



SUMMARY OF RECOMMENDATIONS

1. Expand the Election Committee for the Chief Executive to 6,400 members (1.1.2)
2. Proposals to amend the Election Committee Sectors (1.2.2, 1.2.3, 1.2.5, 1.2.6, 1.2.7, & 1.2.8)
3. Proposals made for minimum and maximum nomination levels for candidates for election to the position of Chief Executive (1.3.1)
4. Proposals made for qualifications as voter for election of members of the Election Committee (1.4.2, 1.4.3, 1.4.4, 1.4.5 & 1.4.6)
5. Review of constituent membership of First, Second & Third Sectors of Election Committee recommended (1.4.7)
6. Compulsory Voting and Postal Voting for the election of Chief Executive proposed (1.5.1)
7. Alternative of a minimum number of votes cast in order for the election of Chief Executive to be valid proposed (1.5.2)
8. Minimum number of valid votes required for winning candidate to be elected as Chief Executive proposed (1.5.3)
9. An increase in the number of Legislative Council Seats proposed (2.1.3)
10. Re-evaluation of the composition of Functional Constituency sectors proposed (2.2.1, 2.2.2 & 2.2.3)
11. A separate study and subsequent public consultation exercise on the Functional Constituencies proposed (2.2.6)
12. Brief details of the Hong Kong Democratic Foundation's proposals for a new Functional Constituency structure (2.2.7 & Appendix I)
13. Elimination of "corporate voting" in the Functional Constituencies proposed (2.3.1)
14. Retention of the present arrangements for provision for Legislative Council members not of Chinese nationality supported 2.4.1)
15. Review of voting system for Geographical Constituencies proposed (2.5.2)
16. Postal Voting for Legislative Council elections proposed (2.6.1)
17. Study and subsequent public consultation on how to better formalize the role of political parties recommended (2.7.2)



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

The Hong Kong Democratic Foundation (HKDF) is pleased to forward its views on the Methods of Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008.

Before setting out our views on these two issues, the HKDF would like to express its disappointment over the Decision by the Standing Committee of the National People's Congress (NPCSC) in respect of the methods for selecting the Chief Executive in 2007 and for forming the Legislative Council in 2008. While not disputing the authority of the NPCSC to rule on these issues, we would like to point out that "Better Government for Hong Kong" is the single most important common goal shared by the Central Government and the people of Hong Kong. The HKDF believes the NPCSC's decision was made without a comprehensive understanding that a strong democratic foundation is needed for building this important common goal.

1. The Method of Selecting the Chief Executive in 2007

Since Hong Kong will be subject to the constraints of the Decision of the NPCSC on the issue, the HKDF's proposals will keep within these boundaries.

1.1 The Number of Members of the Election Committee

1.1.1 The HKDF believes it important to expand the size of the Election Committee (EC) for the 2007 Selection of the Chief Executive.

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

First Sector:	Industrial, commercial and financial sectors	2,000
Second Sector:	The professions	1,000
Third Sector:	Labour, social services, religious and other sectors	3,000
Fourth Sector	Members of the Legislative Council, representatives of district-based organizations,	

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

1.2 Composition of the Four Sectors of the Election Committee

- 1.2.1 The HKDF proposes some fine-tuning of the Election Committee sectors.
- 1.2.2 With regard to the First Sector (Industrial Commercial & Financial Sectors), our proposal is that these are consolidated into just three groups, Commercial, Industrial/Production and Financial Services, with the existing constituents being allocated to whichever of these three groups is most relevant to their occupation.
- 1.2.3 We also propose that the Agriculture and Fisheries sector and the Publication segment of the Sports, Performing Arts, Culture and Publication sector, both of the Third Sector be transferred into the First Sector under the Industrial/Production group, as we believe this is a more appropriate grouping for them than being part of the Third Sector.
- 1.2.4 As a result of this consolidation we propose the 2000 seats on the Election Committee for the First Sector be allocated as follows:

Commercial	1,000
Industrial/Production	500
Financial Services	500

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

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

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

Accountancy	100
Architectural, Surveying and Planning	30
Chinese Medicine	20
Education	440
Engineering	40
Health Services	220
Higher Education	30
Information Technology	30
Legal	30
Medical	<u>60</u>
Total	1,000

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

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

Labour	1,650
Religious	450
Social Welfare	450
Sports, Performing Arts & Culture	450

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

Catholic Diocese of Hong Kong	80
Chinese Muslim Cultural Fraternal Association	60
Hong Kong Christian Council	80
The Hong Kong Taoist Association	70
The Confucian Academy	80
The Hong Kong Buddhist Association	80

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

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

1.3 The Number of Members of the Election Committee Required for Nominating Candidates for the Office of Chief Executive

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

1.4 **The Delineation and Size of the Electorate of the Election Committee**

1.4.1 The HKDF is strongly in favour of the abolition of corporate voting and therefore proposes that the directors or office bearers, as appropriate, of corporate members and organizational members should be enfranchised. This would also have the benefit of widening the electorate for membership of the Election Committee.

1.4.2 With regard to Corporate members of a Sector, all directors of the company duly registered with the Companies Registry at a certain date before the compilation of the electoral roll for the Election Committee should be entitled to be voters in the election of members of the Election Committee.

1.4.3 Similarly, for Organizations (including partnerships and societies that are members of a Sector, all registered office bearers holding office at a certain date

before the compilation of the electoral roll for the Election Committee should be entitled to be voters in the election of members of the Election Committee.

1.4.4 As far as the Religious Sector is concerned, the Third Report of the Constitutional Development Task Force provides no details on the voter composition for this sub-section. The HKDF recommends that the voters in the Religious Sector comprise all members of the constituent bodies who are employed in the capacity of priest, clergy, monks, nuns and equivalent positions, depending on the particular constituent body.

1.4.5 In respect of the Fourth Sector, the HKDF recommends the EC electorate be as follows:

Hong Kong Deputies to the National People's Congress	36
Hong Kong Members of the National Committee of the CPPCC	122
Members of the Legislative Council	60
Heung Yee Kuk	417
Hong Kong & Kowloon District Councils	245
New Territories District Councils	259

1.4.6 The Heung Yee Kuk electorate would consist of the Executive Committee members, including the Chairmen and Vice Chairmen of the 27 Rural Committees. The electorate of the Hong Kong & Kowloon District Councils and the New Territories District Councils comprises all elected, appointed and ex-officio members.

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

1.5 Minimum Votes Required to be Secured by the Successful Candidate in order to be Considered as having been Validly Elected

1.5.1 The HKDF proposes that compulsory voting be introduced for the election of the Chief Executive. To facilitate this, provision would need to be made for Postal Voting (PV). Furthermore, in view of the greatly increased size of the electorate it would be necessary to set up a number of polling stations throughout the SAR to enable convenient access to voting for the electors.

1.5.2 Should this proposal not be adopted, the HKDF recommends that the election of the Chief Executive can only be considered to be valid provided a minimum of number of the members of the Election Committee have cast valid votes and it is our proposal that this be set at 75% of the electorate.

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

2. The Method of Forming the Legislative Council in 2008

2.1 The Number of Seats in the Legislative Council

- 2.1.1 The HKDF believes there is a need to increase the number of seats in the Legislative Council (LC) in order for its work to be carried out efficiently and to encourage the development of a pool of experienced legislators.
- 2.1.2 One of the justifications for an increase in LC seats is that a number of legislators, principally from the Functional Constituency sector (FC), do not participate to a sufficient extent in the routine work of the LC, thus putting an extra burden on other legislators.
- 2.1.3 It is the HKDF's view that the size of the LC be increased on an incremental basis as follows:

80 seats in 2008 {10 additional seats in the Geographical Constituencies (GCs) and 10 additional seats in the FCs}
100 seats in 2012 (all 20 additional seats to be for the GCs)

- 2.1.4 If experience demonstrated a need, the number of seats could be increased to 120 in 2016 or a later date, with all 20 additional seats to be for the GCs.

2.2 The Delineation and Size of the Electorate of Functional Constituencies

- 2.2.1 Extensive examination of the FC system has shown it has a host of anomalies and since these constituencies will continue on for the 2008 LC elections, the HKDF is of the strong opinion that the Government carry out a thorough review of the FC system with the objective of bringing a more coherent rationale to the whole system.
- 2.2.2 The current FCs should be evaluated to see if they comply with the following basic criteria:
- (1) FCs should be substantial and of importance in the community
 - (2) Constituencies should not be based on ideology, dogma or religion

- (3) Particular groups or bodies should not be represented in more than one FC
- 2.2.3 Additionally, any review should address the issue of disproportionate representation, which results in each FC having one seat in the LC, irrespective of its size relative to other FCs, with the exception of the Labour FC, which returns 3 seats. The review should examine the feasibility of allocating more seats to the larger FCs, to more realistically reflect their relative size. The precedent is already there with the Labour FC. On the assumption that the number of GC and FC seats in the LC will be increased, this could be an appropriate way of allocating the extra FC seats. Also, where it would be rational, there may be a case for combining some of the smaller FCs into a single FC, such as Finance with Financial Services and Real Estate and Construction with Architectural, Surveying and planning.
- 2.2.4 The HKDF is also concerned that no elections take place in a number of FCs and that in respect of the 2004 LC election, 11 FC members will be returned unopposed. Such a situation makes a mockery of the democratic process and to have one third of the FC seats returned in this way underlines fundamental flaws in the current FC system.
- 2.2.5 There appears to be an increasing tendency over the years for FCs to develop into sectoral lobby groups rather than to work for Hong Kong as a whole, as legislators pledge in their oath of allegiance. It is distressing, for instance, that the platforms of all the candidates in Financial Services sector in the 2004 L C election are strongly partisan and contrary to the interests of the investing public as a whole, thus detrimental to Hong Kong's presumed desire to be a responsible financial centre.
- 2.2.6 The HKDF would propose that a separate consultation paper be issued by the Constitutional Development Task Force in the course of 2005 on the issue of the reform of the FC system.
- 2.2.7 The HKDF believes many of these issues could be effectively addressed by folding the existing FCs, with the exception of the Education, Labour, Heung Yee Kuk and District Council FCs into seven composite, multi-seat constituencies as set out in the attached Appendix. The Labour and Education FCs would be retained as separate FCs, with the Labour FC expanded to 7 seats and the Education FC expanded to 3 seats. The Heung Yee Kuk and District Council FCs would be disbanded, as these are political in nature and contradictory to the occupational concept on which the FCs are generally based.

2.3 Corporate Voting in the Functional Constituencies

- 2.3.1 The HKDF most strongly supports the abolition of "Corporate Voting" in the FCs and proposes that for all FCs which now have corporate or organizational

electors, the entitlement to vote on behalf of the member be transferred to its directors, partners or office-bearers as individuals. It is our recommendation that in respect of an FC corporate member all directors of the company duly registered with the Companies Registry, or all partners registered at the Business Registration Office, or all office-bearers registered under the Societies Ordinance at a certain date before the compilation of the electoral roll for the FCs should be entitled to be FC voters. In the case of the Labour FC, the electorate should be all registered members of the constituent Trade Unions.

2.4 Provisions Regarding Nationality of Legislative Council Members

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

2.5 The Voting System for the Geographical Constituencies

2.5.1 The HKDF has always been a supporter of proportional representation for the GCs. However, we consider the "list" system that is currently in use, while a valid form of proportional representation, has inadequacies. The HKDF's preference is for the Single Transferable Vote (STV) system, where the voter ranks all the candidates in a constituency in order of preference, as we believe the STV voting system is better because it maximizes the voter's choice while preserving the optimum balance between parties, accountability and proportionality.

2.5.2 Irrespective of our preference, we are of the view that since different voting systems will deliver different outcomes for candidates in the same constituency and would therefore have a material impact on the composition of the legislature and its representativeness. We are also aware of the call for the emergence of two or three stronger political parties that are more likely to succeed in affecting government policies. Therefore, the question of the voting system merits further examination and public debate. Apart from the various systems of proportional representation, consideration should also be given to the smaller size, single seat, constituency with First Past the Post (FPTP) outcome as well as double seat constituency with FPTP outcome. We therefore propose that further public consultation takes place on this before any final decision on the voting system for the GCs for the 2008 LC elections is made. However, we believe that it would be desirable to change from the "list" system, though possibly this might be left until

the LC has been further enlarged and any change should be regarded as a “long term” change, hence the prudence in more detailed examination of this issue.

2.6 Postal Voting Method

- 2.6.1 The disenfranchisement of electors who might be traveling, disabled or too weak to travel through the absence of a PV facility needs to be rectified and the HKDF strongly urges PV be introduced for the 2008 LC elections, in addition to our earlier proposal for this to be introduced for the 2007 Chief Executive election.

2.7 Political Party Legitimization

- 2.7.1 At the present time there is no such thing as a Political Party (PP) as a specific legal entity. PPs are either registered as “companies” or as “societies”.
- 2.7.2 The HKDF believes this situation sends out a message that the Government is ambivalent over the role of PPs and discourages the public at large from joining PPs due to confusion over their legitimacy.
- 2.7.3 Therefore the HKDF strongly urges that the role of PPs be properly formalized within our constitutional system. We propose that the Government carries out an evaluation as to how best to achieve this, either through specific PP legislation or through the mechanism of the Electoral Affairs Ordinance. We would hope such legislation or mechanism could be in place by the end of 2006, so that the campaign for the 2008 LC elections and the elections themselves can be conducted with the participation of PPs operating as such within an appropriate framework.