

**Responses from The Professional Commons Regarding the “Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012”
Consultation Document**

The Professional Commons has the following responses regarding the “Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012” Consultation Document. Our responses comprised of two sections:

Part I Main Response

Part II Responses to the Questions Raised in Chapter Six of the Consultation Document (Question-by-Question)

Part I

Main Response

The Professional Commons responds to the Government’s consultation document with the following demands:

- The proposal should include the abolition of Functional Constituencies (hereafter the FCs) and the attainment of universal suffrage as the final and ultimate destination of Constitutional Reform
- It should have a clear roadmap leading to the total abolition of Functional Constituencies at the latest by the year 2020.

The current proposal does not have a destination, nor a clear roadmap. All discussions about interim arrangements are meaningless. There are risks that interim arrangements would serve as an impediment against future development towards universal suffrage.

The Professional Commons is saddened by the consultation document. We are deeply disappointed by the recent statements made by the Chief Secretary, who openly declared that he could not find the legal requirement in the Basic Law which states that functional constituencies were incompatible with universal suffrage. He was implying that the abolition of functional constituencies is not the ultimate destination of Constitutional Reform.

The proposal and the statements made by Chief Secretary are clearly against public interest and the aspiration of the Hong Kong people.

During the Chief Executive Election in 2007, Mr Donald Tsang promised Hong Kong people to deliver an ultimate solution to the issue of universal suffrage during his five-year term, and spare Hong Kong from the controversy of universal suffrage once and for all. As the Chief Executive, he has the duty to convey Hong Kong people's demand for universal suffrage to the National People's Congress.

Instead by issuing this Consultation Proposal, Mr Tsang has unambiguously conveyed the following message to the Hong Kong people:

1. He has completely reneged on his election promise, and **has decided not to resolve the question of universal suffrage during his term;**
2. He has **abandoned his constitutional authority** which would allow him to start the process by submitting a report to the Central Authorities that contains a roadmap to universal suffrage.
3. He has chosen a policy to **confuse**, entrench political privileges, and aggravate social conflicts.

In view of the above, Mr Tsang has effectively announced that he has neither the intention nor the capability to lead the Hong Kong people. He has abandoned his constitutional responsibilities to foster further political development.

The Universal Declaration of Human Rights, and Article 25 of the International Convention on Civil and Political Rights both specified that citizens should have the rights "to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors." Functional constituencies fulfilled neither, as both the voting rights and the rights for being stand for the elections for the seats functional constituencies are not universal and equal (FC voters being having more voting rights than non-FC voter). Even though if the seats in the functional constituencies could have elected by every voters as some "pro-establishment" figures has suggested, it would still not abide to Article 25 of the International Convention on Civil and Political Rights, as the rights of standing as candidates in different functional constituencies is still not universal.

THREE QUESTIONS

The Professional Commons believes that all political reform proposals must be measured against three fundamental criteria:

1. Do they make our government fairer and more effective?
2. Do they improve transparency, accountability, and the legitimacy of government?
3. Do they lead to greater democracy or are they backward steps?

THREE ANSWERS

The government reform proposals fail in all three criteria:

1. The current arrangement allows a small number of FC voters (212,825 voters in 28 FCs as in 2007), which constitutes only 5.8% out of the total working population of 3,663,299 (Quarterly Report on the Household Survey 2007-Q4), and allows them to elect half (30 seats) of the legislature.

The 14 of the 18 business sector FCs seats were not contested in the last election. Who are these corporate voters and how many votes does one person control? Why do some company directors have votes and most company employees in the business sectors do not? Why do some professionals have votes yet some do not?

The FC legislators from the business sectors had an infamous history of block vote against motions raised by members (some of them even including those raised by their fellow FC legislators), 23 of such motions have been blocked during the legislative sessions between 2004 and 2009, in which the 10-14 FC legislators from the business sectors voted as a bloc. For the motions and bills raised by members of the Legislative Council, a “split counting of votes” mechanism applies, in which member’s motions and bills must be passed by half of the members of the functional constituencies and half of the members of the geographical constituencies respectively. This has led to the situation in which bills and motions which are beneficial to the general public but are harmful or disadvantageous towards the business sectors would not be able to pass, as the legislators from the business sector functional constituencies would use every means to block those legislations and motions.

2. The District Council election is not about public policies but rather candidates are elected local issues. The legislators elected from District Councilors have no political mandate to deal with public policy matters. Furthermore, by adding only

100 directly elected District Councilors to the Chief Executive Election Committee, it further increases the risk of corrupt practices and effectively raises the hurdle for the nomination of Chief Executive candidates.

3. Turning 5 Functional Constituency seats which are in turn elected by a few hundred elected District Councilors does not broaden the electoral base. The arrangement reinforces the interests of District Councilor in the new legislature and forms a new resistance to the further opening up of all Legislative Council seats to universal suffrage.

We also warn that assigning a total of six Legislative Council seats to District Councilors would bring about a material change to the nature of District Councils. This is against the legislative intent of Article 97 of Basic Law which stipulates that District Councils are not organs of political power.

This proposal does not improve the **transparency** and **accountability of our government and electoral system**.

Conclusion

The current proposal is **not in line with the Hong Kong people's aspiration for genuine universal suffrage and the total abolition of Functional Constituencies. It does not lead to the progressive development of democracy in Hong Kong.** The Chief Executive must re-issue a responsible and progressive proposal. A more progressive proposal could be found in the our "Position Paper on Constitutional Reform in 2012" issued in May 2008, in which a **"Comprehensive FC" system should be in place in order to revamp the existing FCs classifications into 6 larger FCs and therefore allowing every single registered individual voter to vote in FC elections.** It shall comprise the following components:

- Four large FCs are to consolidate the existing FCs that are categorized according to the nature of the business activities, namely manufacturing and trade; infrastructure, logistics and tourism; business and professional services; community, social and personal services, which account for the 3.7 million of the population.
- Two new FCs could be introduced in favour other non-business sectors, professional or unionized labour voters. One is for adult students and retired persons. Another is for homemakers and economically inactive persons

previously not included in FCs. They account for about 2 million of the population.

- All eligible voters in Hong Kong should be able to participate in both the elections of geographical constituencies and FCs. We call this “One-Person-Two-Votes”.

For the Chief Executive election, we propose to keep the number of Election Committee for the selection of Chief Executive to 800. The 200 members from fourth category remain unchanged.¹ The 600 members from various business, industrial and professional categories (first, second and third categories) are to be elected by the same concept of Comprehensive FCs. The number of Election Committee members in each Comprehensive FC is, by proportion, of their eligible voters to the total number of eligible voters. By doing so, every vote will be rendered equal effect.

The nomination threshold for an eligible Chief Executive candidate should be no more stringent than the present arrangement, ranging from 50 and 100 Election Committee members. The minimum number is to provide a proper threshold which should be sufficient to avoid too many unqualified candidates from jamming into the election, but not high enough to disallow capable candidate to come to the competition. The minimum number should never be higher than the current number. The maximum number of nominators is to prevent any individual dominant candidate from monopolising.

Also, we are of the view the “split counting of votes” mechanism for motions and bills raised by members of the Legislative Council should be abolished. This is to avoid further abuse of the voting powers from the legislators elected the functional constituencies on defeating bills and motions which would be beneficiary to the general public as a whole.

As for the arrangements of the appointed seats in the District Councils, we proposed a one-off and immediate abolition of all appointed seats in the District Council, starting from the next term of the District Council onwards.

We also stated that if the Chief Executive insists on the Government’s proposal, it should be rejected by the legislature.

The Professional Commons

¹ Eligible voters of the fourth category include: Legislative Council members, District Council representatives, Hong Kong Deputies to National People’s Congress, representatives of Hong Kong members of National Committee of the Chinese People’s Political Consultative Conference.



19 February 2010

Part II

Responses to the Questions Raised in Chapter Six of the Consultation Document (Question-by-Question)

Method for selecting the CE in 2012

1. The number of members of the Election Committee:

(a) Do you agree that the number of members of the Election Committee should be increased to not more than 1200?

- The things that matter are the origin and composition of the Election Committee and the barrier to nomination, rather than the number of members.

2. The composition of the Election Committee:

(a) Should the proportion of members of the four sectors remain even or not?

(b) Do you agree that **most of the new seats** in the fourth sector should be allocated **to District Council members**?

(c) What should be the extent of increase in the number of seats to be allocated to District Council members? Do you agree that **only elected District Council members should take part in the election**?

- The fundamental principle is that the functional constituencies should be totally removed ultimately.
- In the transition, the functional constitution should expand the franchise seriously. The Professional Commons has a comprehensive progressive proposal on such expansion using a Comprehensive Functional Constituencies approach. Please read our main response for details.
- The new election committee should be formed via such Comprehensive Functional Constituencies
- The Professional Commons has a clear analysis on the Government proposal on the expansion of District Council members in Election Committee and added seats Legislators. We found it unacceptable. Please read our main response for details.

3. The electorate base of the Election Committee:

(a) Do you agree that the method of replacing “corporate votes” with “director’s /

executive's / association's / individual votes" should not be adopted?

(b) Do you agree that the proportion of District Council members in the Election Committee should be increased to broaden the electorate base?

- The Professional Commons' Comprehensive Functional Constituencies approach has incorporate removal of corporate votes by practitioner vote for sectors. Please read our main response for details.
- See answer to Question 2.
- To realize the progressive and orderly development of the system towards universal suffrage, the functional constituencies should be totally removed.

4. The arrangements for nominating candidates for the office of the CE:

(a) Do you agree that the nomination threshold should be maintained at the existing level, i.e. at the ratio of one-eighth of the total membership of the Election Committee?

(b) Do you agree that the arrangement of not setting an upper limit on the number of subscribers should be maintained?

- The Professional Commons' stand is that the nomination process must be compliant to the requirement of International Convention on Civil and Political Rights Article 25. It cannot deprive the rights of voters in large (citizens) to free express their will and choice of political leader, and the right of candidate to get elected.
- The minimum thresholds in nomination must be used only to filter opportunist and candidates who are abusing the election mechanism. A threshold of 50 is enough and it should not be increased with the number of Election Committee members.
- The Professional Commons seriously demand a maximum threshold be set to restrict a dominant candidate from pre-empting the election by excessive nominations as seen in 2002 Chief Executive Election in which Tung Chee Hwa had made a second candidate impossible.
- Please read our main response for details.

5. Political affiliation of the CE:

(a) Do you agree that the requirement that the CE should not have any political affiliation should be maintained ?

- To develop party politics, it is natural to have Chief Executive having his own political affiliation. Allowing Chief Executive candidates to have party

affiliation enables evolutionary development of a policy platform with the development of a party and more recognition by voters.

Method for forming the LegCo in 2012

6. The number of seats in the LegCo :

(a) Do you agree that the number of seats should be increased from 60 to 70?

- The origin and composition of the LegCo members are vital rather than the number of seats.

7. The electorate base of the FCs:

(a) Do you agree that the method of replacing “corporate votes” with “director’s / executive’s / association’s / individual votes” should not be adopted?

- The Professional Commons’ Comprehensive Functional Constituencies approach has incorporate removal of corporate votes by practitioner vote for sectors. Please read our main response for details.
- To realize the progressive and orderly development of the system towards universal suffrage, the functional constituencies should be totally removed.

(b) Do you agree that all the five new FC seats and the existing District Council seat should be returned through election by elected District Council members from among themselves to broaden the electorate base of the FCs?

- The Professional Commons has a clear analysis on the Government proposal on the expansion of District Council members in Election Committee and added seats Legislators. We found it unacceptable. Please read our main response for details.

8. Nationality requirement of LegCo Members :

(a) Do you agree that the existing arrangement of allowing Hong Kong permanent residents who are not of Chinese nationality or who have the right of abode in foreign countries to stand in the LegCo elections for 12 seats should remain unchanged?

- The Professional Commons does not have view on this.