existing system. The first way involves specified grouping, where the grouping is expressly and specifically 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 was discussed earlier.

66. 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 as a separate FC. 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.

67. 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".⁷⁹ 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.

68. Similarly, the Industrial (First) FC electorate, which wholly consists of the voting members of the Federation of Hong Kong Industries, shows enormous diversity in the different industrial sectors represented. A search in the 2003 directory of members reveals (surprisingly at times) the following diverse 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.

⁷⁹ Hong Kong General Chamber of Commerce, "Memorandum and Articles of Association", adopted 16 March 1954, as amend. to 27 April 1999, ¶ 4, which can be found online at <http://www.chamber.org.hk/> [hereinafter "Memorandum and Articles of Association"].

Campbell Soup Asia Ltd.
China Airlines Ltd.
Everbright Industrial Co. Ltd.
eMergent Technology (Hong Kong) Ltd.
Lane Crawford (Hong Kong) Ltd.

69. 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 increasingly difficult for the elected representative to represent and understand all the diverse and potentially conflicting interests in the FC. By their nature, a 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.

70. With a limited number of FC 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 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 2008-2012 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 recognized and grouped functions of diverse character need to be disentangled. Yet, unless the total number of LegCo seats is increased, this legitimacy seems unachievable.

6. Relative size of functional constituencies

71. There has always been great variation in the size of FCs. As recognized 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.”⁸⁰ The largest FC in the 2000 LegCo election, Education, had 71,390 registered voters while the smallest one, Heung Yee Kuk, had 148 registered voters (see Appendix 6 for the precise breakdown). Current estimates show that this scale of divergence will exist again in the 2004 election (see Appendix 7 for estimates based on the potential electorate).

72. The vast majority of FCs has less than 10,000 registered electors. In 2000, only three had more than 10,000, and of these, two had more than 30,000 (i.e Education and Health Services); the combined total constituted 59% of all FC registered voters (see Appendix 6), with the remaining 41% distributed amongst the other 25 FCs. In general, FCs are relatively small in size. In 2000, 12 FCs had less than 1,000 registered electors, nine had between 1,000 and 5,000, and four had between 5,000 and 10,000 (see Appendix 6).

⁸⁰ *Lee Miu Ling v Attorney General*, above n 11, p 192 (HC).

73. 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 a 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.

74. 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 for voters in constituencies. 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.

75. A related problem 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 other electors rather than 999 other electors. This makes for more effective representation. 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.

76. 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.⁸¹ He nevertheless found the system not irrational or disproportionate primarily because "by their very nature, functional constituencies are bound to vary in size".⁸² 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.⁸³ The issue has yet to be litigated post-1997 under the Basic Law.

77. In 2000, 73.3% of the FCs with less than 1,500 registered voters were FCs with exclusively (or almost exclusively) corporate voters, and 100% of the FCs with more than 5,000 registered voters were FCs with exclusively (or almost exclusively) individual voters (see Appendix 6). Thus, from the perspective of

⁸¹ *Ibid.*, p 590 (CA).

⁸² *Ibid.*, p 591 (CA).

⁸³ See Young, above n 56.

voting power and effective representation, the current 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.

78. One method of trying to alleviate the problem of constituency size disparity is to allocate more seats to larger constituencies so as to equalize 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.

79. 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 these comparable 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. 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.

B. The functional constituency electorate

1. Three methods of elector determination

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

81. The second method is to directly 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 are used in the current FCs.

82. 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 organizations” entitled to vote at general meetings of such organizations**
These umbrella organizations 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 organizations 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.⁸⁴

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

a. Membership in umbrella organizations

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

85. Inclusion of all umbrella organizations: Fairness would seem to require that all genuine umbrella organizations 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 organizations are included. There are a number of possible explanations for this. 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 proactive role taken by the Administration to find and add organizations that should be included. Changes to the list of umbrella organizations are done reactively, as a result of actions taken by the private bodies or individuals themselves.

86. Every year (and more so in or near election years), private bodies apply to the government informally for recognition as an umbrella organization. The legislation does not set out the criteria for deciding which organizations will receive recognition. 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.⁸⁵ Thus, the Government faces a perennial problem in having to decide which umbrella organizations to recognize. Without the benefit of legislative criteria, decisions of non-recognition

⁸⁴ 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"].

⁸⁵ Basic Law, Art. 74.

by the Government will inevitably lead to criticisms that the process was non-transparent, arbitrary, or, in the worst case, biased. It is an abdication of governmental responsibility in failing to provide the necessary checks and balances against arbitrary decision-making.

87. In 2003, the Government proposed seven new umbrella organizations for the Information Technology FC, all of which were ultimately added to the legislation.⁸⁶ Appearing in the papers of the Bills Committee for the amendment Bill was a letter from an organization, known as the Information Security and Forensics Society (ISFS), that applied unsuccessfully to be an umbrella organization 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 Limited, a group in existence for only one year, was one of the seven included as a new umbrella organization.

88. The Administration appears to give priority to certain established umbrella organizations. Take the example of chambers of commerce. Under the legislation, only two chambers are recognized as umbrella organizations, i.e. the Hong Kong General Chamber of Commerce and the Chinese General Chamber of Commerce. Yet, there exists 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.
Hong Kong Chiu Chow Chamber of Commerce Ltd.
Hong Kong Junior Chamber (Jaycees)
International Chamber of Commerce – Hong Kong, China
Business Council
Kowloon Chamber of Commerce
New Territories General Chamber of Commerce.⁸⁷

89. There is no apparent reason for why these other chambers of commerce 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 umbrella organizations and requiring all engaged bodies and individuals to be a member of these organizations if they want to vote in a FC.

⁸⁶ See Legislative Council (Amendment) Ordinance 2003, Ord. No. 25 of 2003, s. 14.

⁸⁷ See Hong Kong Trade Development Council website list of HKSARG Departments, Trade Associations & Consulates at www.tdctrade.com/hksar/general.htm.

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

Chartered Institute of Building (Hong Kong)
Construction Industry Training Authority
The Hong Kong Association for the Advancement of Real Estate
and Construction
The Hong Kong Construction Association
Hong Kong Institute of Construction Managers
Hong Kong Institute of Real Estate Administration
Hong Kong Real Estate Agencies Association Limited
Society of Hong Kong Real Estate Agents Limited.⁸⁸

91. **Bodies and individuals not belonging to umbrella organizations:** The current system also assumes that all bodies and individuals engaged in a particular sector belong to a recognized umbrella organization. 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 a 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 a FC.

92. As for individuals, it is really a matter of luck whether an umbrella organization recognizes them as members. Neither the legislation nor the Administration adopt a formal policy in requiring or not requiring organizations 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 organizations will never be able to capture all persons engaged in the particular sector.

93. 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

⁸⁸ See Hong Kong Trade Development Council website list of HKSARG Departments, Trade Associations & Consulates at www.tdctrade.com/hksar/order.htm.

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 the equivalent 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.

94. Regulating and enforcing membership rules: Eligibility for being an elector is primarily based on proof of one's membership in a recognized umbrella organization. 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 organization who will verify the application according to its own membership rules. Given this delegated responsibility, a group applying to be an umbrella organization should be scrutinized to ensure that it has a sufficiently rigorous ongoing process of verifying membership requirements, particularly in relation to sector engagement.

95. This system of delegated responsibility raises serious concerns of its own. Government scrutiny of the process only occurs when the umbrella organization initially applies for recognition and when the recognized organization changes its constitution in a material way.⁸⁹ Other than on these occasions, the umbrella organization is essentially left to enforce its own membership rules. A corrupt umbrella organization could sign up voting members who have no connection whatsoever to the function in question. The current 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 organizations for 12 months before applying to be an elector. Corporate electors also need to have been "operating" during the same 12 month period.⁹⁰ This 12 month rule, however, cannot guard against corrupt umbrella organizations since the Government relies on the umbrella organization itself to verify whether the elector has complied with the rule. Unless there is more proactive supervision of the process, this type of abuse could easily go undetected.

96. The legislation requires that the elector member of the umbrella organization have a right to vote in the general meetings of the organization. Most umbrella organizations 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 organization at the time it was recognized or in an amended constitution, which has been approved by the Secretary for Constitutional Affairs.

⁸⁹ See Legislative Council Ordinance (Cap 542), s. 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.

⁹⁰ See Legislative Council Ordinance (Cap 542), s. 25(5) & (6).

97. 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 a FC elector. Nevertheless, when approving amendments to the constitutions of existing organizations, the Government does apply a certain criteria, which has no legislative basis whatsoever. This criteria was 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 organizations 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 organization will affect:

- (i) the objects of the organization;
- (ii) the criteria and conditions of membership of the organization;
- and
- (iii) the eligibility of members of the organization 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 organizations' 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.⁹¹

98. Unfortunately, this statement of the criteria is extremely vague and fails to provide a clear direction to umbrella organizations 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".⁹² The policy of size control puts the Administration in a difficult position of having to make arbitrary decisions about which people or organizations will or will not receive a right to vote. The policy, if strictly adhered

⁹¹ See Amendment to Constitutional of Organisations, above n 84.

⁹² See BC Report on 2003 Amendment Bill, above n 78, ¶ 48.

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.

99. Recently, the Government has taken steps to apply membership standards for new umbrella organizations that have not been in existence for very long. Of the seven new umbrella organizations added to the Information Technology FC in 2003, one of them, the Hong Kong & Mainland Software Industry Cooperation Association Limited, was only established a year prior. In respect of this umbrella organization, there was much debate in the Bills Committee over whether corporate and individual members could be electors, how long of 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.⁹³ 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 Limited, but also to three other new umbrella organizations.⁹⁴

100. On the face of it, the imposition of a four year business track record 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.

101. The extent to which this track record requirement is imposed on all FCs and umbrella organizations 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.⁹⁵ In respect of umbrella organizations, no track record requirement is seen in the legislation, suggesting that the recent 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”.⁹⁶ Most of the umbrella organizations 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

⁹³ *Ibid.*, ¶ 56-66.

⁹⁴ See Legislative Council Ordinance (Cap 542), Sch. 1D, Part 2.

⁹⁵ *Ibid.*, s. 20V(1)(e).

⁹⁶ See Memorandum and Articles of Association, above n 79, ¶ 4.

onerous requirements than other groups before being entitled to the same benefit, which is provided or administered by the Government.

b. Representative organizations

102. Appendix 11 lists all of the representative organizations accorded elector status under the legislation. There are currently 10 FCs that use this method of determining corporate electors, although some use other methods as well (see Appendix 4). Appendix 11 also indicates two ways in which representative organizations are listed. First, representative organizations may be directly specified in the Legislative Council Ordinance (Cap 542). For example, there are 80 bodies specified as electors in the Agriculture and Fisheries FC. Secondly, representative organizations, though not directly specified, may be listed by reference to being registered or authorized under another piece of legislation. For example, the Insurance FC includes only those bodies authorized or deemed to be authorized under the Insurance Companies Ordinance (Cap 41).

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

104. Individual members of umbrella organizations 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 do not come within one of the recognized professions FCs, such as legal, medical, health care, etc. (see Appendix 7). 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 organization method, while disallowing individual electors by using the representative organization 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 recognize some people's right to vote but not others, often on illogical or other unjustified grounds.

105. The method of conferring a right to vote on 'representative' organizations 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 recognizing representative organizations. It is left to the Administration to propose organizations for endorsement by LegCo. There are no published criteria for deciding whether organizations will or will not be accepted as being representative. In the 2003 Bills Committee debate, there was a glimpse of some criteria articulated in respect of deciding which specified bodies could be added to the Sports, Performing Arts, Culture and Publication FC. The Constitutional Affairs Bureau stated that

[i]n considering whether a particular organization should be included in Part 3 of Schedule 1B, our main consideration is whether the organization concerned is a major organization representative of the sector. We will take into consideration factors including the organization's objects, its date of establishment, its membership criteria, its membership size, and past activities held. For organizations which we consider appropriate for inclusion in the FC, amendments would be made to Schedule 1B.⁹⁷

106. Unfortunately, this statement does not define 'representative of the sector'. It probably does not mean having identical interests, since major organizations 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 organizations to voice. Shared interests also exist, however, in respect of geographical constituency members, i.e. 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 organizations engaged in that sector have a role to play in making 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 2000 election, four candidates ran in the Medical FC with the successful candidate winning by a margin of only 346 votes.⁹⁸ 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.

⁹⁷ 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.

⁹⁸ See *EAC 2000 LegCo Report*, n 8 above, App. XVI.

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

c. Recognized professionals

108. There are ten FCs that include recognized 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 organizations as well but are also wholly composed of individuals, as their umbrella organizations only accept individual members. The Catering and the Financial Services FCs comprise of both individual professionals and corporate bodies. The list of professional groups recognized in these ten FCs can be found in Appendix 12.

109. 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 organize 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. 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.

110. 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 recognized professionals? Appendix 12 shows that for the most part, recognized 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.

111. There appears to be two elements common to all the recognized professions, with the exception of the Catering FC: a profession that involves the application of specialized knowledge gained from advanced tertiary educational qualifications and government regulation of the profession. If satisfying these elements is sufficient for being a recognized professional then there are many other professionals, not members of umbrella organizations, who should also be

recognized. 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.⁹⁹

112. There are other examples. Professionals in the Finance, Financial Services, and Insurance FCs often possess and apply specialized 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 recognizing only “appointed insurance agents” and “authorized insurance brokers”.¹⁰⁰ The Hong Kong Federation of Insurers also has a code of practice with which all insurers and insurance agents must comply.¹⁰¹ These regulated insurance agents and brokers appear to be no different in kind from those in the recognized professions, and yet they are not accorded an individual right to vote.

113. 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 recognized Association for Investment Management and Research, to maintain the designation. The Hong Kong Society of Financial Analysts Limited reports a membership of more than 2,000 CFA charterholders.¹⁰² At present, however, the Finance FC has no individual electors, and it is estimated that the Financial Services FC has 744 potential corporate electors and only 93 potential individual electors (see Appendix 7). These individual electors are exchange participants of a recognized exchange company; in other words, they are essentially authorized securities traders.¹⁰³

114. Further research would probably reveal more anomalies. One possible explanation for the continuance of these anomalies is that the recognized professions, as a way of entrenching their own privileged status, have resisted the recognition of new or additional professions. They may use their current 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

⁹⁹ See BC Report on 2003 Amendment Bill, above n 78, ¶ 45-7.

¹⁰⁰ Insurance Companies Ordinance (Cap 41), s. 65.

¹⁰¹ *Ibid.*, s. 67.

¹⁰² See Hong Kong Society of Financial Analysts Limited's website at <http://www.hksfa.org/Membership.htm>.

¹⁰³ Legislative Council Ordinance (Cap 542), s. 20U.

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.

2. Individual electors

115. An individual, who is a member of a recognized umbrella organization 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

- a. be registered as a GC elector (or is eligible to register and an application is being processed);¹⁰⁴
- b. not be registered in any other FC;¹⁰⁵
- c. comply with the 12 month membership rule in respect of certain bodies;¹⁰⁶ and
- d. not be disqualified from being registered.¹⁰⁷

116. Eligibility to vote in the GC requires that the individual must

- a. be a permanent resident of Hong Kong;¹⁰⁸
- b. ordinarily reside in Hong Kong;¹⁰⁹
- c. have provided a residential address in the application that is the only or principal residence for the individual in Hong Kong;¹¹⁰
- d. 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;¹¹¹ and
- e. hold an identity card (or be in the process of obtaining a new or amended one).¹¹²

¹⁰⁴ See Legislative Council Ordinance (Cap 542), s. 25(1)(b).

¹⁰⁵ *Ibid.*, s. 25(2).

¹⁰⁶ *Ibid.*, s. 25(6).

¹⁰⁷ *Ibid.*, s. 31.

¹⁰⁸ *Ibid.*, s. 27.

¹⁰⁹ *Ibid.*, s. 28(1)(a).

¹¹⁰ *Ibid.*, s. 28(1)(b).

¹¹¹ *Ibid.*, s. 29.

¹¹² *Ibid.*, s. 30.

117. 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.¹¹³ 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.¹¹⁴

118. **Not registered in any other FC:** It is a basic principle that although 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.¹¹⁵ 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 the Heung Yee Kuk FC.¹¹⁶ 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.¹¹⁷

119. **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.¹¹⁸ 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 organization and function in question.

120. **Not disqualified:** The disqualifying conditions are generally based on three grounds: crime related, mental incapacity, and membership in any armed forces.¹¹⁹ Under the crime related head, there are three non-mutually exclusive categories: individuals sentenced to death or imprisonment anywhere in the

¹¹³ Hong Kong Bill of Rights Ordinance (Cap 383), s. 8.

¹¹⁴ *Lau San Ching v. Liu, Appollonia* (1995) 5 HKPLR 23 (HC).

¹¹⁵ Legislative Council Ordinance (Cap 542), s. 25(2).

¹¹⁶ *Ibid.*, s. 25(3)(c).

¹¹⁷ *Ibid.*, s. 25(3)(d).

¹¹⁸ *Ibid.*, s. 25(6).

¹¹⁹ *Ibid.*, s. 31.

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.

121. **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.¹²⁰ 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."¹²¹ The purpose of this precondition is apparently to ensure certainty in identification and direct receipt of correspondence.

122. **Age and identification:** The individual must be at least 18 years of age or turning 18 years of age 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.

3. Corporate electors

123. Under the current 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."¹²²

124. 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 recognized that corporations are separate legal persons with their own set of rights and obligations.¹²³ Thus, in theory, there is nothing to

¹²⁰ *Ibid.*, ss. 27, 28.

¹²¹ *Ibid.*, s. 28(3).

¹²² *Ibid.*, s. 3.

¹²³ See *Salomon v Salomon & Co. Ltd.* [1897] AC 22 (HL); *Tesco Supermarkets Ltd. v Natrass* [1972] AC 153 (HL); Interpretation and General Clauses Ordinance (Cap 1), s. 3 (definition of "person").

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.

a. The theory of representation

125. 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.

126. 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.¹²⁴ 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.

127. 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 organization or by membership in a recognized umbrella organization. While it is sometimes stated that the Patten reforms in 1995 abolished corporate voting, this statement is not entirely accurate. Prior to the Patten reforms, 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.

128. 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 was entitled to vote as individuals.¹²⁵ 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. Nor did it require that the directors make the same voting decision. Each director was left to make his or her own voting decision, which could never be revealed. An absurd 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

¹²⁴ See *Tesco Supermarkets Ltd. v Natrass*, *ibid.*; *Meridian Global Funds Management Asia Ltd. v Securities Commission* [1995] 2 AC 500 (PC).

¹²⁵ Legislative Council (Electoral Provisions) (Amendment) Ordinance, Ord. No. 57 of 1994, s. 22.

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.

129. In 1998, agency voting was reintroduced to replace the 1995 system of voting. For the first time, the agent was given the title, 'authorized representative', and certain standards were set for becoming an authorized representative. As discussed below, the system of agency voting which exists now suffers from both theoretical and practical problems.

b. Preconditions to voting

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

- a. select an eligible person to be its authorized representative for the purpose of casting its vote at an election;¹²⁶
- b. not be registered in any other FC;¹²⁷ and
- c. comply with the 12 month rule in terms of operation and, where applicable, membership in respect of certain bodies.¹²⁸

131. A person is eligible to be an authorized representative only if he or she:

- a. is registered as a GC elector (or is eligible to register and an application is being processed);¹²⁹
- b. has a "substantial connection" with the corporate elector;¹³⁰
- c. is not registered, and has not applied to be registered, as an individual elector for the constituency;¹³¹
- d. is not an authorized representative for any other body;¹³² and
- e. is not disqualified from being registered or voting.¹³³

¹²⁶ Legislative Council Ordinance (Cap 542), s. 26(1).

¹²⁷ *Ibid.*, s. 25(2).

¹²⁸ *Ibid.*, s. 25(4) & (5).

¹²⁹ *Ibid.*, s. 26(2)(a).

¹³⁰ *Ibid.*, s. 26(2)(b).

¹³¹ *Ibid.*, s. 26(2)(c).

¹³² *Ibid.*, s. 26(3).

¹³³ *Ibid.*, s. 26(2)(d).

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

- a. be a permanent resident of Hong Kong;¹³⁴
- b. ordinarily reside in Hong Kong;¹³⁵
- c. have provided a residential address in the application that is the only or principal residence for the individual in Hong Kong;¹³⁶
- d. 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;¹³⁷ and
- e. hold an identity card (or be in the process of obtaining a new or amended one).¹³⁸

An authorized representative who meets all of the conditions of eligibility must formally register with the Election Registration Officer before voting.¹³⁹

c. The 'authorized representative' and problems with agency voting

133. In a system that recognizes individuals together with corporate bodies as potential electors, basic fairness requires that the treatment of individual electors be on par with the treatment of corporate electors. Unfortunately, the current system does not guarantee equal treatment. In many ways, corporate bodies are treated more favourably than individuals, resulting in an unfair advantage for the corporate electors over individual electors.

134. Under the legislation, an authorized representative has a "substantial connection" with the corporate body if he or she is "a member, partner, officer or employee of the body".¹⁴⁰ 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 authorized 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 authorized representative for the purposes of casting its vote at an election. [emphasis added]" The authorized 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 authorized representative

¹³⁴ *Ibid.*, s. 27.

¹³⁵ *Ibid.*, s. 28(1)(a).

¹³⁶ *Ibid.*, s. 28(1)(b).

¹³⁷ *Ibid.*, s. 29.

¹³⁸ *Ibid.*, s. 30.

¹³⁹ *Ibid.*, s. 26(4).

¹⁴⁰ Legislative Council Ordinance (Cap 542), s. 3(2)(a).

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.

135. The legislation expressly states that the voting is to be done by secret ballot, and the authorized representative is not required to tell anyone (including a court) for whom he or she voted.¹⁴¹ Indeed, it is an offence for any person to require or purport to require, without lawful authority, the authorized representative to disclose the choice made.¹⁴² 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.¹⁴³ 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 minimized and suspected failures to give effect to the corporate will cannot be corrected.

d. Preconditions imposed on the authorized representative rather than body

136. Few preconditions for voting are imposed on the corporate elector itself. The corporate elector must be specified for a FC, have a properly appointed authorized 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 authorized representative. In other words, it is the authorized representative, rather than the corporate elector itself, who must comply with the non-disqualification conditions, the residency requirements and others. In this way, the authorized representative is identified as the company, and where he or she satisfies these requirements, so does the company.

137. 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 authorized 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. At present, there is nothing to prevent the following otherwise eligible corporate electors, whose authorized representatives meet all of the statutory requirements, from voting:

- a. a company whose directors have all been recently convicted of a corruption or election related offence that would normally disqualify an individual elector;

¹⁴¹ *Ibid.*, ss. 47(1), 60(1).

¹⁴² *Ibid.*, s. 60(2). But even if the choice was revealed, it could never be confirmed.

¹⁴³ 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.

- b. a company whose (former) Chief Executive Officer and Chief Financial Officer are serving a term of imprisonment for corporate fraud;
- c. a company that was convicted of a bribery or election related offence that would normally disqualify an individual elector;
- d. an overseas company that has never carried on business in Hong Kong; none of its officers or directors have ever traveled to Hong Kong and its only Hong Kong employee is the authorized representative;
- e. 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 authorized representative, a recently hired secretarial assistant.

138. In all of these cases, had the disqualifying condition and residency requirements applied directly to the corporate elector, each of these bodies would not have been eligible to vote. Since the legislation only requires that the authorized representative meet these requirements, these conditions do little to keep out illegitimate corporate electors. 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.

e. Controlled entities and the problem of packing

139. 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 FC or multiple FCs with associated or controlled electors so as to increase its overall number of votes. Formalistically, 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.

140. 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 Limited, which in December 2003 reported interests in 68 companies operating in Hong Kong.¹⁴⁴ Appendix 13 shows that of these 68 companies, 35 are potential electors in four different FCs; the number becomes 36 when the parent

¹⁴⁴ See Hutchison Whampoa Limited 2003 Annual Report (Hong Kong, 2003), pp 118-124.

company is included. The Commercial (First) FC is packed the most, with 24 potential electors. The total number of companies listed in this appendix reflects only a minimum figure as it has not been possible to determine the full extent of packing by this company.

141. Others have also reported packing in previous elections. In respect of the 2000 election, Gren Manuel reported multiple instances of packing by many companies in the Real Estate and Construction FC.¹⁴⁵ 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.¹⁴⁶ Reported problems of packing in the real estate FC date back to the 1991 elections.¹⁴⁷

142. Identifying the full extent to which there is packing in all the FCs is practically impossible. This is because of the current governmental policy not to disclose the names of electors for research purposes.¹⁴⁸ 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 organizations.

143. 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 one per cent of the total voting rights of all members.¹⁴⁹ Recognizing 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

¹⁴⁵ 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 Limited had 12 voting companies, more than 50% of the number in 1998.

¹⁴⁶ See Hong Kong Human Rights Monitor, *Report on 1998 Legislative Council Elections*, Chapt. 9, App. 11, which can be found on the website of the Hong Kong Human Rights Monitor at http://www.hkhrm.org.hk/english/reports/eng_elerpt.html.

¹⁴⁷ See Stacy Mosher, “Seats of Power”, *Far East Economic Review*, 29 Aug 1991, pp 18-9.

¹⁴⁸ 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.

¹⁴⁹ See Memorandum and Articles of Association, above n 79, ¶ 5(d).

adopted by the General Chamber has its difficulties, since it still allows packing to a limited extent.¹⁵⁰

144. Given the electoral system's tolerance of packing, it has always been vulnerable to abuse and manipulation in the form of 'deliberate packing'. Deliberate packing occurs when individuals and/or companies deliberately create or register subsidiaries for the dominant purpose of obtaining additional votes in a 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.¹⁵¹ There is no provision in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) that specifically prohibits deliberate packing. 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.¹⁵² While the government is aware of the problem of packing, its only response, as discussed below, is the feeble 12 month rule.

145. 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 Limited 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 a greater scope for choosing 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.

f. The 12 month rule

146. As mentioned earlier, corporate members of umbrella organizations must satisfy a two-fold 12 month rule before they are eligible to vote. They must have been members of the umbrella organization for the 12 month period prior to applying to register and have been "operating" in the same period of time.¹⁵³ There is no definition of what it means to be "operating" or any indication of how

¹⁵⁰ 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.

¹⁵¹ See Mosher, above n 147, p 19, reporting on alleged "ballot-stuffing" in the 1991 Commercial (First) FC election. See also Manuel, above n 145 reporting on the "battle of the tycoons" in the 2000 Real Estate and Construction FC election.

¹⁵² 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.

¹⁵³ Legislative Council Ordinance (Cap 542), s. 25(5).

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 organizations to verify. No apparent standards are imposed by the legislation on how umbrella organizations should approach this verification process.

147. For corporate bodies that are directly specified as electors due to their representative status, they need to only comply with the 12 month 'operating' rule, that is it has 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.

148. These 12 month rules were introduced in the original Legislative Council Ordinance (Cap 542) enacted after the handover in October 1997.¹⁵⁴ As explained by the Government at the time, the purpose of the 12 month rules was to "prevent 'vote planting'".¹⁵⁵ This is another term for describing the problem of deliberate packing already discussed.

149. 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 earlier, i.e. 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.

150. Secondly, there does not appear to be any active enforcement of the rules. Lack of definition and standards employed by the Government and umbrella organizations 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.

151. 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 organization 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.

¹⁵⁴ See Legislative Council Ordinance, Ord. No. 134 of 1997, ss. 25.

¹⁵⁵ 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.

152. 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 FC. 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 rigorously enforced system that tests the legitimacy of each and every corporate elector applicant on the basis of fixed standards.

g. Residential ties to Hong Kong

153. It has already been seen that the legislation indirectly uses the authorized representative of corporate electors to satisfy residential requirements. The system does not scrutinize the corporate elector directly for its residential ties. Since the authorized 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.

154. In Appendix 13, it can be seen that of the 36 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 organizations 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.

155. 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,¹⁵⁶ 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 currently 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.

¹⁵⁶ See unofficial statistic reported in *Gurung Kesh Bahadur v Director of Immigration* [2001] 3 HKLRD 32, pp 43-44 (CA).

h. Governmental bodies with votes

156. 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 Limited, all of which are directly listed electors for the Transport FC.¹⁵⁷ It is probably true that more examples exist but would require further research to uncover.

157. 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.

4. Electorate configurations in FCs

158. The 28 current FCs exhibit 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, the Labour, and the Tourism FCs, with only corporate electors. No obvious reason exists for excluding individual electors from these FCs.

159. 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 and deliberate packing discussed earlier. Such individuals may themselves 'play the game' of packing or may 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 or worry that another 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.

¹⁵⁷ 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 Limited Annual Report 2003, p 51. The other two are wholly owned by the Government.

C. Summary of findings and conclusions

1. Findings

160. The following summarizes the main findings of this report:

FC Arrangements

1. 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.
2. In 2000, only 5.25% of all registered GC electors had an additional right to vote in the FC election. There were about 2.9 million GC registered electors who were not entitled to vote as a FC elector.
3. 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 FC are entitled to vote only once.
4. 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.
5. Since the inception of FCs in 1985, the proportion of FC seats in LegCo has always been greater than the proportion of GC seats. In 2004, for the first time, the proportion of FC to GC seats will be the same at 50% each. The NPCSC has decided that the proportion of FC to GC seats will remain unchanged in the 2008 election.
6. The arrangement of the FCs in the 2004 election remains unchanged from the 2000 election, although there have been some updates and changes to the electorate composition of individual FCs.
7. The number of FCs gradually increased from 11 to 29 in its first decade of existence. It has stabilized at 28 since 1998. The number of members returned is slightly more since the Labour FC has always returned more than one member.
8. 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.

9. 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.

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

11. 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 recognize non-profit oriented sectors. A religious sector is not currently recognized, although such a sector exists in the election of the Chief Executive and had existed in the LegCo Election Committee.

12. 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.

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

14. 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.

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

16. In 2000, the size of individual FCs varied greatly, with the largest FC having 71,390 registered electors while the smallest FC had only 148 registered electors. This disparity will be roughly the same in the 2004

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.

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

18. The sizes of FCs in their relative proportions do not reflect the same proportions of persons actually engaged in the major industrial sectors.

19. Where the FC is small relative to the true sector size, there is difficult to say the FC is representative of the sector. The restricted size also limits the pool of candidates from which to choose the representative.

FC Electorate

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

21. The Government's policy for recognizing new umbrella organizations is not transparent. Many umbrella organizations that would seem to fit within the FC system are not recognized.

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

23. As most of the recognized umbrella organizations only admit corporate members, the number of individual electors is systemically restricted.

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

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

26. In relation to changes to the FC system for the 2004 elections, the Administration has expressly adopted a policy of size control, i.e. the

number and composition of FCs should remain unchanged. Applying such a policy inevitably forces arbitrary distinctions and qualifications to be made.

27. The use of representative bodies to define the electorate of a 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 organization and recognized professionals methods, there appears to be an inconsistent policy being applied.

28. The concept of a 'representative organization' is also problematic. The concept presupposes that smaller organizations cannot make a worthy contribution in deciding the best representative for the sector.

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

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

31. It is a recognized 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.

32. 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.

33. Corporate electors vote by way of an eligible authorized representative according to a theory of representation based on agency voting. An authorized 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.

34. No residential or disqualifying conditions are imposed on the corporate body directly. Instead, it is the authorized representative who must satisfy these requirements. But since the authorized representative can be any employee of the company, these conditions are easily met.

Having selected an eligible authorized 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.

35. 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 realized with packing and the use of controlled entities.

36. The 12 month membership and operating rules were introduced in 1997 to deter the problem of deliberate packing. There are good reasons to believe these rules are ineffectual since the definition of 'operating' is unclear, and with advanced planning, the rule can be easily satisfied.

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

38. 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.

2. Conclusions

161. The conclusions drawn from the above findings are arranged under five headings:

a. Systemic inequalities

1. 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 a FC elector will have an additional vote.

2. 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.

3. 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.

4. Individual electors in mixed FCs (i.e. having both individual and corporate electors) are in a disadvantaged position compared to individuals in non-mixed FCs (i.e. exclusively individuals), as the former must contend with the problem of packing, which 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.

5. Corporate electors enjoy undue advantages over individual electors by virtue of the current authorized 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.

b. Anomalies and incoherence

6. 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 organizations, and the recognition of representative organizations 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.

7. 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

proactive steps are taken to try to ensure that the system is a current reflection of economic reality.

8. 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.

c. Inadequate safeguards to protect against abuse

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

10. 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 organizations like the Hong Kong General Chamber of Commerce try to address the problem in meetings for their own chamber business. Notwithstanding the problems with packing, the current system is flawed in many other ways, including its theory of representation and authorized representative system; it is in dire need of a complete overhaul if not abolition.

11. 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.

d. Abdication of governmental responsibility

12. 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.

13. There is an undue delegation of responsibility to private umbrella organizations for the purposes of identifying and verifying electors. While the use of umbrella organizations is a convenient method of determining electors, this method and the method of using major representative organizations are fraught with such difficulties that it is probably best to move towards abandoning them.

14. 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

currently exist in the legislation, and the statutory body would be required to do more than check the applicant's membership in a specified umbrella organization, 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.

e. Inaccessible primary data

15. 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.¹⁵⁸ 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.¹⁵⁹

16. 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.

¹⁵⁸ *Task Force Second Report*, above n 6, ¶ 3.24.

¹⁵⁹ See Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies)(Voters for Election Committee Subsectors)(Members of Election Committee) Regulation (Cap 541B), s. 41.

Appendix 1

Number and Percentage of FC Seats in LegCo 1985-2004

Election Year	Ex-officio	Appointed	FC	Electoral Committee	Directly Elected (DE)	Total Legislators	% FC Members	Ratio of FC:DE
1985	11	22	12	12	0	57	21	100:0
1988	11	20	14	12	0	57	25	100:0
1991	3	18	21	0	18	60	35	54:46
1995	0	0	30	10	20	60	50	60:40
1998	0	0	30	10	20	60	50	60:40
2000	0	0	30	6	24	60	50	56:44
2004	0	0	30	0	30	60	50	50:50

Sources: Legislative Council (Electoral Provisions) Ordinance 1985, Ord. No. 13/85, Legislative Council (Electoral Provisions) Ordinance (Cap 381), Rev. Ed. 1988; Legislative Council (Electoral Provisions) (Amendment) Ordinance, Ord. No. 84 of 1990; Legislative Council (Electoral Provisions) (Amendment), Ord. No. 57 of 1994; Basic Law, Annex II; Decision on First LegCo, above n 44; Legislative Council Ordinance (Cap 542).

Appendix 2

Development of FCs 1985-2004

1985	1988	1991	1995	1998	2000 & 2004
1. Commercial 1st	1. Commercial 1st	1. Commercial 1st	1. Commercial 1st	1. Commercial 1st	1. Commercial 1st
2. Commercial 2nd	2. Commercial 2nd	2. Commercial 2nd	2. Commercial 2nd	2. Commercial 2nd	2. Commercial 2nd
3. Industrial 1st	3. Industrial 1st	3. Industrial 1st	3. Industrial 1st	3. Industrial 1st	3. Industrial 1st
4. Industrial 2nd	4. Industrial 2nd	4. Industrial 2nd	4. Industrial 2nd	4. Industrial 2nd	4. Industrial 2nd
5. Financial	5. Finance	5. Finance	5. Finance	5. Finance	5. Finance
6. Labour (2)*	6. Accountancy	6. Financial Services	6. Financial Services	6. Accountancy	6. Accountancy
7. Social Services	7. Labour (2)*	7. Accountancy	7. Accountancy	7. Labour (2)*	7. Labour (3)*
8. Medical	8. Social Services	8. Labour (2)*	8. Labour (2)*	8. Social Welfare	8. Social Welfare
9. Teaching	9. Medical	9. Social Services	9. Social Welfare	9. Medical	9. Medical
10. Legal	10. Health Care	10. Medical	10. Medical	10. Health Services	10. Health Services
11. Engineering, Architectural, Surveying and Planning	11. Teaching	11. Health Care	11. Health Services	11. Education	11. Education
	12. Legal	12. Teaching	12. Education	12. Legal	12. Legal
	13. Engineering, Architectural, Surveying and Planning	13. Legal	13. Legal	13. Engineering	13. Engineering
		14. Engineering	14. Engineering	14. Real Estate and Construction	14. Real Estate and Construction
		15. Real Estate and Construction	15. Real Estate and Construction	15. Architectural, Surveying and Planning	15. Architectural, Surveying and Planning
		16. Architectural, Surveying and Planning	16. Architectural, Surveying and Planning	16. Financial Services	16. Financial Services
		17. Tourism	17. Tourism	17. Tourism	17. Tourism
		18. Urban Council	18. Urban Council	18. Urban Council	18. District Council
		19. Regional Council	19. Regional Council	19. Regional Council	19. Heung Yee Kuk
		20. Rural	20. Rural	20. Heung Yee Kuk	20. Textiles and Garment
			21. Primary Production, Power and Construction		

Functional Constituency Research Project 2004

1985	1988	1991	1995	1998	2000 & 2004
			22. Textiles and Garments	21. Textiles and Garment	21. Import and Export
			23. Manufacturing	22. Import and Export	22. Wholesale and Retail
			24. Import and Export	23. Wholesale and Retail	23. Transport
			25. Wholesale and Retail	24. Transport	24. Information Technology
			26. Hotels and Catering	25. Information Technology	25. Insurance
			27. Transport and Communication	26. Insurance	26. Agriculture and Fisheries
			28. Financing, Insurance, Real Estate and Business Services	27. Agriculture and Fisheries	27. Sports, Performing Arts, Culture and Publication
			29. Community, Social and Personal Services	28. Sports, Performing Arts, Culture and Publication	28. Catering

Sources: Legislative Council (Electoral Provisions) Ordinance 1985, Ord. No. 13/85, 2nd Sch.; Legislative Council (Electoral Provisions) Ordinance (Cap 381), Rev. Ed. 1988, 2nd Sch.; Legislative Council (Electoral Provisions) (Amendment) Ordinance, Ord. No. 84 of 1990, s. 22; Legislative Council (Electoral Provisions) (Amendment), Ord. No. 57 of 1994, s. 22; Legislative Council Ordinance, Ord. No. 134 of 1997, Sch. 1; Legislative Council (Amendment) Ordinance 1999, Ord. No. 48 of 1999, s. 20; Legislative Council Ordinance (Cap 542), s. 20.

Notes:

*The number in parenthesis is the number of members returned.

Shading indicates a new or reformed constituency from the previous election year. In the last column, the shading only applies to the 2000 elections.

Appendix 3

Brief Historical Description of Existing and Abolished FCs (June 2004)

Section A - Existing FCs

1. Commercial (First) FC

The Commercial (First) FC was introduced in 1985 as one of the original 11 FCs. It currently consists of corporate members of the Hong Kong General Chamber of Commerce who are entitled to vote at its general meetings. In the 1995 election only, the electorate consisted of a selection of the individuals who controlled the corporate members rather than the corporate entities themselves. In 2000, there were 1,325 registered corporate electors.

2. Commercial (Second) FC

The Commercial (Second) FC was introduced in 1985 as one of the original 11 FCs. It currently consists of both corporate and individual members of the Chinese General Chamber of Commerce who are entitled to vote at its general meetings. In the 1995 election only, the electorate consisted of individual members and a selection of the individuals who controlled the corporate members rather than the corporate entities themselves. In 2000, there were 714 registered corporate electors and 1,117 registered individual electors.

3. Industrial (First) FC

The Industrial (First) FC was introduced in 1985 as one of the original 11 FCs. It currently consists of both corporate and individual members of the Federation of Hong Kong Industries who are entitled to vote at its general meetings. In the 1995 election only, the electorate consisted of the individual members and a selection of the individuals who controlled the corporate entities themselves. In 2000, there were 820 registered corporate electors and 2 registered individual electors.

4. Industrial (Second) FC

The Industrial (Second) FC was introduced in 1985 as one of the original 11 FCs. It currently consists of corporate members of the Chinese Manufacturers' Association of Hong Kong who are entitled to vote at its general meetings. In the 1995 election only, the electorate consisted of a selection of the individuals who controlled the corporate members rather than the corporate entities themselves. In 2000, there were 624 registered corporate electors.

5. Finance FC

The Finance FC was introduced in 1985 as one of the original 11 FCs. It currently consists of banks and deposit-taking companies (corporate members only). Originally, it consisted of members of the Hong Kong Association of Banks who were entitled to vote at its general meetings. In 1991, the composition was amended to its current form. In the 1995 election only, a selection of the individuals who controlled the banks and deposit-taking companies, instead of the corporate entities themselves, made up the electorate. In 2000, there were 182 registered corporate electors.

6. Accountancy FC

The Accountancy FC was introduced in 1988. It currently consists of registered professional accountants (individual members only). In 2000, there were 12,785 registered individual electors.

7. Labour FC

The Labour FC was introduced in 1985 as one of the original 11 FCs. It currently consists of registered trade unions (bodies only). This FC returned two LegCo members up until 2000, when it was increased to three. For the 1995 election only, the officers of the registered trade unions rather than the trade unions themselves made up the electorate. In 2000, there were 455 registered association electors.

8. Social Welfare FC

The Social Welfare FC was introduced in 1985 as one of the original 11 FCs, although it was then known as Social Services. It currently consists of individuals who are registered social workers. Originally, the Social Services FC consisted of the individual and corporate members of the Hong Kong Council of Social Services who were entitled to vote at its general meetings. In 1995, this was changed to the individuals and a selection of the individuals who controlled the corporate members. As well, voting members of the Hong Kong Social Welfare Personnel Registration Council were added. The corporate electors of the Hong Kong Council of Social Services returned in 1998 together with the addition of the registered social workers, social service societies, and registered non-profit making companies. In March 2000, all corporate bodies were removed leaving its current composition of only registered social workers. In 2000, there were 7,897 registered individual electors.

9. Medical FC

The Medical FC was introduced in 1985 as one of the original 11 FCs. It currently consists of registered medical practitioners and dentists. Originally in 1985, this FC consisted of voting members of the Hong Kong Medical Association and registered medical practitioners. In 1988, the members of the Hong Kong Medical Association were deleted and the registered dentists were added. In 2000, there were 7,724 registered individual electors.

10. Health Services FC

The Health Services FC was introduced in 1988 when it was known as the Health Care FC. It currently consists of registered members in various professions and employed in government or public institutions relating to provision of health services, e.g. nurses, pharmacists, occupational therapists, midwives, physiotherapists and optometrists, etc. There have been some minor changes to its membership criteria. In 2000, there were 31,661 registered individual electors.

11. Education FC

The Education FC was introduced in 1985 as one of the original 11 FCs, although known as the Teaching FC at that time. It currently consists of registered teachers, full-time academic staff of universities and certain

designated tertiary institutions as well as members of Councils of the universities, etc. (individual members only). Apart from minor additions, deletions, and changes, there has been no major change to its membership criteria. In 2000, there were 71,390 registered individual electors.

12. Legal FC

The Legal FC was introduced in 1985 as one of the original 11 FCs. It currently consists of legal practitioners (barristers and solicitors), legal officers and government lawyers. Other than minor changes in the identified government departments, there has been no major change to its composition criteria. In 2000, there were 4,181 individual registered voters.

13. Engineering FC

The Engineering FC was introduced in 1991. It currently consists of registered engineers and members of the Hong Kong Institution of Engineers who are entitled to vote at its general meetings (individual members only). The Engineering FC was part of the original Engineering, Architectural, Surveying and Planning FC in 1985. It split away and became a separate FC in 1991. In the 2000 elections, there were 6,035 registered individual electors.

14. Real Estate and Construction FC

The Real Estate and Construction FC was introduced in 1991. It currently consists of both corporate and individual members of the Real Estate Developers Association of Hong Kong, the Hong Kong Construction Association Ltd., and the Hong Kong E & M Contractors' Association Ltd. who are entitled to vote at their general meetings. In only the 1995 election, the electorate consisted of a selection of the individuals who controlled the corporate members of the three associations, rather than the corporate entities themselves. In 2000, there were 399 registered corporate electors and 296 registered individual electors.

15. Architectural, Surveying and Planning FC

The Architectural, Surveying and Planning FC was introduced in 1991, although these professions were represented in the original 1985 FCs. It currently consists of individuals who are registered architects, landscape architects, professional planners, professional surveyors, and individual members of the Hong Kong Institute of Architects, the Hong Kong Institute of Landscape Architects, the Hong Kong Institute of Surveyors and the Hong Kong Institute of Planners who are entitled to vote at their general meetings. When it was introduced, the FC consisted of the members of the above associations, except for the Hong Kong Institute of Landscape Architects. Landscape architects were added until 1995. The FC was originally a part of the Engineering, Architectural, Surveying and Planning FC before splitting off in 1991. In 2000, there were 3,832 registered individual electors.

16. Financial Services FC

The Financial Services FC was introduced in 1991. It currently consists of both corporate and individual electors, i.e. exchange participants of recognized exchange companies and voting members of the Chinese Gold & Silver

Exchange Society. Originally, authorized and deemed authorized insurers were included in this FC. These electors split off in 1998 when a new FC for Insurance was created. For only the 1995 election, the electorate consisted of a selection of the individuals who controlled the corporate entities rather than the entities themselves. In 2000, there were 468 registered corporate electors and 80 registered individual electors.

17. Tourism FC

The Tourism FC was introduced in 1991. It currently consists of the corporate members of the former Hong Kong Tourist Association, the Travel Industry Council, the Hong Kong Board of Airline Representatives, the Hong Kong Hotels Association, and the Federation of Hong Kong Hotel Owners who are entitled to vote at their general meetings. Originally, the hotel industry was not included in its membership but was added in 1998. In the 1995 elections only, the electorate consisted of a selection of the individuals who controlled the corporate members of these associations, rather than the corporate entities themselves. In 2000, there were 909 registered corporate electors.

18. District Council FC

The District Council FC was introduced in 2000 to replace the Urban Council and Regional Council FCs which were abolished pursuant to the Provision of Municipal Services (Reorganization) Ordinance. It currently consists of the elected and appointed members of all 18 District Councils. In 2000, there were 433 registered individual electors.

19. Heung Yee Kuk FC

The Rural FC was introduced in 1991 and renamed Heung Yee Kuk in 1998. It currently consists of the Chairman and Vice-Chairmen of the Heung Yee Kuk and the Ex Officio, Special and Co-opted Councillors of the Full Council of the Kuk. In 2000, there were 148 registered individual electors.

20. Textiles and Garment FC

The Textiles and Garment FC was introduced in 1995 as one of the nine new FCs introduced by Governor Patten. It currently consists of the corporate members of a number of relevant associations, e.g. the Textile Council of Hong Kong Ltd. and Hong Kong Garment Manufacturers Association Ltd., etc. who are entitled to vote at their general meetings as well as the individual and corporate members of the Hong Kong Institution of Textile and Apparel, registered textiles & clothing manufacturers and registered textile traders. In 1995 only, its electors were all the working persons in the industry. In 2000, there were 4,627 registered corporate electors and 70 registered individual electors.

21. Import and Export FC

The Import and Export FC was introduced in 1995 as one of the nine new FCs introduced by Governor Patten. It currently consists of certain licensed companies in the import and export business (corporate members), and both corporate and individual members of a number of relevant associations, e.g. the Hong Kong Chinese Importers' & Exporters' Association, the Hong Kong Industrial Production Trading Association Ltd. and the Hong Kong Shippers'

Council, etc. In 1995 only, its electors were all the people working in the industry. In 2000, there were 817 registered corporate electors and 628 registered individual electors.

22. Wholesale and Retail FC

The Wholesale and Retail FC was introduced in 1995 as one of the nine new FCs introduced by Governor Patten. It currently consists of both corporate and individual members of the designated bodies, e.g. the Chinese Medicine Merchants Association, the Chinese Paper Merchants Association, the Hong Kong & Kowloon Poultry Dealers Guild, etc. In 1995 only, its electors were all the working persons in the industry. In 2000, there were 1,548 registered corporate electors and 1,827 registered individual electors.

23. Transport FC

The Transport FC was introduced in 1998. It currently consists of a number of specified bodies, e.g. MTR Corporation Ltd., Citybus Ltd., the “Star” Ferry Co. Ltd., Hong Kong Tramway Ltd., Taxi Associations Federation and Western Harbour Tunnel Co. Ltd., etc. The Transport FC was part of the Transport and Communication FC introduced by Governor Patten for the 1995 election. It became a separate FC in 1998. In 2000, there were 153 registered corporate electors.

24. Information Technology FC

The Information Technology FC was introduced in 1998. It currently consists of corporate members of a number of relevant associations, e.g. the Hong Kong Information Technology Federation Ltd., the Hong Kong Internet Service Providers Association, the Hong Kong Radio Paging Association, etc., who are entitled to vote at their general meetings; as well as corporate bodies which hold certain licenses granted by the Telecommunication Authority. In addition, it consists of individual members of a number of relevant associations, e.g. the Hong Kong Computer Society and the Institute of Electrical and Engineers Inc. (Hong Kong Section), etc. that are entitled to vote at their general meetings. Eligible individual members of some associations are qualified FC voters even though they have no right to vote at their general meetings, e.g. members of Professional Information Security Association, etc. Since 1998, some new associations have been included in its membership. In 2000, there were 185 registered corporate electors and 3,676 registered individual electors.

25. Insurance FC

The Insurance FC was introduced in 1998. It currently consists of corporate authorized or deemed authorized insurers. It originally appeared as part of the Financial Services FC in 1991. In 1995 only, a selection of the individuals who controlled the corporate body rather than the corporate entity itself received the right to vote. In 2000, there were 181 registered corporate electors.

26. Agriculture and Fisheries FC

The Agriculture and Fisheries FC was introduced in 1998. It currently consists of corporate members of a number of relevant associations, e.g. Federation of Vegetable Marketing Co-operative Societies, Ltd. and Federation of Pig Raising

Co-operative Societies of Hong Kong, Kowloon and New Territories, Ltd., etc. It also consists of a number of specified corporate bodies, e.g. The Aberdeen Fishermen Friendship Association, the Hong Kong Livestock Industry Association, the Tuen Mun Agricultural Association, etc. In 1995 only, people working in this sector obtained the right to vote within the Primary Production, Power and Construction FC. In 2000, there were 167 registered corporate electors.

27. Sports, Performing Arts, Culture and Publication FC

The Sports, Performing Arts, Culture and Publication FC was introduced in 1998. It currently consists of certain relevant statutory bodies, registered sports associations, the designated district sports associations (e.g. Sham Shui Po Sports Association), the designated arts and culture associations (e.g. Kowloon City District Arts and Culture Council), and other designated bodies (e.g. the Hong Kong Dance Company Ltd. and the Hong Kong Film Academy). It also consists of both bodies and individual members of certain associations, e.g. Education Booksellers' Association, Ltd., Hong Kong Publishing Federation Ltd., and Hong Kong Film Awards Association Ltd., who are entitled to vote at their general meetings. In addition, it consists of registered newspaper companies, broadcasting corporations and telecommunication corporations. In 1995 only, persons working in some of the sectors covered by this FC were entitled to vote directly. In 2000, there were 1,247 registered associations or corporate electors and 35 registered individual electors.

28. Catering FC

The Catering FC was introduced as a separate FC in 2000. It currently consists of both corporate and individual members who hold food licenses and a number of specified corporate bodies, e.g. the Association of Restaurant Managers Ltd. etc. In 1995 only, working persons in restaurants, hotels and boarding houses were entitled to vote in the Hotels and Catering FC. In 2000, there were 298 registered corporate electors and 6,670 registered individual electors.

Section B - Abolished FCs

The following FCs were introduced as part of the Patten reforms in 1995. They were abolished after the handover, and replaced with new ones in 1998.

- Primary Production, Power and Construction FC (1995-7)
- Manufacturing FC (1995-7)
- Hotels and Catering FC (1995-7)
- Transport and Communication (1995-7)
- Financing, Insurance, Real Estate and Business Services (1995-7)
- Community, Social and Personal Services (1995-7)

Both the Urban Council FC and Regional Council FC were introduced in 1991. They were abolished in 2000 following the abolition of these regional bodies and replaced with the current District Council FC.

The Rural FC introduced in 1991 was renamed the Heung Yee Kuk FC in 1998.

Sources: Legislative Council Ordinance (Cap 542), ss. 20-20ZB; Legislative Council (Electoral Provisions) Ordinance (Cap 381), enacted in 1985, as amended in 1988, 1990 and 1994; EAC 2000 LegCo Report, above n 8; Legislative Council Ordinance, Ord. No. 134 of 1997, Sch. 1; Legislative Council (Amendment) Ordinance 1999, Ord. No. 48 of 1999, ss. 20-20ZB.

Appendix 4

Three Methods Used to Determine the FC Electorate 2004

Voting members of umbrella organizations	Major organizations representative of the sector	Recognized professionals
Commercial (First)	Finance	Accountancy
Commercial (Second)	Labour	Social Welfare
Industrial (First)	Transport	Medical
Industrial (Second)	Insurance	Health Services
Real Estate and Construction	Catering*	Education
Tourism	Textiles and Garment*	Legal
District Council	Import and Export*	Financial Services*
Heung Yee Kuk	Information Technology*	Engineering*
Wholesale and Retail	Agriculture and Fisheries*	Architectural, Surveying and Planning*
Engineering*	Sports, Performing Arts, Culture and Publication*	Catering*
Architectural, Surveying and Planning*		
Financial Services*		
Textiles and Garment*		
Import and Export*		
Information Technology*		
Agriculture and Fisheries*		
Sports, Performing Arts, Culture and Publication*		

Source: Legislative Council Ordinance (Cap 542), ss. 20-20ZB.

Notes:

*Some FCs appear in more than one category because of the use of multiple methods for defining the electorate in a particular FC.

Appendix 5

Number of Registered FC Electors 1985-2004

Election Year	1985	1988	1991	1995	1998	2000	2003*
Individuals	n/a	n/a	n/a	1,150,000	127,075	160,487	147,266
Bodies	n/a	n/a	n/a	0	11,909	15,119	13,036
Total	46,645	61,052	69,825	1,150,000	138,984	175,606	160,302

Sources: Hong Kong 1986, 1989, 1992 (Hong Kong: Government Printer); Boundary and Election Commission, Report on the 1995 Legislative Council Election (Hong Kong, 15 Dec 1995) 19; EAC 1998 LegCo Report, above n 63, App. IV; EAC 2000 LegCo Report, above n 8, App. VII; Registration and Electoral Office, April 2004.

Notes:

*The figures in this column are taken from the 2003 Final Register. The figures for the 2004 Final Register will be published in July 2004.

“n/a” – not available

Appendix 6

Relative Size of FCs Based on Registered Voters in 2000 Election

	Functional Constituency	# of Registered Electors			Voters/ Member
		Bodies	Individuals	Total	
		(i)	(ii)	(i)+(ii)	
1	Education		71,390	71,390	71,390
2	Health Services		31,661	31,661	31,661
3	Accountancy		12,785	12,785	12,785
4	Social Welfare		7,897	7,897	7,897
5	Medical		7,724	7,724	7,724
6	Catering	298	6,670	6,968	6,968
7	Engineering		6,035	6,035	6,035
8	Textiles and Garment	4,627	70	4,697	4,697
9	Legal		4,181	4,181	4,181
10	Information Technology	185	3,676	3,861	3,861
11	Architectural, Surveying and Planning	3,832	3,832	3,832	3,832
12	Wholesale and Retail	1,548	1,827	3,375	3,375
13	Commercial (Second)	714	1,117	1,831	1,831
14	Import and Export	817	628	1,445	1,445
15	Commercial (First)	1,325		1,325	1,325
16	Sports, Performing Arts, Culture and Publication	1,247	35	1,282	1,282
17	Tourism	909		909	909
18	Industrial (First)	820	2	822	822
19	Real Estate and Construction	399	296	695	695
20	Industrial (Second)	624		624	624
21	Financial Services	468	80	548	548
22	District Council		433	433	433
23	Finance	182		182	182
24	Insurance	181		181	181
25	Agriculture and Fisheries	167		167	167
26	Transport	153		153	153
27	Labour	455		455	455
28	Heung Yee Kuk		148	148	148
	TOTAL	15,119	160,487	175,606	

Source: EAC 2000 LegCo Report, above n 8, App. IV.

Appendix 7

Relative Size of FCs Based on Estimated Potential Electorate in 2004

	Functional Constituency	Potential # of Voters			Voters/ Member
		Bodies	Individuals	Total	
		(i)	(ii)	(i)+(ii)	
1	Education		106,699	106,699	106,699
2	Health Services		53,965	53,965	53,965
3	Accountancy		20,436	20,436	20,436
4	Textiles and Garment	13,290	124	13,414	13,414
5	Catering	1,377	11,757	13,134	13,134
6	Medical		13,006	13,006	13,006
7	Wholesale and Retail	6,285	4,514	10,799	10,799
8	Social Welfare		10,668	10,668	10,668
9	Engineering		8,935	8,935	8,935
10	Information Technology	1,023	7,245	8,268	8,268
11	Legal		6,726	6,726	6,726
12	Import and Export	5,140	1,214	6,354	6,354
13	Commercial (Second)	3,522	2,444	5,966	5,966
14	Architectural, Surveying and Planning		5,664	5,664	5,664
15	Sports, Performing Arts, Culture and Publication	3,251	52	3,303	3,303
16	Commercial (First)	2,922		2,922	2,922
17	Industrial (First)	2,147	2	2,149	2,149
18	Industrial (Second)	1,444		1,444	1,444
19	Tourism	1,431		1,431	1,431
20	Real Estate and Construction	596	467	1,063	1,063
21	Financial Services	744	93	837	837
22	District Council		519	519	519
23	Finance	219		219	219
24	Labour	605		605	202
25	Insurance	190		190	190
26	Transport	190		190	190
27	Agriculture and Fisheries	163		163	163
28	Heung Yee Kuk		146	146	146
	TOTAL	44,539	254,676	299,215	

Source: "Estimated Electorate Size of Functional Constituencies" Table in Constitutional Affairs Bureau, "Delineation of Functional Constituency Electorate", LC Paper No CB(2)2436/02-03(01) prepared for Legislative Council Bills Committee on Legislative Council (Amendment) Bill 2003, 11 June 2003.

Appendix 8

Number of Persons Engaged (other than in the Civil Service) in Selected Major Industry Groups in December 2000

<i>Industry Sector/Major Industry Group</i>	<i># of Persons Engaged</i>	<i>% of Total</i>
Mining and quarrying	154	0.007
Manufacturing	226 205	10.2
Food product, beverage and tobacco manufactures	22 464	
Wearing apparel	36 330	
Leather and leather products and footwear	609	
Textiles	27 489	
Wood and cork products, furniture and fixtures	1 198	
Paper and paper products	3 749	
Printing, publishing and allied industries	43 849	
Chemicals and chemical products, products of petroleum and coal	5 124	
Rubber and plastic products	7 601	
Non-metallic mineral products	2 211	
Basic metal	1 237	
Fabricated metal products	11 185	
Office, accounting and computing machines	2 808	
Radio, television and communication equipment	2 150	
Electronic parts and components	18 085	
Electrical appliances and houseware	708	
Other machinery and equipment	14 901	
Transport equipment	8 859	
Professional instrument and optical goods	4 108	
Other manufacturing industries	11 540	
Electricity and gas	8 203	0.37

<i>Industry Sector/Major Industry Group</i>	<i># of Persons Engaged</i>	<i>% of Total</i>
Wholesale, retail and import/export trades, restaurants and hotels	1 009 094	45.7
Wholesale	67 627	
Retail	215 037	
Import/Export	509 375	
Restaurants	187 772	
Hotels and boarding houses	29 283	
Transport, storage and communications	176 949	8
Land passenger transport	31 966	
Water and air transport	32 590	
Supporting services to transport	23 199	
Services incidental to transport	45 939	
Storage	4 959	
Communications	38 296	
Financing, insurance, real estate and business services	434 105	19.6
Financial institutions	119 152	
Stock, commodity and bullion brokers	14 961	
Insurance	24 751	
Real estate	79 958	
Business services	195 283	
Community, social and personal services	354 537	16.0
Sanitary and similar services	45 793	
Education and related services	114 874	
Medical and health services	67 572	
Other community and social services	42 572	
Amusement and recreational services	32 820	
Personal services	50 906	
All industry sectors above	2 209 247	100

Source: Hong Kong Yearbook 2000, App. 28.

Appendix 9

Individual and Corporate Elector Makeup in the 2004 FCs

Individuals as Electors Only	Both Corporate Bodies and Individuals as Electors	Corporate Bodies as Electors Only
1. Accountancy	1. Commercial (Second)	1. Commercial (First)
2. Social welfare	2. Real Estate and Construction	2. Industrial (First)*
3. Medical	3. Financial Services	3. Industrial (Second)
4. Health Services	4. Textiles and Garment	4. Finance
5. Education	5. Wholesale and Retail	5. Labour
6. Legal	6. Import and Export	6. Tourism
7. Engineering	7. Information Technology	7. Transport
8. Architectural, Surveying and Planning	8. Sports, Performing Arts, Culture and Publication	8. Agriculture and Fisheries
9. District Council	9. Catering	9. Insurance
10. Heung Yee Kuk		

Source: "Estimated Electorate Size of Functional Constituencies" Table in Constitutional Affairs Bureau, "Delineation of Functional Constituency Electorate", LC Paper No CB(2)2436/02-03(01) prepared for Legislative Council Bills Committee on Legislative Council (Amendment) Bill 2003, 11 June 2003.

Notes:

*Since there are only two potential individual electors estimated for this FC, it is tantamount to being a corporate elector only FC.

Appendix 10

List of Umbrella Organizations Recognized in the Legislative Council Ordinance (Cap 542) 2004

Heung Yee Kuk FC (LCO s. 20A)

Heung Yee Kuk

Agriculture and Fisheries FC (LCO s. 20B)*

Federation of Vegetable Marketing Co-operative Societies, Limited
Federation of Pig Raising Co-operative Societies of Hong Kong, Kowloon and New Territories, Ltd.

The Joint Association of Hong Kong Fishermen

Federation of Hong Kong Aquaculture Associations

The Federation of Fishermen's Co-operative Societies of Shau Kei Wan District, Limited

The Federation of Fishermen's Co-operative Societies of Tai Po District, N.T., Limited

The Federation of Fishermen's Co-operative Societies of Sai Kung District, Limited

The Federation of Fishermen's Co-operative Societies of Southern District, Limited

Engineering FC (LCO s. 20J)*

Hong Kong Institution of Engineers

Architectural, Surveying and Planning FC (LCO s. 20K)*

The Hong Kong Institute of Architects

The Hong Kong Institute of Landscape Architects

The Hong Kong Institute of Surveyors

The Hong Kong Institute of Planners

Real Estate and Construction FC (LCO s. 20N)

The Real Estate Developers Association of Hong Kong

The Hong Kong Construction Association, Limited

The Hong Kong E&M Contractors' Association Limited

Tourism FC (LCO s. 20O)

Hong Kong Tourist Association

Travel Industry Council of Hong Kong

Hong Kong Board of Airline Representatives

Hong Kong Hotels Association

Federation of Hong Kong Hotel Owners

Commercial (First) FC (LCO s. 20P)

The Hong Kong General Chamber of Commerce

Commercial (Second) FC (LCO s. 20Q)

Chinese General Chamber of Commerce

Industrial (First) FC (LCO s. 20R)

Federation of Hong Kong Industries

Industrial (Second) FC (LCO s. 20S)

The Chinese Manufacturers' Association of Hong Kong

Financial Services FC (LCO s. 20U)*

The Chinese Gold & Silver Exchange Society

Sports, Performing Arts, Culture and Publication FC (LCO s. 20V)*

Educational Booksellers' Association, Limited

The Anglo-Chinese Textbook Publishers Organisation Limited

The Hong Kong Educational Publishers Association Limited

The Hong Kong Publishers and Distributors Association

Hong Kong Book & Magazine Trade Association Limited

Hongkong Book and Stationery Industry Association Company Limited

Hong Kong Publishing Federation Limited

HK, Kln & NT Motion Picture Industry Association Ltd.

Hong Kong Film Awards Association Ltd.

International Federation of the Phonographic Industry (Hong Kong Group) Limited

Movie Producers and Distributors Association of Hong Kong Ltd.

Music Publishers Association of Hong Kong Ltd.

Hong Kong Theatres Association Ltd.

Import and Export FC (LCO s. 20W)*

Association of Hong Kong Photographic Equipment Importers Ltd.

Hong Kong & Kowloon Steel and Metal Importers and Exporters Association Ltd.

Hong Kong Chinese Importers' & Exporters' Association

Hong Kong Exporters' Association

Hong Kong Fresh Fruits Importers Association Ltd.

Hong Kong General Association of Edible Oil Importers & Exporters Ltd.

Hong Kong Maize and Feed Importers Association Ltd.

Hongkong Rice Importers & Exporters Association

Hongkong Watch Importers' Association

The Hong Kong Food, Drink & Grocery Association

Hong Kong & Kowloon Light Industrial Products Importers & Exporters Association Limited

Nanyang Importers and Exporters Association

Hong Kong Industrial Production Trading Association Limited

Industrial Chemical Merchants' Association Limited

South-China Paper Merchants Association Limited

Wah On Exporters & Importers Association

The Hong Kong Shippers' Council

The Shippers' Association of Hong Kong

Textiles and Garment FC (LCO s. 20X)*

Textile Council of Hong Kong Limited

Federation of Hong Kong Cotton Weavers

Federation of Hong Kong Garment Manufacturers
Hong Kong Chinese Textile Mills Association
Hong Kong Cotton Made-up Goods Manufacturers Association Ltd.
Hong Kong Cotton Spinners Association
Hong Kong Garment Manufacturers Association Ltd.
Hong Kong Knitwear Exporters & Manufacturers Association Ltd.
Hong Kong Woollen & Synthetic Knitting Manufacturers' Association Ltd.
Hong Kong Association of Textile Bleachers, Dyers, Printers & Finishers Ltd.
Hong Kong Weaving Mills Association
Hongkong Wool & Synthetic Spinners Association Ltd.
The Hong Kong General Chamber of Textiles Limited
Hong Kong Institution of Textile and Apparel

Wholesale and Retail FC (LCO s. 20Y)

The Anglo-Chinese Vegetable Wholesale Merchants Association Limited
Association of Better Business & Tourism Services
Cheung Sha Wan Poultry United Wholesalers Association Ltd.
Chinese Medicine Merchants Association Ltd.
Chinese Merchants (H.K.) Association
Chinese Paper Merchants Association
The Cosmetic & Perfumery Association of Hong Kong Ltd.
Eastern District Fresh Fish Merchants' Society
Federation of Hong Kong, Kowloon and New Territories Hawkers Associations
The Federation of Hong Kong Watch Trades and Industries Ltd.
HK Vegetable Wholesaler Community
Hong Kong and Kowloon Bamboo Goods Merchants Association Limited
Hong Kong and Kowloon Electrical Appliances Merchants Association Ltd.
Hong Kong & Kowloon Electro-Plating Trade Merchants Association Ltd.
Hong Kong & Kowloon European Dress Merchants Association
Hong Kong & Kowloon Fresh Water Fish Merchants' & Buyers' Association Limited
Hong Kong & Kowloon Fruit & Vegetable Employees & Employers Guild
Hong Kong & Kowloon Furniture & Shop Fittings Merchants Association
Hong Kong & Kowloon General Association of Liquor Dealers and Distillers
Hong Kong & Kowloon Machine Made Paper Merchants Association Ltd.
Hong Kong and Kowloon Machinery and Instrument Merchants Association Ltd.
Hong Kong & Kowloon Marine Products Merchants Association Ltd.
Hong Kong & Kowloon Plastic Products Merchants United Association Limited
Hong Kong & Kowloon Poultry Dealers Guild
The Hong Kong & Kowloon Provisions, Wine & Spirit Dealers' Association
Hong Kong & Kowloon Rattan Ware Merchants Association (Wing-Hing-Tong)
The Hong Kong and Kowloon Rice Retailers' General Association Ltd.
Hong Kong and Kowloon Salt Merchants' Association
Hong Kong & Kowloon Sauce & Preserved-Fruit Amalgamated Employers Association
Hong Kong & Kowloon Tea Trade Merchants Association Ltd.
Hong Kong & Kowloon Timber Merchants Association
Hong Kong & Kowloon Vermicelli & Noodle Manufacturing Industry Merchants' General Association

Hong Kong Art Craft Merchants Association, Ltd.
Hong Kong Dried Seafood and Grocery Merchants Association Limited
Hong Kong Dyestuffs Merchants Association Limited
Hong Kong Egg Merchants Association (Fung-Kwai-Tong)
Hong Kong Embroidery Merchants Association Limited
Hong Kong Flour Merchants' Association
Hong Kong Flower Dealers & Workers Association
Hong Kong Flower Retailers Association
The Hong Kong Food Council Limited
Hong Kong Fresh Fish Merchants Association
Hong Kong Fur Federation
Hong Kong Furniture & Decoration Trade Association Limited
Hong Kong General Chamber of Pharmacy Limited
Hong Kong Glass and Mirror Merchants and Manufacturers Association
Company Limited
Hong Kong Jewellers' & Goldsmiths' Association Limited
Hong Kong Leather Shoe And Shoe Material Merchants Association Ltd
Hong Kong Live Pig Trade Merchants' Association
The Hong Kong Medicine Dealers' Guild
Hong Kong Metal Merchants Association
The Hong Kong Oil Merchants Association Ltd.
Hong Kong Paints & Pigments Merchants Association Ltd.
Hong Kong Petroleum, Chemicals and Pharmaceutical Materials Merchants
Association Ltd.
Hong Kong Photo Marketing Association Limited
Hong Kong Piece Goods Merchants' Association
Hong Kong Plastic Material Suppliers Association Ltd.
Hong Kong Plumbing and Sanitary Ware Trade Association Ltd.
Hong Kong Provision & Grocery General Commercial Chamber
Hong Kong Record Merchants Association Ltd.
Hong Kong Rice Suppliers' Association Limited
Hong Kong Retail Management Association Ltd.
Hong Kong Silk Piece-Goods Merchants' Association
Hong Kong Stamp and Coin Dealers Association Ltd.
The Hong Kong Video Industry Association Ltd.
Hong Kong Yee Yee Tong Chinese Medicine Merchants Association Ltd.
The Hongkong & Kowloon General Merchandise Merchants' Association
Hongkong Kowloon New Territories & Overseas Fish Wholesalers Association
Limited
Industrial Chemical Merchants' Association Ltd.
The Kowloon Cheung Sha Wan Wholesale Vegetable Market (Importers)
Recreation Club
Kowloon Fresh Fish Merchants Association
Kowloon Fresh Meat Retailers' Association Ltd.
The Kowloon Pearls, Precious Stones, Jade, Gold & Silver Ornament Merchants
Association
Kowloon Poultry Laan Merchants Association
The Merchants Association of First Wholesalers/Jobbery of Imported Fresh
Fruits & Vegetables Limited

The Mongkok Vegetable Wholesale Merchants Association Company Ltd
The Motor Traders Association of Hong Kong
Nam Pak Hong Association
Po Sau Tong Ginseng & Antler Association Hong Kong Ltd.
The Rice Merchants' Association of Hong Kong Limited
Shau Kei Wan Fishery Merchants Association
Tobacco Institute of Hong Kong Ltd.
Umbrella Dealers Association, Hong Kong and Kowloon
Yuet Sum Kong Vegetable Association (Hong Kong) Co.
Kowloon Fruit & Vegetable Merchants Association Limited
The Hong Kong And Kowloon Electric Trade Association
Hong Kong Poultry Wholesalers Association
Diamond Federation of Hong Kong, China Limited

Information Technology FC (LCO s. 20Z)*

Hong Kong Computer Society
Information Technology Division of the Hong Kong Institution of Engineers
Association for Computing Machinery, Hong Kong Chapter
Institute of Electrical and Electronics Engineers, Inc., Hong Kong Section,
Computer Chapter
Institute of Electrical and Electronics Engineers, Inc., Hong Kong Section, Hong
Kong Joint Chapter on Circuits and Systems/Communications
The Institution of Electrical Engineers Hong Kong
British Computer Society (Hong Kong Section)
The Hong Kong Association for Computer Education
Hong Kong Society of Medical Informatics Limited
Information and Software Industry Association Limited
Hong Kong Telemedicine Association
Hong Kong & Mainland Software Industry Cooperation Association Limited
Information Systems Audit and Control Association (Hong Kong Chapter)
Limited
Internet Professionals Association Limited
Professional Information Security Association
Hong Kong Information Technology Federation Limited
Hong Kong Internet Service Providers Association
Hong Kong Radio Paging Association Ltd.
Internet & Telecom Association of Hong Kong Limited
Hong Kong Wireless Technology Industry Association Limited
The Society of Hong Kong External Telecommunications Services Providers
Limited

District Council FC (LCO s. 20ZB)

18 District Councils

Source: Legislative Council Ordinance (Cap 542).

Notes: *These FCs apply additional methods of determining their electorate. See Appendix 4.

Appendix 11

Major Organizations Representative of Sector Recognized as Electors under the Legislative Council Ordinance (Cap 542) 2004

Agriculture and Fisheries FC (LCO s. 20B)*

The Aberdeen Fishermen Friendship Association
The Ap Lei Chau Fishermen's Credit Co-operative Society, Unlimited
The Castle Peak Fishermen's Credit Co-operative Society, Unlimited
The Castle Peak Mechanized Trawler Fishermen's Credit Co-operative Society, Unlimited
Cheung Chau Fisheries Joint Association
Cheung Chau Fishermen's Welfare Promotion Association
The Fanling Kwun Ti Village Farmers' Irrigation Co-operative Society, Ltd.
Fish Farming and Stuff Association
Fisherman's Association of Po Toi Island
Fishery Development Association (Hong Kong) Limited
Fraternal Association of The Floating Population of Hong Kong
The Guild of Graziers
Hang Hau Grazier Association
Hong Kong and Kowloon Fishermen Association Ltd.
Hong Kong & Kowloon Floating Fishermen Welfare Promotion Association
The Hong Kong Fisheries Development Association
Hong Kong Fishermen's Association
Hong Kong Fishing Vessel Owners Association, Ltd.
Hong Kong Florists Association
Hong Kong Graziers Union
The Hong Kong Liner & Gillnetting Fisherman Association
Hong Kong Livestock Industry Association
Hong Kong N.T. Fish Culture Association
Hong Kong N.T. Poultry-Culture (Geese & Ducks) Mutual Association
Hong Kong Netting, Cultivation and Fisherman Association
Hong Kong New Territories Boat People Association
Hong Kong Off-shore Fishermen's Association
Hong Kong Pigfarm Association Limited
The Lam Ti Agricultural Credit Co-operative Society, Limited
Lamma Island Lo Dik Wan Aquaculture Association
Lau Fau Shan Oyster Industry Association, New Territories
Ma Wan Fisheries Rights Association Ltd.
The Mui Wo Agricultural Products Marketing & Credit Co-operative Society, Ltd.
Mui Wo Fishermen Fraternity Society
N.T. Oyster and Aquatic Products United Association
The New Territories Chicken Breeders Association, Ltd.
The New Territories Fishermen Fraternity Association Ltd.
New Territories Florist Association, Ltd.
North District Florists Association
Outlying Islands Mariculture Association (Cheung Chau)
Peng Chau Fishermen Association Ltd.
Quality Broiler Development Association

Sai Kung Fishermen Association Limited
Sai Kung (North) Sham Wan Marine Fish Culture Business Association
Sai Kung Po Toi O Fish Culture Business Association
Sai Kung Tai Tau Chau Fish Culture Business Association
Sai Kung Tai Wu Kok Fishermen's Association
Sha Tau Kok Marine Fish Culture Association
The Sha Tau Kok Small Long Liner and Gill Net Fishermen's Credit Co-operative Society, Unlimited
The Shan Tong Vegetable Marketing Co-operative Society, Ltd.
Shatin Ah Kung Kok Fishermen Welfare Association
Shatin Florists Association
The Shau Kei Wan Deep Sea Capture Fishermen's Credit Co-operative Society, Unlimited
Shau Kei Wan Fishermen Friendship Association
The Shau Kei Wan Pair Trawler Fishermen's Credit Co-operative Society, Unlimited
The Shau Kei Wan Trawler Fishermen's Credit Co-operative Society, Unlimited
The Sheung Shui Ngai Yuen Sun Tsuen Pig Raising Co-operative Society, Ltd.
Tai O Fishermen (Coastal Fishery) Association
The Tai O Sha Chai Min Fishermen's Credit Co-operative Society, Unlimited
The Tai Po Fishermen's Credit Co-operative Society, Unlimited
Tai Po Florists and Horticulturists Association
The Tai Po Ma Wo Village Pig Raising Co-operative Society, Ltd.
The Tai Po Purse Seiner and Small Long Liner Fishermen's Credit Co-operative Society, Unlimited
The Tsing Lung Tau Hand Liner Fishermen's Credit Co-operative Society, Unlimited
The Tsuen Wan Fishermen's Credit Co-operative Society, Unlimited
The Tuen Mun Mechanized Fishing Boat Fishermen's Credit Co-operative Society, Unlimited
Tuen Mun Agricultural Association
Tung Lung Chau Mariculture Association
The World Poultry Science Association, Hong Kong Branch
The Wu Kau Tang Village Agricultural Credit Co-operative Society, Limited
The Yuen Long Agriculture Productivity Association
Yung Shue Au Marine Fish Culture Business Association

青衣水陸居民聯誼會

荃灣葵青居民聯會(漁民組)

荃灣葵青漁民會

The Shau Kei Wan Stern Trawler Fishermen's Credit Co-operative Society, Unlimited
Hong Kong Organic Farming Association Limited
N.T. North District Fishermen's Association
Tai Po Off Shore Fishermen's Association
Aberdeen Fisherwomen Association

Insurance FC (LCO s. 20C)

Bodies that are insurers authorized or deemed to be authorized under the Insurance Companies Ordinance (Cap 41)

Transport FC (LCO s. 20D)

VINCI Park Services Hong Kong Limited
Airport Authority Hong Kong
Articulated & Commercial Vehicle's Instructors Union
The Association of N.T. Radio Taxicabs Ltd.
Autotoll Limited
The Chartered Institute of Logistics and Transport in Hong Kong
China Merchants Shipping & Enterprises Co. Ltd.
China Tollways Ltd.
Chu Kong Shipping Enterprises (Holdings) Co. Ltd.
Chuen Kee Ferry Ltd.
Chuen Lee Radio Taxis Association Ltd.
Citybus Ltd.
Coral Sea Ferry Service Co., Ltd.
COSCO-HIT Terminals (Hong Kong) Limited
CTOD Association Company Ltd.
Turbojet Ferry Services (Guangzhou) Limited
Discovery Bay Transportation Services Ltd.
Driving Instructors Merchant Association Ltd.
Eastern Ferry Co.
Expert Fortune Ltd.
Far East Hydrofoil Co. Ltd.
Fat Kee Stevedores Ltd.
The Fraternity Association of N.T. Taxi Merchants
Fraternity Taxi Owners Association
G.M.B. Maxicab Operators General Association Ltd.
The Goods Vehicle Fleet Owners Association Ltd.
Happy Taxi Operator's Association Ltd.
HKS Parking Limited
Hoi Kong Container Services Co. Ltd.
Hon Wah Public Light Bus Association Ltd.
Hong Kong Air Cargo Terminals Limited
Hong Kong & Kowloon Ferry Ltd.
Hong Kong & Kowloon Goods Vehicle Omnibuses and Minibuses Instructors' Association Ltd.
Hong Kong & Kowloon Motor Boats and Tug Boats Association Ltd.
Hong Kong & Kowloon Radio Car Owners Association Ltd.
Hong Kong and Kowloon Rich Radio Car Service Centre Association Ltd.
Hong Kong and Kowloon Taxi Companies Association Limited
HongKong Association of Freight Forwarding and Logistics Limited
Hong Kong Automobile Association
The Hong Kong Cargo-Vessel Traders' Association Ltd.
Hong Kong Commercial Vehicle Driving Instructors Association
Hong Kong CFS and Logistics Association Limited
Hong Kong Container Tractor Owner Association Ltd.

Hong Kong Driving Instruction Club Ltd.
 Hong Kong Guangdong Transportation Association Ltd.
 The Hong Kong Institute of Marine Technology
 Hong Kong, Kowloon & NT Public & Maxicab Light Bus Merchants' United Association
 Hong Kong Kowloon Taxi & Lorry Owners Association Ltd.
 The Hong Kong Liner Shipping Association
 Hong Kong Marine Contractors Association
 Hong Kong Motor Car Driving Instructors Association Ltd.
 Hong Kong Pilots Association Ltd.
 Hong Kong Public & Maxicab Light Bus United Associations
 Hong Kong Public Cargo Working Areas Traders Association Ltd.
 Hong Kong Scheduled (GMB) Licensee Association
 The Hong Kong School of Motoring Ltd.
 The Hong Kong Sea Transport Association Ltd.
 The Hong Kong Shipowners Association Ltd.
 Hong Kong Shipping Circles Association Ltd.
 Hong Kong Shipping Industry Institute
 Hong Kong Shipping Staff Association
 Hong Kong Society of Articulated Vehicle Driving Instructors Ltd.
 The Hong Kong Stevedores Employers' Association
 Hong Kong Tele-call Taxi Association
 Hong Kong Tramways, Limited
 Hong Kong Transportation Warehouse Wharf Club
 Hong Kong Tunnels and Highways Management Company Limited
 The Hongkong & Yaumati Ferry Co., Ltd.
 Hongkong International Terminals Ltd.
 Institute of Advanced Motorists (Hong Kong) Limited
 The Institute of Seatransport
 Institute of Transport Administration (China-Hong Kong Centre)
 Kowloon Fung Wong Public Light Bus Merchants & Workers' Association Ltd.
 Kowloon Motor Bus Company (1933) Ltd.
 Kowloon Motor Driving Instructors' Association Ltd.
 The Kowloon PLB Chiu Chow Traders & Workers Friendly Association
 The Kowloon Taxi Owners Association Ltd.
 Kowloon Truck Merchants Association Ltd.
 Kowloon-Canton Railway Corporation
 Kwik Park Limited
 Lam Tin Wai Hoi Public Light Bus Merchants Association Ltd.
 Lantau Taxi Association
 Lei Yue Mun Ko Chiu Road Public Light Bus Merchants Association Ltd.
 Lok Ma Chau China-Hong Kong Freight Association
 Long Win Bus Company Limited
 Lung Cheung Public Light Bus Welfare Advancement Association Ltd.
 Mack & Co. Carpark Management Limited
 Marine Excursion Association
 Maritime Affairs Research Association Ltd.
 MTR Corporation Limited
 Merchant Navy Officers' Guild-Hong Kong

Metropark Limited
Mid-stream Holdings (HK) Limited
Mixer Truck Drivers Association
Modern Terminals Ltd.
N.T. PLB Owners Association
N.T. San Tin PLB (17) Owners Association
N.T. Taxi Merchants Association Ltd.
N.T. Taxi Owners & Drivers Fraternal Association
N.T. Taxi Radio Service General Association
N.W. Area Taxi Drivers & Operators Association
New Hong Kong Tunnel Co., Ltd.
New Lantao Bus Co., (1973) Ltd.
New Territories Cargo Transport Association Ltd.
New World First Bus Services Limited
North District Taxi Merchants Association
Organisation of Hong Kong Drivers
Ken On Concrete Co. Ltd. Concrete Lorry Owner-Drivers Association
Peak Tramways Co., Ltd.
Pioneer Concrete Owners Drivers Association
Private Hire Car for Young Children Association Ltd.
Public and Private Light Buses Driving Instructors' Society
The Public Cargo Area Trade Association
Public Light Bus General Association
The Public Omnibus Operators Association Ltd.
Public Vehicle Merchants Fraternity Association
Quadripartite Taxi Service Association Ltd.
Rambo Taxi Owners Association Ltd.
River Trade Terminal Co. Ltd.
Route 3 (CPS) Company Limited
Sai Kung Public Light Bus Drivers and Owners Association
Sai Kung Taxi Operators Association Ltd.
Salvage Association (Hong Kong Office)
CSX World Terminals Hong Kong Limited
Serco Group (HK) Limited
The "Star" Ferry Co., Ltd.
Sun Hing Taxi Radio Association
Tang's Taxi Companies Association Ltd.
Tate's Cairn Tunnel Co., Ltd.
Taxi Associations Federation
Taxi Dealers & Owners Association Ltd.
Taxi Drivers & Operators Association Ltd.
The Taxi Operators Association Ltd.
Taxicom Vehicle Owners Association Ltd.
Tsing Ma Management Limited
Tsuen Wan PLB Commercial Association Ltd.
Tuen Mun PLB Association
Tung Yee Shipbuilding and Repairing Merchants General Association Limited
United Association of Public Lightbus Hong Kong
United Friendship Taxi Owners & Drivers Association Ltd.

United Radio Taxi & Goods Vehicle Association Ltd.
Urban Taxi Drivers Association Joint Committee Co. Ltd.
Wai Fat Taxi Owners Association Ltd.
Wai Yik H.K. & Kowloon and New Territories Taxi Owners Association
West Coast International (Parking) Limited
Western Harbour Tunnel Co. Ltd.
Wilson Parking (Hong Kong) Limited
Wing Lee Radio Car Traders Association Ltd.
Wing Tai Car Owners & Drivers Association Ltd.
Wu Gang Shipping Co. Ltd.
Xiamen United Enterprises (H.K.) Ltd.
Yik Sun Radiocabs Operators Association Ltd.
Young Children School Mini-Buses Operators Association Ltd.
Yuen Long Tai Po PLB Merchants Association Ltd.
Rights of Taxi Owners and Drivers Association Limited
New World First Ferry Services Limited
New World First Ferry Services (Macau) Limited
Hong Kong Container Drayage Services Association Limited
Hong Kong Kowloon & N.T. Grab-Mounted Lorries Association Limited
Hong Kong Waste Disposal Industry Association
HK Public-light Bus Owner & Driver Association
Container Truck Drivers Union
The Concrete Producers Association of Hong Kong Limited
Hongkong Guangdong Boundary Crossing Bus Association Limited
Tsui Wah Ferry Service Company Limited
Quality Driver Training Centre Limited
Public and Private Commercial Driving Instructors' Society
Shun Tak-China Travel Ship Management Limited
Cruise Ferries (HK) Limited
Asia Airfreight Terminal Company Limited
The Hong Kong Joint Branch of The Royal Institution of Naval Architects and
The Institute of Marine Engineering, Science and Technology
The Hongkong Salvage & Towage Company Limited
The Institute of Chartered Shipbrokers, Hong Kong Branch
Hongkong United Dockyards Limited
Guangdong and Hong Kong Feeder Association Limited
Hong Kong Right Hand Drive Motors Association Limited
The Institute of the Motor Industry Hong Kong
Hong Kong Vehicle Repair Merchants Association Limited
Environmental Vehicle Repairers Association Limited
The Hong Kong Taxi and Public Light Bus Association Limited
Park Island Transport Company Limited
Discovery Bay Road Tunnel Company Limited
International Association of Transport Officers
Helicopters Hong Kong Limited
Hong Kong (Cross Border) Transportation Drivers' Association
Hong Kong Logistics Association Limited
Hong Kong Container Depot and Repairer Association Limited
New World Parking Management Limited

The Nautical Institute-Hong Kong Branch
The Hong Kong Union of Light Van Employees
Worldwide Flight Services, Inc.

Labour FC (LCO s. 20L)

Bodies that are trade unions registered under the Trade Unions Ordinance (Cap 332) of which all the voting members are employees

Finance FC (LCO s. 20T)

Banks within the meaning of the Banking Ordinance (Cap 155)
Restricted licence banks within the meaning of the Banking Ordinance (Cap 155)
Deposit-taking companies within the meaning of the Banking Ordinance (Cap 155)

Sports, Performing Arts, Culture and Publication FC (LCO s. 20V)*

Statutory bodies and registered bodies (other than registered schools and bodies formed by such schools) that are members of the sports associations affiliated to the Sports Federation & Olympic Committee of Hong Kong, China
Sports associations affiliated to the Sports Federation & Olympic Committee of Hong Kong, China with no statutory bodies or registered bodies as members
Bodies listed in a Gazette notice currently in force made under section 3(5) of the Hong Kong Arts Development Council Ordinance (Cap 472)
Statutory bodies and registered bodies, the primary goal of which is the promotion of arts, and to which grants, sponsorship or performance fees have been approved by the Hong Kong Arts Development Council, the Urban Council, the Regional Council, the Provisional Urban Council, the Provisional Regional Council, the Leisure and Cultural Services Department or the Home Affairs Bureau during the relevant period (6 years preceding application)
Corporate proprietors, the principal business of which is publication, registered under the Registration of Local Newspapers Ordinance (Cap 268)
Corporate proprietors of newspaper distributors licensed under the Newspapers Registration and Distribution Regulations (Cap 268 sub. leg. B)
Bodies that are holders of certain television services licences granted under the Broadcasting Ordinance (Cap 562)
Holders of licences granted under Part IIIA of the Telecommunications Ordinance (Cap 106) (sound broadcasting licences)
Central & Western District Recreation & Sports Association
Eastern District Recreation & Sports Advancement Association Ltd.
The Federation of Tsuen Wan District Sports & Recreation Association Ltd.
Islands District Sports Association
Kowloon City District Recreation & Sports Council
Kwai Tsing District Sports Association
Kwun Tong Sports Promotion Association Ltd.
Mong Kok District Cultural, Recreational and Sports Association Limited
North District Sports Association
Sai Kung District Sports Association Ltd.
Sha Tin Sports Association Ltd.
Sham Shui Po Sports Association

Southern District Recreation & Sports Council
 Tai Po Sports Association Ltd.
 Tuen Mun Sports Association Limited
 Wanchai District Arts Cultural Recreation & Sports Association Ltd.
 Wong Tai Sin District Recreation & Sports Council
 Yaumatei and Tsimshatsui Recreation & Sports Association Ltd.
 Yuen Long District Sports Association Ltd.
 Central and Western District Association for Culture and Arts
 Eastern District Arts Council
 Kowloon City District Arts and Culture Council
 Kwai Chung and Tsing Yi District Culture and Arts Co-ordinating Association Limited
 Kwun Tong District Culture and Recreation Promotion Association
 North District Arts Advancement Association Limited
 Sai Kung Culture & Recreational Advancement Association
 Sha Tin Arts Association Limited
 Shamshuipo Arts Association
 Southern District Arts and Culture Association Limited
 Tai Po District Arts Advancement Association
 Tsuen Wan Culture & Recreation Co-ordinating Association Limited
 Tuen Mun Arts Promotion Association
 Wong Tai Sin District Arts Council
 Yau Ma Tei and Tsim Sha Tsui Culture and Arts Association Limited
 Yuen Long District Arts Committee
 All Stars Sports Association Ltd.
 The Amateur Lyric Writers' Association of Hong Kong
 Artiste Training Alumni Association Limited
 Composers and Authors Society of Hong Kong Limited
 Friends of the Art Museum, The Chinese University of Hong Kong Limited
 The Friends of the Hong Kong Museum of Art
 HK Film Directors' Guild Ltd.
 Hong Kong Anthropological Society
 Hong Kong Archaeological Society
 The Hong Kong Children's Choir
 Hong Kong Chinese Orchestra
 Hong Kong Chinese Press Association
 Hong Kong & Macau Cinema and Theatrical Enterprise Association Limited
 Hong Kong Cinematography and Television Lighting Association Limited
 Hong Kong Curators Association
 Hong Kong Dance Company Limited
 Hong Kong Federation of Journalists Ltd.
 Hong Kong Festival Fringe Ltd.
 Hong Kong Film Academy
 Hong Kong Film Arts Association Limited
 Hong Kong History Society
 Hong Kong Intellectual Property Society
 Hong Kong Journalists Association
 The Hong Kong Mass Media Professionals Association Ltd.
 Hong Kong Museum of Medical Sciences Society

Hong Kong News Executives' Association, Limited
Hong Kong PEN (English) Centre
Hong Kong Performing Artistes Guild Ltd.
Hong Kong Philharmonic Orchestra
Hong Kong Press Photographers Association
Hong Kong Recreation Management Association Limited
Hong Kong Repertory Theatre Limited
Hong Kong Screen Writers' Guild Ltd.
Hong Kong Sports Association of the Deaf
Hong Kong Sports Press Association Ltd.
Hong Kong Stuntman Association Ltd.
Hong Kong Tai Chi Association
Hong Kong United Arts Entertainment Co. Ltd.
Min Chiu Society
New Territories Regional Sports Association
The Newspaper Society of Hong Kong
Pop-Music Authors Society of Hong Kong
Royal Asiatic Society Hong Kong Branch
Sail Training Association of Hong Kong Limited
Society of Cinematographers (Hong Kong) Limited
Society of Film Editors (HK) Ltd.
South China Film Industry Workers Union
South China Research Circle
Swimming Teacher's Association Hong Kong
Videotage
Zuni Icosahedron
Federation of Hong Kong Film Workers Limited
Hong Kong Movie Production Executives Association Limited

Import and Export FC (LCO s. 20W)*

Companies licensed under the Dutiable Commodities Ordinance (Cap 109) for the import or/and export of dutiable commodities

Companies registered under the Motor Vehicles (First Registration Tax) Ordinance (Cap 330) for the import of motor vehicles for use in Hong Kong

Companies licensed under the Control of Chemicals Ordinance (Cap 145) for the import or/and export of controlled chemicals

Companies licensed under the Import and Export Ordinance (Cap 60) for the import or/and export of outboard engines and left hand drive vehicles and for the export of prescribed articles

Textiles and Garment FC (LCO s. 20X)*

Textiles & Clothing manufacturers registered under the Factory Registration of the Trade and Industry Department for the purpose of applying for the certificate of Hong Kong origin

Textiles traders who are registered by the Director-General of Trade and Industry as Textiles Traders pursuant to regulation 5A of the Import and Export (General) Regulations (Cap 60 sub. leg. A) and have been so registered for a period of 12

months immediately before making the application for registration as an elector and are carrying on the business of importing textiles from any country or place; or exporting certain textiles.

Information Technology FC (LCO s. 20Z)*

Bodies that are holders of one or more of seven classes of licences granted by the Telecommunications Authority under the Telecommunications Ordinance (Cap 106)

APT Satellite Co. Ltd.

Asia Satellite Telecommunications Company Limited

Catering FC (LCO s. 20ZA)*

Holders of food business licences under the Public Health and Municipal Services Ordinance (Cap 132)**

The Association for the Hong Kong Catering Services Management Limited

The Association of Restaurant Managers Limited

Federation of Hong Kong Restaurant Owners Limited

The Hong Kong Restaurant and Eating House Merchants General Association

Hong Kong Catering Industry Association Limited

Source: Legislative Council Ordinance (Cap 542)

Notes:

*These FCs apply additional methods of determining their electorate. See Appendix 4.

**Individuals licenced here are treated as registered professionals. See Appendix 4.

Appendix 12

List of Recognized Professionals in the Legislative Council Ordinance (Cap 542) 2004

Education FC (LCO s. 20E)

Full-time academic staff engaged in teaching or research and administrative staff of equivalent rank in the following institutions-

-institutions of higher education funded through the University Grants Committee
-approved post secondary colleges registered under the Post Secondary Colleges Ordinance (Cap 320)

-technical colleges established under the Vocational Training Council Ordinance (Cap 1130)

-The Hong Kong Academy for Performing Arts

-The Open University of Hong Kong

-School of Continuing and Professional Education of the City University of Hong Kong

-School of Continuing Education of the Hong Kong Baptist University

-Lingnan Institute of Further Education of the Lingnan University

-School of Continuing Studies of The Chinese University of Hong Kong

-Division of Continuing Professional Education of The Hong Kong Institute of Education

-School of Professional Education and Executive Development of The Hong Kong Polytechnic University

-HKUST College of Lifelong Learning Limited

-HKU School of Professional and Continuing Education

Members of each of the following bodies-

-Council of the University of Hong Kong

-Council of The Chinese University of Hong Kong

-Council of The Hong Kong University of Science and Technology

-Council of the City University of Hong Kong

-Council of The Hong Kong Polytechnic University

-Council of The Hong Kong Academy for Performing Arts

-Council of The Open University of Hong Kong

-Council of the Vocational Training Council

-Council of The Hong Kong Institute of Education

-Council of the Hong Kong Baptist University

-Council of Lingnan University

-Board of Governors of the Hong Kong Shue Yan College

-Board of Governors of the Caritas Francis Hsu College

Registered teachers registered under the Education Ordinance (Cap 279)

Permitted teachers engaged in full-time employment in schools registered or provisionally registered under the Education Ordinance (Cap 279)

Teachers and principals of schools entirely maintained and controlled by the Government

Persons whose principal or only employment is that of full-time teaching with the following institutions-

-technical institutes, industrial training centres or skills centres established under

the Vocational Training Council Ordinance (Cap 1130)
-industrial training centres established under the Industrial Training (Construction Industry) Ordinance (Cap 317)
-industrial training centres established under the Industrial Training (Clothing Industry) Ordinance (Cap 318)
-Hong Chi Association-Hong Chi Pinehill Advanced Training Centre
-Caritas Lok Mo Skills Centre of Caritas-Hong Kong incorporated under the Caritas-Hong Kong Incorporation Ordinance (Cap 1092)
Registered managers of schools registered under the Education Ordinance (Cap 279).

Legal FC (LCO s. 20F)

Members of The Law Society of Hong Kong entitled to vote at general meetings of the Society

Members of the Hong Kong Bar Association entitled to vote at general meetings of the Association

Legal officers within the meaning of the Legal Officers Ordinance (Cap 87)

Persons appointed under section 3 of the Legal Aid Ordinance (Cap 91)

Persons deemed to be legal officers for the purpose of the Legal Officers Ordinance (Cap 87) by section 75(3) of the Bankruptcy Ordinance (Cap 6) or section 3(3) of the Director of Intellectual Property (Establishment) Ordinance (Cap 412)

The Legal Adviser of the Legislative Council Secretariat and his or her assistants who are in the full-time employment of The Legislative Council Commission and are barristers or solicitors as defined in the Legal Practitioners Ordinance (Cap 159)

Accountancy FC (LCO s. 20G)

Professional accountants registered under the Professional Accountants Ordinance (Cap 50)

Medical FC (LCO s. 20H)

Medical practitioners registered or deemed to be registered under the Medical Registration Ordinance (Cap 161)

Dentists registered, deemed to be registered or exempt from registration under the Dentists Registration Ordinance (Cap 156)

Health Services FC (LCO s. 20I)

Chiropractors registered under the Chiropractors Registration Ordinance (Cap 428)

Nurses registered or enrolled or deemed to be registered or enrolled under the Nurses Registration Ordinance (Cap 164)

Midwives registered or deemed to be registered under the Midwives Registration Ordinance (Cap 162)

Pharmacists registered under the Pharmacy and Poisons Ordinance (Cap 138)

Medical laboratory technologists registered under the Medical Laboratory Technologists (Registration and Disciplinary Procedure) Regulations (Cap 359 sub. leg. A)

Radiographers registered under the Radiographers (Registration and Disciplinary Procedure) Regulation (Cap 359 sub. leg. H)

Physiotherapists registered under the Physiotherapists (Registration and Disciplinary Procedure) Regulation (Cap 359 sub. leg. J)

Occupational therapists registered under the Occupational Therapists (Registration and Disciplinary Procedure) Regulations (Cap 359 sub. leg. B)

Optometrists registered under the Optometrists (Registration and Disciplinary Procedure) Regulation (Cap 359 sub. leg. F)

Dental hygienists enrolled under the Ancillary Dental Workers (Dental Hygienists) Regulations (Cap 156 sub. leg. B)

Audiologists, audiology technicians, chiropodists (also known as "podiatrists"), dental surgery assistants, dental technicians, dental technologists, dental therapists, dietitians, dispensers, mould laboratory technicians, orthoptists, clinical psychologists, educational psychologists, prosthetists, speech therapists and scientific officers (medical) who are in the service under the Government, or are employed in Hong Kong, at the following institutions-

- public hospitals within the meaning of the Hospital Authority Ordinance (Cap 113);

- hospitals registered under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap 165);

- clinics maintained or controlled by the Government or The Chinese University of Hong Kong or by the University of Hong Kong;

- services subvented by the Government.

Engineering FC (LCO s. 20J)*

Professional engineers registered under the Engineers Registration Ordinance (Cap 409)

Architectural, Surveying and Planning FC (LCO s. 20K)*

Architects registered under the Architects Registration Ordinance (Cap 408)

Landscape architects registered under the Landscape Architects Registration Ordinance (Cap 516)

Professional surveyors registered under the Surveyors Registration Ordinance (Cap 417)

Professional planners registered under the Planners Registration Ordinance (Cap 418)

Social Welfare FC (LCO s. 20M)

Social workers registered under the Social Workers Registration Ordinance (Cap 505).

Financial Services FC (LCO s. 20U)*

Exchange participants of a recognized exchange company, as these terms are defined in the Securities and Futures Ordinance (Cap 571), unless there has been a proper opting-out

Catering FC (LCO s. 20ZA)*

Holders of food business licences under the Public Health and Municipal Services Ordinance (Cap 132)**

Source: Legislative Council Ordinance (Cap 542)

Notes:

*These FCs apply additional methods of determining their electorate. See Appendix 4.

**Bodies licenced here are treated as representative organizations. See Appendix 4.

Appendix 13

Hutchison Whampoa Limited and its Controlled and Associated Entities as Potential Electors in the 2004 FCs*

Transport FC

COSCO-HIT Terminals (Hong Kong) Limited (43% jointly controlled)
Hongkong International Terminals Limited (87% owned subsidiary)
Mid-stream Holdings (HK) Ltd. (wholly owned subsidiary)+
River Trade Terminal Co. Ltd. (43% jointly controlled)+
The Hongkong Salvage & Towage Company Limited (50% jointly controlled)
Hongkong United Dockyards Limited (50% jointly controlled)

Information Technology FC

Hutchison Global Communications Limited (wholly owned subsidiary)
Hutchison Telephone Company Ltd. (71% owned subsidiary)
Hutchison 3G Services (HK) Limited (71% owned subsidiary)
Hutchison 3G HK Limited (71% owned subsidiary)
Hutchison Telecommunications (Hong Kong) Ltd. (100% owned subsidiary)

Sports, Performing Arts, Culture and Publication FC

Metro Broadcast Corporation Limited (50% associated company)

Commercial (First) FC

Hutchison Telecommunications Ltd. (wholly owned subsidiary)
Hutchison Whampoa Ltd. (parent company)
Hutchison Estate Agents Ltd. (wholly owned subsidiary)
Hutchison Hotel Hong Kong Ltd. (wholly owned subsidiary)
Hutchison Port Holdings Ltd. (wholly owned subsidiary)+
Hutchison Properties Ltd. (wholly owned subsidiary)
Hutchison Whampoa (China) Ltd. (wholly owned subsidiary)
Hutchison Whampoa Properties (Management & Agency) Ltd. (wholly owned subsidiary)
Hutchison Whampoa Properties Ltd. (wholly owned subsidiary)
TOM Group Limited (25% owned associated company)+
Elbe Office Investments Ltd. (wholly owned subsidiary)
Hongville Ltd. (wholly owned subsidiary)
Marketon Investment Ltd. (50% jointly controlled)
Turbo Top Ltd. (wholly owned subsidiary)
A.S. Watson & Company, Ltd. (wholly owned subsidiary)
A.S. Watson (HK) Ltd. (wholly owned subsidiary)+
Watson's The Chemist Ltd (wholly owned subsidiary)
Fortress Ltd. (wholly owned subsidiary)
Nuance-Watson (HK) Ltd. (50% jointly controlled)

Anderson Asia (Holdings) Ltd. (85% owned subsidiary)
Cheung Kong Infrastructure Holdings Ltd. (85% owned subsidiary)+
Hongkong Electric Holdings Ltd. (33% owned associated company)
Cavendish International Holdings Ltd. (wholly owned subsidiary)
Hongkong & Whampoa Dock Co Ltd. (wholly owned subsidiary)

Total Number of Companies: 36

Sources: Hutchison Whampoa Limited 2003 Annual Report; Legislative Council Ordinance (Cap 542), Sch. 1A; Hong Kong Telecommunications Authority website (http://www.ofta.gov.hk/frame-set/documents_index_eng.html); Hong Kong Wireless Technology Industry Association Limited website (<http://www.hkwtia.org/wtia/index.htm>); Hong Kong General Chamber of Commerce website (<http://www.chamber.org.hk/hkdir/>).

Notes:

*There may be more entities than the ones listed entitled to vote in the FC system. The companies listed here and potential electors for the indicated FC; it is unknown if they have in fact registered to vote in that FC. Some of these companies may also be eligible to register in other FCs but this is not indicated.

+These companies were incorporated outside of Hong Kong.