

THE PROFESSIONAL COMMONS

PRELIMINARY RESPONSE TO THE

GOVERNMENT'S

GREEN PAPER ON CONSTITUTIONAL

DEVELOPMENT

10 SEPTEMBER 2007

A. INTRODUCTION AND SUMMARY

1. The Government has released its Green Paper on Constitutional Development (the “Green Paper”) in July 2007. It is seeking submissions from the public on the issues raised in the paper, which deals with the future electoral arrangements for the post of the Chief Executive (“CE”) and for the Legislative Council (“LegCo”).
2. This paper sets out our position in relation to the proposals set out in the Green Paper. Although the Green Paper has set out a number of specific questions to which the Government invites response, we will not deal with the issues in accordance with those questions. This is because the questions appear to reduce the whole consultation process to a “box ticking” exercise, whereby respondents are expected no more than to be a “statistic” on specific mechanisms, rather than providing opportunities for dealing with similarly important issues of principle.
3. Against this background, this paper will be divided into the following sections:
 - 3.1. “Universal suffrage – what is it?”;
 - 3.2. “Universal suffrage – Hong Kong is ready”;
 - 3.3. “Models for CE elections by universal suffrage”;
 - 3.4. “Models for LegCo elections by universal suffrage”; and
 - 3.5. “Hong Kong: it’s time”.
4. In dealing with these issues, we have deliberately not taken a highly technical, legalistic approach. We believe that whilst, as professionals, we must not avoid altogether the technical questions in our analysis, Hong Kong’s political system does not belong only to businessmen, professionals and other alleged “elites”. It would be contrary to the spirit of our advocacy for the earliest possible attainment of

universal suffrage if we were to produce an overly technical document that is intended merely for an “elite” audience.

5. As regards our position on the issues raised, they are, in summary:

5.1. There are no legal impediments to the election of the CE and LegCo at any time after 2007 (in the case of CE) or 2008 (in the case of LegCo). Against this background, Hong Kong is not only ready for universal suffrage as soon as possible, but that the actual situation in Hong Kong makes such a move essential.

5.2. Thus, the CE and LegCo should be elected through genuine universal suffrage by 2012. Hong Kong is more than ready for this.

5.3. As regards CE elections, a nomination committee should in principle be formed in a democratic manner so as to represent the public in the broadest possible way. However, as a practical option we also support minimal change to the present composition of the nomination committee; it may either remain unchanged with 800 members, or be expanded to around 1200 through the addition of directly elected District Councillors. On this basis, the nomination threshold for an eligible CE candidate should be no more stringent than the present arrangement, requiring the support of 100 or less Election Committee members.

5.4. As with LegCo, we are of the view that functional constituencies (“FCs”) should be abolished in their entirety. Any retention of FCs is not only undesirable for Hong Kong in light of its actual situation, but is against the principle of genuine universal suffrage.

6. Before proceeding to explain our position in more detail, we wish to make clear our fundamental rationale for our advocacy of early and genuine universal suffrage:

- 6.1. Strictly speaking, as a group of professionals, most of us are currently in the privileged position of being able to vote for Election Committee candidates, as well as having our own FC members within LegCo. This puts us in a privileged position. In that regard, it is clearly in our personal interests for the present electoral system to be maintained.
 - 6.2. However, for reasons that will be outlined in this paper, we are very firmly of the opinion the present electoral system is untenable. As professionals exercising independent judgments, we believe that it would be inappropriate for us to adopt a narrow, elitist line on issues of public interest such as this. After all, no single person, however educated, qualified or experienced, can claim any monopoly over wisdom on what is best for Hong Kong.
 - 6.3. Thus, rather than hoarding privilege and power for ourselves, we believe that professionals should embrace and engage with the public so that we can learn from each other. And the best way for achieving this would be through an open electoral system where everyone gets to have a say in Hong Kong's governance.
7. On this basis, we now proceed to explain our position in more detail.

B. UNIVERSAL SUFFRAGE – WHAT IS IT?

8. In the Green Paper, the Government devoted an entire chapter discussing the concept of universal suffrage and the factors relevant to its meaning. We will examine these in turn and point out where we believe the Government appears to be attempting to confuse the issue.

Starting point – Hong Kong is entitled to universal suffrage

9. Without defining what universal suffrage involves, the Green Papers refers to the fact that under the Articles 45 and 68 of the Basic Law, Hong Kongers are ultimately entitled to electing the CE and LegCo by universal suffrage.
10. We welcome the fact that the Government is at least willing to continue acknowledging this fact.
11. However, we disagree with the Government's position that Hong Kongers' right to enjoy universal suffrage is derived from the Basic Law alone. Article 25 of the International Covenant on Civil and Political Rights ("ICCPR"), a document that is incorporated into Hong Kong law by Article 39 of the Basic Law, states clearly that every citizen has the right "*to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage*".
12. The Green Paper sought to suggest that this right is not incorporated into the laws of Hong Kong, because of a 1976 reservation by the then colonial power to exclude the application of this part of the ICCPR to Hong Kong. We believe that the Government's suggestion is wrong on a number of fronts:
 - 12.1. The United Nations Human Rights Committee, which acts as a monitor for territories' compliance with the ICCPR, clearly considers the reservation not to apply in Hong Kong any longer. It has, over the years since reunification in 1997, consistently pointed out that Hong Kong's electoral system is inconsistent with the ICCPR right to universal suffrage.

- 12.2. Further, even if one were to take a slightly more technical view, the reservation in question applied only “*in so far as it may require the establishment of an elected Executive or Legislative Council in Hong Kong*”. Thus, the Government has clearly taken the reservation out of context. The fact is that once an electoral mechanism of sorts had been established in Hong Kong for both CE and LegCo, there is no reason why such a mechanism does not have to conform with the ICCPR.
13. Whilst this issue might be seen as one of purely technical legal interest, it is instructive as to the way the Green Paper had been put together to cloud rather than to clarify issues. The issues are analysed by the Government in a way which creates the impression that Hong Kong’s entitlement to universal suffrage seem narrower in scope than it actually is. We will, throughout the course of this and other sections, examine these obfuscations, and seek to debunk them one by one.

What is universal suffrage?

14. In chapter two of the Green Paper, the Government sought to explain its understanding of what constitutes universal suffrage. Given that political reforms in Hong Kong centres around the achievement of this goal for CE and LegCo elections, the meaning of the term is of fundamental importance.
15. Unfortunately, the Government saw fit to leave this analysis to the end of the chapter. Instead, there was an attempt to include additional factors and concepts before this analysis as apparently relevant considerations as to what constitutes universal suffrage. By contrast, we believe that it is most important to make clear from the outset what we mean by universal suffrage.
16. Broadly speaking, we agree with the Government’s position as to the components of universal suffrage. They include:

- 16.1. the requirement of the right of citizens to vote in elections for political representatives;
 - 16.2. such a right must not be limited in any way by reference to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;
 - 16.3. universal suffrage implies both “universal” and “equal” representation;
 - 16.4. any system of universal suffrage should conform with international standards; but
 - 16.5. there is a range of systems which would be consistent with the concept of universal suffrage. In particular, the right to “equal” votes does not imply the need for a strict numerical equality.
17. Whilst we believe that these are all valid features of one’s right to vote for political representatives, they are not, in themselves, sufficient. The fundamental rationale for any system of universal suffrage is to try and ensure “democratic” government. In perhaps overly simplified terms, this means essentially that any elected government would broadly reflect the society’s political orientation at a given time. Thus, any system of universal suffrage designed to undermine this principle would also undermine universal suffrage itself. This calls the genuineness of such a process into question.
18. As such, in order for universal suffrage to be “real”, we believe that the overall electoral system must be such that:
- 18.1. Fair constituencies: the electoral constituencies must not be formed in such a way as to favour intentionally any political group. Whilst, by economic demographics, different geographical areas would tend to favour certain political groups, the system must not be tailored specifically to ensure that such groups will win any territory-wide elections overall.

- 18.2. Fair candidate nomination procedures: the right for voters to become candidates for election is also of great importance. Whilst both pragmatism and the Basic Law provide for the need for procedures to nominate candidates, such procedures must not be discriminatory in nature so as to limit unduly the range of choices available to voters.
- 18.3. Fair voting: each voter's ballot should (subject only to moderate discrepancies due to the impracticality of drawing constituencies of exactly the same size), to the maximum extent possible, have approximately equal value.
19. We are of the opinion that these factors are essential in order to make universal suffrage "real". Without these conditions, any purported system of universal suffrage risks being no more than acting as a popular "rubber stamp" for incumbent governments and politicians.

The role of the Central People's Government

20. As noted earlier, rather than going straight to discussing the components of universal suffrage, the Green Paper had sought to create distractions by introducing seemingly but not actually pertinent factors to what constitutes universal suffrage. The first and foremost factor discussed in the Green Paper is that the concept of universal suffrage must be considered in the context of Hong Kong being part of the China, which is a unitary state. Thus, matters relating to Hong Kong's political system are ultimately matters for the Central People's Government, and the progress towards universal suffrage is no exception.
21. We acknowledge that as a matter of legal and political reality, the Central People's Government is the final arbiter of Hong Kong's political development. However, this does not mean that the concept of universal suffrage is somehow affected by that fact. Instead, the concept should be considered objectively, which in turn will involve an examination of the rationale for universal suffrage and widely accepted international practices.

22. To support Hong Kong's status as an international city, we encourage the Central Government to openly acknowledge the need for Hong Kong to follow international best practice in universal suffrage, including the provisions in the International Convention on Civil and Political Rights. We believe it is unfortunate for the Government to choose to blur the issues by making questions of political process part of wider definitional questions.

The Government's alleged principles for universal suffrage

23. In addition to the reference to the Central People's Government, the Green Paper suggests further that any notion of universal suffrage in Hong Kong must bear in mind the following four factors:

- 23.1. meeting the interests of different sectors of society;
- 23.2. facilitating the development of a capitalist economy;
- 23.3. gradual and orderly progress; and
- 23.4. appropriate to Hong Kong's actual situation.

24. Of these four factors, we note the following:

- 24.1. The first two of the factors are not in fact any particular legal and institutional requirements at all. Instead, they are apparently deduced from comments made by the chairman of the Basic Law drafting committee. To that end, we believe that:

- (a) At most, these notions are no more than factors to bear in mind when designing the specific system for achieving universal suffrage in Hong Kong. As with the question of the Central People Government's role, these factors do not go to the fundamental question of what constitutes

universal suffrage. This is yet another attempt by the Government to insert purely procedural/political elements into the concept of universal suffrage.

- (b) Even if, contrary to the above, these factors are somehow relevant at a more conceptual level, we are firmly of the view that, in any event these factors are best promoted if Hong Kong enjoys an internationally recognised system of universal suffrage. After all, a political system that allows the widest possible public participation should (assuming that it is otherwise fairly structured, as will be discussed later in this chapter), on average, be a better representation of different interests in society than a system that favours particular groups. In addition, international experience strongly suggests that countries with thriving capitalist economies almost inevitably also have representative government returned by universal suffrage. Conversely, countries without such open political mechanisms tend also to less market-oriented.

24.2. As for the latter two factors, they are found in Articles 45 and 68 of the Basic Law, and will be analysed further in the next section of this paper. For present purposes, it suffices to note that these factors go merely to the question of timing for achieving universal suffrage, and not what constitutes as such.

The Government's attempts to confuse

- 25. In essence, what is clear is that the Government has sought to cloud the issue by inserting additional seemingly salient points which are in fact diversions at a "principles" stage of analysis. Only after making these points did the Government see fit to outline its views on what actually constitutes universal suffrage. We believe that this is most inappropriate. Unfortunately, as will be noted in other sections of this paper, we have identified many other instances of such attempts at obfuscation. It is for this reason that we believe groups like us needed to present our positions in order to clarify matters.

C. UNIVERSAL SUFFRAGE – HONG KONG IS READY

26. Of the chapters in the Green Paper which dealt with the substance of electoral reforms in Hong Kong, the one which dealt with the timetable for achieving universal suffrage came last. Similarly, in the individual chapters dealing with CE and LegCo elections, the question of timing is not dealt with at all (in the case of the chapter on CE elections) or it comes last (in the case of the chapter on LegCo elections).
27. We believe that this is the wrong approach. Questions regarding specific electoral mechanisms are, whilst important, pointless unless there is a sense of timing as to when such mechanisms is intended to be implemented. As such, in this paper we have put the question of timing to the forefront. In this section, we will explain why Hong Kong is in fact already ready for universal suffrage, and that both in CE and LegCo elections, this should be achieved by 2012.

Gradual and orderly progress in light of the actual situation in Hong Kong

28. As noted earlier, Articles 45 and Article 68 of the Basic Law states that CE and LegCo elections should ultimately be conducted by universal suffrage in a “*gradual and orderly manner*” and “*in light of the actual situation in Hong Kong*”. Further, Annexes II and III of the Basic Law envisaged the possibility of moving to universal suffrage in the term after the 2003 CE elections and 2004 LegCo elections. This means that there was no requirement for Hong Kong to drift slowly towards universal suffrage if Hong Kong is ready for it at any time after 2003/2004.
29. In addition, Article 25 of the ICCPR as applied by Article 39 of the Basic Law (as earlier discussed) reinforces the fact that every citizen has the right to vote in elections by “*universal and equal suffrage*”.
30. Taking these points together, we have no doubt that Hong Kong is already ready for universal suffrage:

- 30.1. Gradual and orderly: Hong Kong has gone through a “gradual and orderly progress” towards universal suffrage since the first direct elections for some LegCo seats took place in 1991. The process is now sixteen years old. If that is not “gradual and orderly”, then what is?
- 30.2. Actual situation: the actual situation in Hong Kong also calls for universal suffrage of LegCo as soon as possible:
- (a) Hong Kong claims to be “Asia’s World City”. A “world city” demands world class facilities, infrastructure and systems. Only a system of popularly elected government, which is internationally recognised as “best practice”, is good enough for a world city.
 - (b) Hong Kongers are reasonable, mature and highly educated and informed people. Over the past sixteen years, we have seen a real awakening in Hong Kongers’ civic and political consciousness. And we always handle political and social disputes in a peaceful manner. Where else in the world can one find a crowd of protesters who are consistently peaceful, patient even in extreme weather, leave no rubbish on the floor, and even sometimes thank police officers that they march past for keeping order? If such a population is not ready for universal suffrage, then what is?
 - (c) Hong Kong prides itself on an open market economy and a wide array of choices for consumers. The people of Hong Kong are thus well used to making choices in most aspects of their lives. It would thus be odd to say that they are somehow not ready to make choices about their own governance.
 - (d) Some Government officials and special interest groups claim that political parties in Hong Kong have not grown to a stage where universal suffrage is possible. This ignores the fact that political parties can only grow where they have the opportunity to win and

exercise political power. Thus, rather than saying that the system can only become more open if parties become more developed, the fact is that parties can only develop if the political system becomes more open through universal suffrage.

- (e) We have seen in recent years the explosion of judicial review proceedings as a means to deal with politically contentious matters. This is perhaps inevitable. Under the present system, anger over unpopular laws and policies cannot be vented by people knowing that there is a future opportunity to elect a new CE or a new majority in LegCo to deal with such laws and policies. This leaves the courts as the only other place where people can attempt to have their concerns redressed. Universal suffrage is thus now taking on a greater urgency to prevent a politicisation of the use of the courts by Hong Kongers.

30.3. International obligations: Hong Kong is now well overdue to meet its international law obligations (as adopted by the Basic Law). Again, any further delay will surely be inconsistent with Hong Kong being “Asia’s World City”.

- 31. Thus, not only is Hong Kong ready for universal suffrage for CE and LegCo as soon as possible, but it urgently needs this.

Legal impediments against universal suffrage now – but what about 2012?

- 32. It is clear from the above that we are firmly of the view that Hong Kong is ready and needs universal suffrage now. It is a widely held misconception that the SCNPC issued an interpretation of the Basic Law in 2004 which prohibits universal suffrage for election of CE in 2007 and of LegCo in 2008. However, in 2004, the SCNPC issued an interpretation which does not prohibit universal suffrage in 2007/2008 and separately made a “Decision” prohibiting universal suffrage in 2007/2008. The HKSAR and the Court of Final Appeal (CFA) is bound by an interpretation by the

SCNPC but the CFA has never ruled on the binding effect of a Decision.

33. Nonetheless, there is nothing in the 2004 interpretation which prevents the universal suffrage of the CE and all LegCo seats in the 2012 elections for these positions/seats. Indeed, the Government has listed universal suffrage in 2012 as an option in its Green Paper.
34. Given the points we have outlined earlier in this section, we strongly believe that, working within the constraints of the 2004 SCNPC interpretation, universal suffrage for both the election of the CE and LegCo seats should and must take place by 2012.

Can universal suffrage not be phased in gradually after 2012 instead?

35. Apart from the listing of 2012 as a year in which universal suffrage can take place, the Government has also listed the following as possibilities:
 - 35.1. in the case of CE elections, universal suffrage in or after 2017; and
 - 35.2. in the case of LegCo elections, universal suffrage for all seats in or after 2016.
36. Are these alternatives not acceptable?
37. We believe that they are not. Not only are there concerns as discussed earlier about the further delaying of universal suffrage, but the proposed “phasing in” of universal suffrage is extremely difficult to implement. Which special interest group is willing to let itself lose a grip on its privileged status in the Election Committee (in the case of CE elections) or functional constituencies (in the case of LegCo) and have its influence diluted earlier than some others?
38. Thus, rather than entering into intractable arguments about how universal suffrage should be phased in, the simplest (and legally permissible) thing to do would be to abolish them all at once. We have already shown that such a move is consistent with

the Basic Law, our international law obligations, as well as Hong Kong's current needs.

Universal suffrage for Hong Kong by 2012!

39. We have made our position clear. No excuses. No confusion. Hong Kong is ready. Hong Kong needs it. Give us universal suffrage for all elections by 2012!

D. MODELS FOR CE ELECTIONS BY UNIVERSAL SUFFRAGE

40. In earlier sections, we have dealt with the question of what constitutes real universal suffrage, and the timing for which this should be achieved in Hong Kong. We now turn to specific proposals for achieving universal suffrage raised in the Green Paper. This section will deal with those relating to CE elections, whilst the next section will focus on LegCo elections.

Nomination committee by democratic procedures

41. Article 45 of the Basic Law states that when universal suffrage is achieved for the election, candidates for CE are to be nominated by a nomination committee. This committee, in turn, is to be chosen through “democratic procedures”. The Green Paper appears to identify two types of issues arising from this, which we now deal examine.

Size and composition of the nomination committee

42. The Government appears obsessed with the question of the size and composition of the nomination committee. In the Green Paper, this was the first and most extensively dealt with item in its chapter on CE elections. The part in question dealt in detail with a range of options on the number of committee members and the committee’s composition.
43. We believe that the focus on this aspect of the Government’s focus is misplaced, and merely has the effect of making the issue appear more complicated than it really is:
- 43.1. Wrong to focus on a “magic” number: the Green Paper discussed so extensively on whether the nomination committee should have less than 800 members, 800 members or more than 800 members, that this was made to appear a vital issue. However, we believe that the simple fact is this: whilst a “number” must eventually be agreed for the size of the nomination committee, it is by no means a vital issue:

- (a) if the committee is chosen by “democratic procedures” in a way intended broadly to represent the community as a whole, and if the threshold for candidate nomination is not unduly restrictive, then maybe even a 100-member committee will be large enough. The key is for the committee to be sufficiently large to represent diverse interests; but
- (b) if these conditions are not satisfied, then the committee will be skewed in composition and/or produce insufficiently diverse candidates for Hong Kongers to vote for. In such a case, even a relatively large committee of, say, 3000 members will not be sufficiently democratic.

43.2. Wrong to impose unnecessary conditions on committee composition: attempts were also made in the Green Paper to link the concepts of “*meeting the interests of different sectors of society*” and “*facilitating the development of a capitalist economy*” to the composition of the nomination committee:

- (a) As noted earlier in section B of this paper, these factors are in any event best achieved through a truly democratic system.
- (b) Nonetheless, these are not standalone requirements in relation to nomination committee composition. All that is required is that the committee is selected through “democratic procedures”.

44. Thus, as regards the size and composition of the nomination committee, the Government yet again created sideshows, which results only in creating confusion and distractions from truly relevant issue of how to ensure that the committee is formed by democratic procedures (and thus broadly representative of the people).

Democratic procedures

45. Having discussed purely mechanical issues in relation to numbers and composition, the Green Paper then proceeded merely to spend four paragraphs on the “*electorate base of the nomination committee*”. Though this issue is of fundamental importance which goes to the question of “democratic procedures” as required by the Basic Law, it was treated almost as an afterthought. The Green Paper merely noted that the current means for electing Election Committee members may be a good starting point for considering how best to elect any nomination committee in the future.
46. We disagree with the Government’s view on this issue. To begin with, the current Election Committee is not chosen by a broad cross-section of the community. Only a *few percent* of the total Hong Kong population are eligible to vote in Election Committee polls. Some seats are not even returned by individuals, but by so-called “corporate” votes.
47. This means that the Election Committee is not in fact broadly representative of the people of Hong Kong as a whole. If it is not broadly representative, then how is it democratic? And if it is not democratic, how can it serve as a model for the selection of nomination committee?
48. Of course, democratic procedures are not only about the voter base. After all, there should be some semblance of equality in the value of votes to ensure that the results are not skewed in favour of particular groups. The Green Paper was silent on this issue.
49. So where does this leave us?
50. As a group, we are open to ideas and proposals as to how the nomination committee can be formed by democratic procedures. Most of the proposals that are being discussed in the public domain still maintain privileged status for specific sectors or groups within the nomination committee. In such circumstances, we do not see how it can be said that the nomination committee is somehow formed democratically.

51. On the other hand, we also appreciate that requiring a full popular election for a nominating committee may be impractical, as the voting mechanism may be unduly complex. Further, such a process would be disproportionately expensive when compared with the limited role and function of a nomination committee.
52. Thus, in the absence of any other proposals, we support minimal change to the present composition of the nomination committee – it may either remain changed at around 800 members, or may be expanded to around 1200 with the addition of all the directly elected District Councillors.

.Nomination of CE candidates

53. As with the size and the composition of the nomination committee, the Government tried to turn the question of the nomination of CE candidates into a warped numerical exercise. The nomination thresholds and sector-specific requirements are considered purely in the context of how many candidates should be presented to voters for election by universal suffrage. The options given by the Government are mechanisms allowing for:
 - 53.1. ten or more CE candidates;
 - 53.2. up to eight CE candidates; or
 - 53.3. only two to four CE candidates.
54. In our view, this presentation of nomination proposals is yet another attempt by the Government to create confusion over the issue. By talking about eight or even ten or more candidates, the Government effectively seeks to create fears that voters may be swamped with too many (and sometimes frivolous) CE candidate choices. These fears are, in our view, unfounded.
55. If we take the Government's presentation of issues at face value, then the current nomination mechanism for CE candidates allow for up to eight candidates. Sounds

like a lot? Well, the fact is this. For the 1997 CE selection, there were four candidates nominated. In 2003 and 2005, there was only one candidate. And even in 2007, where there were two candidates, there was great difficulty in securing the necessary nominations for a second candidate to run for the position. This shows clearly that a mechanism allowing for up to eight candidates will inevitably end up producing substantially less candidates.

56. On the other hand, proposals to limit the maximum number of potential candidates to only a few (say two to four) have a number of drawbacks:
 - 56.1. As noted above, even a system that allows for up to eight candidates can lead to difficulties nominating more than one eligible candidate.
 - 56.2. Limiting the number of eligible candidates through mechanisms such as only letting two candidates with the highest number of nominations could potentially allow for collusion between like-minded political groups to ensure that only their favoured candidates are put up for election. This would mean that voters are not being given a real choice between candidates with different views and perspectives.
57. Taking all these points together, we are firmly of the view that the nomination threshold for a CE candidate must be sufficiently low to enable voters to have a real choice at elections. If experience is anything to go by, this would mean a percentage threshold that is even lower than that which currently prevails. This is nothing more than a proposal to ensure that, in practice, there will be more than one CE candidate, and that there can likely be a diversity of views advocated by the candidates. It is not, as the Government might alarmingly put it, a “ten or more candidates” option.

E. MODELS FOR LEGCO ELECTIONS BY UNIVERSAL SUFFRAGE

58. As with CE elections, we have already outlined in earlier sections why Hong Kong is ready for universal suffrage, and that this should happen by 2012. In this chapter, we will set out our position on why FCs should be abolished in favour of true universal suffrage for all LegCo seats.

FCs' alleged positives – the myths

59. In the Green Paper, the Government has highlighted a number of alleged advantages of retaining FCs, and how FCs can be retained and still be consistent with universal suffrage. Let us examine each of these in turn.

The necessity of FCs as specialists

60. First, the Government claims that FCs “*have brought the voices of the business and professional sectors into LegCo and have, through their expertise, assisted LegCo in carrying out its legislative function and in monitoring the Government’s work. FC members have made contributions to the community.*”

61. We believe that this assertion is misleading. It may be said that FC members have brought expertise to LegCo and have contributed to the community. However, that is beside the point.

62. There is simply no need for professional and business experts to have their specially “reserved” positions for them in LegCo. Professional and business groups from all walks of life routinely make submissions to the Government on issues of interest to them. The Professional Commons is but one example of this, as are the various labour groups, chambers of commerce, and various profession-specific bodies.

63. Indeed, the Government rarely, if ever, proceeds with a major policy or legislative proposal without first consulting all the relevant specialist stakeholders. And even after draft legislation reaches LegCo, these same specialist groups are called upon to

testify and assist LegCo in its deliberations. To that extent, FCs represent an unnecessary duplication of efforts.

64. Further, there is nothing to stop members of business and professional groups from running for directly elected seats in LegCo in order to advance their agenda. In many democracies, political parties advocating ideologically conservative policies are often comprised of members of such groups. And they often win majorities in their respective legislatures, thus giving their agenda popular legitimacy.
65. By contrast, the reservation of seats for FCs is not only unfair and can create societal conflicts (as will be explained in more detail later). Even at the level of providing specialist expertise, the retention of FCs inevitably leads to relatively poorer policies and legislation:
 - 65.1. By being disproportionately represented (when combined with their fellow specialists' share of seats won in geographical constituencies), there is less of an incentive for special interests represented by FCs to consider their proposals fully and obtain public support before they are passed in LegCo.
 - 65.2. Thus, there is a greater risk that points of difficulties or concerns in relation to these specialists' agenda which could arise from any widespread public debate may not surface until after legislation is set in stone. This means that pieces of legislation are likely to be less refined or popularly legitimate as they otherwise could be if there was a need to win public support.
66. We therefore believe that retaining FCs is not only unnecessarily for the preservation of specialist voices in LegCo, but also leads to poorer law-making.

FCs' role in maintaining balance

67. Second, the Green Paper alleges that "*FCs can meet the interests of different sectors of society, which is consistent with the principle of 'balanced participation'.*"

68. Our query on this assertion is: balance between and against *what*?

68.1. If the “balance” refers to that as between different political ideologies, then the best reflection of that would be through directly elected geographical constituencies. Popular participation ensures the widest possible reflection of public opinion.

68.2. If the phrase means “balance” between different sectors of society, then FCs are definitely the wrong way to go about it. FCs are necessarily arbitrary as to what specialist groups are represented, and which ones are not. Certainly no “balance” there. In addition and as we have already noted earlier, members of FCs are already represented in geographical constituencies and can win popular legitimacy through this method. In this context, FCs in fact create an imbalance in favour of sector-specific special interests.

68.3. Most ominously, it appears that the notion of “balance” can also be seen as that between privileged groups with positions reserved for them, as against the general public, as a means for avoiding allegedly “populist” policies. If this is the meaning of balance, then it goes to the heart of our objections-in-principle to the retention of FCs, including:

(a) Unfairness: allowing certain groups to have effectively “two bites at the cherry” through both FCs and geographical constituencies is inherently unfair. This entrenches narrow sectoral interests to the detriment of wider public interest. Further, one is effectively insulting the intelligence of much of the Hong Kong population by suggesting that only certain groups are “good” enough to run Hong Kong. This is inconsistent with the image of Hong Kong being a mature, open and sophisticated world city.

(b) Social conflict: with the unfairness inevitably comes resentment by those who are locked out of an opportunity to elect majorities in LegCo. Rather than ensuring “reasonable” policies (as in the case of many

democracies where political groups tend to stick to the “middle ground”), the maintenance of FCs merely encourages those left out of the system to pursue more radical ideas in order to be heard. Such radical tendencies inevitably encourage social and sectoral conflicts, rather than “balance”.

- (c) Inferior legislation: we repeat here the point made earlier about the disadvantages of the advancement of sectoral interests without winning over the public.

69. We are firmly of the view that far from promoting “balanced participation”, the maintenance of FCs entrench and encourage further imbalance in our political system.

Objections to the abolitions of FCs?

70. Third, the Government suggests that “*abolition of FCs altogether is bound to meet with objections from among different sectors of the community and their representatives in LegCo, and it will be difficult to reach consensus on the issue.*”

71. With respect, this is an altogether facetious argument:

71.1. Whilst the abolition of FCs may face objections, the retention of FCs is also being objected to by many sectors of society.

71.2. If anything, if consistent opinion poll results over many years are anything to go by, then there is actually more of a consensus for the abolition of FCs than for their retention.

71.3. If the objections by some is a valid reason for not doing something, there are many things that perhaps the Government should not have done. This ranges from the setting up of the Independent Commission against Corruption in the 1970s (objections from the police and some public servants), to the

controversial recent demolition of Queen's Pier (objections from many sectors of the public).

72. We believe that not only is the mere fact of some objections to the abolition of FCs not a valid reason for not doing so, but that their abolition would have more consensus than their retention.

F. HONG KONG: IT'S TIME

73. In the preceding sections, we explained our understanding of what universal suffrage is about. We showed why Hong Kong is ready and is in need of universal suffrage as soon as possible. We demonstrated the paramount importance of a truly democratic procedure for nominating CE candidates to ensure genuine choice for the people of Hong Kong. We pointed out the problems with maintaining FCs in LegCo. And, above all, we exposed the intended or unintended attempts by the Government to create unnecessary confusion around what are, essentially, simple issues.

74. And what are these simple issues? Here are our own set of concluding questions for consideration:

74.1. Are Hong Kongers too to choose their own representatives?

74.2. Are fake choices preferable to no choice or to genuine choice?

74.3. Do certain groups or sectors have any god-given rights to enjoy a monopoly over political power?

74.4. Are undemocratic places denying its people the right to universal suffrage more likely to provide for better representation of a wide

cross-section of society, and protect the notion of free, open capitalist economies?

75. If, like us, you believe that the answers to each of these questions are “No”, then these are the inescapable conclusions. It’s time Hong Kongers are no longer treated as political imbeciles. It’s time for Hong Kongers to be given genuine choices over their representatives. It’s time for Hong Kongers to get true competition in the political scene and not put up with a political monopoly. It’s time for Hong Kongers to have representatives that truly represent their diverse views, and exercise public political rights in the same way they now enjoy private economic rights.
76. And, it’s time for Hong Kongers to enjoy real universal and equal suffrage.

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