



15 February 2005

Members of the Panel on Constitutional Affairs  
Constitutional Panel  
Hong Kong Legislative Council  
Jackson Road  
Hong Kong

Dear Members,

**Re: Submission on Methods for Selecting the Chief Executive in 2007 and for forming the  
Legislative Council in 2008**

Thank you for the invitation to present views on the methods for selecting the Chief Executive (CE) in 2007 (including the composition and operation of the Election Committee) and for forming the Legislative Council (LegCo) in 2008.

We would like to submit the following views:

**a) On the Method for Selecting the Chief Executive in 2007**

The constitutional mission of the Basic Law is clear that the “ultimate aim” is to achieve universal suffrage, there has to be determined movement towards that direction on each and every available occasion. Despite the SCNPC decided that 2007 would not be the right time, it may be argued that the acknowledgement did imply that there should be an attempt made for the Hong Kong to achieve universal suffrage the next time, that is in 2011. Therefore, adjustments made in 2007 must have the effect of moving the election system towards universal and equal suffrage.

With this principle in mind, we suggest that the Election Committee be made as large as possible and in any event not less than 5,000 people and this Committee will be changed into a Nominating Committee. Furthermore, we believe the voter base should be much larger as it should be a significant step towards achieving universal suffrage.

For the Nominating Committee members, apart from the ex-officio members, such as members of the LegCo, Hong Kong deputies to the NPC and Hong Kong deputies to the CPPCC, the other members can be chosen at random based on each of the District Council constituencies. On this basis, people from all sectors of society will be included and this method can accommodate the selection of 5,000 people. For the voter base, the same random selection process can be used to select 500,000 relatively easily.

With regard to the number of people needed to nominate candidates standing for CE, the principle should be to keep it relatively small to encourage competition. According to the suggestion we made above, a candidate needs 250 Nominating Committee members and 2,500 registered voters in order to qualify to stand.

**b) On the Method for Forming the Legislative Council in 2008**

We believe the argument we made in relation to the CE election in 2007 also applies here because the Basic Law also provides that the “ultimate aim” is for all LegCo members to be directly elected. Thus, whatever steps are taken for the 2008 election, they must be aimed at achieving universal and equal suffrage by 2012.

To move towards universal and equal suffrage, increasing the number of legislators is not essential. The real issue involved is the representativeness of the elected legislators from functional constituencies. The size and the composition of the functional constituencies are problematic. Some of the functional constituencies have fewer than 200 voters. Some of the electors are not even humans but corporate bodies.

We believe 2008 presents an opportunity for Hong Kong to revamp functional constituencies significantly towards the direction of universal and equal suffrage. The guiding principles for reform should be to:

- (a) Do away with corporate voters altogether as this system provides little transparency and votes for legislators should never have been given to non-humans;
- (b) Ensure all functional constituencies have no less than a sizable number of human voters to encourage competition [5,000 in our view may be regarded as a sizable number]; and
- (c) Ensure the determination of who qualifies as a voter should not be handed over to some corporate bodies as it is today in situations where corporations are allowed to vote, or in mixed constituencies where corporations and some individuals are entitled to vote.

Indeed, Civic Exchange sees the functional constituency election system as a major issue Hong Kong needs to resolve in order to move towards universal suffrage. We have already highlighted this matter in our last submission to you and the relevant reports published so far by us have already been sent to Members. We enclose here a copy of another research report, entitled *The Dynamic of Social Policy-making in Hong Kong: The Role of Functional Representatives (1998-2004)*. This report looks at the role of functional constituency members through examining their performance records. Civic Exchange is currently conducting other research into the functional constituencies and we will be sending you our reports as and when they are completed.

Thank you.

Yours sincerely,



Christine Loh  
Chief Executive Officer

Encl.

# **Functional Constituency Research Project 2004**

A research project commissioned by Civic Exchange

## **The Dynamics of Social Policy-making in Hong Kong: The Role of Functional Representatives 1998-2004**

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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 Rowena YF Kwok from University of Hong Kong and Chow Chiu-tak from University College London, is part of a 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. We are also grateful to the National Endowment for Democracy, USA, for funding the research and publication costs of this paper.

Christine Loh  
Chief Executive Officer  
Civic Exchange  
January 2005

### Overview

In October 2004, Civic Exchange commissioned the authors to conduct a study of the roles of functional constituency representatives (FRs) in social policy-making in Hong Kong between 1998 and 2004. This is a report on the findings of the study.

As a two-pronged approach has been adopted to understand and capture the dynamics in social policy-making, this report is organized accordingly. Part I reports on the quantitative study which assesses the degree of participation (taken to be proxy for degree of interest and concern) of functional representatives in social policy deliberations and decision-making. Part II reports on the qualitative study, consisting of two case studies to gauge major considerations that might have informed the positions of functional representatives on specific social policy issues. The two case studies are in labour protection and education policy-making respectively.

On the basis of the quantitative and the qualitative studies, it appears that several major findings can be identified. Firstly, overall speaking, functional representatives were not as interested or diligent as the geographical/Election Committee members in social policy deliberations. From the various indicators used to ascertain interest and participation, the ratio of FRs to the other 30 legislators is on average 1 to 2, that is, for the engagement of two geographical/Election Committee representatives, there was corresponding engagement of only one FR. Secondly, this observation has to be qualified for the sectoral FRs who, on the whole were very active in posing sectorally-relevant questions, moving corresponding motions as well as joining pertinent panels and bills committees. Such activism, on the face of it, appears to be closely linked to the element of "role fixing" such that while sectoral FRs would be immersed in sectorally-relevant activities, their concern for non-sectorally-relevant issues was at best lukewarm. Thirdly, when no sectoral relevance or interests were perceived, the FRs, in particular those without obvious political affiliations, sometimes seemed to suffer from "role confusion". This is illustrated explicitly in the case of one FR as well as in the silence of many other FRs in the case studies, and in the lower engagement statistics in the quantitative study, thus casting doubt on how much sectoral expertise was contributed to policy-making. Fourthly, in general, the FRs were supportive of the government especially in formal policy-making when the vote was taken.

Rowena Kwok  
Chow Chiu Tak  
December 2004

\* The authors would like to thank Mr. Alfred Choy of the Catholic Monitors on Legislative Councillors for his advice and assistance in the preparation of this report.

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## **Introduction**

### ***The Legislative Council in policy-making***

According to the Basic Law, Hong Kong's constitution, the Legislative Council (LegCo) is the legislature of the Hong Kong Special Administrative Region.<sup>1</sup> As Hong Kong's law-making body, LegCo has among its primary functions the duties to enact, amend or repeal laws, approve budgets, debate the Chief Executive's policy addresses, raise questions on the work of the government, as well as debate any issue concerning public interests.<sup>2</sup> As far as policy-making initiatives are concerned, however, LegCo is barred from introducing bills that relate to public expenditure or political structure or the operation of the government.<sup>3</sup> Any bills that relate to government policies have to have the written consent of the Chief Executive before they can be introduced by legislators.

With the powers of policy initiatives effectively denied to them, mechanisms available to legislators to influence or monitor public policy-making on a regular basis revolve mainly around the following: (a) putting questions to government officials for clarifications or information on the work of government; (b) moving amendments to the government's draft bills and setting up bills committees for closer scrutiny of bills contents if necessary; (c) moving motions for debates on issues concerning public interests; and (d) engaging in the work of panels which correspond to major policy areas.<sup>4</sup> In terms of time costs and efforts required, the demands these activities impose on legislators probably broadly ascend in the following order: asking questions, moving amendments to debate motions, moving debate motions and amendments to bills motions, panel membership, and finally, bills committee membership especially in the case of controversial bills. Obviously, the order of arduousness can only be put in very broad terms here as a lot will depend on the substance of the issues involved; moreover, the nature of different tasks may not be directly comparable, for example, panel work is more spread-out and requires more long-term commitment whereas bills committee work is normally more time-specific but intense.

To the extent that a policy-making process is conceptualized as consisting mainly of the two stages of deliberation and decision-making,<sup>5</sup> legislators' engagement in the above activities will be indicative

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<sup>1</sup> Consultative Committee for the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, *The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (hereafter *The Basic Law*), April 1990, Article 66.

<sup>2</sup> *Ibid.*, Article 73.

<sup>3</sup> *Ibid.*, Article 74.

<sup>4</sup> There are other ways through which the legislature can and does influence government operations, for example, through the Finance Committee and resolutions/subsidiary legislation. These are not included for the current study. The government's annual budgetary proposals are presented for the scrutiny of the legislature in the form of Appropriation Bills, the Finance Committee's decisions are largely made under the umbrella of the Appropriation legislation. Resolutions, on the other hand, while having legislative effects, have not been included for this study because the wordings in the related records are very vague; in the absence of in-depth examination of the contents of each resolution which is beyond the scope of this study, it is not possible to isolate social policy resolutions from other policy resolutions.

<sup>5</sup> A popular method in the study of the policy process is to separate policy-making into its component parts and to examine each part in detail in turn, thus a policy process is usually taken to consist of the stages of problem definition and agenda setting, policy formulation, implementation, evaluation and termination, and studied accordingly. See for example, Brian W. Hogwood and Lewis A. Gunn, *Policy Analysis for the Real World*. Oxford: Oxford University Press, 1984; James Anderson, *Public Policymaking: An Introduction*. Boston, MA: Houghton Mifflin, 1994 (2<sup>nd</sup> ed.). Lindblom and Woodhouse, however, take issue with the "step-by-step approach", considering it factually misleading and conceptually artificial because the policy-making processes in real life are nowhere near the coherence and rationality implied. In their view, policy-making rather resembles a "primeval soup", involving a lot of mutual partisan adjustments and muddling through and seldom ends with satisfactory or effective solutions to policy problems. See Charles Lindblom and Edward J. Woodhouse, *The Policy-Making Process*. Englewood Cliffs, New Jersey: Prentice Hall, 1993 (3<sup>rd</sup> ed.). It is not the intention of the authors to engage in this debate except to suggest that all political processes and negotiations prior to formal voting are in essence deliberative processes, formal decision-making takes place only when the vote is taken.

of their level of concern and commitment to the deliberative processes in policy-making. In asking questions, moving bills amendments and debate motions, and participating in panel work etc., what legislators effectively do is finding out more about government work and proposing what they believe are better policy ideas or alternatives to government measures. Legislators participate in decision-making in a more determinate manner when they vote to pass or negative particular bills motions.

### *The composition of the Legislative Council*

According to the Basic Law, the Legislative Council is 60-strong and currently equally split between two kinds of membership: 30 representatives returned by geographical constituencies (GRs) through direct elections and 30 by functional constituencies (FRs).<sup>6</sup> Currently, a total of 28 government-designated sectors are entitled to functional representation. These include: (1) Accountancy; (2) Agriculture and Fisheries; (3) Architectural, Surveying and Planning; (4) Catering; (5) Commercial First (the Hong Kong General Chamber of Commerce); (6) Commercial Second (the Chinese General Chamber of Commerce); (7) District Council; (8) Education; (9) Engineering; (10) Finance; (11) Financial Services; (12) Health Services; (13) Heung Yee Kuk; (14) Import and Export; (15) Industrial First (the Federation of Hong Kong Industries); (16) Industrial Second (the Chinese Manufacturers' Association); (17) Information Technology; (18) Insurance; (19) Labour; (20) Legal; (21) Medical; (22) Sports, Performing Arts, Culture and Publication; (23) Real Estate and Construction; (24) Social Welfare; (25) Textiles and Garment; (26) Tourism; (27) Transport; and (28) Wholesale and Retail. Apart from the Labour constituency, which has three seats, each of the remaining sectors has one seat in the legislature.

While all Hong Kong permanent residents aged 18 and over qualify to vote in the geographical constituencies, not everyone working in the designated functional sectors qualifies to be an elector. In fact, there are nine constituencies whose electorates are solely corporate bodies. There is great variation in electorate sizes across functional constituencies, ranging from the smallest, the Heung Yee Kuk which represents rural interests with 149 registered voters, to Education with 77,696.<sup>7</sup> Among the constituencies with solely corporate voting, four had less than 200 registered voters while four others had less than 1,000 in the September 2004 Legislative Council elections. The combined registered electorates of all functional constituencies were 199,539, about 6% of the 3.207 million of the geographical constituencies.

For the reasons of exclusive representation and voting rights, the functional representation system has long been branded "small circle" elections and criticized for creating different classes of citizens.<sup>8</sup> In the words of one local observer, "the system of functional representation is not only a continuation but an institutionalization of elite hegemony in Hong Kong", "[u]nder such circumstances, 'Hong Kong people ruling Hong Kong' would, at best, mean 'elitist functional groups ruling the Hong Kong masses'".<sup>9</sup> Notwithstanding such observations, how functional representatives have impacted on policy-making can only be better gauged through empirical investigations of their legislative behaviour.

<sup>6</sup> *The Basic Law*, Annex II. During the first two legislatures between 1998 and 2004, however, there had been a third category of members, namely, Election Committee (EC) members, 10 in 1998-2000 and 6 in 2000-2004. Together with the geographical representatives, they composed half of the legislature during the 6 years under study. Election Committee members were elected on electorates largely similar to those of the functional constituencies plus representation for stipulated political bodies. See *The Basic Law*, Annex I. Election Committee members will be referred to as "ECR"s in this report.

<sup>7</sup> Electoral Affairs Commission, <<http://www.info.gov.hk/eac/en/legco/2004>>.

<sup>8</sup> Anson Chan (former Chief Secretary of Administration), "Hong Kong Gears Up for a World Without Walls," in Information Services Department, Hong Kong SAR Government, *Hong Kong 1999*. Hong Kong: The Printing Department, pp. 1-7.

<sup>9</sup> Joan Y.H. Leung, "Functional Representation in Hong Kong: Institutionalization and Legitimization of the Business and Professional Elites," *The Asian Journal of Public Administration* Vol. 12, No. 2, p. 171.

### *The functional representatives in social policy-making*

The focus of this study is the role of functional representatives in social policy-making. Social policies are taken to encompass the policy areas of education, health care, housing, labour and social welfare in this study.<sup>10</sup> The investigation covers the years 1998-2004, spanning the first two legislatures after the Handover. Relevant records were accessed primarily at the Legislative Council website and checked against the records of proceedings where necessary.

Ideally, a more thorough way of gauging the impact of legislators on policy-making should involve close study of each members' substantive contributions in the policy-making process, for example, the nature and numbers of questions asked, contents of motions moved, as well as distinctive views and substantive advice tendered in the deliberative processes. As far as the FRs are concerned in particular, one would be interested in examining the contribution of their sectorally-relevant expertise in policy-making because this was one of the main reasons for the institution of functional representation in the first place.<sup>11</sup> However, since such in-depth study is not possible for the scale and resources of this study, proxies are used instead. Pursuing the distinction drawn above between policy deliberation and decision-making, frequencies of FRs in putting questions to the government, moving motions in relation to bills and debates, as well as participating in relevant policy panels and bills committees will be examined. Such activities collectively will be taken as indicative of FR interest and commitment in the deliberative processes of social policy-making. To the extent that FRs were enthusiastic in these activities, it would lay the ground for more in-depth, qualitative study of the substantive nature of their policy impacts. Conversely, if FR participation in these regards turns out to be lukewarm, then there may not be much policy impact to be assessed to start with.

As well as the overall performance of FRs in the deliberative processes, special attention will be paid to the FR(s) presumed to have direct sectoral interests in a particular policy area, for example, the functional representative of Education in education policy deliberations and the functional representatives of Labour in deliberations pertaining to labour welfare and labour rights. These would be referred to as the "sectoral" FRs. Findings in connection to the deliberative processes will first be reported and analyzed in Part I of this report.

In section H of Part I, the voting patterns of FRs on social policy-making will be scrutinized for their formal impacts on policy-making as well as on agenda-setting. Here, the voting records of FRs on

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<sup>10</sup> There is no common consensus on the definition and scope of "social policy". It is however said that there exists some consensus among authorities that social policy is mainly concerned with collective interventions to promote individual welfare; social policies are often distinguished from "economic policies" to highlight their "integrative functions" and concerns with the non-economic aspects in human relations. See Alan Walker, "Social Policy, Social Administration and the Social Construction of Welfare," in Martin Loney et al., eds., *Social Policy and Social Welfare*. Milton Keynes: Open University Press, 1983, pp. 127-150. A local edited volume on social policy in Hong Kong has similarly taken the five policy areas examined in this study as constituting the major established components of social policy, see 李健正、趙維生、梁麗清、陳錦華編，*新社會政策* 香港：中文大學出版社，1999，第二部分。

<sup>11</sup> Functional representation was introduced to Hong Kong in 1985 by the former British colonial government on the basis of two major considerations. Firstly, after the Sino-British *Joint Declaration* of 1984 provided for the return of Hong Kong, then a Crown colony, to Chinese sovereignty in 1997, the colonial administration decided to develop a system "to represent authoritatively the views of the people of Hong Kong". It was considered paramount to give "full weight...to representation of the economic and professional sectors of Hong Kong society which are essential to future confidence and prosperity". Secondly, it was considered that the functional representation system would allow the government to continue to tap expert advice for policy-making from major socio-economic and occupational strata, as it had done under the appointment system, only on a more regular and formal basis. See *A Draft Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Future of Hong Kong*, 26 September 1984; *White Paper: The Further Development of Representative Government in Hong Kong*. Hong Kong: Government Printer, November 1984.

bills and debate motions will be presented. Votes on bills have legislative effects and constitute formal policy-making. Debates, on the other hand, have no legislative effects, but to the extent that debates convey legislators' concerns with issues of public interest, the legislature's stances on the debated issues should, in principle, have both symbolic and political significance. In part, such debates can be perceived as attempts at agenda-setting to draw both public and governmental attention to issues of public concern.

In part II, qualitative examination of two social policy episodes will be presented. The two case studies relate to school-based management and the use of display screen equipment respectively. Despite the earlier reference to substantive qualitative study being not feasible for the scale of this research, these case studies have been conducted to supplement the quantitative study so that the dynamics in social policy-making can be understood in better relief. Among other things, it is hoped that some glimpses can be provided into the rationales underlying the stances of individual FRs and whether and what they contributed to policy-making.

In Part III, summary findings as well as limitations of the research will be outlined.

## Part I Quantitative study: FR participation in social policy deliberations and decisions<sup>12</sup>

### A. Asking questions at Legislative Council meetings<sup>13</sup>

The legislature holds its regular, weekly meetings in public on Wednesday afternoons. At such meetings, allowance is provided for legislators to put questions to government officials. Normally, not more than 20 questions may be asked at any one meeting and legislators have to give prior notice to the Clerk of the Council on their intention to ask questions. Legislators can specify whether an oral or a written reply is requested. In the case of the former, upon a legislator asking a question, the designated public officer who is to answer it will have to respond; if necessary, the President of the Council may permit supplementary questions for the purpose of elucidating the officer's answer. In the case of a written reply, the answer has to be supplied to each legislator as well as printed in the Official Record.

There are more than 10 rules that questions have to conform with, for example, a question must not "seek information about a matter which is of its nature secret" or contain "arguments, inferences, opinions, imputations or epithets, or tendentious, ironical or offensive expressions". Notwithstanding, "Question time" at the weekly meetings does provide a regular opportunity for legislators to either seek information or clarifications on the work of government or to suggest that certain action be taken in relation to issues of concern to legislators. To the extent that legislators are enthusiastic in putting questions of a particular nature or that pertain to a particular policy area, such questions can be taken as a baseline indicator of legislators' interest and concern with the issues involved. The following is an analysis of functional representatives' records in this regard in connection with social policy issues.

|                | Questions<br>by FRs | Column<br>% | Row<br>% | Questions<br>by<br>GRs/ECRs | Column<br>% | Row<br>% | Total no.<br>of<br>questions | Column<br>% | Row<br>Total<br>% |
|----------------|---------------------|-------------|----------|-----------------------------|-------------|----------|------------------------------|-------------|-------------------|
| Education      | 136                 | 26.6%       | 42.8%    | 182                         | 27.9%       | 57.2%    | 318                          | 27.3%       | 100.0%            |
| Health Care    | 189                 | 37.0%       | 55.6%    | 151                         | 23.2%       | 44.4%    | 340                          | 29.2%       | 100.0%            |
| Housing        | 58                  | 11.4%       | 26.9%    | 158                         | 24.2%       | 73.1%    | 216                          | 18.6%       | 100.0%            |
| Labour         | 64                  | 12.5%       | 47.1%    | 72                          | 11.0%       | 52.9%    | 136                          | 11.7%       | 100.0%            |
| Social Welfare | 64                  | 12.5%       | 41.8%    | 89                          | 13.7%       | 58.2%    | 153                          | 13.2%       | 100.0%            |
| Column Total   | 511                 | 100.0%      | 43.9%    | 652                         | 100.0%      | 56.1%    | 1163                         | 100.0%      | 100.0%            |

**Table 1 (Questions): FR questions on social policy and as percentage of total corresponding questions 1998-2004**

Table 1 shows that between 1998 and 2004, there were a total of 1,163 oral and written questions on social policy. Among these, the greatest number, 340 were about health care, followed by 318 on education and 216 on housing; social welfare and labour attracted 153 and 136 questions respectively. Overall speaking, close to 44% (511) of these questions were posed by functional representatives.

Among the five policy areas, it appears that the FRs as a whole had most interest in health care, thus, 37% of all FR questions were on health care. On the other hand, housing, labour and social welfare issues received relatively less attention from the FRs, each attracting only about 12% of total FR questions. The last policy area, education, drew 26.6% of all FR questions posed.

<sup>12</sup> The focus of this study is the role of functional representatives in social policy-making, there is therefore no attempt to ascertain the degree of importance that FRs attach to social policy relative to other policies like political or economic policies; furthermore, in order for the findings on the FRs to be better understood in their context, the corresponding performance of GRs/ECRs is brought in for natural comparison where appropriate since the latter composes the other half of the legislature.

<sup>13</sup> Unless otherwise specified, the explication below on questions to the government is based on the *Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region* (hereafter *Rules of Procedure*), Part E.

Despite variations across policy areas, given that 44% of social policy questions were asked by the FRs, it would appear that on the whole, there was no great difference between the FRs and GR/EC members in the frequency of asking questions on social policy. Looking at it from another angle, however, new insights may be gained. To the extent that the functional representatives have been elected to represent specific functional constituencies, one would expect the sectoral FR(s) to be more active in posing sectorally-relevant questions. This is confirmed when related records are examined.

|                | Questions by all FRs | Questions by sectoral FRs | % of total FR questions |
|----------------|----------------------|---------------------------|-------------------------|
| Education      | 136                  | 39                        | 28.7%                   |
| Health Care    | 189                  | 87                        | 46.0%                   |
| Housing        | 58                   | 9                         | 15.5%                   |
| Labour         | 64                   | 28                        | 43.8%                   |
| Social Welfare | 64                   | 24                        | 37.5%                   |
| Total          | 511                  | 187                       | 36.6%                   |

**Table 2 (Questions): Sectoral FR questions on social policy and as percentage of total corresponding FR questions 1998-2004**

From Table 2, it can be seen that as surmised, the sectoral FRs indeed were very active in posing sectorally-relevant questions, so much so that sectoral FRs as a whole asked close to 40% of all social policy questions asked by the FRs. Take the case of health care, the FRs whose sectoral interests would appear to be directly related would be Leong Che-hung (1998-2000) and Lo Wing-lok (2000-2004) for Medical, and Ho Mun-ka (1998-2000) and Mak Kwok-fung (2000-2004) for Health Services. Between them, the four FRs asked 87 questions on health care out of a total of 189 asked by FRs, constituting 46% of the total. Similarly, the five Labour FRs during the two legislatures together posed 28 questions out of a total of 64 questions on labour issues asked by FRs, amounting to 43.8% of the total.<sup>14</sup> The Social Welfare FR alone contributed 37.5% of FR questions on welfare during the 6 years he represented the Welfare functional constituency while the corresponding contribution of the Education FR to his sector was close to 30%. For housing, there was no directly corresponding functional constituency. If one were to regard the Real Estate and Construction, and the Architectural, Surveying and Planning constituencies to be most immediately relevant with regard to housing policies, then the four FRs for these two functional constituencies over the two legislatures asked nine questions out of a total of 58 questions on housing asked by FRs, being 15.5% of the total. It is not clear however how the four FRs actually perceived the relations between their sectoral concerns and housing issues.<sup>15</sup>

It was observed earlier that overall speaking, the FRs had asked close to 44% of all social policy questions put to the government over the period of study. If, however, sectoral FRs were the main protagonists in asking sectorally-relevant questions, then the next point of interest should be to re-assess the extent to which FRs as a whole had shown interests in asking social policy questions. Table 3 below shows the actual number of questions in each social policy area asked by FRs after subtracting the numbers of questions asked by the respective sectoral FRs.

<sup>14</sup> The Labour constituency has three functional representatives, one of whom was re-elected to the second legislature, hence the number here is five rather than six.

<sup>15</sup> For this reason, in the following tables, calculations will be entered for Housing like it is done here, but the substantive discussion will not include the housing area. A speculative reading of Housing-related statistics in the tables will be made in the conclusion of this part.

|                | Questions by sectoral FRs | Questions by other FRs | Questions by GRs/ECRs | Total | Ratio of questions by other FRs to GRs/ECRs |
|----------------|---------------------------|------------------------|-----------------------|-------|---|
| Education      | 39                        | 97                     | 182                   | 318   | 1 : 1.9                                     |
| Health Care    | 87                        | 102                    | 151                   | 340   | 1 : 1.5                                     |
| Housing        | 9                         | 49                     | 158                   | 216   | 1 : 3.2                                     |
| Labour         | 28                        | 36                     | 72                    | 136   | 1 : 2.0                                     |
| Social Welfare | 24                        | 40                     | 89                    | 153   | 1 : 2.2                                     |
| Total          | 187                       | 324                    | 652                   | 1163  | 1 : 2.0                                     |

**Table 3 (Questions): FR questions on social policy minus respective sectoral FR questions and as ratio to total corresponding GR/ECR questions 1998-2004**

Since sectoral FRs had asked the bulk of questions in all the social policy areas except in housing, the actual numbers of corresponding questions asked by the other FRs as a whole declined quite significantly. Take the example of social welfare, after subtracting the 24 questions asked by the Welfare FR, the other FRs in total had in fact only asked 40 questions on welfare over the 6-year period under study. If this figure is compared to the 89 corresponding questions posed by the GRs/ECRs over the same period, the ratio of frequency is 1 to 2.2, in other words, the GRs/ECRs had asked questions on social welfare more than two times the other FRs as a whole. By the same token, after subtracting the 28 questions asked by the Labour FRs, the other FRs as a whole had in fact asked only 36 questions on labour issues. If this figure is compared to the 72 corresponding questions posed by the GRs/ECRs, the ratio is 1 to 2.0, that is, the GRs/ECRs had asked twice the number of questions on labour issues as FRs. In fact, this is the overall ratio of social policy questions posed by the FRs vis-à-vis the GRs/ECRs.

## **B. Moving debate motions and amendments<sup>16</sup>**

Debates are occasions during LegCo's weekly meetings when legislators introduce matters of concern to them for extended debate in the legislature. Usually, for every sitting of the legislature, there are two debate motions. Legislators are effectively free to raise any issue for debate and also in moving amendments to debate motions. Often, legislators move debate motions to give articulation to sentiments in society on matters of public interest, or to pressure government for action deemed necessary. Although debate motions do not have legislative effects, since legislators represent public opinion, the positions they take in relation to the subject matters debated are politically meaningful and can in some way be seen as attempts at agenda setting.

As shown in Table 4 below, during the period under study, there had been a total of 66 debate motions on social policy. Among these, labour issues attracted the most concern, involving 31 motions while housing issues attracted only 4. Overall speaking, FRs moved 45.5% (30) of all debate motions.

<sup>16</sup> For rules governing the movement of debate motions and amendments, see *Rules of Procedure*, Part G. The statistics in this section do not include the final votings on the amended debate motions because these were more of a formal procedure as all substantive amendments would have already been voted on.



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|                | Motions by FRs | Column % | Row % | Motions by GRs/ECRs | Column % | Row %  | Total no. of debate motions | Column % | Row Total % |
|----------------|----------------|----------|-------|---------------------|----------|--------|-----------------------------|----------|-------------|
| Education      | 7              | 23.3%    | 70.0% | 3                   | 8.3%     | 30.0%  | 10                          | 15.2%    | 100.0%      |
| Health Care    | 8              | 26.7%    | 88.9% | 1                   | 2.8%     | 11.1%  | 9                           | 13.6%    | 100.0%      |
| Housing        | 2              | 6.7%     | 50.0% | 2                   | 5.6%     | 50.0%  | 4                           | 6.1%     | 100.0%      |
| Labour         | 13             | 43.3%    | 41.9% | 18                  | 50.0%    | 58.1%  | 31                          | 47.0%    | 100.0%      |
| Social Welfare | 0              | 0.0%     | 0.0%  | 12                  | 33.3%    | 100.0% | 12                          | 18.2%    | 100.0%      |
| Column Total   | 30             | 100.0%   | 45.5% | 36                  | 100.0%   | 54.5   | 66                          | 100.0%   | 100.0%      |

**Table 4 (Debates): FR debate motions on social policy and as percentage of total corresponding debate motions 1998-2004**

Among the individual policy areas, it appears that the FRs were most concerned about labour issues, 43.3% (13 out of 30) of their motions being in this policy area. The next most concerned area was health care, constituting 26.7% of all FR motions, followed by 23.3% in education. Housing and social welfare received the least attention in this connection, housing drawing only 6.7% of all FR motions while social welfare drew none at all.

As in the case of posing questions, sectoral FRs were in fact responsible for the bulk of sectorally-relevant debate motions. The picture can be glimpsed from Table 5 below.

|                | Motions by all FRs | Motions by sectoral FRs | % of total FR motions |
|----------------|--------------------|-------------------------|-----------------------|
| Education      | 7                  | 5                       | 71.4%                 |
| Health Care    | 8                  | 7                       | 87.5%                 |
| Housing        | 2                  | 1                       | 50.0%                 |
| Labour         | 13                 | 7                       | 53.8%                 |
| Social Welfare | 0                  | 0                       | N.A                   |
| Total          | 30                 | 20                      | 66.9%                 |

**Table 5 (Debates): Sectoral FR debate motions on social policy and as percentage of total corresponding FR debate motions 1998-2004**

Table 5 shows that the first impression, that FRs on the whole were almost as interested in moving debate motions on social policy as the GRs/ECRs since they were responsible for 45% of motions moved, may be misleading. It turns out that actually, most FR motions were moved by the sectoral FRs concerned. On the high end, the four FRs for the Medical and the Health Services functional constituencies together sponsored 87.5% (seven out of eight) of all FR motions on health care, followed by the Education FR's 71.4% (five out of seven) of all FR motions on education. Even on the low end, the Labour FRs moved 54% of all FR motions on labour issues. It was however noteworthy that FRs had moved no motion at all on social welfare while the total number of FR motions on housing was too small (only 2) for mention. If these figures were taken into account, the broad picture of FR interest in moving social policy debate motions would change quite dramatically as shown in Table 6 below.

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|                | motions by sectoral FRs | motions by other FRs | motions by GRs/ECRs | Total | Ratio of motions by other FRs to GRs/ECRs |
|----------------|-------------------------|----------------------|---------------------|-------|---|
| Education      | 5                       | 2                    | 3                   | 10    | 1:1.5                                     |
| Health Care    | 7                       | 1                    | 1                   | 9     | 1:1.0                                     |
| Housing        | 1                       | 1                    | 2                   | 4     | 1:2.0                                     |
| Labour         | 7                       | 6                    | 18                  | 31    | 1:3.0                                     |
| Social Welfare | 0                       | 0                    | 12                  | 12    | 0:12.0                                    |
| Total          | 20                      | 10                   | 36                  | 66    | 1:3.6                                     |

**Table 6 (Debates): FR debate motions on social policy minus respective sectoral FR debate motions and as ratio to total corresponding GR/ECR debate motions 1998-2004**

If the motions moved by sectoral FRs were taken out, it transpires that the other FRs as a whole had moved significantly less motions on social policy than the GRs/ECRs. Take the example of labour issues, FRs other than the Labour FRs had moved only six motions in total. When this is compared to the 18 motions moved by the GRs/ECRs, the ratio between the two is 1 to 3. In other words, for every 3 motions moved by the GRs/ECRs on labour issues, the other FRs had moved only one motion. The comparison assumes dramatic effects when the 12 social welfare motions were all moved by the GRs/ECRs with none sponsored by FRs, not even the Social Welfare FR. For Housing, the ratio is 1 to 2. It was only on health care and education that the FRs appeared to be on par with the GRs/ECRs.

The same picture largely obtains when the attention is shifted to amending debate motions.

|                | Debate amendments by FRs | Column % | Row % | Debate amendments by GRs/ECRs | Column % | Row %  | Total no. of debate amendments | Column % | Row Total % |
|----------------|--------------------------|----------|-------|-------------------------------|----------|--------|--------------------------------|----------|-------------|
| Education      | 4                        | 15.4%    | 57.1% | 3                             | 7.3%     | 42.9%  | 7                              | 10.4%    | 100.0%      |
| Health Care    | 7                        | 26.9%    | 87.5% | 1                             | 2.4%     | 12.5%  | 8                              | 11.9%    | 100.0%      |
| Housing        | 0                        | 0.0%     | 0.0%  | 6                             | 14.6%    | 100.0% | 6                              | 9.0%     | 100.0%      |
| Labour         | 11                       | 42.3%    | 34.4% | 21                            | 51.2%    | 65.6%  | 32                             | 47.8%    | 100.0%      |
| Social Welfare | 4                        | 15.4%    | 28.6% | 10                            | 24.4%    | 71.4%  | 14                             | 20.9%    | 100.0%      |
| Column Total   | 26                       | 100.0%   | 38.8% | 41                            | 100.0%   | 61.2%  | 67                             | 100.0%   | 100.0%      |

**Table 7 (Debates): FR debate amendments on social policy and as percentage of total corresponding debate amendments 1998-2004**

Table 7 shows that there had been a total of 67 amendments to debate motions during the period under study. The biggest number of the amendments pertained to labour issues, drawing 32 out of a total of 67, followed by 14 on social welfare. The rest of the amendments were more or less equally spread across housing, education and health care. Relatively speaking, FR sponsorship of amendments to debate motions is lower in percentage points, only about 39%, compared to about 45% for questions and debate motions (see Tables 1 and 4 above).

From Table 8 below, it can be seen that among the five social policy areas, the sectoral FRs for education and social welfare were responsible for 50% (2 out of 4) of the amendments moved to debate motions in their respective policy areas, followed by 42.9% (three out of seven) of the Medical and Health Services FRs on health care and 36.4% (4 out of 11) of the Labour FRs on labour issues. FRs had moved no amendments to debate motions on housing.

|                | Debate amendments<br>by<br>all FRs | Debate amendments<br>by<br>sectoral FRs | % of total FR debate<br>amendments |
|----------------|------------------------------------|---|------------------------------------|
| Education      | 4                                  | 2                                       | 50.0%                              |
| Health Care    | 7                                  | 3                                       | 42.9%                              |
| Housing        | 0                                  | 0                                       | N.A.                               |
| Labour         | 11                                 | 4                                       | 36.4%                              |
| Social Welfare | 4                                  | 2                                       | 50.0%                              |
| Total          | 26                                 | 11                                      | 42.3%                              |

**Table 8 (Debates): Sectoral FR debate amendments on social policy and as percentage of total corresponding FR debate amendments 1998-2004**

After discounting the amendments moved by sectoral FRs, Table 9 shows the ratios of FR debate amendments on social policy to corresponding figures for GRs/ECRs. Since the FRs had moved no amendment to debate motions on housing, the ratio is the greatest here, 6 for the GRs/ECRs and zero for the FRs. On welfare, for every five amendments moved by the GRs/ECRs, the other FRs had moved only one amendment; on labour issues, the ratio is 1 to 3 FRs to GRs/ECRs while for education, 1 to 1.5 FRs to GRs/ECRs. The only exception to this picture of GRs/ECRs moving more amendments than FRs is in health care where for every four amendments moved by FRs, the GRs/ECRs had moved only one amendment.

|                | Debate<br>amendments by<br>sectoral FRs | Debate<br>amendments by<br>other FRs | Debate<br>amendments by<br>GRs/ECRs | Total | Ratio of debate amendments<br>by<br>other FRs to GRs/ECRs |
|----------------|---|--------------------------------------|-------------------------------------|-------|---|
| Education      | 2                                       | 2                                    | 3                                   | 7     | 1:1.5   |
| Health Care    | 3                                       | 4                                    | 1                                   | 8     | 1:0.25  |
| Housing        | 0                                       | 0                                    | 6                                   | 6     | 0:6.0   |
| Labour         | 4                                       | 7                                    | 21                                  | 32    | 1:3.0   |
| Social Welfare | 2                                       | 2                                    | 10                                  | 14    | 1:5.0   |
| Total          | 11                                      | 15                                   | 41                                  | 67    | 1:2.7   |

**Table 9 (Debates): FR debate amendments on social policy minus respective sectoral FR debate amendments and as ratio to total corresponding GR/ECR debate amendments 1998-2004**

### C. Moving bills amendments

As explicated in the Introduction, the Legislative Council is Hong Kong's law-making body, but the Basic Law bars it from introducing any bill that relates to public expenditure or political structure or the operation of the government. The upshot of this constitutional limitation is that the great majority of draft laws is moved by the government, and the most that legislators can do in relation to policy-making is to move amendments to government bills. In other words, the real powers of policy agenda-setting and policy initiatives are not in the hands of the legislators.

Table 10 below shows the number of bills on social policy that had been moved by the government and associated Member amendments during the period under study. There had been no draft laws in housing or social welfare, and only four bills in education and five in health care. Labour issues received the most attention, with 20 bills introduced. As far as amendments are concerned, although there had been a total of 20 Member amendments in relation to the 29 bills, none was moved by the FRs. Since the amendments were all sponsored by the GRs, it would appear that the FRs had either

been more successful in settling policy differences with the government, if any, so that no “open battle” on the floor of the legislature had been necessary for the FRs, or their policy preferences were much in tune with those of the government’s.<sup>17</sup>

|                | Government Bills | Member amendments | FR amendments |
|----------------|------------------|-------------------|---------------|
| Education      | 4                | 7                 | 0             |
| Health Care    | 5                | 2                 | 0             |
| Housing        | 0                | 0                 | 0             |
| Labour         | 20               | 11                | 0             |
| Social Welfare | 0                | 0                 | 0             |
| Total          | 29               | 20                | 0             |

**Table 10 (bills): Number of whole bills and FR amendment motions on social policy 1998-2004**

#### **D. Membership of relevant LegCo panels**

Away from the spotlight of the weekly public meetings and the public debates, another major area of activities that legislators engage in is panel work. Panels are standing committees where legislators deliberate on issues relating to specific policy areas as well as keep a watchful eye over the performance of the corresponding policy bureau and departments. Legislators are free to join any number of panels and there are currently 18 such panels. Apart from considering important issues of public concern, the panels receive briefing papers and reports from bureaus and departments on major policy and administrative undertakings and give views on major legislative or financial proposals before these are formally introduced into the Council.

During the six years under study, there had been a total of 487 combined membership counts across the five panels of Education, Health Services, Housing, Manpower and Welfare services.<sup>18</sup> As shown in Table 11 below, the most popular among legislators was the Housing Panel, with 125 membership counts, following by Manpower with 111 and Education with 93. The Welfare Services and the Health Services Panels had had the least membership counts, with 86 and 72 respectively.

<sup>17</sup> The law-making process in Hong Kong involves three Readings of a draft law. The First Reading is only a formal procedure of reading out the title of a bill, followed by the Second Reading at which the government will explain the main points of the bill. The Second Reading is then adjourned for legislators to consider and conduct consultations on the draft law. During this intermission, if legislators deem necessary, a Bills Committee may be set up to scrutinize the bill in detail, sometimes even to receive submissions from different lobbies in society or to conduct public hearings. Upon resumption of the Second Reading, amendments can be moved to specific provisions in the bill either by the government or legislators. Such amendments will be voted on one by one, sometimes after heated debates between disagreeing sides. When all the amendments have been voted on, the bill passes to the Third Reading at which a final vote is taken on the whole draft law. The bill becomes law if passed by the legislature. Before the resumption of the Second Reading, it is possible that the government and legislators will engage in negotiations over particular provisions in the draft law. If no satisfactory resolution to differences is found, legislators may then have no choice but conduct “open warfare” on the floor of the legislature by moving amendments to the government motions.

<sup>18</sup> Labour issues were within the terms of reference of the Manpower Panel.

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|                  | a                          | b                       | c                           | d                      | e                             | f  |
|------------------|----------------------------|-------------------------|-----------------------------|------------------------|-------------------------------|--|
| Panel            | Membership of sectoral FRs | Membership of other FRs | Membership of all FRs (a+b) | Membership of GRs/ECRs | Total membership counts (c+d) | Ratio of membership of other FRs to GRs/ECRs |
| Education        | 6(23.1%)*                  | 20                      | 26                          | 67                     | 93                            | 1 : 3.4                                      |
| Health Services  | 12(32.4%)*                 | 25                      | 37                          | 35                     | 72                            | 1 : 1.4                                      |
| Housing          | 12(38.7%)*                 | 19                      | 31                          | 94                     | 125                           | 1 : 5.0                                      |
| Manpower         | 18(34.6%)*                 | 34                      | 52                          | 59                     | 111                           | 1 : 1.7                                      |
| Welfare Services | 6(20.0%)*                  | 24                      | 30                          | 56                     | 86                            | 1 : 2.3                                      |
| Total            | 54(30.7%)*                 | 122                     | 176                         | 311                    | 487                           | 1 : 2.6                                      |

\*% of total FR membership counts

**Table 11 (Panels): LegCo social policy panels FR membership counts 1998-2004**

If the sources of the membership counts were traced, it transpires that sectoral FRs again contributed a significant portion of the participation rates of all FRs. Both the Labour FRs and the Health Services FRs contributed about one-third of total FR membership counts of their respective panels while the Education and the Welfare FRs, 23% and 20% respectively of theirs.

If the participation rates of the sectoral FRs were discounted, and the participation rates of the remaining FRs were compared to those of the GRs/ECRs, a picture emerges that shows the latter in more favourable light. On average, for the participation of every 2.6 GRs/ECRs in panels, there was participation by only one FR.

### E. Attendance of meetings of panels joined

As far as panel attendance is concerned, sectoral FRs' participation rates show them to be very responsible and diligent. Table 12 below shows that the mean of the yearly average attendance rates of the sectoral FRs for Education, Health Services and Welfare Services was all about 98% of their respective panel meetings (see the note in the table for the calculation of the mean), while even the seemingly "less diligent" Labour FRs still managed to attend 87% of the Manpower panel meetings. When the attendance rates of the remaining FRs are compared to those of the GRs alone, the latter again has an edge over the former. The GRs attended on average 77.5% [calculated as (75.4% + 74.4% + 77.2% + 81.0% + 79.5%) ÷ 5] of all panel meetings compared to the FRs' average of 69.7% [calculated as (66.9% + 73.8% + 70.2% + 64.5% + 73.3%) ÷ 5] across the same five panels.

| Panel            | sectoral FRs | other FRs | GRs   |
|------------------|--------------|-----------|-------|
| Education        | 97.8%        | 66.9%     | 75.4% |
| Health Services  | 98.1%        | 73.8%     | 74.4% |
| Housing          | 69.1%        | 70.2%     | 77.2% |
| Manpower         | 86.8%        | 64.5%     | 81.0% |
| Welfare Services | 97.7%        | 73.3%     | 79.5% |

Note: The mean of the yearly average attendance rates in 6 years of each group of legislators in each panel is calculated as follows:

- the average of the attendance rates of all legislators in a group in each panel each year is first calculated
- the mean of the averages in 6 years is then calculated

**Table 12 (Panels): LegCo social policy panels FR mean yearly average attendance rates 1998-2004**

## F. Membership of relevant bills committees

Bills committees are set up by the legislature specifically to scrutinize draft laws in detail when deemed necessary. All legislators except the President of the Council may join any bills committees. A bills committee may invite government officials as well as members of the public to attend its meetings as it considers the principles and detailed provisions of a bill. After a bills committee has completed scrutiny of a bill, it reports its deliberations to the House Committee and is dissolved upon the passage of the bill concerned or as decided by the House Committee.

In the six years under study, there had not been any bill on either housing or social welfare (see Table 10 above), thus also no related bills committees. There had been a total of 12 bills committees on labour issues, while health care and education each got four bills committees. For the bills committees on labour issues, there was a total membership count of 160; for the health care and education bills committees, there were 42 and 36 membership counts respectively. Except for the Labour FRs, all sectoral FRs were in all sectorally-relevant bills committees. All the sectoral FRs in the three policy areas, furthermore, contributed about one-third of the total FR membership counts of sectorally-relevant bills committees.

|                             | a                          | b                       | c                           | d                      | e                             | f  |
|-----------------------------|----------------------------|-------------------------|-----------------------------|------------------------|-------------------------------|--|
| Policy area                 | Membership of sectoral FRs | Membership of other FRs | Membership of all FRs (a+b) | Membership of GRs/ECRs | Total membership counts (c+d) | Ratio of membership of other FRs to GRs/ECRs |
| Education                   | 4(36.4%)*                  | 7                       | 11                          | 25                     | 36                            | 1 : 3.6                                      |
| Health Care                 | 8(36.4%)*                  | 14                      | 22                          | 20                     | 42                            | 1 : 1.4                                      |
| Housing <sup>+</sup>        | -                          | -                       | -                           | -                      | -                             | -  |
| Labour                      | 21(30.9%)*                 | 47                      | 68                          | 92                     | 160                           | 1 : 2.0                                      |
| Social Welfare <sup>+</sup> | -                          | -                       | -                           | -                      | -                             | -  |
| Total                       | 33(32.7%)*                 | 68                      | 101                         | 137                    | 238                           | 1 : 2.0                                      |

<sup>+</sup> No bills committees formed

\* % of total FR membership counts

**Table 13 (Bills committees): LegCo social policy bills committees FR membership counts 1998-2004**

If the participation rates of the sectoral FRs were discounted, and the participation rates of the remaining FRs were compared to those of the GRs/ECRs, the overall ratio of the participation rates between the two groups of legislators was 1 to 2, that is, for the participation of every 2 GRs/ECRs in bills committees, there was participation by only one FR.

## G. Attendance of meetings of bills committees joined

As regards bills committees attendance, sectoral FRs have similarly demonstrated exceptional diligence. As can be seen from Table 14 below, the mean of the yearly average attendance rates (see the note in the table for the calculation) of the education FR was 100%, the means of the sectoral FRs for Labour and for Health Services were 82.5% and 91.1% respectively. When the attendance rates of the remaining FRs are compared to those of the GRs alone, the latter attended on average 76% [calculated as (87.0% + 71.0% + 70.0%) ÷ 3] of all bills committee meetings compared to the FRs' average of 69.6% [calculated as (82.8% + 62.2% + 63.8%) ÷ 3] across the same committee meetings.

| Bills Committee<br>Policy Area | sectoral FRs | other FRs | GRs   |
|--------------------------------|--------------|-----------|-------|
| Education                      | 100.0%       | 82.8%     | 87.0% |
| Health Care                    | 91.1%        | 62.2%     | 71.0% |
| Housing*                       | -            | -         | -     |
| Labour                         | 82.5%        | 63.8%     | 70.0% |
| Social Welfare*                | -            | -         | -     |

\*No bills committees formed

Note: The mean of the yearly average attendance rates in 6 years of each group of legislators in each committee is calculated as follows:

- a) the average of the attendance rates of all legislators in a group in each committee each year is first calculated
- b) the mean of the averages in 6 years is then calculated

**Table 14 (Bills committees): LegCo social policy bills committees FR mean yearly average attendance rates 1998-2004**

## H. Voting patterns

While the preceding sections uncover the patterns of FR engagement in policy deliberation processes, their formal voting positions should also be examined for comprehending policy dynamics because in the final analysis, it is formal voting that determines policies in their final shapes. We thus turn to FRs' voting patterns.

Voting records were accessed at the Legislative Council website and checked against the records of proceedings where necessary. Only the voting records on bills and debate motions are examined as these constitute the two most important activities undertaken by legislators in their weekly public meetings. The importance of votes on bills as draft legislation is self-evident since laws are made or not made as a result. Debate motions, on the other hand, enable legislators to table issues of public concern for debate. Albeit without legislative effects, such debates allow the legislature, as a collective body that represents Hong Kong public opinion, to indicate its stance on issues of public importance.

According to the Basic Law, voting in the legislature is governed by two separate rules. Government-sponsored motions require only a simple majority vote of legislators present to be passed. For legislators' motions, however, the legislature is effectively divided into two "chambers", one comprising the FRs alone, the other of legislators returned from geographical constituencies and the Election Committee. For legislators' motions to be passed, a simple majority of legislators present in each of the two groups is necessary. This is the "split-voting" mechanism.<sup>19</sup>

When voting, legislators can choose to vote for, against, or abstain on a motion. When a motion is put to the vote, the President of the Council will ask legislators in favour of and against the motion respectively to raise their hands in turn, then judge and declare whether the majority is in favour or against the motion. No record is made of how individual legislators have voted in such cases, these are therefore not amenable to further study. Legislators however are free to demand a "Division", in which case individual votes will be formally recorded. On the basis of the Division votes, the next two subsections show the FRs' voting patterns in relation to social policy bills and amendment motions, and debate motions and amendments respectively.

<sup>19</sup> *The Basic Law*, Annex II.

### 1. *Votings on bills and amendments*

Article 74 of the Basic Law stipulates that legislators can only sponsor bills that do not relate to public expenditure or political structure or the operation of the government. Any bills relating to government policies have to have the Chief Executive's written consent before introduction. As a consequence, the great majority of bills motions are initiated by the government although legislators may move motions to amend provisions in draft bills.

As shown in Table 15 below, between 1998 and 2004, there had been a total of 29 Division votings on bills motions and amendments.<sup>20</sup> Eleven of these Division votings involved government motions while 18 were amendments moved by GRs. Among these Division votings, 21 (72.4%) were Opposite votings, that is, when a majority of the FRs had voted "no" to a motion, the majority of the GRs/ECRs had voted "yes" to the same motion, or vice versa.

Among the 21 Opposite votings, 6 involved government motions while the rest were legislators' motions. On further scrutiny, it turned out that among the 21 Opposite votings, 15 (71.4%) of the "no" votes (Veto votes) had come from the FRs and all 15 were Veto votings against GRs/ECR amendments to government motions. There was not one single Veto voting against the 11 motions moved by the government on the part of the FRs.

| Policy area      |               | Division voting | Opposite voting | FR voting      | Veto | FR vetoes against GR motions | FR support for Gov't motions |
|------------------|---------------|-----------------|-----------------|----------------|------|------------------------------|------------------------------|
| Education        | Gov't motions | 6               | 5               | 0              | -    | -                            | 6                            |
|                  | GR motions    | 7               | 7               | 7              | 7    | 7                            | -                            |
|                  | Total         | 13              | 12<br>(92.3%)*  | 7<br>(58.3%)+  | -    | -                            | -                            |
| Health Care      | Gov't motions | 1               | 0               | 0              | -    | -                            | 1                            |
|                  | GR motions    | 2               | 1               | 1              | 1    | 1                            | -                            |
|                  | Total         | 3               | 1<br>(33.3%)*   | 1<br>(100.0%)+ | -    | -                            | -                            |
| Labour           | Gov't motions | 4               | 1               | 0              | -    | -                            | 4                            |
|                  | GR motions    | 9               | 7               | 7              | 7    | 7                            | -                            |
|                  | Total         | 13              | 8<br>(61.5%)*   | 7<br>(87.5%)+  | -    | -                            | -                            |
| All policy areas | Gov't motions | 11              | 6               | 0              | -    | -                            | 11                           |
|                  | GR motions    | 18              | 15              | 15             | 15   | 15                           | -                            |
|                  | Total         | 29              | 21<br>(72.4%)*  | 15<br>(71.4%)+ | -    | -                            | -                            |

\* % of total Division votings

+ % of total Opposite votings

**Table 15 (Votings): FR voting patterns on bills and amendments**

<sup>20</sup> This number contains five motions falling not under the social policy bills studied but under the Mass Transit Railway Bill, they have been included because their contents explicitly pertained to labour rights and welfare. In other words, as far as the 29 social policy bills examined for this study are concerned, there were only 24 Division votings. A voting is the collective act of legislators taking a vote, the result of which is determined by the sum of legislators' individual votes. The figure excludes votings on motions which were solely procedural in nature, such as suggesting the suspension of certain rules of procedures or for voting to proceed after certain duration.



## 2. *Votings on debate motions and amendments*

As far as debates on social policy are concerned, out of the total of 133 debate motions and amendments, 83 (62.4%) involved Division votings (Table 16). Among these, 49 (59%) were Opposite votings, that is, when a majority of the FRs had voted "no" to a motion, the majority of the GRs/ECRs had voted "yes" to the same motion, or vice versa. Among the Opposite votings, 40 (81.6%) of the "no" votes had come from the FRs and among these 40 Veto votings, 29 (72.5%) were against motions moved by the GRs/ECRs.

| Policy area      | Division voting | Opposite voting | FR Veto voting | FR vetoes against GR/ECR motion and amendments |
|------------------|-----------------|-----------------|----------------|--|
| Education        | 6               | 6<br>(100.0%)*  | 4<br>(66.7%)*  | 1<br>(25.0%)*                                  |
| Health Care      | 5               | 0               | n.a.           | n.a.   |
| Housing          | 9               | 2<br>(22.2%)*   | 1<br>(50.0%)*  | 1<br>(100.0%)*                                 |
| Labour           | 44              | 30<br>(68.2%)*  | 26<br>(86.7%)* | 19<br>(73.1%)*                                 |
| Social Welfare   | 19              | 11<br>(57.9%)*  | 9<br>(81.8%)*  | 8<br>(88.9%)*                                  |
| All policy areas | 83              | 49<br>(59.0%)*  | 40<br>(81.6%)* | 29<br>(72.5%)*                                 |

\* % of total Division votings

# % of total Opposite votings

+ % of total FR Vetoes

Table 16 (Votings): FR voting patterns on debate motions and amendments

### I. Summary findings on quantitative study

The intention of the quantitative study in this part of the research was to ascertain the extent and pattern of FR engagement in policy deliberations and decision-making. For deliberation, several categories of legislative activities have been used to facilitate the estimation, these include: putting questions to government officials, moving debate motions and amendments, moving bills motions and amendments, as well as membership and attendance in panels and bills committees. For policy-making, voting patterns on bills have been examined for the FRs' formal policy stances.

As far as policy deliberations are concerned, it appears that several findings can be summarized about FR engagement:

- (1) sectoral FRs have been found to be most conscientious in getting engaged where immediate sectoral issues appeared to be involved. Thus, they excelled among fellow FRs in asking questions, moving motions and amendments, as well as in joining panels and bills committees and attending associated meetings whenever these were sectorally-relevant;

- (2) FRs were otherwise not particularly enthusiastic in the above activities, thus, when compared to the GRs/ECRs, the ratio of FR participation was typically 1 to 2, in other words, for whatever one FR engaged in, GRs/ECRs would have been twice as engaged;
- (3) that FRs were mainly sectorally-minded appeared to be supported by an indirect piece of evidence. As there were no direct FR for Housing, we had taken the FRs for the Real Estate and Construction, and the Architectural, Surveying and Planning constituencies to be most immediately relevant with regard to housing issues. It turns out that their engagement was indeed more subdued compared to other sectoral FRs in their respective policy areas, for example, the four FRs were relatively inactive in posing housing questions or engaging in related debates (Tables 2, 5 and 7). Their attendance in relevant panels was also markedly less than other sectoral FRs in their respective policy panels. It could be that the "Housing" FRs we designate considered their constituency interests to partially but not exclusively pertain to housing issues.

From the above, it seems there is a phenomenon of "role fixing" among FRs so that participation and engagement ascended with the extent of direct or immediate sectoral interests perceived. When little such interests were perceived, FRs felt little responsibility or incentive to be engaged in policy deliberations; when sectoral interests were partially perceived, engagement increased moderately; when there appeared to be direct correspondence between policy issues and sectoral interests, engagement became comprehensive and frequent.

In terms of voting positions on legislation, a few pertinent observations appear in order:

- (1) the great majority of government motions on social policy during the period studied was passed by the legislature with unanimity. Of a total of 233 votings on social policy bills, only 24 involved Division votings, that is, just over 10%. Notwithstanding, it has to be pointed out that most of the legislation on social policy introduced during this period appeared to involve relatively minor or technical amendments to existing laws and all those motions passed with unanimity were government motions;
- (2) when GRs moved amendments to government bills, the FRs had overwhelmingly voted to negate their amendments and support the government's motions instead; as a matter of fact, for about three-quarters of the time, the FRs had voted diametrically opposite to the GRs/ECRs (Table 15);
- (3) FRs had not moved a single amendment to the government's draft legislation on social policy during the six years under study. There are several possible explanations, which this study is however not in a position to confirm or refute: (a) most of the proposed legislation was non-controversial; (b) the FRs had been able to satisfactorily resolve differences with the government before formal voting on the draft legislation so that no open warfare on the floor of the legislature had been necessary; or (c) all the FRs had found the proposed legislation agreeable.

Votings on debate motions, on the other hand, involved a more direct "duel" between the FRs and the GRs/ECRs because the government's participation in this area was negligible. Of a total of 133 debate motions and amendments, 83 (62.4%) involved Division votings. Among these, 49 (59%) were Opposite votings in which the two groups of legislators took diametrically opposite positions, with 40 (81.6%) being Veto votings by FRs. Furthermore, of the 40 FR Veto votings, 29 (72.5%) were vetoes against motions moved by GRs/ECRs. The inclination of the FRs to veto GR/ECR positions thus is equally manifest in their voting positions on debates.

## **Part II Qualitative study: Case studies on FR participation in social policy deliberations and decisions**

### **Introduction**

The quantitative study in Part I suggests that FRs might have been much guided by a conception of “role fixing” in their legislative behaviour. Thus, when direct or immediate sectoral interests were perceived, it was as if the relevant sectoral FRs felt driven or compelled to immerse in related legislative activities; conversely, the purpose of policy engagement appeared to quickly evaporate and participation became noticeably tepid.

In light of the above, two case studies were conducted. Through these, we sought to uncover “codes” of behaviour, if any, that might stand in the place of sectoral identity and interests to guide the FRs’ policy-making behaviour.

In this connection, three conclusions are derived from the case analyses:

1. the observation that FRs tended to be inactive in the absence of perceived sectoral interests is corroborated by the two case studies;
2. party affiliation was the second clue for legislative behaviour; and
3. despite conspicuous silence in the deliberations, there was however a prevalent inclination on the part of the FRs to support government proposals when voting time came, especially when the proposals did not directly connect or conflict with sectoral concerns and when the FRs thus suffered from “role confusion”.

**A. School-Based Management and the Education (Amendment) Bill 2002<sup>21</sup>****1. Introduction**

This case concerns the introduction of the school-based management (SBM) governance framework to all aided schools in Hong Kong.<sup>22</sup> The reasons for selecting this case are manifold. First, the legislative process took an exceptionally long period of time. The Education (Amendment) Bill 2002 (hereafter the Bill) had its First Reading in the Legislative Council (LegCo) on 4 December 2002. It took 18 months for the Bill to be passed in the LegCo meeting on 8 July 2004. During that period, 39 bills committee meetings were held, at which the contents of the Bill were carefully and substantially scrutinized. Even when the Bill was moved to LegCo for the Second and Third Readings, it took 13 hours of debate among legislators before the Bill was finally passed. Both proponents and opponents regarded the passage of the Bill as having far-reaching effects on the education system in Hong Kong. By studying the documentary materials of LegCo and others, one might start to comprehend how legislators, especially the FRs, came up with their positions, what considerations they might have in mind, what principles or values they might be upholding in their political arguments, and what strategies they had adopted to achieve their goals.

Secondly, the Bill had evoked great controversies not only in LegCo but also in society. On the one hand, the idea of making school authorities more accountable and transparent by introducing SBM was to the general public very appealing. Teachers' associations and parents' groups were generally in support of the Bill. On the other hand, there were persistent, strong and organized opposition from a fair number of school sponsoring bodies (SSBs), including the Catholic Diocese of Hong Kong and the Anglican Church Sheng Kung Hui, which together run about 300 schools in Hong Kong.<sup>23</sup> If we consider LegCo as an arena for expressing, balancing and integrating different interests in society, the case of SBM stands a good chance of allowing some insights to be drawn. As far as our present purpose is concerned, we are particularly interested to see how the FRs reacted to conflicting opinions and demands in society, whether they brought a range of sectoral viewpoints into LegCo, and whether they contributed to the discussion of the Bill with their expertise, as all these are what the FRs are supposed to do.

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**<sup>21</sup> Acronyms**

ACSBM = Advisory Committee on School-based Management  
DAB = Democratic Alliance for Betterment of Hong Kong  
DSS = Direct subsidy scheme  
EC = Election Committee  
FR = Functional representative  
GR = Geographical representative  
HKPTU = Hong Kong Professional Teachers' Union  
LegCo = Legislative Council  
PSEM = Permanent Secretary of Education and Manpower  
SBM = School-based management  
SMC = School management committee  
SSB = School sponsoring body

<sup>22</sup> At present there are mainly three kinds of schools in Hong Kong, namely, aided schools, schools under the Direct Subsidy Scheme (DSS), and government schools. Very briefly, aided schools are schools fully funded by the government but managed by school sponsoring bodies under the Codes of Aids. DSS schools also receive funding from the government but on a student per capita basis. DSS schools recruit students on their own and enjoy greater freedom than aided schools, for example, they can charge their students approved amounts of school fees, they are also free to design the school curriculum and use either Chinese or English as the medium of instruction. Government schools are funded and managed by the government. Aided schools have constituted a large portion of schools in Hong Kong.

<sup>23</sup> In the 2003/04 school year, there were 785 primary schools and 501 secondary schools in Hong Kong. See Education and Manpower Bureau, <<http://www.emb.gov.hk/index.aspx?nodeid=2062&langno=1>>, 2004.

Thirdly, the case further enables one to study closely the distinct impact, or the lack of it, of a FR. Here the role of Cheung Man-kwong, the FR of the education sector, is worth noting. As the representative of the education sector and the president of the Hong Kong Professional Teachers' Union, the issue of SBM is of immediate relevance to Cheung. In the legislative process, Cheung was harshly attacked by opponents and parents' groups as 'turning the steer' from supporting the idea of SBM to opposing the Bill. Later in this analysis we shall spell out the details of their arguments. Meanwhile it is interesting to note that while Cheung was presumably the most authoritative member in LegCo, being the sectoral representative, to contribute relevant expertise and integrate interests within the education sector, his recommendations and amendments of the Bill were largely ignored and rejected by his fellow legislators. From Cheung's treatment at the hands of his colleagues, it appears that sectoral relevance need not necessarily render a FR more authoritative in political arguments. By studying the roles of Cheung in the SBM episode, one may better understand the realpolitik inside and outside of LegCo.

In what follows, we shall first explain the background and controversies of the Bill. It is not the purpose here to make judgment as to whose views were more correct. We shall plainly describe the core of the controversy. Having done so, we shall then proceed to a critical assessment of the roles of the FRs in the present case. We shall illustrate the pro-government tendency of the FRs and suggest that political affiliation might be a significant factor in understanding the politics involved. Furthermore, by explaining the various roles of Cheung Man-kwong, we shall point out that although Cheung tried to resolve the conflicts between the government and the SSBs, his effort was not appreciated by the government. It appears that the government reckoned it would have sufficient support in LegCo and that LegCo voting, at the end of the day, could be a demonstration of sheer voting power if necessary.

## 2. Background and development of the Bill

The idea of SBM dates back to the early 1990's. In 1991, the government introduced the School Management Initiative, under which schools were encouraged to adopt the SBM governance framework on a voluntary basis. One of the foci of SBM was that school management committees (SMCs) should open their membership to teachers, parents, alumni, and members of community so that there could be checks and balances in SMCs. The scheme was not successful since by 1997, only 334 schools (about 30%) had joined the scheme.<sup>24</sup> When SMCs became entrusted with more and more resources however, demands in society, especially from teachers' associations and parents' groups for more accountable and transparent SMCs also grew. To respond to this demand, the then Education Department set up an Advisory Committee on School-based Management (ACSBM) under the Board of Education in 1998 to draw up a SBM framework for aided schools.<sup>25</sup>

In February 2000, the ACSBM published a consultation document, namely, *Transforming Schools into Dynamic and Accountable Professional Learning Communities*. The consultation document listed a number of recommendations concerning the legal status as well as the structure and composition of SMCs, the power of SSBs, and the qualifications of school managers. A two-month public consultation ensued. The consultation document invited many criticisms, mainly from SSBs. After the

<sup>24</sup> See Hong Kong Legislative Council, "Report on the Bills Committee on Education (Amendment) Bill 2002", LC Paper No. CB(2)2967/03-04, p.4.

<sup>25</sup> The Board of Education was established in 1920. Its role was to advise the then Director of Education on the practice of education policies. Its members included professionals in the education sector, community leaders, representatives of parents' groups and government officials. As the Education Department was merged with the Education and Manpower Bureau in 2003, the Board of Education was also merged with the Education Commission, which is also an advisory body on education policy. Unlike the Board of Education which focused more on specific practices of education policies, the Education Commission advises on the comprehensive and long-term development of education policy in Hong Kong.

consultation period, the ACSBM drew up its final proposal, with a number of revisions, and submitted it to the Board of Education and the Director of Education in January 2001. Yet severe criticisms by SSBs continued.

Consultation with the LegCo Panel on Education was at the same time going on. The Panel first discussed the ACSBM's original proposal at its meetings on 20 November 2000. Another meeting with deputations of SSBs was held on 11 December 2000. The Panel further discussed the final proposals of the ACSBM with government officials and deputations of SSBs at its meeting on 19 February 2001.

Having consulted the public and the Panel, the government published the Bill in the Gazette on 22 November 2002. The First Reading of the Bill in LegCo was on 4 December 2002. At the LegCo House Committee meeting on 6 December 2002, LegCo members agreed to form a bills committee to study the bill, which sought to amend the Education Ordinance (Cap.279) to facilitate the implementation of SBM and introduce certain amendments.

The Bills Committee on Education (Amendment) Bill 2002 (hereafter the Bills Committee) held a total of 39 meetings from February 2003 to July 2004. The Bill went under careful and critical scrutiny by members of the Bills Committee and a number of revisions by the government were made. However, opposition from SSBs became even more intensified. The Catholic Diocese of Hong Kong threatened to initiate litigation against the government for contravention of Article 141 of the Basic Law if the Bill was passed. Article 141 of the Basic Law stipulates that religious organizations may, according to their previous practice, continue to run schools in Hong Kong. Notwithstanding, the Bill proceeded to the Second and Third Readings in LegCo on 7 and 8 July 2004. It was passed on 8 July 2004 with 29 of the 50 legislators present voting for it and the rest against it (see Tables 5 to 7 below).

### 3. The controversies

Why and how did the issue of SBM become so contentious? What were the controversies over the Bill? To begin, let us summarize the major provisions of the Bill as follows:

- Each aided school shall set up a SMC in which 40% of its members (i.e. school managers) comprises parents, teachers, alumni and community representatives, with the other 60% made up of nominees of the SSB.
- A school manager shall not serve more than five SMCs.
- The SMC shall be registered as an incorporated body with limited liability under the Education Ordinance. The incorporated SMC shall become an independent legal entity. Individual school managers will not incur personal civil or criminal liability in the performance of school management duties so long as they act with prudence and good faith and do not approve or tolerate criminal acts.
- The SMC of a school shall keep a register of all declarations and disclosures of pecuniary or other personal interests of its school managers and allow the public to inspect the register.
- The SSB shall enjoy the power to set out the vision and mission of the school, maintain full control of funds and assets owned by it, draft the SMC constitution, appoint the chairperson (the supervisor) of the SMC, nominate the school principal, and make written request to the SMC to issue notice to the Permanent Secretary of Education and Manpower (PSEM) to cancel the registration of a SSB manager.
- The PSEM is empowered to refuse to register a person as a manager of a school on the ground that the person is not "a fit and proper person".
- The PSEM is empowered to appoint one or more persons to be managers of a school for such period as he/she thinks fit if it appears to him/her that a school is not or not likely to be managed satisfactorily and that the education of the pupils of the school is not or not likely to be promoted in a proper manner.

- The PSEM retains the power to approve or disapprove the constitution of a SMC even if it has been passed by the SMC.
- The PSEM retains the power to give a direction in writing to the supervisor and to the principal of a school to the effect that a syllabus of instruction or any document specified in the direction shall not be used for instruction in any class in the school.
- Every aided school shall establish a SMC in accordance with the Bill by the year 2010. A review of the progress of implementation will be conducted in 2008. If necessary, LegCo can pass a resolution to postpone full implementation to the year 2012.
- The PSEM is empowered to appoint one or more persons to be the manager of a school which has failed to establish a SMC in accordance with the Bill and cancel the registration of any manager.
- Schools under the Direct Subsidy Scheme are allowed a choice whether or not to establish a SMC in accordance with the Bill.
- Government schools are exempted from the regulations of the Bill.

The Bill introduces considerable changes to the governance framework of aided schools in Hong Kong. Before the passage of the Bill, SSBs had enjoyed full control over the structure and composition of their SMCs. There had been no requirement in the Education Ordinance covering either the membership or the operation of SMCs. SSBs had had the authority to appoint all members of their SMCs. Some large SSBs even set up a central SMC to administer their schools. Given the close relationship between the SSBs and the SMCs, it was conceivable that most members of SMCs had been compliant with the views of the SSBs. Furthermore, under the Education Ordinance, the SMCs were also not required to disclose the names and particulars of school managers, nor were managers required to declare personal interests that might conflict with the best interests of the school. Critics argued that this lack of accountability and transparency was unacceptable since the schools were funded by taxpayers. After the passage of the Bill, SSBs no longer enjoy supreme authority over their SMCs. The membership of SMCs has to be opened to teachers, parents, alumni and community representatives. The SMCs have also become independent legal entities. From a legal point of view, the SSBs and the SMCs become two separate bodies. The SMCs will no longer be subordinate to SSBs, the role and authority of the SSBs is therefore diminished.

The idea of making the SMCs more accountable and transparent was agreeable to the general public. The government made great appeal to this idea when putting forward the Bill. Arthur Li, the Secretary for Education and Manpower, repeatedly stressed that the fundamental principle underlying SBM and the Bill was to engender the accountability and transparency of SMCs by providing for a participatory decision-making mechanism where all key stakeholders would be involved. It is not easy to reject this idea. In fact, during the consultation period on the ACSBM proposal in 2000 and early 2001, this idea was most welcome to teachers' associations and parents' groups, and rarely challenged by legislators or political parties. The only objections appeared to have come primarily from the SSBs, especially from the Catholic Church and the Anglican Church. As the Churches counter-argued, the government should not force all schools to follow one management model because different schools had different cultures and faced different problems. While they agreed that SMCs could be made more accountable and transparent, they firmly objected to the proposal that teachers, parents and others should enjoy decision-making powers in the SMCs. They alleged that with the participation of all key school stakeholders, the SMCs would become politicized. If parents and teachers not sharing the vision and mission of a school were elected to the SMC, there would be great trouble in the school. For the Churches, teachers and parents could instead contribute by performing a more active advisory role in school management.

On the face of it, it would appear that the protesting SSBs were opposing the idea of SBM mainly for self-interests. It is worth noting however, that after the government drafted the Bill and moved the First Reading in December 2002, the Catholic Church had presented another line of argument which subsequently turned many original supporters of SBM into opposers of the Bill. The argument was that the Bill, as the Catholic Church warned, not only cut away the authority of the SSBs but also

opened a door to the government to suppress anti-government thinking and teaching of politically sensitive issues in schools. Under the Bill, the PSEM was given enormous powers to directly intervene and control school operations, for example, in appointing an unlimited number of managers to a SMC whenever he/she saw fit, disallowing a person deemed not fit or proper from being a school manager, and sending a directive to a school to forbid certain topics and materials being used for instruction. The constitution of a SMC also had to have the PSEM's approval. Since the powers of the SSBs would be substantially reduced under the Bill, no one would be in a position to counter-balance the powers of the government. The government would enjoy unchecked authority in manipulating schools and extending direct control into every SMC. For the Catholic Church, what the Bill was proposing was in truth centralization of power tactfully put under the covers of democracy, accountability and transparency.

Since the Catholic Church has been a vocal critic of the Government in recent years,<sup>26</sup> its worry may not be totally groundless. The Church's argument abruptly changed the position of many original supporters of SBM, including Cheung Man-kwong and his democratic allies. It was only when the Bill was put under the scrutiny of the Bills Committee that legislators came to realize the potential danger of the Bill in facilitating the extension of government powers into school operations in Hong Kong. This is the main reason why the Bills Committee, most of its members belonging to the pan-democratic camp, had spent so much time on scrutinizing the Bill, and why the seemingly uncontroversial idea of SBM had in the end become so contentious in the legislation process.

Not everyone, however, was convinced by the Churches' worries. While the government categorically denied the conspiracy theory, supporters of the Bill thought the Catholic Church was merely crying wolf. Some accused democratic legislators of opposing the Bill simply to garner political capital for the following LegCo elections, as the Churches would likely ask and mobilize their followers not to vote for candidates who supported the Bill. Arthur Li, the Secretary for Education and Manpower, retorted that the proposed Bill in fact did not give new powers to the PSEM, and that the PSEM had always had the powers that the opponents of the Bill said they were worried about.<sup>27</sup> Li further defended that the PSEM had to retain the powers so as to protect the interest of students in case of management malpractices in schools.<sup>28</sup> Li not once openly criticized that the democrats were opposing for the sake of opposition, and disrupting the Bills Committee meetings for the sake of disruption. The Secretary's outbursts of course did not help the situation.

The government and the opponents of the Bill were therefore arguing on different grounds. While the government insisted that the aim of the Bill was solely to enhance transparency and accountability of SMCs, the opponents argued that since the powers of SSBs would be reduced, the Bill would in effect grant the government supreme authority over education. For the opponents, even though it might be true that the government had always reserved unto itself draconian powers under the Education Ordinance, that the government would enjoy supreme authority over education was dangerous in itself. They argued, under the Bill, the government would be left unchecked and it would have every legal means to suppress anti-government thinking and teaching of politically sensitive issues in schools.

As disagreement between the government and the opponents deepened, consensus and compromise became more and more difficult to achieve. Although the government, under the pressure of the democrats, had made a number of amendments and clarifications on for example, the relations between SSBs and SMCs, the liability of a school manager, and outdated provisions in the Education

<sup>26</sup> The Bishop had been very critical of the way the government attempted to legislate for state security in 2003 as well as its inaction in tackling poverty problems.

<sup>27</sup> 「校本條例無新增罰則，李國章稱條例所賦予權力早存在」，《文匯報》，2004年5月23日，A13；「特設代課教師將檢討存廢」，《星島日報》，2004年5月23日，A07。

<sup>28</sup> *Hansard*, 8 July 2004 (Floor), p.798.



Ordinance,<sup>29</sup> the government had rejected all other substantive recommendations made by the democrats, such as posing further limits on the powers of the PSEM, allowing LegCo to review the implementation of SBM in 2008 and if necessary, suspend its full implementation. As the democrats occupied only one-third of the seats in LegCo, it was apparent they could do little on their own to stop the Bill from passing.

On the eve of the Second and Third Readings of the Bill, the main opponent, the Catholic Church, was about to make a final move. The Catholic Church threatened that if the Bill was passed, it would initiate litigation against the Government for contravention of Article 141 of the Basic Law, which states that,

Religious organizations may, according to their previous practice, continue to run seminaries and other schools, hospitals and welfare institutions and to provide other social services.

In the view of the Catholic Church, the introduction of SBM was a contravention to “their previous practice”. The government, however, was standing firm. It responded by claiming that Article 141 should be read together with Article 136, which states that,

On the basis of the previous educational system, the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on the development and improvement of education, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational qualifications. Community organizations and individuals may, in accordance with law, run educational undertakings of various kinds in the Hong Kong Special Administrative Region.

The Bill was passed in stormy atmosphere on 8 July 2004. The Catholic Church has subsequently informed the government that schools under the Church will not be setting up incorporated SMCs as required by the law before 2008.<sup>30</sup>

We have thus dwelt at length with the main controversies surrounding SBM and the Education (Amendment) Bill 2002. As one could see from the above, the controversies were both fundamental and acute. They involved not only conflicts of interests among SSBs, teachers’ associations and parents’ groups, but also political disagreements among the government, SSBs, and legislators. In the remainder of this case analysis, we shall proceed to a critical assessment of the role of the FRs in the episode. In so doing, the political dynamics underlying the legislative process of the Bill can hopefully be put in better relief.

#### **4. FR involvement in the policy-making processes**

One simple but useful way of starting to gauge the involvement of the functional representatives in the episode is to depict the membership of the LegCo Panel on Education (hereafter the Panel) and the related Bills Committee and see how many FRs were involved. Although such depiction may be general, it is appropriate because it would render some preliminary idea of who was involved in the consultation and examination processes of the Bill.

Recall that in Section 2, the proposal of the ACSBM was discussed in three Panel meetings between late 2000 and early 2001. In the legislative year 2000-2001, there were 19 members in the Panel (see

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<sup>29</sup> For example, it would be a criminal offence if a school allows a student who has been expatriated to enter and stay in school premises without the permission of the PSEM; it would also be a criminal offence if more than one student per two square meters stands in the corridor, playground or balcony of a school.

<sup>30</sup> *Ming Pao* 17 December 2004.

## Functional Constituency Research Project 2004

Table 1).<sup>31</sup> Six of the members were FRs, constituting about one third of total Panel membership.

| Name  | Political Affiliation                           | Method of Election                               |
|---|---|--|
| CHEUNG Man-kwong                                      | Democratic Party                                | Functional Constituency (Education)              |
| SIN Chung-kai   |   | Functional Constituency (Information Technology) |
| CHEUNG Yu-yan, Tommy                                  | Liberal Party                                   | Functional Constituency (Catering)               |
| LI Ka-cheung, Eric                                    | Independent                                     | Functional Constituency (Accountancy)            |
| LO Wing-lok   | Independent                                     | Functional Constituency (Medical)                |
| MAK Kwok-fung, Michael                                | Independent                                     | Functional Constituency (Health Services)        |
| YEUNG Sum (Chairperson)                               | Democratic Party                                | Geographical Constituency                        |
| SZETO Wah   |   |  |
| WONG Sing-chi   |   |  |
| HO Sau-lan, Cyd                                       | The Frontier                                    |  |
| LAU Wai-hing, Emily                                   |   |  |
| LEUNG Yiu-chung                                       | Neighbourhood and Workers' Service Centre       |  |
| TSANG Yok-sing, Jasper                                | Democratic Alliance for Betterment of Hong Kong |  |
| LAU Kong-wah  |   |  |
| WONG Wang-fat, Andrew                                 | Independent                                     |  |
| EU Yuet-mee, Audrey (since 21 Dec 2000) <sup>32</sup> | Independent                                     |  |
| YEUNG Yiu-chung (Deputy Chairperson)                  | Democratic Alliance for Betterment of Hong Kong | Election Committee                               |
| CHU Yu-lin, David                                     | The Hong Kong Progressive Alliance              |  |
| NG Ching-fai (up to 14 July 2001)                     | New Century Forum                               |  |

Source: Hong Kong Legislative Council, Membership List of the Panel on Education (2000-2001) <[http://www.legco.gov.hk/yr00-01/english/panels/ed/general/ed\\_mem.htm#0001](http://www.legco.gov.hk/yr00-01/english/panels/ed/general/ed_mem.htm#0001)>, 2004.

**Table 1 Membership of the LegCo Panel on Education 2000-2001**

<sup>31</sup> Panel membership is basically on a yearly basis. A LegCo member may, for different reasons, join and leave a Panel at any point during a legislative session. In this particular case, the Panel membership was relatively stable in the whole term of the LegCo.

<sup>32</sup> Eu Yuet-mee was not yet a member of the Panel for the first two meetings on the discussion of the ACSBM proposal.

## Functional Constituency Research Project 2004

As regards the Bills Committee that operated from 23 February 2003 to 6 July 2004, Table 2 shows that among the 10 members,<sup>33</sup> there were 3 FRs.

| Name                          | Political Affiliation                           | Method of Election                    |
|-------------------------------|---|---------------------------------------|
| CHEUNG Man-kwong              | Democratic Party                                | Functional Constituency (Education)   |
| CHEUNG Yu-yan, Tommy          | Liberal Party                                   | Functional Constituency (Catering)    |
| HO Chung-tai, Raymond         | Independent                                     | Functional Constituency (Engineering) |
| SZETO Wah                     | Democratic Party                                | Geographical Constituency             |
| HO Sau-lan, Cyd (Chairperson) | The Frontier                                    |                                       |
| LAU Wai-hing, Emily           |   |                                       |
| LEUNG Yiu-chung               | Neighbourhood and Workers' Service Centre       |                                       |
| LEE Cheuk-yan                 | Hong Kong Confederation of Trade Unions         |                                       |
| EU Yuet-mee, Audrey           | Independent                                     |                                       |
| YEUNG Yiu-chung               | Democratic Alliance for Betterment of Hong Kong | Election Committee                    |

Source: Hong Kong Legislative Council, Membership List of the Bills Committee on Education (Amendment) Bill 2002, <[http://www.legco.gov.hk/yr02-03/english/bc/bc54/general/bc54\\_mem.htm](http://www.legco.gov.hk/yr02-03/english/bc/bc54/general/bc54_mem.htm)>, 2004.

**Table 2 Membership of the Bills Committee on the Education (Amendment) Bill 2002**

Thus, in both the Panel and the Bills Committee, the FRs had occupied about 30% of the membership. Cheung Man-kwong and Cheung Yu-yan had joined both the Panel and the Bills Committee, the former's presence was to be expected as he was the sectoral FR concerned while the latter had probably participated as a representative of his party, the Liberal Party. Apart from these two, there were only four other FRs in the Panel and one in the Bills Committee.

It will be prudent to note that a mere headcount may overlook the factor of political affiliation and party representation. FRs of the same political party or grouping usually divide labour across different panels and bills committees, thus for example, in the present case, Cheung Yu-yan, as a member of the Liberal Party, was in fact representing and speaking on behalf of his party, whose LegCo members were all FRs. If one simply bases the evaluation of legislators' participation on a head count in the Panel and the Bills Committee, one may fail to capture the 'political weight' of certain members involved. A fairer assessment should better be considered in the light of the political parties or blocs to which the members belonged. Having conceded this though, it is also true that GRs did not seem to have been constrained by the same consideration, for example, both the Democratic Party and the Frontier had more than one GR member in the Panel and the Bills Committee.

When the spotlight is turned on FRs with no formal political affiliation, the limited involvement of these so-called "independent" FRs became even more obvious. Among the 30 FRs in LegCo, 13 were independents (see Table 5). There were only 3 independent FRs in the Panel in 2000-2001, namely, Li Ka-cheung, Lo Wing-lok and Mak Kwok-fung, who represented the functional constituencies of Accountancy, Medical and Health Services respectively. In the Bills Committee, there was even fewer independent FRs, in fact, only one, namely, Ho Chung-tai, the FR of the engineering sector. Although it might be the case that at the time of setting up the Bills Committee, the controversies on SBM were not as acute as in the later stage and that most of the legislators might have overlooked the sensitivity of the Bill, the involvement rate itself was undeniably low. It is probably fair to say that the involvement of the independent FRs in the consultation of the ACSBM proposal and the examination

<sup>33</sup> There were 11 members at the outset of the Bills Committee. Yeung Sum left the Bills Committee after its second meeting on 17 March 2003.

of the Bill had been minimal.

That the contingent of GRs outnumbered the FRs almost two to one in the Panel and the Bills Committee is in fact broadly in tune with statistical findings in the preceding quantitative study. The FRs have been shown to be less active in the major indicators of participation in the deliberation processes of policy-making, usually by a ratio of 1 to 2 compared to the GRs/ECRs. Given the total presence of 30 FRs in Legco, and the fact that the Panel was a standing committee in LegCo to monitor education matters in Hong Kong, it does appear education was not among the FRs' priorities.

Apart from the involvement of the FRs in the consultation and deliberations on the ACSBM proposal and the Bill, we may also take a look at their voting patterns and participation in the Second and Third Readings of the Bill to see what roles the FRs in general performed in the present case. Three observations can be highlighted here.

Firstly, except for Cheung Man-kwong, the FR of the education sector, no other FR had put forward any amendment in the Second Reading of the Bill as Table 3 shows.

| Name                | No. of Amendment | Political Affiliation                   | Method of Election                  |
|---------------------|------------------|---|-------------------------------------|
| LAU Wai-hing, Emily | 5                | The Frontier                            | Geographical Constituency           |
| HO Sau-lan, Cyd     | 4                |   |                                     |
| LEE Cheuk-yan       | 1                | Hong Kong Confederation of Trade Unions | Functional Constituency (Education) |
| CHEUNG Man-kwong    | 1                | Democratic Party                        |                                     |

Hong Kong Legislative Council, Official Record of Proceedings, 8 July 2004 (Floor), <<http://www.legco.gov.hk/yr03-04/chinese/counmtg/floor/cm0708ti-confirm-c.pdf>>, 2004.

**Table 3 Member amendments in the Second Reading of the Education (Amendment) Bill 2002**

There were in total 11 amendments moved by 4 LegCo members, 10 by GRs.<sup>34</sup> One may wonder why Cheung Man-kwong had moved only one amendment. One possible reason might be that Cheung and the other three GRs moving the amendments were all democrats, the latter hence doing part of the job for Cheung. Meanwhile one may also wonder why there was no amendment from the rest of the FRs in the Second Reading. There are two possible answers: either they were in support of the democrats' amendments and therefore saw no need to move any amendment themselves, or they were in full support of the provisions of the Bill and therefore also saw no need for any amendment. As we shall see later in this section, for most FRs, the answer is definitely the latter rather than the former. In the present case, all the amendments were negated under the split-voting system.<sup>35</sup> It was a landslide victory for the government.

The second observation concerns the number of LegCo members who spoke in the Second Reading of the Bill. As far as this study is concerned, delivering speeches is a direct manifestation of participation in the deliberations of an issue. It is a role that any LegCo member is expected to perform. As the Second and Third Readings of the Bill had lasted 13 hours, one would expect a legislator to have had the opportunity to speak if he or she so wished. Table 4 summarizes the speech records.

<sup>34</sup> Among the 11 amendments, four were not put to the vote because they conflicted with preceding amendments moved by the Government which had been passed.

<sup>35</sup> According to the Basic Law as well as the LegCo Rules of Procedure, a private member's motion requires a majority in each of the two "houses" created by the split-voting system to pass. This split divides LegCo into the 30 functional representatives on one hand, and the 24 geographical representatives and 6 Election Committee members on the other. Even if a bill is passed in one "house", if it is not passed in the other, the bill will be negated. Confer section H above.

# Functional Constituency Research Project 2004

| Method of Election        | Position on the Bill | Name                       | Political Affiliation                           |
|---------------------------|----------------------|----------------------------|---|
| Functional Constituency   | Support              | CHEUNG Yu-yan Tommy        | Liberal Party                                   |
|                           |                      | CHOW LIANG Shuk-ye, Selina |   |
|                           |                      | LEUNG Fu-wah               | Democratic Alliance for Betterment of Hong Kong |
|                           |                      | IP Kwok-him                |   |
|                           |                      | SHEK Lai-him, Abraham      | Independent                                     |
|                           | Against              | CHEUNG Man-kwong           | Democratic Party                                |
|                           |                      | NG, Margaret               | Independent                                     |
| Geographical Constituency | Support              | TSANG Yok-sing, Jasper     | Democratic Alliance for Betterment of Hong Kong |
|                           |                      | CHAN Kam-lam               |   |
|                           | Against              | LEE Chu-ming, Martin       | Democratic Party                                |
|                           |                      | HO Chun-yan, Albert        |   |
|                           |                      | TO Kun-sun, James          |   |
|                           |                      | YEUNG Sum                  |   |
|                           |                      | CHENG Kar-foo, Andrew      |   |
|                           |                      | SZETO Wah                  |   |
|                           |                      | LAU Wai-hing, Emily        | The Frontier                                    |
|                           |                      | HO Sau-lan, Cyd            |   |
|                           |                      | LAU Chin-shek              | Hong Kong Confederation of Trade Unions         |
|                           |                      | LEE Cheuk-yan              |   |
|                           |                      | LEUNG Yiu-chung            | Neighbourhood and Workers' Service Centre       |
|                           |                      | EU Yuet-mee, Audrey        | Independent                                     |
|                           |                      | CHAN Wai-yip               | Independent                                     |
| Election Committee        | Support              | YEUNG Yiu-chung            | Democratic Alliance for Betterment of Hong Kong |

Hong Kong Legislative Council, Official Record of Proceedings, 8 July 2004 (Floor), <<http://www.legco.gov.hk/yr03-04/chinese/counmtg/floor/cm0708ti-confirm-c.pdf>>, 2004.

**Table 4 Member speeches in the Second Reading of the Education (Amendment) Bill 2002**

As Table 4 shows, a total of 23 LegCo members spoke during the Second Reading of the Bill. While seven were FRs, 15 were GRs. In other words, 23 FRs chose not to say a word on the issue. Although for FRs with party affiliation, it could be that their party spokesperson on the issue spoke for them too, many of the GRs, similarly with political affiliations, chose to deliver personal speeches. One likely explanation for the inactivity of the FRs in the deliberation process is that most were in support of the government and were under no pressure to have to change the minds of fellow legislators when they were confident the government had sufficient votes to carry the Bill through the legislature.

This observation appears to be substantiated by the third observation – the voting positions of the FRs. As noted in Section 3, the issue of SBM was extremely controversial in society on the eve of the Second and Third Readings. The Catholic Church was threatening to bring the government to court if the Bill was passed. The democrats in the Bills Committee also tried very hard to extract government concessions on the Bill. But Arthur Li, the Secretary for Education and Manpower, opined publicly that the democrats were opposing the Bill just for the sake of opposing the government. It is not difficult to surmise why the government stood so firm on the Bill, it was because the government was confident of sufficient supporting votes in LegCo. Tables 5 to 7 show where the support was coming from.

# Functional Constituency Research Project 2004

| Voting Position   | Name                        | Functional Constituency                          | Political Affiliation                                      |
|-------------------|-----------------------------|--|--|
| For               | TIEN Pei-chun, James        | Commercial (I)                                   | Liberal Party  |
|                   | TING Woo-shou, Kenneth      | Industrial (I)                                   |  |
|                   | CHOW LIANG Shuk-yee, Selina | Wholesale and Retail                             |  |
|                   | LEUNG LAU Yau-fun, Sophie   | Textiles and Garment                             |  |
|                   | YOUNG, Howard               | Tourism  |  |
|                   | LAU Wong-fat                | Heung Yee Kuk                                    |  |
|                   | LAU Kin-yee, Miriam         | Transport  |  |
|                   | CHEUNG Yu-yan Tommy         | Catering   |  |
|                   | WONG Yung-kan               | Agriculture and Fisheries                        |  |
|                   | IP Kwok-him                 | District Council                                 | Democratic Alliance for Betterment of Hong Kong/(Leung)FTU |
|                   | LEUNG Fu-wah                | Labour   | Independent  |
|                   | HO Chung-tai, Raymond       | Engineering                                      |  |
|                   | LUI Ming-wah                | Industrial (II)                                  | Independent  |
|                   | CHAN, Bernard               | Insurance  | Independent  |
|                   | WONG Yu-hong, Philip        | Commercial (II)                                  | Independent  |
|                   | FOK Tsun-ting, Timothy      | Sports, Performing arts, Culture and Publication | Independent  |
|                   | SHEK Lai-him, Abraham       | Real Estate and Construction                     | Independent  |
|                   | WU King-cheong              | Financial Services                               | Independent  |
|                   | LAU Ping-cheung             | Architectural, Surveying and Planning            | Independent  |
| Against           | CHEUNG Man-kwong            | Education  | Democratic Party   |
|                   | SIN Chung-kai               | Information Technology                           |  |
|                   | LAW Chi-kwong               | Social Welfare                                   |  |
|                   | NG, Margaret                | Legal  | Independent  |
|                   | MAK Kwok-fung               | Health Services                                  | Independent  |
| Absent for voting | CHAN Kwok-keung             | Labour   | Democratic Alliance for Betterment of Hong Kong/FTU        |
|                   | HUI Cheung-ching            | Import and Export                                | The Hong Kong Progressive Alliance                         |
|                   | LI Fung-ying                | Labour   | The Federation of Hong Kong and Kowloon Labour Unions      |
|                   | LI Ka-cheung, Eric          | Accountancy                                      | Independent  |
|                   | LI Kwok-po, David           | Finance  | Independent  |
|                   | LO Wing-lok                 | Medical  | Independent  |

Source: Hong Kong Legislative Council, Voting Results in Council Meetings <<http://www.legco.gov.hk/yr03-04/english/counmtg/voting/v0407081.htm>>, 2004.

**Table 5 FR voting positions in the Third Reading of the Education (Amendment) Bill 2002**

# Functional Constituency Research Project 2004

| Voting Position   | Name                   | Political Affiliation                             |
|-------------------|------------------------|---|
| For               | TSANG Yok-sing, Jasper | Democratic Alliance for Betterment of Hong Kong   |
|                   | CHAN Kam-lam           |   |
|                   | LAU Kong-wah           |   |
|                   | TAM Yiu-chung          |   |
|                   | TANG Siu-tong          | The Hong Kong Progressive Alliance                |
| Against           | LEE Chu-ming, Martin   | Democratic Party                                  |
|                   | HO Chun-yan, Albert    |   |
|                   | LI Wah-ming, Fred      |   |
|                   | TO Kun-sun, James      |   |
|                   | YEUNG Sum              |   |
|                   | CHENG Kar-foo, Andrew  |   |
|                   | SZETO Wah              |   |
|                   | WONG Sing-chi          |   |
|                   | LAU Wai-hing, Emily    | The Frontier                                      |
|                   | HO Sau-lan, Cyd        |   |
|                   | LAU Chin-shek          | Hong Kong Confederation of Trade Unions           |
|                   | LEE Cheuk-yan          |   |
|                   | LEUNG Yiu-chung        | Neighbourhood and Workers' Service Centre         |
|                   | FUNG Kin-kee           | Association for Democracy and People's Livelihood |
|                   | EU Yuet-mee, Audrey    | Independent                                       |
|                   | CHAN Wai-yip           | Independent                                       |
| Absent for voting | CHAN Yuen-han          | Democratic Alliance for Betterment of Hong Kong   |
|                   | CHOY So-yuk            | Independent                                       |
|                   | WONG Wang-fat, Andrew  |   |

Source: Hong Kong Legislative Council, Voting Results in Council Meetings <<http://www.legco.gov.hk/yr03-04/english/counmtg/voting/v0407081.htm>>, 2004.

**Table 6 GR voting positions in the Third Reading of the Education (Amendment) Bill 2002**

| Voting Position        | Name                   | Political Affiliation                           |
|------------------------|------------------------|---|
| For                    | YEUNG Yiu-chung        | Democratic Alliance for Betterment of Hong Kong |
|                        | LAU Hon-chuen, Ambrose | The Hong Kong Progressive Alliance              |
|                        | CHU Yu-lin, David      |   |
|                        | MA Fung-kwok           | New Century Forum                               |
|                        | NG Leung-sing          | Independent                                     |
| Present (did not vote) | FAN HSU Lai-tai        | Independent (President of LegCo)                |

Source: Hong Kong Legislative Council, Voting Results in Council Meetings <<http://www.legco.gov.hk/yr03-04/english/counmtg/voting/v0407081.htm>>, 2004.

**Table 7 ECR voting positions in the Third Reading of the Education (Amendment) Bill 2002**

The support of the government came mainly from the FRs and the Election Committee representatives. Among the FRs, there were 19 supporting votes and 5 opposing votes, whereas among the GRs, there were only 5 supporting votes but 16 opposing votes. The majority view of the GRs thus were vetoed or 'balanced' by the FRs. Since the FRs occupied half of the seats in LegCo, they had an incomparable influence if they adopted a uniform position on an issue. In the case of SBM, their support for the government successfully overrode the majority view of the directly elected legislators.

To summarize on this section, the FRs as a group of legislators have been shown to be inactive in the Second and Third Readings of the Bill. Very few of them had either moved amendments or spoken on the issue. Yet the voting records show them up as ardent and loyal supporters of the government. When voting time came, they either turned up in force to support the government or at worst, not show up for the vote. Against such records, it is tempting for one to label the FRs as pro-government and to lament their disincentive in even getting engaged in the deliberations to contribute their views. To concede to the temptation will be understandable, but too hasty. To suggest that the FRs were simply the government's voting machines, one would need extra and stronger evidence. Efforts should be made to examine what considerations the FRs might have in mind when they decided on what position to take. For instance, could they have been guided by sectoral considerations or were they expressing considered views rather than being blind supporters of the government? Or did they have in mind public interests? These questions are crucial and they are the focus of the next section.

### 5. Whose views? Whose interests?

To examine the underlying considerations of the FRs is not an easy task. As far as the present case is concerned, many of the FRs appeared to have been inactive and hiding from view – they did not join the Panel or the Bills Committee; they did not put forward any amendment and hardly spoke during the Second Reading of the Bill; they rarely expressed their views on SBM in public. All these place great demands on the researchers to try to comprehend what might have been in the minds of the FRs. It might be that the FRs saw no immediate relation between SBM and sectoral interests that explains their seeming inactivity. On the face of it, the issue of SBM concerned only Cheung Man-kwong directly, the FR of the education sector.

Even so, one would be interested to know what made the FRs take the positions they took? Whose views were they endorsing? Why? Whose interests were they safeguarding? To begin, a speech by Shek Lai-him, the FR for Real Estate and Construction, in the Second Reading debate of the Bill might be illuminating of the line of thinking informing not a few FR positions. Mr. Shek started his speech in the following way:

Not being a member of the Bills Committee, I am not qualified to speak on the subject. Since so much efforts, hard work and time have been spent by members on this Bill, it is highly admirable. But as a *citizen*, I also feel an urge to speak out. ...<sup>36</sup> (emphasis added)

It is puzzling to hear a legislator say he was not qualified to speak on a subject *because* he had not participated in the related committee. As a legislator, Mr. Shek could have commented at least on the broad principles of the issue under debate if not the technical provisions in the draft law had he wished to do so. However, the focal point here is not his opening, but what he then said:

..... I ask myself: Should I speak or should I not speak? If I speak, what role should I assume? As a Catholic? Though I am not a good Catholic, I am still a Catholic. As a past student of a Catholic school? As a father of three daughters who attended an Anglican school – the St. Stephen Girls' School which is one of the best in Hong Kong? Or as a citizen and a pro-government legislator? *I found these roles all so confusing*, and that is why I only started to write while everybody was talking. As a Catholic, I only need to follow my church teachings in the matter of my religion. In the matter of the state, I abide by the state laws. This is no different from a bishop or a priest, or a layman or a bad Catholic like me because this is actually the teaching of God – render unto Caesar, the things that are Caesar's, and to God, the things that are God's. On this basis I would like to talk about this subject....<sup>37</sup> (emphasis added)

<sup>36</sup> Hansard, 8 July 2004 (Floor), p.779.

<sup>37</sup> Ibid., p.780.



The sharp conflicts between the government and the Catholic Church on SBM made Shek reflect on his identity in LegCo. He admitted openly about his confusion as to what role he should assume. It seems that Shek finally decided to speak as an ordinary citizen, disregarding his religious dispositions, his official capacity as a sectoral FR, and his even broader capacity as a lawmaker of Hong Kong. In the passage above, not a word was said about the sector he was representing. It appears it did not occur to Shek that either his expertise or the sectoral interests he was representing was of any relevance to the issue under debate. His judgment on the issue was conceived in the capacity as an ordinary citizen, instead of a well-informed legislator or a representative of a functional constituency. In his speech, he warned Arthur Li, the Secretary for Education and Manpower to be "very careful" when putting forward the Bill, since its effects on the education system would be irreversible. Here Shek did make reference to the general interests on education, but then he arrived at his conclusion on a largely different note,

..... As a *pro-government* legislator of this council for the last four years, I have no regrets. I will give you [i.e. Arthur Li] my support, *believing* that you have very good intent. I will also give you my support *trusting* that what you are doing is for the good of our children....<sup>38</sup>  
(emphases added)

Shek explicitly affirmed his political commitment to the government and duly voted in support of the Bill. From his speech, several interesting points can be noted. Firstly, he thought he was not qualified to comment on the issue because he did not join the Bills Committee. Secondly, he had not intended to speak but when he changed his mind and spoke, he chose to speak in the capacity of an ordinary citizen rather than as a FR or legislator. Thirdly, although he showed awareness of the significant effects the Bill might have on the education system, when he determined on the position to take on the Bill, he professed to be a pro-government legislator and duly gave his support to the government on his belief and trust of the government's good intent.

It is not often that a FR would publicly profess to be a pro-government legislator in such a frank manner. On an issue that had generated so much controversy in society, at least one legislator had found no better grounds to base his position on than to put faith in the government's good intent, despite the fact he was the representative of a functional constituency and also a lawmaker of Hong Kong. As an independent FR, he had to find resort in a role he professed to having performed in the preceding four years, that is, supporting the government on faith.

One should certainly resist the temptation to over-generalize from one specific speech. However, it is worth noting that the pro-government tendency of the FRs in LegCo has also been established in the quantitative study above (see Table 15 of Part I). This appears to be particularly true of the independent FRs. As far as the present case is concerned, with the exception of Margaret Ng and Mak Kwok-fung, the representatives of the Legal and the Health Services sectors respectively, all independent FRs consistently voted for the government in the Second and Third Readings of the Bill. At worst, two of these, namely, Li Ka-cheung and Lo Wing-lok, representing the Accountancy and Medical functional constituencies respectively, stayed away from the vote. They did not turn up to oppose the government. While it will take a lot more evidence to establish the reasons behind individual legislators' positions, the voting patterns at least confirm the pro-government tendencies of many of the FRs, especially when no sectoral interests were perceived to be directly at stake.

Mindful of not over-generalizing from one individual FR, we proceed to examine the views expressed by other FRs in the Second Reading of the Bill. As Table 4 shows, seven FRs spoke during the Second Reading. They were Cheung Yu-yan (Catering), Chow Liang Shuk-ye (Wholesale and Retail), Leung Fu-wah (Labour), Ip Kwok-him (District Council), Margaret Ng (Legal), Cheung Man-kwong (Education) and Shek Lai-him (Real Estate and Construction). As the case of Shek has been examined while the role of Cheung Man-kwong will be considered in Section 7 below, in the following, we

<sup>38</sup> Ibid., p782.

shall focus on the remaining five.

On the face of it, there seems to be no obvious or immediate relationship between SBM and the sectoral interests of the five FRs involved. It is therefore conceivable that they would not make recourse to their sectoral views when commenting on the issue. As shall be seen in their speeches, this postulation is correct. What then might be in the five FRs' considerations when they argued for or against SBM and the Bill? There are several possible answers. They might follow the line of the party or political group they belonged to; they might have in mind public interests, the interests of the stakeholders, or the interests of SSBs; they might be guided by concerns for such political principles as democracy, accountability and check and balances; or they might simply toe the government line. These answers are not mutually exclusive. A FR might adopt a cluster of these considerations. In what follows, we shall examine if any of these featured in the five FRs' considerations. In doing so, hopefully more of the underlying dynamics in the legislation of the Bill can be captured.

The speeches of Cheung Yu-yan and Chow Liang Shuk-yea will be looked at first. They both belonged to the Liberal Party. In the Second Reading, both Cheung and Chow were speaking on behalf of their party. They did not mention a word about the views of their own sectors. As Cheung propounded, the Liberal Party regarded the Bill as having struck a balance among different interests in society. For Cheung, the crux of the Bill was to allow stakeholders to participate in school management and he considered the powers reserved for the PSEM as appropriate since the schools were granted huge sums of public money every year. He could not see how the idea of participation and accountability could be rejected.<sup>39</sup> His colleague, Chow Liang Shuk-yea, took a similar line in her speech. She especially stressed the importance of democratic participation of stakeholders in school management and attacked the democrats for being inconsistent because democracy and accountability were presumably the watchwords of the democrats, yet here, in her view, the democrats were up in arms against a bill intended precisely to bring democracy and accountability to school management. She teased that their inconsistency made her think of the saying, "the shoe is on the other foot".<sup>40</sup> The Liberal Party was in support of the Bill.

Ip Kwok-him and Leung Fu-wah, both members of the Democratic Alliance for Betterment of Hong Kong (hereafter the DAB), also spoke in support of the Bill. In his speech, Ip did not explain why he supported the Bill. Rather, he launched a harsh attack on the Democratic Party and Cheung Man-kwong for their alleged inconsistency over SBM, citing pieces of evidence to support his challenge. Ip's speech was essentially political in nature and did not contain much substantive discussion of the Bill itself.<sup>41</sup> Leung Fu-wah, on the other hand, did address the contents of the Bill in his speech, although he also fiercely attacked not only the democrats but the Catholic Church. In short, he supported the Bill because, as he said, he thought transparency and accountability were most important and that students' interests should always take priority.<sup>42</sup>

Margaret Ng was the only FR, apart from Cheung Man-kwong, to speak against the Bill in the Second Reading. Ng was an independent FR representing the legal sector. In her speeches, she mentioned little the interests of the SSBs or stakeholders. She had rather perceived the Bill as an unjustified expansion of government powers in education. Her fundamental worry was that when the SMCs became independent incorporated entities, the government could easily extend its manipulation whenever it wished. As she argued, the Bill would greatly undermine the freedom and autonomy of schools.<sup>43</sup>

<sup>39</sup> Ibid., pp.754-758, and 847-848.

<sup>40</sup> Ibid., pp.782-783.

<sup>41</sup> Ibid., pp.758-760.

<sup>42</sup> Ibid., pp.776-778.

<sup>43</sup> Ibid., pp.769-770, 885-887, and 897-898.

From the above, one sees that the considerations of the five FRs overlapped as well as varied. In sum, the considerations involved were (1) whether the Bill achieved a good balance amongst interests; (2) whether the Bill truly upheld the principles of democratic participation, transparency and accountability; (3) whether students' interests had been given priority; and (4) whether the Bill would grant the government too much power. Since none of the five sectoral FRs made much reference to their own sectors, it is probably an indicator that they did not perceive the Bill as having any immediate relevance in that connection.

Thus, while Shek lay bare his commitment to the government above all, other FRs obviously had more diverse considerations at least as far as their expressed views indicated. The range of opinions however was not confined to the five FRs, it featured in most other speeches made during the Second Reading of the Bill. Interestingly, within this range of opinions, a clear dividing line is visible between the supporters and opponents of the Bill. While the supporters of the Bill, who were mainly FRs, stressed the importance of strengthening the accountability and transparency of SMCs, the opponents, who were mainly GRs, argued vigorously for the power of the government to be checked.

In addition, those among the five FRs who had political affiliations obviously gave vent to party lines a great deal, repeatedly stating their party positions and attacking political opponents in their speeches. That a line can be drawn using political affiliation becomes even clearer if the picture is broadened to include all FRs. The impact of "party line" was not brief or contingent. It happened in every voting on every amendment of the Bill. The division is so clear and consistent that one could tell a FR's vote just by knowing his/her political affiliation – while the Liberal Party and the DAB were all in support of the government, the Democratic Party was against. As the voting records demonstrate, FRs with the same political affiliation all took the same position without exception. In the case of SBM, thus, political affiliation appears to provide a much better clue than sectoral identity for predicting the vote of a FR.

The general picture that derives from the above concerning the considerations of FRs in the SBM episode thus appears variegated – at least one FR professed his pro-government stance explicitly, some toed the party line, some were concerned with strengthening the accountability and transparency of school management, still others were suspicious of the government's motivations. What can be said in simpler terms is that there was no sign that FRs had taken SBM to be immediately related either to their sectoral interests or their respective expertise. As a consequence, FRs, especially the independents, had had great liberty to decide what position to take on the issue, so much so that at least one, namely, Shek, appeared to be at a loss as to what to do with that liberty. In the few FR speeches, but more conspicuously in their silence, there was little sign that FRs considered their sectoral perspective or any personal expertise as worth contributing to the policy debate under way.

The only exception to the above is Cheung Man-kwong. As the FR of the education sector, SBM was of direct and immediate concern. In fact, Cheung had participated from the very beginning in the evolution of the Bill. In the later stages, he became a significant figure in attempting to resolve the conflicts between the SSBs and the government. Although he was not successful in his efforts, his role as the relevant sectoral FR deserves to be studied. To this the next section turns.

## **6. The roles of the sectoral FR**

In the controversies surrounding SBM, Cheung was faced with a touchy situation. Cheung was one of the pioneer advocates for teachers' and parents' representatives to be included and share decision-making powers in SMCs. He had also been critical of the lack of accountability and transparency on the part of SMCs. During the consultation on the ACSBM proposal in the Manpower Panel, Cheung's role as advocate was outstanding both inside and outside LegCo. At the time, he was of the view that SSBs should occupy no more than 50% of SMC memberships and that the SMCs should be incorporated in order that questions of liability could be clarified. Although the Catholic

Church and the Anglican Church had already made clear their objection to the ACSBM recommendations such as the incorporation of SMCs and the inclusion of teachers and parents in SMCs, Cheung kept urging the government to introduce as soon as possible legislative measures to realize the idea of SBM. He opined in clear terms in a Panel meeting that he saw no reason why there should be further delay in implementing SBM.<sup>44</sup>

At the same time as playing advocate for SBM, however, Cheung was performing multiple other roles such as protector of teachers' interests, watchman of the potential dangers of the Bill, as well as conciliator and consensus-builder between the SSBs and the government. Let us elaborate on these roles in turn.

As the president of the Hong Kong Professional Teachers' Union (HKPTU), the largest teachers' union in Hong Kong, Cheung had a good sense of protecting the interests of school employees. In the examination of the Bill, he showed great concern whether the Bill was paving the way for the introduction of the 'Lump Sum Grant'.<sup>45</sup> He also queried whether the Bill would empower the SMC to reduce the salaries and benefits of teaching and non-teaching staff.<sup>46</sup> The government was pressed to clarify its intentions behind specific provisions of the Bill. On those queries, Cheung made good use of HKPTU's newsletter to report latest developments on the Bill and reaffirm his priority in protecting the interests of school employees.<sup>47</sup> He sustained good communication with his main constituents.

In the Bills Committee, Cheung took up the role of a watchman. As a member of the Democratic Party, Cheung kept his eyes wide open on any proposal made by the government. Under the close scrutiny of the Bills Committee, the government made more than forty amendments to the Bill. The government was uncompromising on requests to curb the power of the PSEM, but Cheung's contributions in winning the other amendments have to be recognized. For example, it was Cheung who suggested that the Bill should empower SSBs to determine the appointment of the Chairperson of a SMC and the principal of a school.<sup>48</sup> He, together with Chueng Yu-yan, put forward the proposal that a SSB should have full control of the use of funds other than government funds and assets owned by it.<sup>49</sup> He also strongly urged the government to clarify the civil and criminal liabilities of a school manager under the Bill.<sup>50</sup>

The most challenging job for Cheung though, was to help resolve the deadlock between the SSBs and the government. As mentioned above, during the consultation on the ACSBM proposal, the main SSBs such as the Catholic Church and the Anglican Church were strongly and fundamentally against some ACSBM recommendations. Although the two Churches had had no difficulty with engendering the accountability and transparency of SMCs, they flatly rejected the proposal to incorporate the SMCs and to render them independent of respective SSBs. They also disagreed that all stakeholders should be given decision-making powers in the SMCs lest the latter would become politicized. The

<sup>44</sup> Hong Kong Legislative Council, LegCo Panel on Education, minutes of meeting held on 20 November 2000, LC Paper No. CB(2)668/00-01, p.5.

<sup>45</sup> The idea of Lump Sum Grant was put into practice in the social welfare sector in 2000. Under this system, the staffing levels of aided welfare agencies are not standardized, agencies are given a lump sum to spend as they choose, including idiosyncratic staffing and structures. The teachers' association worried that the system would sooner or later be introduced to the education sector and teachers would probably face a wage cut as a result.

<sup>46</sup> Hong Kong Legislative Council, Bills Committee on Education (Amendment) Bill 2002, minutes of meeting held on 12 February 2004, LC Paper No. CB(2)1491/03-04, pp.5-6; and 21 April 2004, LC Paper No. CB(2)2305/03-04, pp.4-5.

<sup>47</sup> For example, 張文光,「教育修訂條例新進展 教師職業保障現轉機」,《教協報》,2003年6月9日。

<sup>48</sup> Hong Kong Legislative Council, Bills Committee on Education (Amendment) Bill 2002, minutes of meeting held on Thursday, 30 October 2003, LC Paper No. CB(2)302/03-04, p.2.

<sup>49</sup> *Ibid.*, minutes of meeting held on 3 March 2004, LC Paper No. CB(2)1676/03-04, p.3.

<sup>50</sup> *Ibid.*, minutes of meeting held on 27 May 2004, LC Paper No. CB(2)3109/03-04, p.3.

conflicts became even more intense when the government ignored the Churches' objections and moved the Bill for the Second and Third Readings in LegCo. In view of this loggerhead, Cheung attempted to put forward a compromise proposal to the SSBs and the government. In brief, he suggested the introduction of a grace period of five years, during which the legal bindings of the Bill would be temporarily suspended to allow experimentation and observation of its effects. If, by the third year, it turned out that the implementation of SBM was not as successful as intended and was causing troubles in school governance, LegCo would be in a position to pass a resolution to postpone the Bill for a further period. Cheung regarded his proposal as a conciliation option for the SSBs and the government to consider.

With his proposal, Cheung made visits to the SSBs in the hope of gaining their support. The SSBs were not impressed however and insisted on the withdrawal of the Bill. The government also rejected Cheung's proposal. The Secretary for Education and Manpower insisted on legislation of the Bill in its entirety and rejected any possibility of delaying the enforcement of the Bill. Cheung's effort of attaining a compromise between the conflicting parties was thus fruitless.

We have seen the different roles of Cheung in the SBM episode. As the FR of the education sector, Cheung was presumably the most suitable and legitimate representative to be performing the different roles depicted. However, neither did his views appear to have weighed heavily on the government nor was his amendment to the Bill supported in LegCo. Sectoral relevance and presumed expertise thus do not necessarily carry extra weight in policy-making deliberations and political decisions. In the case of SBM, rather, it seems that what counted most for the government was to ensure a sufficient number of legislators falling in line to secure the safe passage of the government bill, whereas legislators had an assortment of other political considerations apart from the policy issue itself.

## **7. Conclusion**

As generally understood, one of the main intentions of functional representation is for the FRs to inject a range of sectoral viewpoints into LegCo to enrich legislative deliberations. In practice, both representatives and constituents of functional constituencies have also developed an outlook of FRs as the mouthpieces of sectoral perspectives and guardians of sectoral interests. Given the high diversity of issues in the legislative processes, however, it is clearly impossible for a FR to discern sectoral relevance in the deliberation of every issue. In reality, therefore, when the issue at hand has little to do with the expertise or immediate interests of the sector a FR is representing, alternative "guides" for action enter the stage.

The case of SBM provides a good illustration of how FRs might react in case of an issue of no immediate relation to either expertise or sectoral interests. In this case analysis, we have sought to illustrate the various reactions and considerations of the FRs in tackling the controversies of the Education Bill. These turn out to be diverse but nonetheless clearly patterned. When no sectoral expertise or interests were directly involved, it seems that the next clue for action was political inclination and party affiliation. Thus, while the FRs from the democratic camp were always cautious about every move of the government, the FRs from the Liberal Party, the DAB, and most of the independent FRs would be always providing unfailing support to the government. A rather stable 'alliance' between the pro-government FRs and the government became manifest. If this reading is correct, it stands to cast doubt on the justification of the functional representation system on grounds of contributing diverse input to improve the quality of legislative deliberations and policy-making. Judging from the dynamics revealed in the SBM episode, it appears that the word that speaks louder is power and not expertise. When the government was confident of sufficient supporting votes in the legislature, the politics of dialogue and consensus-building appears to be relegated to a much lower priority, if at all.

## **B. The Occupational Safety and Health (Display Screen Equipment) Regulation**

### **1. Introduction**

The Occupational Safety and Health (Display Screen Equipment) Regulation (hereafter the Regulation) provides protection to employees whose job nature involves prolonged use of display screen equipment (DSE) almost on a daily basis. The policy-making processes of the Regulation are of interest to this research for a couple of reasons and these pertain to two major dimensions of the nature of the Regulation. Firstly, as the intention of the legislation was to provide new protections for employees, it is almost natural that it would be seen as heralding production cost increase and therefore earn the ire of employers. As a matter of fact, from the government's notice of intention to move a motion on the Regulation in the legislature in December 2000 to the passage of the Regulation in April 2002, legislative scrutiny of the Regulation had taken more than 15 months. A Subcommittee (hereafter the Subcommittee)<sup>51</sup> set up by the legislature to study the government's draft Regulation in detail met a total of 15 times. The legislative deliberations involved were not without some unexpected twists of events and fireworks between legislators of business backgrounds and those of labour backgrounds.

Secondly, apart from the business-labour, "interest" based dichotomy that is usually used to look at labour protection issues, there is a "scientific" dimension to the Regulation and this can be further divided into two specific aspects. To start with, as the subject matter relates to DSE, advances in information technology and the usual modes of IT application in everyday business and production activities become relevant in the consideration of how widespread the problem might be that links DSE use to health problems. This leads on to the second scientific aspect, that is, medical estimation and proof that there is indeed substantial relationship between DSE use and specific health problems. In the Subcommittee, it is noteworthy that out of a total of 14 members, 10 were functional representatives, there were only three GRs and one legislator from the Election Committee. Since the functional representatives came from different economic and professional sectors, one would expect to hear from them about IT application and perhaps even related health problems in their respective sectors, in other words, one would imagine the deliberations to be diverse and comprehensive. In addition, one would also be inclined to consider the three representatives of Medicine, Health Services, and Information Technology respectively as the "authorities" in this relation and expectant of professional advice from them to enhance the scientific angle and objectivity of the discussions.

In the following analysis, therefore, the examination of the deliberation and decision-making processes associated with the passage of the Regulation will be conducted along the dimensions outlined above. For consideration of keeping consistency as much as possible, the organization of the analysis will follow the pattern of the first case study. Sections 2 and 3 will provide a description of the evolution of the Regulation and the major controversies involved respectively. Section 4 follows with an examination of the involvement of FRs in the deliberation processes and their votes on the Regulation. The patterns of involvement will pave way for a critical assessment in section 5 of the performance and positions of individual FRs in the episode. Unlike the first case study in which there was one obvious sectoral FR, namely, the FR of Education, the Regulation in this case was poised to have cost and operational implications for almost all functional constituencies, especially those belonging broadly to the business sector. It follows that in this case, generally speaking, the functional representatives can all be treated as sectoral FRs, because their sectoral interests could be at stake, albeit to various extents. Notwithstanding, in terms of directness and immediacy of the potential impacts of the Regulation, the FRs for Labour and those for the four Commercial and Industrial constituencies probably stood out among the rest and will therefore be taken as the immediate sectoral FRs for analysis. After the review of the positions of FRs in general, therefore, section 6 zooms in on the participation and contribution of the immediate sectoral FRs and the three professional FRs of

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<sup>51</sup> The Regulation was not in itself a bill as such but was made under the Occupational Safety and Health Ordinance. So instead of a bills committee, it was scrutinized by a subcommittee. Confer Note 52 below.

Medicine, Health Services, and Information Technology, for the reasons given above. In section 7, some concluding remarks complete the case analysis.

## **2. Background and development of the Regulation**

The origin of the Regulation can be traced back to 1996 when the Labour Department submitted the Regulation for discussion to the Labour Advisory Board (LAB), a statutory body on labour issues with representation from employers, employees and the government. After submissions were invited from labour unions, commercial associations, the occupational safety profession and other interested organizations on some proposed standards under the Regulation, and subsequent to further consultations, the Labour Advisory Board gave the green light to the Regulation.

In November 2000, the SAR government gave notice of its intention to move a motion in the following month to seek the Legislative Council's approval of the Occupation Safety and Health (Display Screen Equipment) Regulation made by the Commissioner for Labour under section 42 of the Occupational Safety and Health Ordinance (OSHO).<sup>52</sup> In view of the growing use of computers at work and the increasing number of employees who had to use DSE for prolonged periods in their work, the Regulation was intended to protect the occupational safety and health of employees using DSE as a significant part of their work.

Upon the government notice, the House Committee decided to set up a subcommittee to study the Regulation in detail. At the request of the House Committee, the government withdrew its notice of moving the motion in the Legislative Council to allow time for the Subcommittee to conduct its study of the Regulation. The Subcommittee held its first meeting in December 2000 and concluded its deliberations in October 2001, after meeting with government officials 11 times. The decision was made for the chairman of the Subcommittee to report deliberations and conclusions of the Subcommittee to the House Committee, while at the same time for the government to give fresh notice to move a motion on the Regulation for the approval of the Legislative Council at its meeting on 21 November 2001.

In his report to the House Committee on 9 November 2001, the Subcommittee chairman pointed out that while the objective of protecting the occupational safety and health of DSE users was agreeable to all Subcommittee members, members had had different views on various issues, especially certain controversial provisions in the proposed Regulation. Some members, broadly of business backgrounds, questioned whether an education and publicity campaign would not be more effective than legislative means in achieving the objective, some wondered if it was the best of times to be imposing additional responsibilities on employers given the state of the Hong Kong economy, and still others had had grave concerns about making non-compliance with certain stipulated requirements in the Regulation offences of strict liability punishable with a substantial fine. On the other hand, some Subcommittee members, especially of labour backgrounds and the FR of the IT sector, were concerned about compliance standards not being set out in the Regulation itself but instead in an advisory Health Guide, non-compliance with which would not be subject to any penalty. Given such ambiguity, these

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<sup>52</sup> In November 1999, the government had consulted the legislature's Panel on Manpower on the Regulation and members resolved that controversial and technical aspects of the Regulation could be further discussed when it was brought forth for the Council's examination. As much of the subsequent debate and political wrestling on the Regulation had taken place in the legislature's House Committee and the Subcommittee it set up for the purpose, the Panel had not been a main theatre of activity and therefore will not be referred to again. The House Committee comprises all legislators except the President of the Council. It prepares for meetings of the Council and considers matters relating to the Council's business. It may form Bills Committees to scrutinize bills, or appoint subcommittees to study some subsidiary legislation in greater detail. See the minutes of the Manpower Panel meeting on 25 November 1999 at <http://www.legco.gov.hk/yr99-00/english/panels/mp/minutes/mp251199.pdf>.

members wondered how employers or other responsible persons at workplaces could discharge their responsibilities properly and in the final analysis, how the Regulation could be enforced effectively. The Subcommittee chairman reported that although the government had proposed a number of amendments to the Regulation, the Subcommittee had not been able to reach agreement on some of the more controversial issues. He therefore considered it appropriate to conclude the work of the Subcommittee and for the Council to make its decision on the fate of the Regulation.

At the House meeting, on top of the outstanding issues reported by the Subcommittee chairman, a new concern was raised, namely, the cost implications of the Regulation for the business environment. Legislators of the Liberal Party and representatives of some professional sectors indicated grave reservations about the wide scope and heavy penalties for non-compliance, they voiced special concern about the cost implications for small and medium enterprises to carry out improvement measures to comply with provisions of the Regulation. Questions about enforcement of the Regulation were also raised. The House Committee decided that the Subcommittee should continue its work to address the new concern as well as the outstanding issues. The government was requested to withdraw its notice of moving the motion on the Regulation in the Council a second time.

As the Subcommittee resumed its deliberations, submissions from interested groups were received.<sup>53</sup> The Subcommittee met a further four times and eventually concluded its deliberations in March 2002. After two withdrawals at the request of the legislature, the government finally moved a motion on the Regulation for the Legislative Council's approval on 22 April 2002. The Regulation was passed without Division. On the other hand, two amendments moved by legislators Lee Cheuk-yan and Andrew Cheng respectively on the definition of "user" in order to provide protection under the Regulation to more employees, and "periodic breaks or changes of activity" to reduce the duration that employees have to work with DSE, while passed by the geographical and Election Committee members by majority, were vetoed by FRs.<sup>54</sup>

### 3. The controversies

In explaining the introduction of the proposed Regulation, the government made reference to the fact of growing computer use at work and an increasing trend of employees who had to work long hours with computers developing health problems including upper limb pains and discomfort, back discomfort and eyestrain. The government reckoned that such problems were closely related to the design of workstations, working posture, working environment and work organization. Noting the ineffectiveness of public education as well as Labour Department guidelines on computer use at work since the early 1980s in arresting health problems caused by improper use of DSE, the proposed Regulation was intended to legislate for measures to ensure the safety standards of workstations in offices and other workplaces. Workstations were taken to comprise DSE, items peripheral to the DSE such as chair, desk, work surface and printer, as well as the immediate working environment around the DSE including lighting, acoustics, temperature and humidity.

In the government's initial draft Regulation, several central provisions were later to become major bones of contention in the deliberations of the Subcommittee and the House Committee. These included:

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<sup>53</sup> These included submissions from the Hong Kong Information Technology Federation which was against the introduction of the Regulation, and from the Hong Kong Information Technology & Network Engineering Employees Association, Hong Kong Communication Industry Employees Association, and Hong Kong Workers' Health Centre which were in support.

<sup>54</sup> Recall that motions moved by legislators have to be subject to the split-voting mechanism. See section H above.



### *The definition of "users"*

It was proposed that the Regulation would only cover employees who had to use DSE as a significant part of their normal work and were highly dependent on the use of DSE in their job, for example, word processing operators, computer graphic designers, data input operators and financial dealers.

### *Duties of employers*

Employers were to be required to perform multiple duties:

1. Conduct risk assessments of workstations used by users
2. Review risk assessments upon significant changes in the workstations or in the conditions of previous assessments
3. Record the results of risk assessments and keep such records for two years after the workstations involved have ceased to be used
4. Produce risk assessment records for inspection upon request by an occupational safety officer
5. Take action to reduce the identified hazards to the lowest extent as reasonably practicable
6. Inform users about the findings of risk assessments and actions taken to reduce the risks
7. Provide safety and health training to users
8. Ensure workstations are suitable for the safety, health and welfare of users as far as reasonably practicable

### *Offences*

1. Upon conviction for contravening the provisions of the proposed Regulation, an employer would be subject to a maximum fine of \$50,000
2. Non-compliance with the duties listed above would constitute an offence of strict liability.<sup>55</sup>

To assist compliance with the provisions of the proposed Regulation, the government also drafted a sample computer workstation assessment checklist and an advisory health guide to illustrate the kind of standards required for the purpose of compliance, for example, the brightness and contrast controls on a computer screen, the size of work surfaces, the location of keyboards and the height of seats, illumination and reflections in the immediate surrounding of the workstation, and other detailed hardware requirements.<sup>56</sup>

In not setting out explicit or specific compliance standards against which risk assessment and hazard reduction could be measured, and opting instead for an advisory health guide outside of the statutory framework, the government explained that the Regulation was premised largely on the concept of self-regulation. It noted that across-the board compliance standards would not be practical because of differing circumstances in different trades as well as physical differences at workplaces. In its view, it would be best if employers and employees could mutually agree on the improvement measures to be taken to reduce risks at their workplace. Furthermore, it considered that non-statutory guidelines would allow flexibility for amendments in view of rapid developments in information technology application. The Regulation would be scheduled to take effect only 12 months after its enactment, in order to allow time for employers and employees to get to understand and prepare for their new obligations.

<sup>55</sup> As a general principle, strict liability would be imposed on regulatory offences related to issues of social concern, of which employee occupational safety was considered as one. In such offences, the requirement of *mens rea* (namely, knowledge, recklessness or negligence) before a person could be convicted of a criminal offence would be displaced. Employees would also be liable to offences for non-compliance with the Regulation but the provision had not attracted strong disagreement in the deliberations.

<sup>56</sup> The above has only highlighted those provisions of the Regulation that were to subsequently attract controversy. For the initial proposed Regulation and the related risk assessment checklist and advisory Health Guide, see "Legal Service Division Report on Motion under section 42 of the Occupational Safety and Health Ordinance (Cap. 509)", paper for the House Committee Meeting of the Legislative Council on 24 November 2000, <<http://www.legco.gov.hk/yr00-01/english/hc/papers/lc-23.pdf>>, and Education and Manpower Bureau, "Occupational Safety and Health (Display Screen Equipment) Regulation", Legislative Council Brief, November 2000, EMBRCR 3/3/3231/95.

From the perspective of legislators of business and financial backgrounds, the proposed Regulation was most unsatisfactory in several regards. Firstly, the lack of clear compliance standards and clear guidelines meant that employers would be uncertain about the correct answers in completing the risk assessment checklist and answers to questions in the checklist would most likely be subjective. They wondered how risk assessment could be properly conducted. Under such uncertainty, this group of legislators argued, employers would be unclear about their obligations, might unwittingly take insufficient risk reduction action and end up running foul of the Regulation. It was further noted that an overwhelming majority of firms in Hong Kong were small and medium enterprises operating in small offices, the physical layout of which might not allow certain required risk reduction action to be taken.

To compound the problem, the government had proposed to make conviction of non-compliance with certain provisions in the Regulation strict liability offences without mandating a warning mechanism in the Regulation. Despite the government's assurance that what was required was only to do what was reasonably practicable, and that except in cases of serious breaches capable of leading to imminent risk of death or serious bodily harm to employees, employers would normally be served with warning and improvement notices before prosecution, these members remained unconvinced.

The cost implications for the business community was another issue bothering this group of legislators, again noting that the overwhelming majority of enterprises in Hong Kong were small and medium firms struggling merely to survive in the economic doldrums after the Asian Financial Crisis. It was argued that the Regulation would have significant cost implications for many trades and industries and one legislator pointedly reminded his colleagues that the Chief Executive had in his October 2001 policy address promised that the government would fully assess the impact on the business environment prior to the formulation of new policies and legislation.

All in all, this group of legislators was in favour of more education and publicity efforts on the proper use of DSE and good practices before the introduction of related legislation.

On the other hand, a group of legislators favouring better protection for labour was equally concerned about the vagueness in the Regulation as to what standards were required in safeguarding the occupational safety of employees, albeit for very different reasons. Without explicit standards, these legislators worried there would be plenty of loopholes for employers to evade their responsibilities to employees, for instance, carrying out risk assessment without closely following the guidelines or without due regard to the potential risks. Once employers had performed risk assessment, it would be difficult to bring prosecution even if the quality of risk assessment had been substandard. There was therefore a view that the Health Guide should be turned into a workplace code of practice.<sup>57</sup> Lee Cheuk-yan further opined at the Subcommittee meetings on 14 December 2000 and 17 January 2001 that although rest breaks and breaks to perform alternative duties after prolonged use of DSE were recommended in the Health Guide, because the Guide was non-statutory, enforcement of the Regulation would rely heavily on the self-regulation of employers and thus uncertain. This concern was supported by Andrew Cheng, the Subcommittee chairman and the Democratic Party's spokesman on labour issues.

Despite outstanding dissatisfaction with particular provisions in the Regulation, this group of legislators was in favour of passing the Regulation as soon as possible. For this group of legislators, some legislative protection, albeit rudimentary, would be better than none at all.

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<sup>57</sup> The request was made by Lee Cheuk-yan, a unionist legislator, at the Subcommittee meeting on 29 May 2001. Under section 40 of the Occupational Safety and Health Ordinance, the Commissioner for Labour is empowered to issue codes of practice for the purpose of providing practical guidance to employers and employees. According to section 41 of the Ordinance, while a person does not incur a civil or criminal liability for contravening a provision in a workplace code of practice, the code is however admissible in evidence in court proceedings. See Subcommittee meeting minutes of 29 May 2001, p. 9, para. 33.

A final major area of disagreement among legislators concerns the definition of the notion of “user” of DSE as it affects the number of employees who would be protected. Members had at various stages of their deliberations taken issue with the definition of “user” proposed by the government and the definition went through several mutations. In the initial draft of the Regulation, the word was used to denote employees who had to use DSE as a significant part of their normal work and were therefore highly dependent on the use of DSE in their job. This initial definition was criticized as overly general and imprecise. A more exact definition was thus proposed in a revised draft of the Health Guide put to the Subcommittee meeting in May 2001 to mean employees who would usually be highly dependent on the use of DSE to do their jobs, and “normally use the equipment for continuous spells of an hour or more at a time and more or less daily”.<sup>58</sup> This new definition drew vociferous protests from legislators, particularly those of business backgrounds, who insisted that this new definition would protect even employees who use the computer only intermittently and defeat the original intention of the Regulation, which was to protect only those employees who really work with a display screen for long hours on a daily basis. Eventually, upon the suggestion of Margaret Ng, the FR for the Legal sector, the definition took another transformation to become “an employee who, by reason of the nature of his work, is required to use display screen equipment for a prolonged period of time almost every day” in the Regulation.<sup>59</sup> This was not entirely to the satisfaction of legislators in favour of more protection for employees. As a compromise, the government agreed to spell out, in a code of practice that had previously been suggested to replace the Health Guide, the definition of “user” to mean “an employee who is required, more or less daily, to use DSE continuously for at least four hours during a day, or cumulatively for at least six hours during a day”.<sup>60</sup> This was to accommodate one side of the argument that prolonged use of DSE should be taken to mean at least several hours of continuous use in order not to lose the original intention of the Regulation, and the other side that the “continuous use” definition would in effect be so stringent that only employees spending almost all their working hours in front of a computer screen qualify for protection, and therefore that the duration of DSE use should be calculated by the total number of hours of DSE use in a day rather than continuous use per se.

By the time the Regulation was presented for the Council’s approval in April 2002, the major contentious points were resolved as follows:

- A “user” was defined as “an employee who, by reason of the nature of his work, is required to use display screen equipment for a prolonged period of time almost every day”
- Practical guidance for compliance with the provisions of the Regulation were to be provided in a code of practice and a health guide for employers and employees, including an elaborated definition of “user” to mean an employee required, more or less daily, to use DSE continuously for at least four hours during a day, or cumulatively for at least six hours during a day
- For offences of strict liability, the government agreed to build in a defence of reasonable practicability and also undertook to issue an improvement notice before initiating prosecution against less serious breaches of the Regulation

With such concessions, the government’s motion was supported. As noted above, two amendments to respectively define “user” by the concept of cumulative use, and to institute mandatory rests breaks or alternative tasks by two legislators in favour of more protection for employees were defeated.

<sup>58</sup> See speech by the Secretary for Education and Manpower, *Hansard*, 24 April 2002, pp. 5808-9.

<sup>59</sup> Secretary for Education and Manpower, *Hansard* 24 April 2002, p. 5766.

<sup>60</sup> “Administration’s Response to Issues raised by Members at the Subcommittee meeting on 21 December 2001”, LC Paper No. CB(2)949/01-02(01).

#### 4. FR involvement in the policy-making processes

Following the framework used in the preceding case study, we start the examination of FR involvement in policy-making on the Regulation by looking at their membership in relevant arenas. In this case, one major theatre of activity was the Subcommittee. Unlike the picture in the last case analysis and in the quantitative study which show FRs to be generally less enthusiastic about membership in Panels and Bills Committees than GRs/ECRs, FRs were conspicuous by their presence in the Subcommittee. As shown in Table 1 below, of the total of 14 members in the Subcommittee, 10 were FRs. There were only three GRs and one Election Committee member.

| Name                                | Political Affiliation  | Method of Election                               |
|-------------------------------------|--|--|
| SIN Chung-kai                       | Democratic Party   | Functional Constituency (Information Technology) |
| TING Woo-shou, Kenneth              | Liberal Party  | Functional Constituency (Industrial - First)     |
| LAU Kin-ye, Miriam                  |  | Functional Constituency (Transport)              |
| LEUNG Fu-wah                        | Democratic Alliance for Betterment of Hong Kong/<br>Hong Kong Federation of Trade Unions | Functional Constituency (Labour)                 |
| HUI Cheung-ching                    | The Hong Kong Progressive Alliance   | Functional Constituency (Import and Export)      |
| LI Fung-ying                        | The Federation of Hong Kong and Kowloon Labour Unions                                    | Functional Constituency (Labour)                 |
| LO Wing-lok                         | Independent  | Functional Constituency (Medical)                |
| MAK Kwok-fung, Michael              | Independent  | Functional Constituency (Health Services)        |
| WU King-cheong, Henry               | Independent  | Functional Constituency (Finance Services)       |
| HO Chung-tai, Raymond               | Independent  | Functional Constituency (Engineering)            |
| CHENG Kar-foo, Andrew (Chairperson) | Democratic Party   | Geographical Constituency                        |
| HO Sau-lan, Cyd                     | The Frontier   |  |
| LEE Cheuk-yan                       | Hong Kong Confederation of Trade Unions  |  |
| YEUNG Yiu-chung                     | Democratic Alliance for Betterment of Hong Kong  | Election Committee                               |

Source: Hong Kong Legislative Council, Membership List of the Subcommittee on Occupational Safety and Health (Display Screen Equipment) Regulation  
[http://www.legco.gov.hk/yr00-01/english/hc/sub\\_leg/sc54/general/sc54\\_mem.htm](http://www.legco.gov.hk/yr00-01/english/hc/sub_leg/sc54/general/sc54_mem.htm), 2004.

**Table 1 Membership of the Subcommittee on Occupational Safety and Health (Display Screen Equipment) Regulation**

The significance of the membership should probably be read along two prongs. As far as the political spectrum is concerned, all major political parties and groups were represented in the Subcommittee. Of the 14 Subcommittee members, two were Liberal Party members. The Democratic Party, the Democratic Alliance for Betterment of Hong Kong (DAB), the Frontier, and the Hong Kong

Progressive Alliance were all represented by one member. As far as the FRs were concerned, of the 13 “independent” FRs in LegCo., that is, those without formal political affiliation (see Appendix 2), four were in the Subcommittee. In the words of one legislator, “the membership of the Subcommittee was quite representative of the membership of the Council”.<sup>61</sup>

If one looks at the episode from a capital-labour dichotomy perspective and considers interest representation thereof, it explains why the Liberal Party, a pro-business party, was represented by two members although the two had a second capacity as the FRs for the Transport and the Industrial (First) constituencies respectively. It might also account for the presence of two other independent FRs, namely, the FR for Financial Services and the FR for Engineering. These two and the FR for Import and Export (also representing the Hong Kong Progressive Alliance) might be taken to stand more for conservative interests and therefore more sympathetic to business concerns. On the other hand, labour’s cause was represented by two Labour FRs and one other unionist GR legislator, namely, Lee Cheuk-yan. Broadly speaking, the Democratic Party, the DAB and the Frontier can also be taken to be generally friendly to labour interests. As for the presence of the FRs for Information Technology, Medicine and Health Services respectively, as surmised above, it might have to do with the scientific angle pertaining to the subject matter.

In an upshot, compared to their membership in panels and other committees in general as well as in the relevant panel and bills committee in the preceding case study, FRs appeared to be much more engaged in the present case. Not only did they constitute close to 72% of the Subcommittee membership, but such membership also represented one-third of total FR membership in the legislature.

When it comes to making speeches in the debate to approve the proposed Regulation in the legislature, the records of the FRs, while not abysmal, are however less impressive. Table 2 below shows that of the 13 legislators who spoke on the motion, nine were FRs, although it has to be noted that six were Subcommittee members. If one agrees that the Regulation stood to impact on almost all functional constituencies and the FRs should therefore all be concerned, this is not obvious in terms of speech-making. Given a contingent of 30 in the legislature, only three of the FRs apart from those who were Subcommittee members were concerned enough to want to participate in the debates on the Regulation. It is true that some of the FRs would have been represented by their party spokesman or other party colleague so that they felt no need to make an individual speech, but it is also possible that most FRs had not seen the Regulation in the light of sectoral interests and had resolved to take a pro-government stance in any case. As it turned out, the Regulation was agreeable to most FRs, judging from records on amendments and the final votes.

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<sup>61</sup> James To, of the Democratic Party, minutes of the House Committee meeting held on 9 November 2001, p. 13.

## Functional Constituency Research Project 2004

| Method of Election        | Name                  | Political Affiliation  |
|---------------------------|-----------------------|--|
| Functional Constituency   | YOUNG, Howard         | Liberal Party  |
|                           | TIEN Pei-chun, James  |  |
|                           | LAU Kin-ye, Miriam    |  |
|                           | LEUNG Fu-wah          | Democratic Alliance for Betterment of Hong Kong/Hong Kong Federation of Trade Unions |
|                           | SIN Chung-kai         | Democratic Party   |
|                           | HUI Cheung-ching      | The Hong Kong Progressive Alliance   |
|                           | LUI Ming-wah          | Independent  |
|                           | LO Wing-lok           | Independent  |
|                           | NG, Margaret          | Independent  |
| Geographical Constituency | CHENG Kar-foo, Andrew | Democratic Party   |
|                           | LEE Cheuk-yan         | Hong Kong Confederation of Trade Unions  |
|                           | LEUNG Yiu-chung       | Neighbourhood and Workers' Service Centre  |
| Election Committee        | YEUNG Yiu-chung       | Democratic Alliance for Betterment of Hong Kong                                      |

Hong Kong Legislative Council, Official Record of Proceedings, 24 April 2002 (Floor), <<http://www.legco.gov.hk/yr01-02/chinese/counmtg/floor/cm0424ti-confir-c.pdf>>, 2004.

**Table 2 Member speeches in the debate to approve the Occupational Safety and Health (Display Screen Equipment) Regulation**

| Name                  | No. of Amendment | Political Affiliation                   | Method of Election        |
|-----------------------|------------------|---|---------------------------|
| CHENG Kar-foo, Andrew | 1                | Democratic Party                        | Geographical Constituency |
| LEE cheuk-yan         | 1                | Hong Kong Confederation of Trade Unions |                           |

Hong Kong Legislative Council, Official Record of Proceedings, 24 April 2002 (Floor), <<http://www.legco.gov.hk/yr01-02/chinese/counmtg/floor/cm0424ti-confir-c.pdf>>, 2004.

**Table 3 Member amendments to the Occupational Safety and Health (Display Screen Equipment) Regulation**

One clear sign that the FRs had found the proposed Regulation wholly acceptable was that no FR moved any amendment to the Regulation at all. As shown in Table 3 above, there were only two amendments moved to the Regulation, both by GRs, and as a matter of fact, both were vetoed by the FRs. In other words, the government's proposed Regulation was given the approval intact. The voting records are shown in Tables 4 and 5.

## Functional Constituency Research Project 2004

| Voting Position   | Name                        | Functional Constituency                          | Political Affiliation  |
|-------------------|-----------------------------|--|--|
| For               | CHEUNG Man-kwong            | Education  | Democratic Party   |
|                   | SIN Chung-kai               | Information Technology                           |  |
|                   | LAW Chi-kwong               | Social Welfare                                   |  |
|                   | LI Fung-ying                | Labour   | The Federation of Hong Kong and Kowloon Labour Unions  |
|                   | LO Wing-lok                 | Medical  | Independent  |
|                   | MAK Kwok-fung               | Health Services                                  | Independent  |
| Against           | TIEN Pei-chun, James        | Commercial (I)                                   | Liberal Party  |
|                   | TING Woo-shou, Kenneth      | Industrial (I)                                   |  |
|                   | CHOW LIANG Shuk-yee, Selina | Wholesale and Retail                             |  |
|                   | LEUNG LAU Yau-fun, Sophie   | Textiles and Garment                             |  |
|                   | YOUNG, Howard               | Tourism  |  |
|                   | LAU Wong-fat                | Heung Yee Kuk                                    |  |
|                   | LAU Kin-yee, Miriam         | Transport  |  |
|                   | CHEUNG Yu-yan Tommy         | Catering   |  |
|                   | WONG Yung-kan               | Agriculture and Fisheries                        | Democratic Alliance for Betterment of Hong Kong/(Leung) Hong Kong Federation of Trade Unions |
|                   | IP Kwok-him                 | District Council                                 |  |
|                   | LEUNG Fu-wah                | Labour   |  |
|                   | HUI Cheung-ching            | Import and Export                                | The Hong Kong Progressive Alliance   |
|                   | NG, Margaret                | Legal  | Independent  |
|                   | HO Chung-tai, Raymond       | Engineering                                      | Independent  |
|                   | LUI Ming-wah                | Industrial (II)                                  | Independent  |
|                   | CHAN, Bernard               | Insurance  | Independent  |
|                   | FOK Tsun-ting, Timothy      | Sports, Performing arts, Culture and Publication | Independent  |
|                   | SHEK Lai-him, Abraham       | Real Estate and Construction                     | Independent  |
|                   | LAU Ping-cheung             | Architectural, Surveying and Planning            | Independent  |
| Absent for voting | CHAN Kwok-keung             | Labour   | Democratic Alliance for Betterment of Hong Kong/Hong Kong Federation of Trade Unions         |
|                   | WONG Yu-hong, Philip        | Commercial (II)                                  |  |
|                   | WU King-cheong              | Financial Services                               | Independent  |
|                   | LI Ka-cheung, Eric          | Accountancy                                      | Independent  |
|                   | LI Kwok-po, David           | Finance  | Independent  |

Source: Hong Kong Legislative Council, Voting Results in Council Meetings <<http://www.legco.gov.hk/yr01-02/english/counmtg/voting/v0204241.htm>>, 2004.

**Table 4 FR voting positions on LEE Cheuk-yan's amendment to the Occupational Safety and Health (Display Screen Equipment) Regulation**

In connection to Lee Cheuk-yan's amendment, among the 28 GRs/ECRs present for the voting, 14 were in favour of the amendment and 13 were against; among the 25 functional representatives present, six were in favour and 19 were against. Since the amendment had to be subject to split-voting by the two groups of legislators and since it failed to be passed by the functional representatives, it was in effect scuttled by the FRs.

As for Andrew Cheng's amendment, among the 28 GRs/ECRs present, 14 were in favour while 13 were against; among 25 functional representatives present, five were in favour and 20 were against. By the same token, under the split-voting mechanism, Cheng's amendment was sunk by the FRs.

## Functional Constituency Research Project 2004

| Voting Position   | Name                       | Functional Constituency                          | Political Affiliation  |
|-------------------|----------------------------|--|--|
| For               | CHEUNG Man-kwong           | Education  | Democratic Party   |
|                   | SIN Chung-kai              | Information Technology                           |  |
|                   | LAW Chi-kwong              | Social Welfare                                   |  |
|                   | LI Fung-ying               | Labour   | The Federation of Hong Kong and Kowloon Labour Unions  |
|                   | MAK Kwok-fung              | Health Services                                  | Independent  |
| Against           | TIEN Pei-chun, James       | Commercial (I)                                   | Liberal Party  |
|                   | TING Woo-shou, Kenneth     | Industrial (I)                                   |  |
|                   | CHOW LIANG Shuk-ye, Selina | Wholesale and Retail                             |  |
|                   | LEUNG LAU Yau-fun, Sophie  | Textiles and Garment                             |  |
|                   | YOUNG, Howard              | Tourism  |  |
|                   | LAU Wong-fat               | Heung Yee Kuk                                    |  |
|                   | LAU Kin-ye, Miriam         | Transport  |  |
|                   | CHEUNG Yu-yan Tommy        | Catering   |  |
|                   | WONG Yung-kan              | Agriculture and Fisheries                        | Democratic Alliance for Betterment of Hong Kong/(Leung) Hong Kong Federation of Trade Unions |
|                   | IP Kwok-him                | District Council                                 |  |
|                   | LEUNG Fu-wah               | Labour   |  |
|                   | HUI Cheung-ching           | Import and Export                                | The Hong Kong Progressive Alliance   |
|                   | NG, Margaret               | Legal  | Independent  |
|                   | HO Chung-tai, Raymond      | Engineering                                      | Independent  |
|                   | LUI Ming-wah               | Industrial (II)                                  | Independent  |
|                   | CHAN, Bernard              | Insurance  | Independent  |
|                   | FOK Tsun-ting, Timothy     | Sports, Performing arts, Culture and Publication | Independent  |
|                   | SHEK Lai-him, Abraham      | Real Estate and Construction                     | Independent  |
|                   | LO Wing-lok                | Medical  | Independent  |
|                   | LAU Ping-cheung            | Architectural, Surveying and Planning            | Independent  |
| Absent for voting | CHAN Kwok-keung            | Labour   | Democratic Alliance for Betterment of Hong Kong/Hong Kong Federation of Trade Unions         |
|                   | WONG Yu-hong, Philip       | Commercial (II)                                  |  |
|                   | WU King-cheong             | Financial Services                               | Independent  |
|                   | LI Ka-cheung, Eric         | Accountancy                                      | Independent  |
|                   | LI Kwok-po, David          | Finance  | Independent  |

Source: Hong Kong Legislative Council, Voting Results in Council Meetings <<http://www.legco.gov.hk/yr01-02/english/counmtg/voting/v0204242.htm>>, 2004.

**Table 5 FR voting positions on Andrew CHENG's amendment to the Occupational Safety and Health (Display Screen Equipment) Regulation**

Having rejected the amendments, legislators then voted on the government's proposal. This was passed without Division or opposing votes, the Regulation was thus approved unanimously.

### 5. Whose views? Whose interests?

In gauging the participation and policy positions of the FRs, this section will start with some general comments about the performance of FRs as a whole. These general comments were based on the presumption made at the beginning of this case analysis that most FRs should/would be concerned because of the possible impact of the Regulation on their respective constituencies and that they would likely contribute sectoral views on the issue. The examination will then focus on a few FRs



whose positions could perhaps render some clue as to what the debate was really about and which might, in turn, help to explain the behaviour of the other FRs.

It has been pointed out that the major theatres of activity in this case were the Subcommittee and the House Committee. For legislators who did not join the Subcommittee, the main opportunities for them to participate in the deliberations on the Regulation were in the House Committee and the final voting debate. During the whole episode, the House Committee had had four meetings. There was not much substantive discussion in the first two or the last meetings. At the first meeting in November 2000, the House Committee was notified of the impending government motion on the proposed Regulation and decided to set up a Subcommittee to study the issue. The second meeting heard the Subcommittee chairman report that more discussions on the Regulation would be needed in the Subcommittee. The last meeting in March 2002 heard the latest amendments to the proposed legislation before its introduction into the legislature. It was only at the third meeting on 9 November 2001 upon the Subcommittee's conclusion of its first stage of work that legislators discussed the issue and the Subcommittee report at length.

The Subcommittee had had 11 meetings by October 2001 and agreed to the government moving a motion on the Regulation in the legislature. But at the November 2001 House Committee meeting, legislators expressed all kinds of reservations about the proposed legislation. These included questions on whether specific health problems might not be related to incorrect posture of users rather than prolonged use of DSE, whether public education might not be more effective than legislation in achieving the objective, concerns about offences of strict liability and practical difficulties in enforcement, and above all, the newly raised concern about the cost implication of the Regulation and its impact on the business environment in general. Apart from the last, newly raised concern about cost implications, the other concerns had also been aired in Subcommittee meetings.

Most of the legislators who expressed the above reservations were FRs of business or professional backgrounds.<sup>62</sup> What is particular about these views is the common concern about possible impact on the business environment and additional burdens on employers. There does not appear to have been expressions about particular modes of IT application or idiosyncratic conditions pertaining to individual trades or sectors. This was despite the objection by the same group of legislators against uniformity and rigidity in terms of the standards required for reasons of varying conditions and problems of practicability in different trades.<sup>63</sup> Indeed, it had to befall a fellow FR, namely, Sin Chung-kai representing Information Technology to remind his colleagues that "as the Regulation would apply to all workplaces in which DSE users worked, Members should consult the relevant trade association, professional bodies and other organizations concerned on the practical difficulties they envisaged in complying with the Regulation".<sup>64</sup> At the voting debate on the Regulation, legislators of similar backgrounds repeated largely the same general rather than sector-specific worries.

Against expectation, therefore, it appears the impact of the Regulation was not seen mainly from individual sectoral perspectives but rather taken as having generic implications for doing business in general. That the implications of the Regulation did not appear to be seen as sector-specific perhaps

<sup>62</sup> Namely, Eric Li of Accountancy, Kenneth Ting of Industrial (First), Raymond Ho of Engineering, Henry Wu of Financial Services, Miriam Lau of Transport and Howard Young of Tourism. See minutes of the House Committee meeting held on 9 November 2001.

<sup>63</sup> See for example, Miriam Lau in the Subcommittee meeting on 18 June 2001 and James Tien in the voting debate. In this connection, there have been a couple of exceptions. Henry Wu of Financial Services did repeatedly advise in Subcommittee meetings that in his sector, small work surface for finance, securities and foreign exchange dealers or the use of notebook computers would pose practical difficulties for employers to comply with the requirements for DSE workstations. Howard Young of Tourism in the voting debate also made mention that in the tourism industry, front-line employees of travel agents, airlines and hotels would not normally use computers for continuous prolonged periods of time and that it would only cause unnecessary impediment and affect efficiency if the Regulation was imposed on such industries.

<sup>64</sup> *Supra* Note 63.

helps to explain the complete silence of about half of the FRs in the deliberation processes. If no or little idiosyncratic sectoral relevance was perceived, some FRs might have felt no need to speak up. Even for those who did participate, at different stages and in the different arenas of the Subcommittee, the House Committee and the voting debate, not many sectoral views appeared to have been brought to bear on the deliberations of the Regulation.

In the absence of unique sectoral relevance, it is noteworthy that party position and an economic worldview appeared to quickly fill the void to provide some FRs with an anchor for their positions on the issue. In this connection, the speeches of three of the four FRs who spoke at the voting debate were revealing. Leaving aside for the moment the immediate sectoral FRs, that is, the FRs for Labour and those for the four commercial and industrial functional constituencies, and the three professional FRs for Information Technology, Medical and Health Services, who would be examined in the next section, only four FRs chose to speak in the voting debate. These were Hui Cheung-ching of Import and Export and Miriam Lau of Transport, who were also Subcommittee members, and Howard Young of Tourism and Margaret Ng of the Legal sector.

Mr. Hui Cheung-ching, FR for Import and Export, but also a member of the Hong Kong Progressive Alliance (HKPA), made it clear as he rose to speak that he was speaking on behalf of the HKPA. Significantly, he hardly ever made any reference to his sector at all. In his words, "(a)s the actual situation faced by different trades varies ... law will make it impossible for officers in charge of enterprises to make work arrangements in a flexible manner. This will consequently affect the operation of individual trades and industries."<sup>65</sup> All references were about the "operation of enterprises" and "the administrative work and business costs of enterprises".

Miriam Lau, FR for Transport and a member of the Liberal Party, similar spoke entirely in the capacity of a party member. Ms. Lau had throughout the whole deliberation process been very vocal, studying provisions of the proposed Regulation in great detail, and was persistent in seeking clarifications and concessions from the government in Subcommittee deliberations. Throughout the whole episode, hardly did she ever make any reference to her own sector. Instead, all Ms. Lau's queries and concerns were about the implications of the Regulation for the business community and employer obligations. "The Liberal Party opposes the making of legislation and provisions that will have negative impact on the business environment given the present economic downturn and an increasingly difficult business environment. Subjecting employers to offences of strict liability arbitrarily will only increase the pressure on employers...." She delivered the whole of her debate speech in the name of the Liberal party.<sup>66</sup>

The case of Ms. Lau's party colleague, Mr. Howard Young, FR for Tourism, is similarly revealing. While Mr. Young openly acknowledged his formal capacity as a functional representative of Tourism and commented on use of DSE in his sector briefly, it was obvious he saw a lot of identical interests between his sector, the business community at large and also his party position. He was at ease to sometimes speak in the capacity of a FR, sometimes in the name of his party and sometimes both. Thus, "(a)s a representative of the tourism sector, which comprises travel agents and hoteliers, I shall simply admit that I am representing the industrial and commercial sector since my constituents belong to the industrial and commercial sector", "I feel that regardless of businessmen or SMEs, a better business environment means lower costs", "(i)f we rigidly require employers to arrange from time to time other assignments for employees who have been continuously using DSE for more than four hours, I think that is unrealistic and a waste of time, and eventually the draconian regulation will only add administrative pressure and operational cost to employers."<sup>67</sup>

<sup>65</sup> *Hansard* 24 April 2002, p. 5780.

<sup>66</sup> *Ibid.*, pp. 5797-5799.

<sup>67</sup> *Ibid.*, pp. 5792-5795.

Of the four FRs speaking at the voting debate who were not immediate sectoral FRs in this case, only Margaret Ng did not take an obvious “business versus labour” course of argument. Ms. Ng’s conception of her role, though not explicitly stated, is illuminating. Recall that in the preceding case study, Mr. Shek Lai-him had doubted his own qualification to speak on the Education Bill as he was not a member of the Bills Committee and he eventually decided to make his comments in the capacity of a citizen. He also resolved to support the government on trust of the latter’s good intent. In this case, Ms. Ng, while also not a member of the Subcommittee, had the following to say:<sup>68</sup>

It is the obligation of all employers to ensure the occupational safety and health of their employees, which is why every civilized community should support the cause without hesitation. I very much agree that laws should be made to set down the minimum legal responsibilities of employers or responsible persons. I also agree that a policy should be formulated to encourage the cooperation of employees and employers in raising occupational safety and health standards, with a view to creating a good working environment.

Thus, “(a)lthough the occupational safety standards provided for in the Regulation are rather low, we have after all taken a solid first step”, and “(a)lthough I understand that the labour side may still be a bit worried, I nonetheless think that with a mechanism, there will always be room for development in the future”. Significantly and diametrically opposite to Mr. Shek’s position,<sup>69</sup>

though I was not a member of the relevant Subcommittee, I still think that I should also exert personal efforts to assist in passing the Regulation.

Apparently, Ms. Ng had given considered thought to the substantive issues at stake and taken a position on reasoned grounds. In the remainder of her speech, she contributed her expertise as a legal personnel and explained why she thought, with the elaborated meaning of “user” in the code of practice, the two amendments by Lee Cheuk-yan and Andrew Cheng would instead muddle the clarity of the intention of the Regulation and were therefore unnecessary.

To briefly recapitulate on this section, let us summarise a few observations. Firstly, half of the FRs were completely silent in the deliberation processes on the Regulation. This was against an early expectation that given the potential implications of the Regulation for all functional sectors, most FRs would have had sector-specific input to make. Secondly, for those FRs who did participate in the deliberations, there was also not much sign that the Regulation was read in sector-specific terms, rather, it was considered to have generic implications for the business environment in general and very much in a business versus labour context. Thirdly, most FRs voted to support the government and against amendments introduced by two legislators to the Regulation.

In this section, views in favour of more protection for employees have not been visited because these were very much left for the Labour FRs to promote. In other words, apart from the FRs for Labour, the other FRs had either not spoken on the issue, or when they spoke, they had largely taken the business and employer perspective as illustrated above. The next section will therefore examine the roles of the immediate sectoral FRs, namely, the Labour FRs and the FRs for the commercial and industrial constituencies. The section will also study the positions and input of the three “professional” FRs for Information Technology, Medicine, and Health Services respectively whose expertise this study considers might have special relevance for the issues under debate.

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<sup>68</sup> *Ibid.*, pp. 5784-5787.

<sup>69</sup> *Ibid.*

## 6. The roles of the relevant FRs

### *The Commercial and Industrial FRs*

Among the functional representatives, there were four to represent commercial and industrial interests, namely, Commercial First, Commercial Second, Industrial First, and Industrial Second. Notwithstanding the suggestion above that the Regulation stood to impact on all functional constituencies, it is possible that one reads it as having more direct and immediate impact on the four sectors and expects more conspicuous reactions from the FRs concerned. The reality varies from FR to FR. Among the four FRs, the FR for Commercial Second, Philip Wong, never made an appearance in the episode, he did not even turn up for the vote. The FR for Industrial Second, Lui Ming-wah, managed only a very brief speech in the voting debate, mainly to oppose the two amendments to the Regulation. The FR for Commercial First, James Tien, did make an effort to attend three Subcommittee meetings after the House Committee asked the former to continue its work on the Regulation and also spoke at length in the voting debate. It is not clear, however, in what capacity he was making his speech. While Tien started his speech by making reference to the viewpoint of the business sector on the Regulation and voiced concern in particular for small and medium enterprises, he progressively merged the business sector with the Liberal Party, of which he was chairman, and ended up talking more about the Party's position than that of his constituency's.<sup>70</sup> The last of the four FRs, the FR for Industrial First, Kenneth Ting, was a member of the Subcommittee. There is however no strong sign that he had tried to advance a distinct sectoral view, if there was one. The FR did not speak in the voting debate. It seems fair to say, therefore, that there is no evidence to suggest that the FRs representing commercial and industrial interests had either considered their sectors to be specifically threatened by the Regulation or found it necessary to advance sector-specific viewpoints, if any, distinct from general business perspectives.

### *The Labour FRs*

On a Regulation to provide added protection to employees, the FRs for Labour naturally have to be the protagonists. There were three FRs for Labour, namely, Leung Fu-wah, Li Fung-ying, and Chan Kwok-keung. Leung and Li were Subcommittee members; Chan never made an appearance in the whole episode, this may be because he had the same political affiliations as Leung, both belonging to the DAB and the Federation of Trade Unions. He did not even turn up for the vote.

While a Subcommittee member, the participation and input of Li cannot be considered substantial. Of the Subcommittee's first 11 meetings, there was no record of her speaking in three of the meeting minutes. Where she was indicated to have spoken in the other meetings, she might have spoken only once or twice and only to endorse or clarify a view expressed by another member. She also did not speak at the November 2001 meeting where business-oriented legislators sought to dilute the provisions of the proposed Regulation or in the voting debate. She did vote in support of the two amendments.

By contrast, Leung was altogether much more engaged throughout the whole process. During Subcommittee meetings, Leung had more than one time provided background information on the origin of the Regulation when it first got considered by the Labour Advisory Board, of which he used to be a member, explained the relationship between the Regulation and the umbrella legislation, the OSHO, counter-argued viewpoints expressed by business-oriented Subcommittee members, and expressed impatience that the Subcommittee was unduly dragging its deliberations on the Regulation.<sup>71</sup> In his voting debate speech, he expressed relief that after all, the Regulation had survived pro-business legislators' attempt to abort it and made its way to voting in the legislature. He

<sup>70</sup> James Tien, *Hansard* 24 April 2002, pp. 5803-5808.

<sup>71</sup> See for example, minutes of the Subcommittee meeting on 14 December 2000, 17 January 2001, 7 May 2001, 29 May 2001, and 14 June 2001.

pleaded for those against the Regulation to take a longer-term view and see the benefits of ensuring the occupational safety of employees as the latter were assets in doing business.<sup>72</sup> Notwithstanding, he voted against the two amendments, seemingly on the grounds that the Subcommittee had not had dealt with the second amendment in detail while the first amendment would have to wait, pending more medical evidence to establish more direct relationships between a certain duration of DSE use and specific health problems.

Thus, while there were three FRs for Labour, as far as this particular case is concerned, only one can be seen as arguing the case for labour with some degree of diligence and vigor. In this connection, it is noteworthy that the members who appeared to champion the cause of labour the hardest in the whole process and in Subcommittee meetings were rather two geographically-elected legislators, namely, Lee Cheuk-yan and Andrew Cheng, the former a long-time unionist and the latter, chairman of the Subcommittee and spokesperson of the Democratic Party on labour issues. As a matter of fact, it was the two, not any of the Labour FRs, who moved amendments to the Regulation in an attempt to legislate for more protection for employees.

### *The professional FRs*

Given the nature of the issue, involving a relationship between DSE use and specific health problems, this study surmises that three professional FRs, namely, for Information Technology, Medicine, and Health Services might have particular relevant expertise to contribute to the deliberations. As a matter of fact, all three FRs were members of the Subcommittee.

Of the three FRs, the FR for Health Services, Michael Mak quite obviously had the least to contribute. Out of 15 Subcommittee meetings, he was shown to be completely silent in 10 of the meeting minutes. For the other five meetings in which he did speak, it was mainly to seek clarification on certain provisions in the Regulation and related measures. He did not speak in the November 2001 House Committee meeting in which the disagreement between business-oriented and labour-oriented legislators came to ahead. He also was silent in the voting debate but voted to support the two amendments.

The participation and input of the FR for Medicine, Dr. Lo Wing-lok were a little more substantial but mainly concentrated in the latter part of the deliberation process. It is interesting to see how Dr. Lo defined his own role in the episode. In his voting debate speech, Dr. Lo said:<sup>73</sup>

I was one of the first members of the Subcommittee at the time of its formation. In the very long scrutiny process, I had the opportunity to witness how employers and employees expounded their respective concerns about the Regulation, how they negotiated and bargained, and how they finally arrived at a scheme acceptable to the majority of Subcommittee members....

I participated in the work of the Subcommittee neither as an employees' representative nor as an employers' representative. Instead, I was there to study the Regulation from the professional and scientific perspectives, with at the same time a detached and objective standpoint.

In fact, Dr. Lo was absent twice from the Subcommittee's 15 meetings and was completely silent for another seven. His input was minimal before the November 2001 House meeting and not contributing distinctly "medical" advice. It was only after the House meeting that he pursued the definition of "user" and solicited some medical research findings to support the definition pushed by pro-labour legislators. He had consulted a Medical professor at the University of Hong Kong who pointed out that most relevant literature and records of other countries had adopted "a cumulative duration of four hours" as the standard and that the government's offer to use "a continuous duration of four hours"

<sup>72</sup> Leung Fu-wah, *Hansard* 24 April 2002, pp. 5781-5784.

<sup>73</sup> Lo Wing-lok, *Hansard* 24 April 2002, p. 5795.

was without scientific basis. Dr. Lo subsequently voted to support Lee Cheuk-yan's amendment to revise the definition of "user" in the Regulation on the basis of cumulative rather than continuous duration. He however vetoed Andrew Cheng's amendment for mandatory rest breaks or alternative tasks "because the circumstances of different trades and industries vary greatly".<sup>74</sup>

In taking the expert, scientific high-ground and claiming to be speaking from a detached and objective viewpoint, one wonders however how Dr. Lo took the substance of his role as a functional representative to be. To start with, one wonders if the issue of DSE use did not have any implication for the medical sector. Hospitals and clinics probably are one of the high users of DSE in various ways and medical doctors and trainees have as part of their jobs to input patient data into the computer system. In Subcommittee meetings and in the voting debate speech, one does not hear Dr. Lo comment on the state of DSE use in the medical sector. Secondly, the government and legislators had argued about the relationship between prolonged DSE use and specific health problems like upper limb pains and discomfort, eyestrain, fatigue and stress. There were concerns that these problems, if not duly addressed, could develop into chronic health problems requiring long-term treatment which would be expensive to both employers and employees alike, and ultimately to the health care service at large. There was nonetheless not much sign of Dr. Lo rendering any expert clarification or advice or arbitrating between conflicting views. It appears Dr. Lo's main contribution to the whole episode was in relaying the Medical professor's view and in pursuing the same point in the rest of the policy-making process which, however was drawing to a close.

Among the three professional FRs, it is probably fair to say that the IT FR was the most participatory in terms of both substance and frequency although he was absent five times from the Subcommittee meetings. The FR appeared to take a while to warm to the work of the Subcommittee so that his participation and input became more frequent and substantive only after the first several meetings of the Subcommittee. Nonetheless, in Subcommittee meetings, the FR more than once cited examples on IT applications to exhort care in making certain breaches of the Regulation criminal offences and to support the idea of mandatory rest breaks or alternative duties after prolonged DSE use.<sup>75</sup> He was conscious he represented the information technology sector and said as much in the voting debate.<sup>76</sup> He consulted his constituents and reported major sectoral feedbacks to the Subcommittee, outlining the major queries and recommendations from his constituents on the Regulation.<sup>77</sup> He even suggested to fellow legislators that they should consult relevant trade associations and professional bodies to gauge the practical difficulties of implementing the proposed Regulation in different trades and sectors.<sup>78</sup> Being not entirely satisfied with the provisions of the Regulation, he voted to support both amendments.

## **7. Conclusion**

In the last case study, FRs were shown to fall back on political inclination and party affiliation to guide their policy positions in the absence of sectoral relevance. The present case study yields further insights on their legislative behaviour. Firstly, it is not clear how and when FRs perceived sectoral interests. While the proposed legislation stood to impact on all functional sectors, albeit necessarily to different extents, half of the FRs had felt no need to get engaged at all. Secondly, for a number of FRs who did get engaged, there seemed to be a quick and easy identification of sectoral interests with broader business interests as well as party interests. Thus, Miriam Lau, while representative of the Transport functional constituency, openly admitted to the success of the Liberal Party's "repeated

<sup>74</sup> *Ibid.*, p. 5797.

<sup>75</sup> See for example Subcommittee meeting minutes of 7 May and 18 June 2001.

<sup>76</sup> Sin Chung-kai, *Hansard* 24 April 2002, p. 5800.

<sup>77</sup> See Sin Chung-kai, letter to the Subcommittee chairman, dated 4 January 2002, LC Paper No. CB(2)820/01-02(01).

<sup>78</sup> House Committee meeting minutes of 9 November 2001.

lobbying efforts” in winning concessions from the government.<sup>79</sup> Thirdly, where sectoral interests were advanced, it was the employer’s perspective that was given more prominent articulation. Fourthly, as far as the pro-labour contingent is concerned, judging from the performance of the FRs for Labour, there seems to be no reason to believe that FRs will necessarily always be the most vigorous advocates of sectoral interests. In this case study, it seems it was two geographically-elected legislators who were more persistent than the Labour FRs in trying to promote more protection for employees. Lastly, but not least, to the extent that half of the FRs did not participate in the process, while not much professional advice per se was forthcoming from the professional FRs either, it follows that the policy-making process was deprived of input from a significant portion of the legislature. This must elicit questions on one of the original intentions of the functional representation scheme, which was to tap the expertise and idiosyncratic knowledge base of different functional sectors.

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<sup>79</sup> Miriam Lau, *Hansard* 24 April 2002, p. 5799.

### **Part III Conclusion**

#### **A. Findings of study**

It was pointed out in the Introduction of this report that the institution of functional constituencies as a system of representation was informed by two major considerations: incorporating sectoral interests in formal policy-making and tapping the idiosyncratic knowledge bases of different economic and professional sectors. As far as the findings of this study are indicative, however, it is not clear how far either rationale has been borne out in the practice of functional representation.

Let us start with the representation of sectoral perspectives and interests. Firstly, if there was an understanding, both on the part of the functional representatives and society at large, that the main responsibilities of these representatives were to advance sectoral perspectives and interests in the legislature, this study has indeed rendered evidence of "sectoral loyalty", hence the "role fixing" behaviour of the functional representatives, at least as far as the "hard", quantitative figures show.<sup>80</sup> Where immediate sectoral interests were perceived, FRs were highly participative; where no such direct connection was in sight, the appearance is that FRs became much less interested and not infrequently disengaged themselves from the deliberations altogether.

Secondly, an interesting question in this connection is rather, how the representatives interpreted sectoral interests. Both the quantitative and qualitative studies in this research raise the possible spectre of sectoral interests being interpreted very narrowly by the functional representatives. Thus in the case study on DSE, although the Regulation stood to impact on all functional constituencies, half of the FRs had not felt the need to become involved throughout the whole process. In the case on the Education Bill, many FRs were similarly silent. Whereas in the quantitative study, the four FRs thought to have closer relation to housing issues participated noticeably less in related deliberative processes than other sectoral FRs in their respective policy areas.

Thirdly, the DSE case study shows that sectoral representatives need not by definition be the most vocal advocates of sectoral interests. Many FRs were totally silent in the deliberative processes on the Regulation, whereas the most persistent defenders of labour protection appeared to be two geographical representatives rather than the Labour FRs as a whole.

Fourthly, when sectoral interests provided no guide to legislative behaviour, it transpires that FRs usually abstained from the deliberations, then either followed the party line, for those with political affiliations, or toed the government line, especially for the so-called "independents" when voting time came.

If we now turn attention to the second rationale for the functional representation system, that is, to tap the idiosyncratic knowledge base of different sectors and professions for policy-making, the picture is also short of assuring. Firstly, that many FRs appeared to find no relevance of their experience or expertise for policy-making has already been referred to. It is postulated that this may be part of the reason why many were absent from the deliberations, as illustrated both in the quantitative and the qualitative studies. Secondly, where professional expertise appeared to be particularly pertinent, there was however no sign that this was profusely displayed. Thirdly, at least on the part of some FRs, especially those of business backgrounds, there seems to be a close identification of sectoral (usually employers') interests with party positions and even a broader economic world view; there is not much sign therefore of distinct sectoral perspectives being advanced.

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<sup>80</sup> It should be pointed out that "hard" data on membership and attendance rates of panels and committees have to be distinguished from the frequency and quality of input during meetings. It has been shown in the DSE case study, for example, that while Ms. Li Fung-ying, a Labour FR, attended Subcommittee meetings, her distinct input was in fact quite minimal. The same applies to Mr. Mak Kwok-fung.



## **B. Implications of study**

Following from the findings presented above, a few questions are worth asking:

1. If FRs do not see engagement and input in policy deliberations as obligatory unless sectoral interests are directly at stake, and if FRs incline to perceive sectoral interests more narrowly than broadly, the question arises as to how the FRs spend their time in the legislature and what the implications are for policy-making if legislative processes are frequently devoid of the concern and input of a significant portion of the legislators?
2. If FRs care most about and speak up mainly for sectoral interests, since FRs compose half of the legislature, the question arises as to whether sectoral interests might not conflict with wider "public interests" and if they do, how often and how such conflicts are and should be resolved;
3. If it is not often that distinct sectoral interests are articulated, rather that party positions, relations with the government, or even broader world views appear to bear on the legislative behaviour of FRs more of the time, the question arises as to the need of sectoral incorporation and by extension, the functional representation system; and
4. If GRs could be equally persistent, if not better advocates of certain sectoral interests, it similarly invites the question about the indispensability of functional representation.

## **C. Limitations of study**

As the focus of the study is on social policy alone, the validity of its findings must necessarily be taken with care for generalization to other policy areas.

For reasons of resource and time constraints, the scale of the study is of necessity modest. The quantitative study provides some hard data on FR participation in legislative activities, which however are silent on the nature and quality of substantive input that FRs might have made within meetings. This study has tried to make up for part of the deficiency through two case studies. In this connection, much of the case analyses has relied on official records and meeting minutes openly available, some of which are not entirely comprehensive or detail. It is therefore possible that the pictures portrayed are only partial. More accurate understanding of the full dynamics of policy-making can only be uncovered with investigation of more cases and processes.

For the same reasons of time and resource constraints mentioned above, this study is only a preliminary, fact-finding endeavour to describe FR legislative behaviour in the social policy arena. No attempt has been made to establish the causal factors for the patterns of behaviour observed. This should be a worthwhile direction for further research so that the impacts of institutional design on behaviour can be more adequately understood.

## Functional Constituency Research Project 2004

### Appendix 1 Members of LegCo (Functional Constituencies) 1998-2000

| Name   | Constituency                                     | Political Affiliation |
|--|--|-----------------------|
| ARCULLI, Ronald Joseph                         | Real Estate and Construction                     | LP                    |
| CHOW LIANG Shuk-yee, Selina                    | Wholesale and Retail                             | LP                    |
| HO Sing-tin, Edward                            | Architectural, Surveying and Planning            | LP                    |
| LAU Kin-yee, Miriam                            | Transport  | LP                    |
| LAU Wong-fat                                   | Heung Yee Kuk                                    | LP                    |
| LEUNG LAU Yau-fun, Sophie                      | Textiles and Garment                             | LP                    |
| TIEN Pei-chun, James                           | Commercial – First                               | LP                    |
| TING Woo-shou, Kenneth                         | Industrial – First                               | LP                    |
| YOUNG, Howard                                  | Tourism  | LP                    |
| CHAN Kwok-keung                                | Labour   | DAB / FTU             |
| CHAN Wing-chan                                 | Labour   | DAB / FTU             |
| WONG Yung-kan                                  | Agriculture and Fisheries                        | DAB                   |
| CHEUNG Man-kwong                               | Education  | DP                    |
| HO Mun-ka, Michael                             | Health Services                                  | DP                    |
| LAW Chi-kwong                                  | Social Welfare                                   | DP                    |
| SIN Chung-kai                                  | Information Technology                           | DP                    |
| FUNG Chi-kin                                   | Finance Services                                 | HKPA                  |
| HUI Cheung-ching                               | Import and Export                                | HKPA                  |
| TANG Siu-tong                                  | Regional Council                                 | HKPA                  |
| CHAN, Bernard                                  | Insurance  |                       |
| CHEUNG Wing-sum, Ambrose<br>(Up to 31.12.1999) | Urban Council                                    |                       |
| FOK Tsun-ting, Timothy                         | Sports, Performing Arts, Culture and Publication |                       |
| HO Chung-tai, Raymond                          | Engineering                                      |                       |
| LEE Kai-ming                                   | Labour   |                       |
| LEONG Che-hung                                 | Medical  |                       |
| LI Ka-cheung, Eric                             | Accountancy                                      |                       |
| LI Kwok-po, David                              | Finance  |                       |
| LUI Ming-wah                                   | Industrial – Second                              |                       |
| NG, Margaret                                   | Legal  |                       |
| WONG Yu-hong, Philip                           | Commercial – Second                              |                       |

**Note:**

DAB: Democratic Alliance for Betterment of Hong Kong

DP: Democratic Party

FTU: Hong Kong Federation of Trade Unions

HKPA: The Hong Kong Progressive Alliance

LP: Liberal Party

Appendix 2 Members of LegCo (Functional Constituencies) 2000-2004

| Name                       | Constituency                                     | Political Affiliation                                 |
|----------------------------|--|---|
| CHEUNG Yu-yan, Tommy       | Catering   | LP  |
| CHOW LIANG Shuk-ye, Selina | Wholesale and Retail                             | LP  |
| LAU Kin-ye, Miriam         | Transport  | LP  |
| LAU Wong-fat               | Heung Yee Kuk                                    | LP  |
| LEUNG LAU Yau-fun, Sophie  | Textiles and Garment                             | LP  |
| TIEN Pei-chun, James       | Commercial – First                               | LP  |
| TING Woo-shou, Kenneth     | Industrial – First                               | LP  |
| YOUNG, Howard              | Tourism  | LP  |
| CHAN Kwok-keung            | Labour   | DAB / FTU   |
| IP Kwok-him                | District Council                                 | DAB   |
| LEUNG Fu-wah               | Labour   | DAB / FTU   |
| WONG Yung-kan              | Agriculture and Fisheries                        | DAB   |
| CHEUNG Man-kwong           | Education  | DP  |
| LAW Chi-kwong              | Social Welfare                                   | DP  |
| SIN Chung-kai              | Information Technology                           | DP  |
| HUI Cheung-ching           | Import and Export                                | HKPA  |
| LI Fung-ying               | Labour   | The Federation of Hong Kong and Kowloon Labour Unions |
| CHAN, Bernard              | Insurance  |   |
| FOK Tsun-ting, Timothy     | Sports, Performing Arts, Culture and Publication |   |
| HO Chung-tai, Raymond      | Engineering                                      |   |
| LAU Ping-cheung            | Architectural, Surveying and Planning            |   |
| LI Ka-cheung, Eric         | Accountancy                                      |   |
| LI Kwok-po, David          | Finance  |   |
| LO Wing-lok                | Medical  |   |
| LUI Ming-wah               | Industrial – Second                              |   |
| MAK Kwok-fung, Michael     | Health Services                                  |   |
| NG, Margaret               | Legal  |   |
| SHEK Lai-him, Abraham      | Real Estate and Construction                     |   |
| WONG Yu-hong, Philip       | Commercial – Second                              |   |
| WU King-cheong, Henry      | Finance Services                                 |   |

**Note:**

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