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**FUNCTIONAL CONSTITUENCY MEMBERS IN
HONG KONG'S LEGISLATIVE COUNCIL:
A STUDY OF GOVERNANCE, LEGITIMACY
AND ACCOUNTABILITY IN ACTION**

BY

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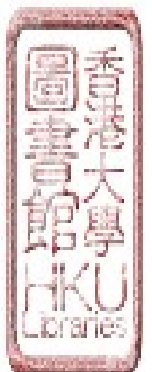
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Capstone project reports submitted in partial fulfillment of
the requirements of the Master of Public Administration

Department of Politics and Public Administration
The University of Hong Kong

August 2015



DECLARATION

We declare that this Capstone Project Report, entitled “Functional Constituencies Members in Hong Kong’s Legal Legislative Council: A Study of Governance, Accountability and Legitimacy in Action”, represents our own work, except where due acknowledgement is made, and that it has not been previously included in a thesis, dissertation or report submitted to this University or any other institution for a degree, diploma or other qualification.

(Signed)

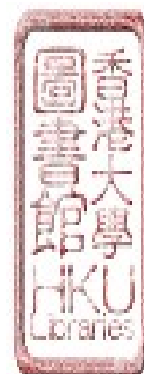
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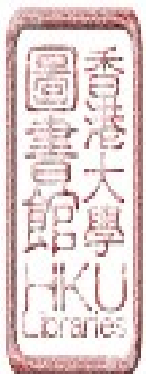
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ABSTRACT

Functional Constituency has been a very unique feature in Hong Kong's legislative system. Different Functional Consistencies represent different interest groups and are held accountable to respective sectors.

Throughout the years, Functional Constituency members did play a role in the discussions in the Legislative Council to offer their views and advices. They have moved important motions and asked critical questions. They also have made significant speeches and casted votes that would have consequential effects on the final decision throughout policy processes.

Applying the analytical framework on related concepts and ideas about the roles of legislatures and legislators in terms of governance, accountability and legitimacy, this capstone project focuses on how mindsets of various types of governance, accountability and legitimacy among the Functional Constituency members affect the way they perform in the Legislative Council, including what motions to move, what questions to raise, how to cast votes, etc.

This capstone project has selected two case studies, namely the mandatory provident fund and statutory minimum wage, to illustrate the analysis of the mindsets of related Functional Constituencies. These two case studies are employment-related, involving the conflicting interests between the employers and the employees. Besides, these two matters have also been discussed in the Legislative Council for a long time. This capstone project can therefore show a change in mindsets of Functional Constituency members across the time. As notions of governance, accountability and legitimacy are all interrelated, it is not uncommon to see mindsets of Functional Constituency members as reflecting a combination of governance, accountability and legitimacy.

Last but not least, this capstone project ends with a way forward for the Functional Constituency in Hong Kong, together with recommendations on how the Functional Constituency system might be optimized in future.

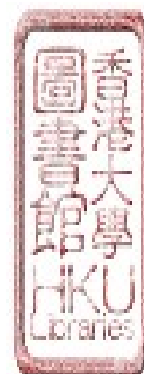
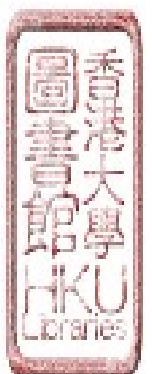


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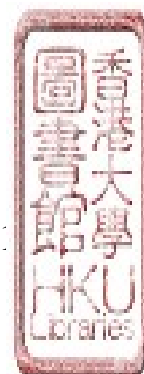
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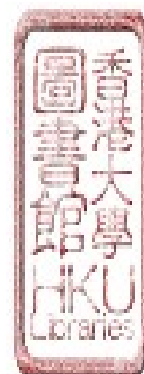


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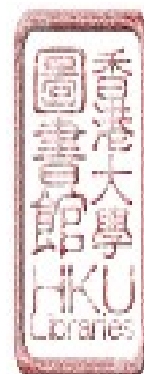
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LIST OF ABBREVIATIONS

ADPL	Association for Democratic and People's Livelihood
CE	Chief Executive
CPF	Central Provident Fund
FC	Functional Constituency
FCM	Functional Constituency Member
FTU	The Hong Kong Federation of Trade Unions
GC	Geographic Constituency
Hansard	Official Proceedings of the Legislative Council of Hong Kong
HKFLU	The Federation of Hong Kong & Kowloon Labour Unions
HKGCC	Hong Kong General Chamber of Commerce
HKSAR	Hong Kong Special Administrative Region
LegCo	Legislative Council
MPF	Mandatory Provident Fund
MPFSO	Mandatory Provident Fund Schemes Ordinance
MPS	Mandatory Provident Fund Scheme
MWC	Minimum Wage Commission
NPC	National People's Congress
OPS	Old Age Pension Scheme
SAR	Special Administrative Region



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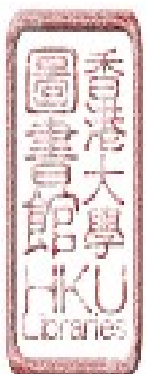
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Chapter I: Introduction

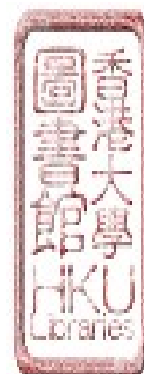
Focus, Background and Objectives of the Project

This project focuses on examining how FCMs of the Hong Kong LegCo perform their roles, especially how their mindsets has brought impacts on policy processes. According to the Basic Law, legislators, no matter they are FCs or geographical constituencies, are regarded as representatives of their respective constituencies. Therefore, they have the duty to participate in the work of the Council so that the LegCo may perform its powers and functions given under the Basic Law.

The more specific focus of the project is the performance of the FCMs, using analytical tools provided by concepts of *governance, legitimacy and accountability*. The aim is to address significant roles of legislators of the Council and assess the existing performances of the FCs and the impact of their performances in the Council.

According to Article 75 of the Basic Law, it gives the Council the power to make rules of procedure on its own, subject to the proviso that the rules do not contravene the Basic Law. Furthermore, for Article 73 of the Basic Law, it provides the powers and functions of the LegCo, so the Council can enact, amend or repeal laws in accordance with the provision of the Basic Law and legal procedures, examine and approve budgets introduced by the government, raise questions on the work of the government, debate any issue concerning public interests, etc. For performing these power and function, the LegCo needs to adopt formal procedural rules to govern the proceedings on bills and subsidiary legislation.

For FCMs, *corporate votes*, which are based on organizations, associations and institutions with a territory-wide coverage, and *professional votes*, which are based on membership of those professions with well-established and recognized qualifications, are expected to be made by the economic and social constituencies as well as the professional constituencies, so as to incorporate formal representatives from a wide range of constituencies. From the White paper in August 1984, it has provided guidelines and mentioned the importance of the wide ranging representative system so as to enhance exchange of views of specialized knowledge and effectiveness of decision making processes among legislators for better understandings of impact of any new policies or legislation to stakeholders and communities affected. This might increase the quality of functioning of the Council so as to facilitate a progressive development



towards a more representative government. However, can these roles of the legislators function as expected? How our FCMs hold our government to accountable?

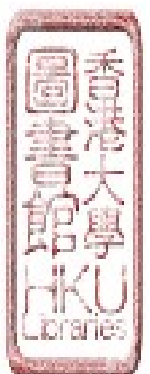
The Basic Law stipulates that from 1997 to 2007 half of the LegCo would be elected by FCs that represent the most influential business and professional groups in the territory (Ma, 2007). However, according to Ma (2007), one of the major problems is that, although a strong government-business coalition is built (as a ‘corporatist regime’), it may not create a capable government to run the HKSAR government. From Ma’s observation, it is due to the lack of an overarching organization (which may mean to be political party) in control of the whole appointment and elite formation process. Furthermore, there is no single overriding political organization can represent its diverse interests and derive a coherent policy package, and there are few common interests among different professional groups and hence elite fragmentation is caused as the major problem to ungovernability in the government.

The objective of the project is to examine how mindsets of FCs, with the conceptions of *governance, accountability and legitimacy*, affect the roles of FCMs to perform. Based on their mindsets, FCMs perform their roles accordingly. These actions and performances by FCMs are therefore making corresponding policy impacts to achieve certain policy outcomes. With the frame of reference by governance, accountability and legitimacy, the implications of whether they can perform their roles are whether they are conscious about public interests. Public interest may imply whether to promote the well-being of the society, and to protect to the most vulnerable groups in the society. It can also be seen whether FCMs can still play ‘balancing roles’ at the Council, which may not only represent the interests of the vital minority entities, but also different stakeholders in the society. This may be helpful in strengthening public’s trust and confidence in the integrity of the government. We wish it would be helpful in finding the way-out of the system of FCs in Hong Kong to be optimized in future too, especially when universal suffrage becomes one of the most important policy agenda in the coming LegCo.

Research Questions and Related Propositions: Theory and Practice

The project addresses the following research questions:

- What are the roles of legislatures and on what basis do legislators acquire office?
- How conscious are legislators of the significance of governance, legitimacy and accountability when they perform their legislative roles?



- What is the significance of governance, legitimacy and accountability to FCMs of the Hong Kong LegCo when they perform their roles?
- How might the system of FCs in Hong Kong be optimized in future?

The research questions focus on the roles of legislatures, consciousness of legislators, and the significance of governance, accountability and legitimacy to FCMs. These questions assume that FCMs in the LegCo are making policy judgements, performing their roles as legislators, and bringing impact on policy processes primarily based on their mindsets. These mindsets are primarily based on how conscious of their roles and performances which can be further analyzed with the conceptions of governance, accountability and legitimacy, and therefore correlation between their mindsets and roles of legislatures can be drawn.

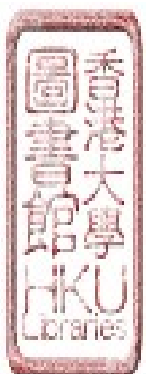
Mindsets of FCMs can be examined with different policy processes. Two cases are hence being chosen: First of all, the case of the legislation of minimum wage, and second, the case of the legislation of MPF. These two cases are chosen as they show the economic and professional interests of the FCMs from different sectors, and their voting patterns with the spectrum of their opinions across a long period of time. The two are classic cases of social, market and corporate issues which are considered as appropriate issues for generating big pictures and examining how issues of governance, accountability and legitimacy as mindsets work in this parliamentary system.

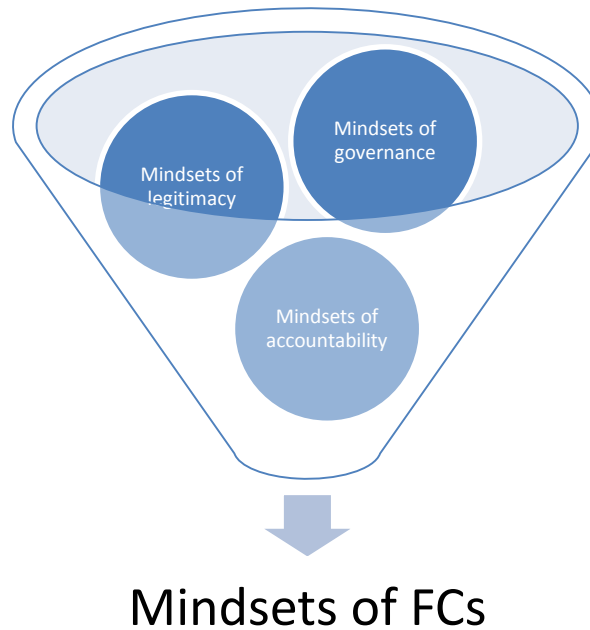
Through the analysis of the performance of FCMs including their voting patterns, speeches made, motions moved, amendments suggested, questions asked and bills raised, so as to show the reflection of their mindsets in terms of governance, accountability and legitimacy. Relationship between their mindsets and their legislative performance can then be formulated through careful scrutiny as structured, guided and informed by the analytical framework established in Chapter II.

Overview of Analytical Framework

For better illustration, Figure 1 gives the overview the Analytical Framework of the project. It is assumed mindsets of governance, accountability and legitimacy are the three main components which are shaping the mindsets of FCs throughout the policy processes.

Figure 1.1: Components of Mindsets of FCs throughout policy processes



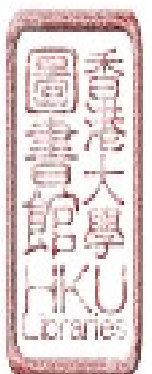


For the analytical framework, mindsets of FCs are crucial of the analysis. For the mindsets of legislators, they are complex of different values and beliefs, and these are interrelated to each other. In this framework, three main perspectives are provided as lens to analyze mindsets of FCs, which are mindsets of governance, legitimacy and accountability.

Among the many important concepts in public administration, these three main conceptions are chosen for the project. Referring back to the focus of the project, it is to examine how FCMs of the Hong Kong LegCo perform their roles, especially how their mindsets has brought impacts on policy processes. Therefore, in this project, roles of legislatures are the core part to what it is going to examine.

For the roles of legislatures, *governance* is one of the important conceptions which sheds light on specific policy regimes understood as institutional forms and instruments shaping processes of collective action. This is thus helpful in analyzing how FCs perform, in a sense of collective action, and make policy impacts on policy processes. It is also helpful in generating patterns of policy-making in a given public sector and country, and potential changes in these patterns over time (Knill and Tosun 2012: 200). For FCs, their mindsets of governance are crucial as it will make direct impact on mindsets of FCs to shape policy processes.

Accountability is another closely related crucial mindset of legislators here being discussed because it is the essence for the tasks to ensuring public authorities could make explainable and justifiable acts in the forum. Accountability is also a relational



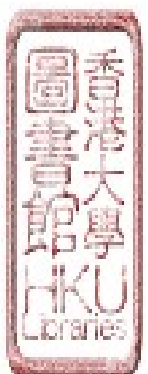
concept which rests on a range of assumptions about the relationship between the government and the public at large, where LegCo is the most important political arena which handles government, social, and market affairs as one of the major role. Furthermore, FCs are the main targets of whom we would focus on, as mentioned in the first part, they are with the power and functions to make rules of procedure on its own, and can enact, amend or repeal laws in accordance with the provision of the Basic Law and legal procedures, examine and approve budgets introduced by the government, raise questions on the work of the government, debate any issue concerning public interests. Hence, mindsets of accountability is important for FCs to be justified in resolving conflicts over the proper distribution of power (Newman, 2003). Therefore, when studying mindsets of legislatures, accountability is the one best illustrates the relationship of FCs to the public.

Accountability is trying to illustrate mindsets of FCs with the justifications of their powers, and governance is trying to describe how FCs shape policy processes with varied types of participations. So, here comes the question: how could power exercised by the authority be justified by the citizens as well as their mandated legislators? To answer this, first, we need to know what power is and the interplay between power, rules and legitimating norms and actions actually constitutes a complex interrelationship, in which each element is affected by the others.

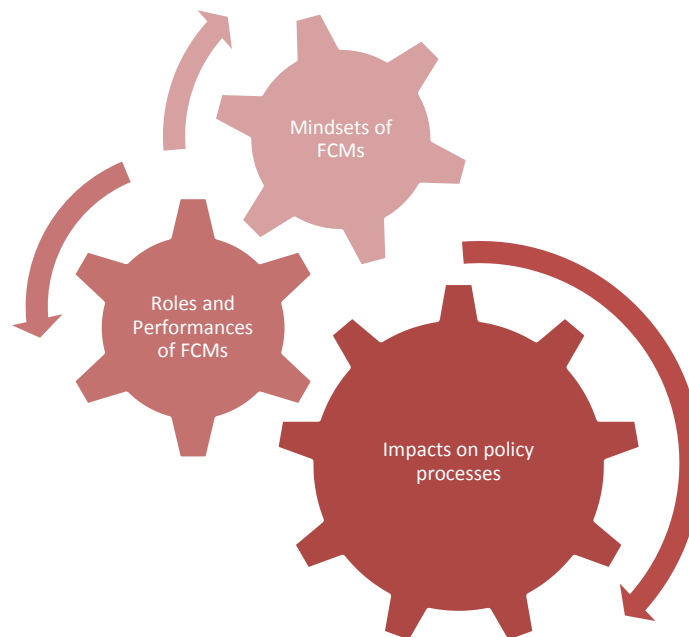
For the roles of legislatures, it is not only powers and functions, but also involving the policy process which FCs deliver their policy outcomes with their impacts. Hence, mindset of *legitimacy* are the key mindsets of legislatures to seek power and consent of their subordinates and citizens for justification and legitimization. The justification and legitimization can said to be legitimate by established rules, which may be in written or unwritten forms, and should be based on shared beliefs and expressed consent of their subordinates and citizens. It is important that mindset of legitimacy helps explaining how mindsets of legislatures are illustrating the ground, guidance and justification when they exercise their power.

By the mindsets of governance, accountability and legitimacy, here gives a comprehensive analysis of roles of legislatures with their mindsets. With categorizing mindsets of legislators with mindsets of governance, legitimacy and accountability, it can be further analyzed how the mindsets of legislators affect their legislative performance. This can be shown as in Figure 2.

Figure 1.2: Relationships between mindsets of FCMs, roles and performances of



FCMs and impacts of policy processes

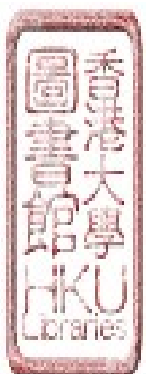


Through analyzing different policy processes the legislations of MPF and Minimum Wage, the objective of the project is of examining how mindsets of FCs affect the roles of FCMs perform is carefully scrutinized with the research methodology provided as follows.

Research Methodology

Based on the framework above, the project is primarily based on desktop research for establishing the analytical framework of the project. The reason why desktop research is chosen is that all the raw data and materials of this project are particularly scattered around the past records and policy papers in the LegCo. These related materials from the past LegCo materials and records include all the detail record of attendance, voting results, speeches made, motions moved, questions and bills made, are regarded as the raw data of the project. Quantitative performances of FCs are therefore assessed in the project and these raw data are available openly by LegCo, including Hansards, and minutes of meetings. The resourceful data can provide a comprehensive foundation for establishing the analytical framework of this project.

Besides the LegCo's official documents (especially how rules and practices of LegCo of Hong Kong Special Administrative Region are formed) and database, studies from different think tanks on FC, literatures and academics on the legislatures are also reviewed and referred to, so that bombardment of different views can be shown throughout this project.



Data and empirical findings will be drawn in tables, with respect to the voting results, speeches made, motions and bills made comparable to the Functional groups which they refer to. As mentioned above, two cases are going to be used for giving concrete evidence and foundation to the analysis of mindsets and commitments of FCs. For the case of Mandatory Provident Fund, materials from 1985 to 2000 are tabulated and reviewed; for the case of minimum wage, materials from 1999 to 2012 are also tabulated and reviewed. The data will be listed chronologically, and when tracing how **all** FCs perform over a long period time, patterns of performance of FCs can hence be analyzed and deduced. Together with the analytical framework provided by governance, legitimacy and accountability, general pictures of mindsets of FCs can be drawn.

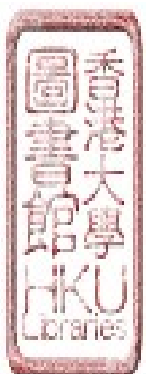
Chapter Outline

This project is divided into 6 chapters, including this Introduction. *Chapter Two* establishes the analytical framework of the project, especially on the roles of legislatures and legislators, with a particular interest in the mindsets of legislators as they perform their legislative roles with reference to the importance of governance, accountability and legitimacy. Literature review on governance, accountability and legitimacy will be discussed in this chapter so that the analytical framework is established with the lens of governance, accountability and legitimacy.

Chapter Three discusses the history of FC, including legal framework involved, underlying principles, evolution of FC, and impact of the voting procedures.

Chapter Four and Chapter Five focus on an in-depth analysis on two cases respectively. In Chapter Four, the policy process involved in the legislature of MPF case is going to be studied, and in Chapter Five, policy process involved in the Minimum Wage case is also be gone through in detail.

Chapter Six, which is the last chapter of all, is the conclusion of the project, and it will be with our reflection on FC. Based on perspectives on governance, accountability and legitimacy, it would suggest the way forward of FC in Hong Kong in the future.



Chapter II: Analytical Framework – Governance, Accountability and Legitimacy as Mindsets

Introduction

This chapter establishes the analytical framework for the project. The focus is on the roles of legislatures and legislators, with a particular interest in the mindsets of legislators as they perform their legislative roles with reference to the importance of governance, accountability and legitimacy.

The analytical framework appreciates that various theories, concepts and related ideas about the roles of legislatures and legislators in terms of governance, accountability and legitimacy can be used in at least three distinct, but interrelated, ways in making sense of the structure and operation of government. One way is to use them as a basis for describing and assessing the efficacy of particular arrangements. Another is to use them as a means of prescribing how selected arrangements might be transformed and made more effective. A third is to use them to understand the mindsets of various contributors to government on the understanding that those involved will approach their work with differing perspectives and commitments.

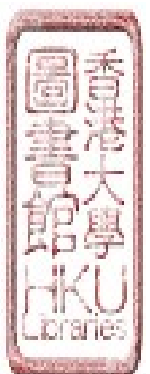
The last of the three ways identified above is especially relevant here. Accordingly, in discussing the roles of legislatures and legislators, along with various types of governance and ideas about accountability and legitimacy, it is relevant to give special attention to how the types of governance and ideas about accountability and legitimacy affect the ways in which legislators approach their work, including when voicing opinions, debating and voting on issues in a legislature as contributions to policy processes.

Legislatures and Legislators: Roles and Mindsets

Legislature is generally a body observing and steering government actions. The main roles of legislatures include law-making, financial appropriation, public representation, holding government to account and government forming.

Law-making

Legislatures make and approve new laws. They also amend and approve changes to the existing laws. Legislatures adopt laws that govern society in a structured manner. In



many countries, much of the legislative initiative lies with the government. Since the legislatures do not have sufficient resources in terms of legislative drafting services, the bulk of the legislation come from the government. The role of the legislatures is to scrutinize the draft legislation and to make sure it is consistent with the international standards, its constitution and the requirements for the well-being of the people (Inter-Parliamentary Union, 2003).

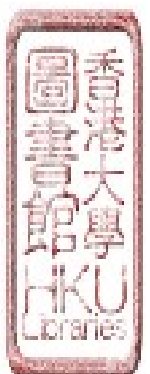
Normally, before passing a new law, government or a legislator will first introduce the plan and content in form of a bill. The bill will then be given three readings before its passage. The First Reading is a formality, with the short title of the bill being read at a meeting of the legislatures. The Second Reading of the bill starts with the government official or legislator who introduces the bill moving the motion and explaining the purpose of the bill. Usually, there will be a debate among the legislators. During the debate, legislators present their views on the general merits and principles of the bill and may indicate their support or otherwise. A vote is then taken by the legislatures on the motion. If the motion is not passed, the bill cannot proceed further. If it is passed, the bill is given the Second Reading, and the legislatures will go through the clauses of the bill, making amendments where necessary and agreed by the legislators or Committee. After that, the legislatures will consider whether to support the passage of the bill by giving it the Third Reading. When a bill has been given three readings, it becomes an Ordinance / a legislation enacted by the legislatures.

Financial Appropriation

Legislatures examine and approve budgets introduced by the government. They also monitor the revenue and expenditure of the government. Since the public fund is appropriated by the legislatures, the government has to submit financial proposal including revenue estimates and budget estimates for scrutiny by the legislatures. By the close of financial year, the government also needs to explain to the legislatures about any over-spending or under-spending.

Public Representation

Legislatures listen to, communicate with, and represent the needs and wishes of citizens in policymaking; and intercede with government on behalf of the citizens (Saiegh, 2005). Legislators are members of the legislatures. Some of the legislators are appointed by the government, while some of them are elected by citizens. For those elected by the citizens, they are like the representatives of their electors to participate



in the discussion in the legislatures. Therefore, they are also more prone to express their electors' concerns and make effort to fight for their electors' interests and rights.

Holding Government to Account

Legislatures oversee the implementation of laws, policies, and programs by monitoring, reviewing, and investigating government activities to ensure that government actions are transparent, accountable, consistent with, and uphold existing laws and regulations (Saiegh, 2005). In order to hold the government accountable, legislatures scrutinize and challenge the works of the government. There are many ways for the legislatures to check the performance of the government, from questioning orally or in writing, to debating and challenging the government during meetings.

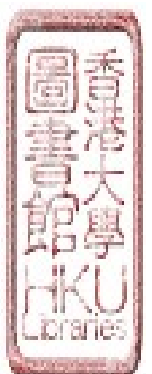
Government Forming

Under a parliamentary system of government, the executive is responsible to the legislature which it derives democratic legitimacy from. The government remains in office as long as it retains the "confidence" of the legislature. A government that loses a legislative vote of no confidence is constitutionally deemed dismissed. Legislatures therefore bear an important role of making and breaking the government (Laver, 2008).

Roles and mindsets

Legislators, as the players in the legislatures, usually come from different political parties and constituencies, they will behave differently and offer different views when performing the same role within the legislatures, and therefore results in discussions and debates.

In performing their roles, legislators, as with other actors in government and governance, have particular mindsets comprising philosophies, ideologies and viewpoints concerning the proper roles and responsibilities of government, the ways in which government business should be conducted, and the appropriate contributions of various actors. The mindsets of particular significance for this project include those of legislators concerning types of governance and the roles played by public and private actors; mechanisms of accountability and the importance of calling governments to account; and factors underlying and fostering the legitimacy of governments and governance. These mindsets are addressed here drawing on selected literature on governance, accountability and legitimacy.



A Governance Mindset

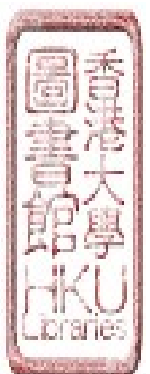
Definitions of governance

Governance is a complex concept with numerous definitions and dimensions. Many people may easily get confused between “Governance” and “Government”. These two words look similar but indeed have different meanings. “Government”, in dictionary, means a group of people with the authority to govern a country or state. There are various forms of governments such as democracy or autocracy. Under normal circumstances, a country or state is run by a government that has a mandate from the people to run the affairs of the country or state with a term of office lasting around 4-6 years.

As regards “Governance”, there is no consensus regarding its meaning and specific applicability (Kooiman *et al.* 2008: 2). The definition of “Governance” varies considerably across different sub-fields and research strands of the social sciences (Pierre and Peters 2000: 7; Kohler-Koch and Rittberger 2006). In fact, a focus on “Governance” implies that processes of problem definition, agenda-setting, decision-making, implementation and, to a certain extent, evaluation are interpreted through a different analytical lens. The governance perspective sheds light on specific policy regimes understood as institutional forms and instruments shaping processes of collective action. The focus is hence on general patterns of policy-making in a given public sector and country, and potential changes in these patterns over time (Knill and Tosun 2012: 200).

Regardless of no generally accepted definition of “Governance”, there are two general conceptions of governance: one common definition, which is rather broad, defines “Governance” as political steering and hence purposeful attempts at coordinating individual action in order to achieve certain policy goals. Therefore, “Governance” refers to the collective settlement of social affairs in a polity, including a broad range of different modes, such as hierarchical intervention and non-hierarchical steering, based on cooperation between public and private actors or patterns of private self-governance (Knill and Tosun 2012: 201).

Another definition of “Governance” defines it as classification of different modes of political steering, the term is also widely used to describe a distinctive mode of steering, namely non-hierarchical approaches (Peters and Pierre 1998). Rhodes (1996: 660), for



instance, refers “Governance” as self-organizing, inter-organizational networks. These networks encompass not only public, but also private actors. Cooperation is based on the need to exchange resources and negotiation over shared policy objectives and solutions (Knill and Tosun 2012: 201).

Therefore, “Governance” focuses on (i) all kinds of organizations and arrangements involved in pursuit of public interest; and (ii) the steering role of government in the management of public affairs. Therefore, under this concept of “Governance”, government is only one of the many actors in service delivery. The focus of “Governance” also implies a new set of ideas (conceptions) about how government should be organized and how public management should be conducted.

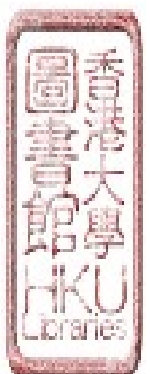
In addition, “Governance” perspective is also suitable for investigating the initial policy stages that consist of problem definition and agenda-setting. Governance concept provides a clear understanding of policy formulation and adoption.

Types of governance

One valuable way to understand governance is provided by Knill and Tosun (2012) who identified three modes of governance (namely hierarchy, markets and networks) and four types of governance (namely interventionist governance, regulated self-governance, cooperative governance and private self-governance). The essence of the types is that they depict contrasting levels or forms of policy action by public and private actors, with immediate significance for alignments of the state, market and civil society in various governance arenas. These levels and alignments are particularly relevant to the mindsets of legislators when they contribute to governance and policy processes.

Governance concept focuses on patterns of political steering, that is, the institutionalized relationship between public and private actors. In fact, the three modes of governance can be integrated with the four types of governance for better understanding of the concept of governance.

The first type of governance - **the interventionist governance** – is like operating under the hierarchy mode. There is a hierarchical relationship between the public and private actors, with the state government intervening from above into society. It stresses the role of formal rules and procedures that are binding for both public and private actors. Relationship between public and private is asymmetrical, in which state plays a key



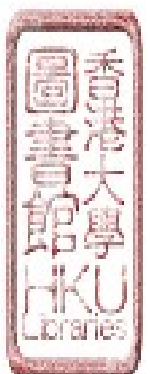
role in policy-making. There is limited governance capacity of private actors. In addition, state hierarchically intervenes to produce and supply common goods and defines the legal framework without which no economic activities could be realized (Knill and Tosun, 2012).

The second type of governance – **regulated self-governance** – is like running the mode of governance by markets. It is exactly an opposing model to hierarchical governance. Goods and services are allocated efficiently without intervention by the state. Markets provide individual and corporate actors with an ideal setting for exchanging resources based on price. Under regulated self-governance, there is also hierarchical intervention through legal binding rules but accompanied by more cooperative relationships between public and private actors during the formulation and implementation of public policies (Knill and Tosun, 2012).

The third type of governance – **cooperative governance** – seems like operating under the mode of network governance. There are no legally binding requirements. Interdependent public and private actors interact informally to achieve distinctive but interdependent goals through the exchange of policy – relevant information, expertise and additional resources. Both public and private actors can participate in the preparation of decisions taken by the executive or the legislature. Government will work closely with those groups offering the most valuable resources. Such governance emphasizes mutual trust and the exchange of resources cannot be reflected in prices. Public and private actors cooperate in the development of rules. Conflicts between network participants are resolved by discussion and negotiations rather forcing the affected actors to leave the network. Policies are therefore the result of bargaining processes, in which both public and private actors participate on an equal standing (Knill and Tosun, 2012).

The fourth type of governance – **private self-governance** – mainly focuses on individuals. Definition and implementation of public policies are completely in the hands of private actors. Private self-governance is based on voluntary rather than legally binding instruments. State government may still play a role in providing complementary governance contributions, such as guidance, mediating and moderating between conflicting interests, stimulating communication and coordination between different actors. Private self-governance is completely opposite to Interventionist Governance (Knill and Tosun, 2012).

Therefore, if the legislators are having the interventionist governance in their mindsets



when performing their roles in legislatures, it means that they prefer a more hand-on approach, addressing the hierarchical intervention of the government. If the legislators are having a mindset of regulated self-governance or cooperative governance, it means that they prefer a more cooperative approach between public and private actors, but also more market-oriented in the case of regulated self-governance. However, if the legislators are having a mindset of private self-governance, it means that they will prefer a completely hands-off approach, addressing voluntariness and dominance by the private actors.

An Accountability Mindset

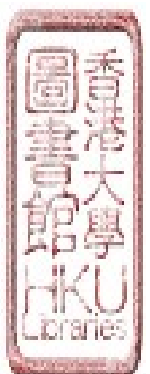
Significance of accountability

To understand whether legislators are assuming their roles and performing their duties in a way they “ought to be”, that is, being able to meet the expectations of the ones, normally the voters, who have given them the mandate to exercise power and authority in the legislatures, a related area of assessment is to look into how accountable they are and in what ways or to what extent they are holding the government accountable.

When accountability is being discussed, it could be interpreted using two dimensions. First, the degree of accountability and commitment the legislators are demonstrating to the voters of their own sectors. Second, the effectiveness of the legislators to call the government to account and to monitor its conduct.

Among different contributors of the concept of public accountability, the school of thought from Mark Boven, Thomas Schillemans & Paul ‘T Hart provides a useful way to understand how it should work. As they have suggested (2008), accountability is about “the relationship between an actor and a forum, in which the actor has an obligation to explain and justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences.” The idea is further elaborated to introduce that the concept of accountability could be distinguished between broad and narrow, and on theoretical perspective, it could be understood in three ways, namely democratic, constitutional and learning.

Boven et al. (2008) explained that for the narrow concept of accountability, it is particular helpful for the study of democratic governance, because it focuses on the mechanism and institutional arrangement which is designed to hold the public actors accountable. As for the broad concept, it discusses about the behavior of the public



actors, and accountability is seen as positive personal or organisational virtues.

When it comes to making assessment on the effectiveness of the accountability arrangement, Boven et al. introduces various systematic frameworks outlined by three perspectives, namely democratic perspective, constitutional perspective and learning perspective.

A democratic perspective

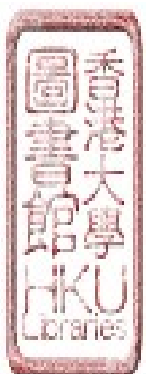
This approach examines accountability by evaluating the degree to which citizens, their representatives, and the democratically legitimized bodies are monitoring the public actors in executing their delegated tasks. In such a sense, accountability arrangement is mainly about controlling and legitimizing government actions. Under the principal-agent relationship democratic perspective accountability concept is suggesting, that is, citizens, who the primary principals, are actually monitoring and evaluating the behavior of the government agencies through their delegated representatives, which are essentially the legislators, the legislators should focus on assuring the effectiveness of government by means of judging the democratic chain of delegation has been reaffirmed (Boven et al., 2008).

A constitutional perspective

This perspective concerns about whether there are concentration or even abuse of public authority, thus breaking of the dynamic equilibrium among various powers in the executive branch. The emphasis here is on the need of a strong accountability forum for public officials and agencies to avoid improper or even abusive executive behaviors. Legislators, who gained their power through the process of collective transfer of mandate from their voters, are expected to play the role of political watchdogs in such forums in ensuring the actions of the government will conform with the laws and societal norms, and that they would make good use of their investigative powers to promote a deterrence effect against potential transgressors (Boven et al., 2008).

A learning perspective

From this perspective, accountability is seen as a tool to enhance the effectiveness and efficiency of the government and the public officials, thus making them smart and to be able to achieve consistently the desirable societal outcomes. Through the provisions of feedbacks to government officials and agencies on their policy proposals at the public



forums, and with their shortcomings and failures pinpointed, legislators seeing accountability from learning perspective tend to demonstrate their responsibility to put them on the track to achieve the desirable societal outcomes. Rather than focusing on fault-findings, their approach is more positive which aims at stimulating public executives to perform their duties in a smart and sharp matter (Boven et al., 2008).

A Legitimacy Mindset

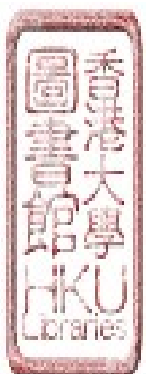
Power and legitimacy

As abovementioned, “Governance” perspective is suitable for investigating the initial policy stages, one of the key functions of the executives, and its concept provides a clear understanding of policy formulation and adoption. On the other hand, concept of “accountability” assists us to understand whether legislators are assuming their roles and performing their duties by holding the authority accountable. Then, how could power exercised by the authority during initial policy stages be justified by the citizens as well as their mandated legislators? To answer this, first it is necessary to know what power is and the interplay between power, rules and legitimating norms and actions actually constitutes a complex interrelationship, in which each element is affected by the others (Beetham, 2013).

What is power, and why does it stand in need of legitimation? The interplay between power, rules and legitimating norms and actions typically constitutes a complex interrelationship, in which each element is affected by the others.

In the widest sense, power of someone is the ability of those people to produce intended effects upon the world around them. Hence, due to its problematic nature; societies will seek to subject the power exerted by the government to justifiable rules. At the same time, authorities that hold the power will seek to secure consent to its power from at least the most important among their subordinates. Where power is acquired and exercised according to justifiable rules, and with evidence of consent, it is known as rightful or legitimate (Beetham, 2013).

The conception on legitimacy from some scholars, like traditional Weberian, was not comprehensive enough as it only stated that power is legitimate if people believe it to be so. This concept misconceives the relationship between legitimacy and the beliefs that provide the justificatory basis for rules of power. Moreover, it also fails to recognize that people’s interests can be harnessed to legitimacy through actions expressive of



consent. In contrast, conformation of rules, justification on shared norms and belief and consent on the qualified parts provides framework to understand the systematic comparison between different forms of legitimacy appropriate to different historical types of social and political system; and helps assess the degree of legitimacy-in-context of a given power relationship (Beetham, 2013).

According to Beetham (2013), for power to be fully legitimate, three conditions are required. First, the power must conform to the established rules; second, the rules could be justified by reference to beliefs shared by both dominant and subordinate; and able to obtain consents from the subordinate in a power relationship. All three components contribute to legitimacy.

According to rules

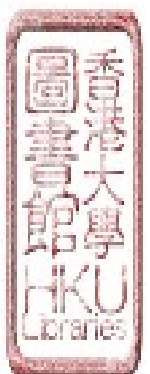
Power can said to be legitimate in the first instance if it is **acquired and exercised in accordance with established rules**. These rules may either be in written or unwritten form, it can be recorded in informal means or formalized in legal codes or judgments. However, even the rules were well developed, there still remains a considerable role for dispute about the law due to convention, or ‘custom and practice’ in different societies. Therefore, power is considered partially legitimate even though it conformed to the established rules (Beetham, 2013).

Shared beliefs

In addition to the first level of legitimacy that power must conform to the established rules, the second level of legitimacy illustrated that power is legitimate if it can be **justified in terms of beliefs** shared by both dominant and subordinate. To be justified, power has to be derived from a valid source of authority; the rules must provide that those who come to hold power have the qualities appropriate to its exercise; and the structure of power must be seen to serve a recognizably general interest, rather than simply the interests of the powerful. It is more open to be disputed in adequacy and sufficiency of justification rather than the legally validity of rules in the first level of legitimacy. The dispute is yet to be settled by any authority (Beetham, 2013).

Expressed consent

Besides of the first and second level of legitimacy, the third one involves the demonstrable **expression of consent** on the part of the subordinate to the particular



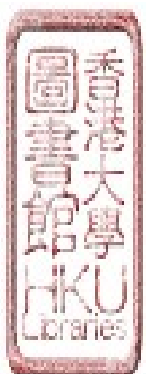
power relation in which they are involved, through actions, which provide evidence of consent. The actions undertaken by the subordinate that can be regarded as contribution to legitimacy, included concluding agreements with a superior; swearing allegiance; and taking part in election. At one side, the actions of consent exerted by the subordinate created a normative commitment on the part of those engaging in them. On the other hand, the superior would acknowledge such actions as confirmation of their legitimacy to third parties not involved in the relationship, or those who have not taken part in any expression of consent. Qualification to give consent is typically related to the category of the 'free' in the sphere of social and economic power relations, and those who count as members of the political community in the sphere of politics. It is a culturally specific matter on counting the appropriateness of consent and from whom it is required to confer legitimacy, these are variables and were determined by the conventions of a society. However, the common ground to legitimate power via consent in everywhere, is the need to 'bind in' at least the most significant members among the society, through their actions or ceremonies publicly expressive of consent (Beetham, 2013).

Underlying significance of power and legitimacy

The power exerted by the government is the ability to influence or control the actions of different parties, including legislators; ally political parties; opponent political parties; pressure groups and citizens, etc. The power exerted by the government therefore must have several preconditions and was closely monitored by the legislators. For legislators having a legitimacy mindset, the preconditions are conformation to rules; justified in terms of shared beliefs; and with the consent from the members of public.

Some people attribute power to freedom. In fact, according to Beetham (2013), power and freedom are correlated to each other. Without freedom, even the strongest individual may be rendered powerless; vice versa, without resources of a personal, even the most free society will remain impotent. Since exercising of power involves the restriction of one's interest for a continuous period, therefore, justification is required to regulate the utilization of power.

Therefore, if the legislators are having the legitimacy mindset when performing their duties, the legislators would somehow pay special attention on that the government should stick to rules and in accordance with the voters' shared belief when it exercises its power. From another point of view, the legislators having the legitimacy mindset would behave actively by frequently participating in the LegCo meetings as well as voting in the LegCo that is also known as their contributions to the legitimacy, in order



to express their consent to the powerful, the executives.

Concluding Comments

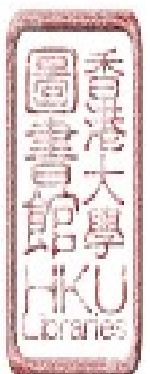
The analytical framework established in this chapter focuses on the roles of legislatures and legislators, as well as how the mindsets of legislators in terms of governance, accountability and legitimacy affect their legislative performance.

To better understand various kinds of governance mindsets, the 3 modes of governance (namely hierarchy, markets and networks) can be integrated with the 4 types of governance, (namely interventionist governance, regulated self-governance, cooperative governance and private self-governance) (Knill and Tosun, 2012).

Interventionist governance is like running under the hierarchy mode, focusing on formal rules and procedures and emphasizing state intervention; regulated self-governance is like running under the market mode, focusing on market-oriented exchange of resources; cooperative governance is like running under the network mode, focusing on cooperation and mutual trust between public and private actors; lastly, private self-governance is exactly the opposite of interventionist governance, focusing on domination of private actors (Knill and Tosun, 2012).

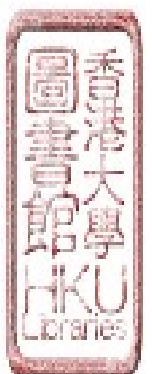
Accountability is a closely related crucial mindset of legislators here being discussed because it is the essence for the tasks to ensuring public authorities could make explainable and justifiable acts in the forum. Boven et al. (2008) distinguished 3 perspectives for assessing whether the accountability arrangements could bring the expected effects, they are (i) democratic perspective, (ii) constitutional perspective, and (iii) learning perspective. Nevertheless, no matter through which lens the concept of public accountability is looked at, much importance is attached to this concept because it sets out the rationales and principles for the assessment of whether government conduct is controlled and monitored, whether executive abuses are prevented, and whether the learning capacity of the public officials be questioned could be enhanced.

Finally, of immediate significance to types of governance and perspectives on accountability, legislators having a legitimacy mindset will seek to subject the power to justifiable rules because power is problematic. According to Beetham (2013), there are three preconditions for power to be fully legitimate. First, the power must conform to established rules and the rules may either be in written or unwritten form, it can be recorded in informal means or formalized in legal codes or judgments. Second, the



power could be justified by reference to beliefs shared by both dominant and subordinate. The rules must be provided that with those who hold the power has the qualities appropriate to its exercise. Moreover, the structure of power must be seen to serve a recognizably general interest, rather than simply the interests of the powerful. Third, the power should be able to obtain consents from the subordinate in a power relationship. The actions undertaken by the subordinate that can be regarded as contribution to legitimacy, included concluding agreements with a superior; swearing allegiance; and taking part in election.

In the following chapters, the framework established here is adopted to empirically analyze how the concepts of various mindsets were demonstrated by the FCMs in Hong Kong when they perform their roles in the legislatures. The analysis is illustrated through two case studies, namely the MPF and the statutory minimum wage, as explained in Chapter I.



Chapter III: Functional Constituencies – Background, History and Evolution

Introduction

This chapter outlines the background and development of FCs of the LegCo in Hong Kong.

This chapter is composed of three parts: it shall begin by an overview and analysis of both origins and justifications as articulated by various stakeholders concerned in respect of the establishment and continuity of the FC, which will be followed by a critical review on the historical development of the FC system over the years. The chapter will be concluded with a summary of findings and concluding remarks on the significance of FC to Hong Kong's political system.

Background of FC

Definitions of FC's Nature

The concept and modus operandi of FC are widely perceived by scholars as signifying a unique mode of “institutionalized corporatism” under the Basic Law framework, by which the functional elites (notably the business and industrial representatives, and professional practitioners) are incorporated into the institutionalized representation framework of the HKSAR governance through the avenues of FC seats in the LegCo, which are in turn given higher degree of recognition in their categories and entrenchment of their political influence in the society (Cheung, 2000 ; Ma, 2007).

Such functional representation could also be perceived as a means of “elite co-optation” or “elite integration” through administrative absorption, representing an attempt by the Administration to promote political stability by incorporating potential dissent groups into the established institutional framework where different, sometimes confronting, sphere of interests are represented (Leung, 1990). The recognized groups / constituencies would hence be endowed with both representation in policy formulation and roles in policy implementation procedures during the courses of political exchanges with administrative agencies. Such mechanism strives for a close linkage between the Administration and the elites, as well as a high degree of elites' consensus in pursuance of bureaucratic polity, with a view to maintaining and promoting a growing capitalist economy amidst a stable society (Cheung, 2007).



Origin of FC's Concept

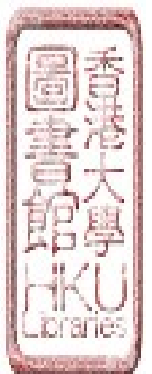
The concepts of GCs and FC was firstly introduced in the “*Green Paper: Further Development of Representative Government of Hong Kong*” announced by the then Governor Sir Edward Youde at a special LegCo sitting on 18 July 1984.

The Green Paper proposed a progressive development of a more representative government by building on the two different types of shared interests among the people in the community, namely those arising from place of residence (*viz* “*GCs*”) and those from their occupation (*viz* “*FCs*”).

The Green Paper also proposed two types of indirect elections: one through FC by way of a formal election of representatives from a range of constituencies, and one through an electoral college consisting of boards with elected elements such as District Boards, and the two Municipal Councils.

A “*White Paper: Further Development of Representative Government of Hong Kong*” was then published in November 1984, which, *inter alia*, announced that 12 Members be returned from each group of 2 constituencies, and laid down guidelines for the composition, determination and voting eligibility of FCs with salient points as follows-

- (1) the composition of FC would be classified into two major categories, notably the ‘*economic and social constituencies*’ (such as commercial and industrial sectors) and ‘*professional constituencies*’ (such as medical and legal sectors) ;
- (2) while corporate vote (i.e. vote by corporate members of well-organised, territory-wide major organisations) would be adopted for the economic and social constituencies, individual votes on the basis of Membership of respective professions with well-established and recognised qualifications would be adopted for professional constituencies ; and
- (3) The composition of FC would be ascribed to the underlying principles of granting the voting rights to the ‘*economic and social constituencies*’ which were essential to future confidence and prosperity, and the ‘*professional constituencies*’ which possessed valuable knowledge and expertise, both of which were considered indispensable to the substantial development and prosperity of the society.



Historical Development of FC

Initial Stage of Establishment and Developments (1985-1991)

The first term FC election was held in 1985 after the implementation of recommendations set out in the Green Paper and White Paper on development of representative government published in 1984.

First batch of 12 LegCo Members returned by FC and another 12 Members elected by an Electoral College joined the LegCo in the 1985-1988 Term. Members of seats of FC increased to 14 in the 1988-1991 Term, to 21 in the 1991-1995 Term, and to 30 in the 1995-1997 Term. The election methods were developed in accordance with the principles laid down in the White Paper. A breakdown of composition of seats in the LegCo during the period from 1985 to 2012 is presented in Table 3.1.

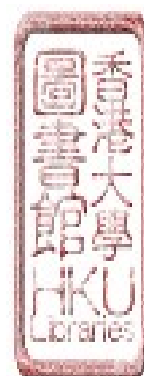
Patten's Short-lived Reforms at 1995 LegCo Election

In 1992, new electoral arrangements were introduced for, *inter alia*, FC in the 1995 LegCo election upon recommendations of the then Governor Christopher Patten.

The objectives of the reforms, as the Governor addressed to the LegCo, were “to *extend democracy while working within the Basic Law. All the proposals I have outlined would, I believe, be compatible with the provisions of the Basic Law. What these arrangements should give us, therefore, is a ‘through train’ of democracy running on the tracks laid down.*”, which could attain the aspirations to “*give every single worker in Hong Kong the opportunity to elect to the LegCo a Member to represent him or her at the workplace. Secondly, by encompassing all occupations, we will ensure broad representation in the LegCo.*” (Patten, 1994). Salient points of the reform packages comprised-

- (1) the broadening of the franchise of the existing FC by replacing corporate voting with individual voting ; and
- (2) the introduction of 9 FC with further broadened the size of the electorate.

The reform measures accomplished the targets of broadening the electorate of FC that the franchise of FC witnessed a 21-times' increase, resulting in as many as 1.15 million



individuals were potentially qualified as FC electors (LegCo Secretariat, 2012). Please see Table 3.2 on the chronology of changes and the breakdown in the number of registered voters for the FC elections between 1985 and 2012.

Post-handover Changes to LegCo's FC Election (1997-2012)

Nevertheless, on account of the disparity in the attitudes of Chinese and British governments towards the Patten's reforms, the original voting mechanism to return Members from FC were restored, and the corporate voting were re-introduced after the handover of Hong Kong and commencement of operation of the Provisional LegCo in 1997¹. This changes resulted in a sharp reduction in the size of potential electorate from 1.15 million individual voters to 138 984 corporate bodies and individual voters. Only minor changes were introduced to the components of FCs in subsequent elections to incorporate more sectors of the community into this group of FC.

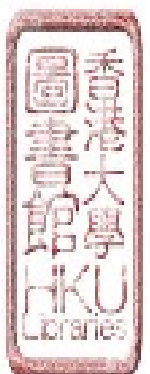
Substantial Reforms to the LegCo Election in 2012

In 2010, a motion contained an amendment to the Annex II to the Basic Law was moved and passed by the LegCo by a two-third majority in order to expand the number of seats of FC to 35, and to enlarge the electorate to return Members from FC by way of "one-person-one-vote" method for the 5th LegCo term (2012-2016). Candidates for the 5 new seats under the FC "District Council (Second)", nominated by elected District Councillors, would be elected by all registered voters who did not have a vote in the original FC system on a "one-person-one-vote" basis. With CE's consent and the draft amendment to Annex II was put to the Standing Committee of the NPC, the eventual LegCo (Amendment) Bill 2010 containing the proposed amendment was eventually passed in 2011. Such being the case, every registered voter was entitled to have two votes, one for each of two groups of constituencies, and the number of electorate for FC, as shown in Table 3.2, was hence surged from 229 861 in the 2008 election to 3 466 201 in the 2012 election. A summary on the composition of various constituencies for the FC during the period from 1985 to 2012 is available at Table 3.3.

Rationales of FC's Establishment

Legitimacy Basis: Legal Framework

¹ The original voting mechanism for functional constituencies was retained: 3 smallest constituencies by preferential elimination voting system; Labour constituency by block vote system; and the remaining by single-seat, single-vote system.



While the composition of the LegCo is not specified in the main text of the Basic Law, Article 68 of the Basic Law provides that members of the LegCo shall be returned by election with the ultimate aim towards the election of all the LegCo Members by universal suffrage in a “gradual and orderly” manner.

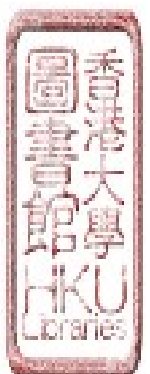
Specific details in respect of the composition of the LegCo is prescribed in the “Decision of the NPC on the Method for the Formation of the First Government and the First LegCo of the HKSAR”, as well as the Annex II to the Basic Law, which set out the composition of the First term LegCo (1998-2000), as well as the second (2000-2004) and third (2004-2008) terms LegCo respectively, for which there should be 60 seats in the LegCo comprised 30 for members returned by GC and FC respectively in the third term LegCo. Meanwhile, amendments to the LegCo’s formation beyond the third term, which is not specified in the Basic Law, shall be made in accordance with the provisions specified in Annex II of the Basic Law should there be a need to do so; otherwise, the composition of the third term would remain.

Moreover, the paragraph 2 of part I of Annex II of the Basic Law states explicitly that such matters as constituency division and delimitation, electoral methods, seats returned are issues for HKSAR to determine. Such issues, for which the FC is concerned, are provided in relevant provisions of the LegCo Ordinance [Cap. 542].

Regulated Self-governance: Perspectives from Colonial Government

The aforementioned system of offering institutionalized representation to a wide range of constituencies had long been adopted by the then Hong Kong government before the advent of elections to LegCo throughout the colonial era, which would be stemmed from the long-standing logic of “administrative absorption of politics” (King, 1975). The colonial bureaucrats had, by means of appointing British *hongs*’ merchants, as well as the Chinese businessmen and entrepreneurs, and professional leaders as non-official members to the Executive Council and LegCo from time to time, in an attempt to establish a “synergy” to mediate between the colonial bureaucrats, British merchants and Chinese elites (Lam, 2013; Loh, 2004; Ma, 2007).

In the circumstances, when the Hong Kong government published Green Paper and White Paper in 1984 to consult the progressive development of a system which was “able to represent authoritatively the views of the people of Hong Kong, and which is more directly accountable to the people of Hong Kong” (Hong Kong government, 1984



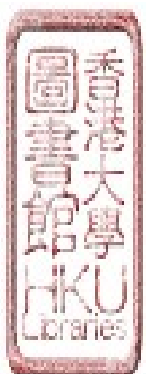
a), the concept of a dual system of representation in the LegCo through GC and FC was first initiated, amongst which the FC would evolve the previous informal appointment practices into a more formal representative system by the introduction of election arrangements to each of those constituencies for selection of representative(s) to the LegCo. Emphasis was also put on the identification of constituencies in order to ensure that *“those major sectors of the community having common social, economic and occupational interests”* would still be well represented and safeguarded under the proposed partially democratic system (Hong Kong government, 1984 b; Van Rafelghem and Lau, 2006). The White Paper even stated explicitly that *“full weight should be given to representation of economic and professional sectors of Hong Kong society which are essential to future confidence and prosperity”* (Hong Kong government, 1984 b).

Regulated Self-governance: Perspectives from Chinese Government

The FC system also offered much appeal to the Chinese Government as well. The primary objective of the Chinese Government is to ascertain the continuity in the stability and prosperity of Hong Kong after handover of sovereignty in 1997. Such being the case, it has been the long-standing united front tactics of the Chinese Government to incorporate local economic and professional interests, which were considered by Chinese Government vital to the maintenance of free-wheeling capitalism in Hong Kong, into such institutions as Basic Law Drafting Committee, Basic Law Consultation Committee and Provisional LegCo during the transition period as the “takeover elites” (Cheung, 2000; Ma, 2007).

Also, the Chinese Government also have to cope with the soaring requests from the Hong Kong public for greater degree and quicker pace of democracy as stipulated in the Joint Declaration and Basic Law in the post-handover period. The politically conservative business and professional interests, which are naturally sceptical of direct election for fear of lavish welfare policies and heavier taxation against affluent classes, could easily be picked up by the Chinese Government as convenient allies to balance or even serve as the bulwark against democratic demands (Loh, 2004 ; Loh and Civic Exchange, 2006).

In the premises, FC is perceived by the Chinese Government as an ideal mechanism, which can serve the dual purposes. First, it can be a buffer to the full and direct election. Second, it is a shelter to protect the business and professional interests. When the draft Basic Law was introduced to the NPC for deliberation in 1990, the then Chairman of



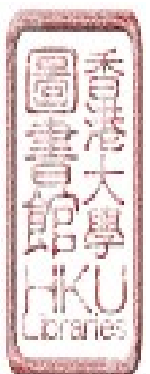
the Basic Law Drafting Committee added remarks in respect of post-handover political structure that “*consideration must be given to the interests of the different sectors of society and the structure must facilitate the development of the capitalist economy in the Region*”, whereas the LegCo composition of GC and FC could safeguard the interests of all social strata, and possible nuisance to government’s efficiency posed by LegCo’s endless debates on government bills². The Chinese Government’s attitude towards the FC remain unchanged that in a speech by the Deputy Secretary-General of the Standing Committee of the NPC on 1 September 2014 about the decision of NPC on the election methods of Chief Executive in 2017 and LegCo in 2016, it was emphasised that the “*balanced participation by different sectors and interests of the society can strike a balance among confronting views, reduce the risk of populism from election*”, which was considered to be a menace to the stability and prosperity of Hong Kong³.

Democratic Accountability: Perspectives from Hong Kong government before and after Handover of Sovereignty in 1997

Subsequent to the signature of the Sino-British Joint Declaration in 1984, the focus of Hong Kong government towards institutional reforms shifted to the maintenance of confidence of both local community and foreign investors in the stability and prospect of Hong Kong. Meanwhile, since the Annex I Section I of the Joint Declaration provided that “*the legislature of the Hong Kong Special Administrative Region shall be constituted by election*”, further evolutions in a “*prudent and gradual*” manner rather than revolutionary changes to the prevailing system had to be introduced, so as to facilitate the accomplishment of the Joint Declaration’s aspiration (Hong Kong government, 1988). In place of universal suffrage which was feared by governing elites as a seed of populist welfarism and “*adversarial politics*” that might “*introduce an element of instability at crucial time*” (Hong Kong government, 1988), the FC was offered by the Hong Kong government as safeguarding “balanced participation” of various sectors, especially the economic and professional interests that possessed technical expertise and specialist knowledge, which were seen by the Administration to be conducive to policy formulation and indispensable to both stability and prosperity

² Instrument 8 to the Basic Law “Explanations on ‘The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (Draft)’ and Its Related Documents (Addressing the Third Session of the Seventh NPC on March 28, 1990)”. *Basic Law Homepage* [http://www.basiclaw.gov.hk/en/basiclawtext/images/basiclawtext_doc8.pdf].

³ Speech made by Deputy Secretary-General of the Standing Committee of the NPC Mr. Li Fei at briefing session on constitutional development in Hong Kong on 1 September 2015. *Hong Kong SAR Government’s Homepage on Methods for Selecting Chief Executive by Universal Suffrage* [<http://www.2017.gov.hk/filemanager/template/tc/doc/20140901c.pdf>]



of the society, but might be lacking in a popularly-elected legislature (Ma, 2007; Van Rafelghem and Lau, 2006).

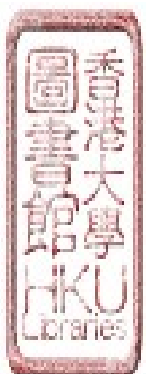
Subsequent to the handover of sovereignty in 1997, given the controversies in relation to the status and prospect of FC, the HKSAR government has been reluctant to reveal its stance or inclination on how the FC will be dealt with in future by referring to the diverging views from various sectors of the community. While it has emphasized that when the universal suffrage for the LegCo is implemented in future, the electoral method shall comply with the principles of “universality” and “equality”, but it would simply leave room for public deliberation until social consensus has been forged on the specific model of implementing universal suffrage (Constitutional and Mainland Affairs Bureau, 2009 and 2010).

In summary, the prevailing justifications adopted by various parties in the establishment and preservation of the FC system could be construed on the basis of the following assumptions-

- (1) Safeguarding social stability and economic prosperity are indispensable to the prospect and sustainable development of Hong Kong;
- (2) The economic and professional interests from different sectors could contribute their technical expertise and specialist knowledge in the policy making and implementation processes, which are considered critical to the safeguarding of social stability and economic prosperity; and
- (3) Unless the FC system promulgating the principle of “balanced participation” exists, such economic and professional interests will unlikely be given substantial representation in the institutionalised framework, such as LegCo (Van Rafelghem and Lau, 2006; Young and Law, 2004).

Concluding Comments

This chapter overviewed the major features, justifications and historical development of the FCs. While the emergence of FCs have been considered by Chinese, British and Hong Kong authorities as an indispensable component to safeguard the social stability and economic prosperity of Hong Kong, but the design of the FC system as well as modus operandi in elections have aroused concerns whether the FC system would in practice be served a means to safeguard the vested interests groups, and hamper the democratic development of the local political system.



We shall hence, by adopting two in-depth case studies in respect of the legislative procedures of MPF and statutory minimum wage, analyse the role(s) and rationale(s) of various FC Members in the two controversial issues, and whether the justifications for the emergence of FC been attained in the ensuing chapters.

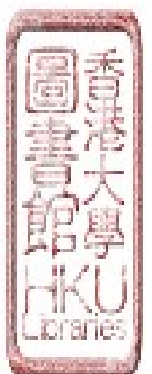


Table 3.1:
Number and Percentage of FCs' Seats in LegCo
(1985 to 2012)

Breakdown of LegCo Members								
Term	Ex-officio	Appointed	GC	FC	Electoral Committee	Total	% of FC Members	Ratio of FC : GC
1985-1988	11	22	0	12	12	57	21	100 : 0
1988-1991	11	20	0	14	12	57	25	100 : 0
1991-1995	3	18	18	21	0	60	35	54 : 46
1995-1997	0	0	20	30	10	60	50	60 : 40
1998-2000	0	0	20	30	10	60	50	60 : 40
2000-2004	0	0	24	30	6	60	50	56 : 46
2004-2008	0	0	30	30	0	60	50	50 : 50
2008-2012	0	0	30	30	0	60	50	50 : 50
2012-2016	0	0	35	35	0	70	50	50 : 50

[Sources: LegCo Ordinance; Electoral Affairs Commission (1998, 2000, 2004, 2008 and 2012); LegCo Secretariat (2012); Young and Law (2004)]

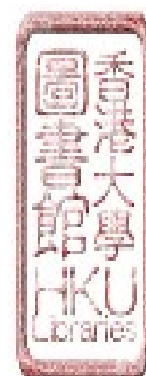


Table 3.2:
Number of Registered Electors for FCs
(1985 to 2012)

Term	Breakdown of Registered Voters for FC			
	(A) Bodies	(B) Individuals	(C) Individuals for District Council (Second) FC *	(D)=(A) + (B) + (C) Total
1985-1988	N/A	N/A	N/A	46 645
1988-1991	N/A	N/A	N/A	61 396
1991-1995	N/A	N/A	N/A	68 862
1995-1997	0	1 147 107	N/A	1 147 107
1998-2000	11 909	127 075	N/A	138 984
2000-2004	15 119	160 487	N/A	175 606
2004-2008	14 783	184 756	N/A	199 539
2008-2012	16 084	213 777	N/A	229 861
2012-2016	16 160	224 575	3 225 466	3 466 201

Legends:

* : The FC “District Council (Second) FC” was introduced in 2012-2016, for which 5 seats of candidates would be elected by all registered voters who did not have a vote in the original FC system on a “one-person-one-vote” basis.

[Sources: LegCo Ordinance; Electoral Affairs Commission (1998, 2000, 2004, 2008 and 2012); LegCo Secretariat (2012); Ma (2007); Young and Law (2004)]

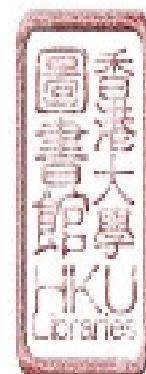
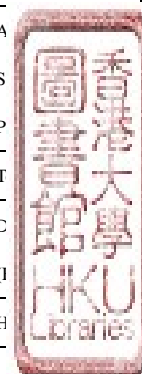


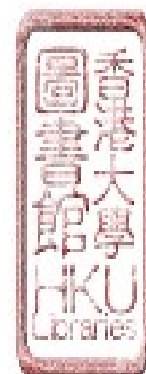
Table 3.3:
Evolution of FCs' Seats in LegCo

Term								
1985-1988	1988-1991	1991-1995	1995-1997	1998-2000	2000-2004	2004-2008	2008-2012	2002-2016
Commercial (First)	Commercial (First)	Commercial (First)	Commercial (First)	Commercial (First)	Commercial (First)	Commercial (First)	Commercial (First)	Commercial (First)
Commercial (Second)	Commercial (Second)	Commercial (Second)	Commercial (Second)	Commercial (Second)	Commercial (Second)	Commercial (Second)	Commercial (Second)	Commercial (Second)
Industrial (First)	Industrial (First)	Industrial (First)	Industrial (First)	Industrial (First)	Industrial (First)	Industrial (First)	Industrial (First)	Industrial (First)
Industrial (Second)	Industrial (Second)	Industrial (Second)	Industrial (Second)	Industrial (Second)	Industrial (Second)	Industrial (Second)	Industrial (Second)	Industrial (Second)
Labour (2)	Labour (2)	Labour (2)	Labour (2)	Labour (2)	Labour (2)	Labour (3)	Labour (3)	Labour (3)
Social Services	Social Services	Social Services	Social Welfare	Social Welfare	Social Welfare	Social Welfare	Social Welfare	Social Welfare
Teaching	Teaching	Teaching	Education	Education	Education	Education	Education	Education
Legal	Legal	Legal	Legal	Legal	Legal	Legal	Legal	Legal
Financial	Finance	Finance	Finance	Finance	Finance	Finance	Finance	Finance
Medical	Accountancy	Financial Services	Financial Services	Financial Services	Financial Services	Financial Services	Financial Services	Financial Services
Engineering, Architectural, Surveying and Planning	Medical	Accountancy	Accountancy	Accountancy	Accountancy	Accountancy	Accountancy	Accountancy
	Health Care	Medical	Medical	Medical	Medical	Medical	Medical	Medical
	Engineering, Architectural, Surveying and Planning	Health Care	Health Care	Health Care	Health Care	Health Care	Health Care	Health Care
		Engineering	Engineering	Engineering	Engineering	Engineering	Engineering	Engineering
		Real Estate and Construction	Real Estate and Construction	Real Estate and Construction	Real Estate and Construction	Real Estate and Construction	Real Estate and Construction	Real Estate and Construction
		Architectural, Surveying and Planning	Architectural, Surveying and Planning	Architectural, Surveying and Planning	Architectural, Surveying and Planning	Architectural, Surveying and Planning	Architectural, Surveying and Planning	A S P
		Tourism	Tourism	Tourism	Tourism	Tourism	Tourism	T
		Urban Council	Urban Council	Urban Council	District Council	District Council	District Council	D I
		Regional Council	Regional Council	Regional Council	Heung Yee Kuk	Heung Yee Kuk	Heung Yee Kuk	H



		Rural	Rural	Heung Yee Kuk	Textiles and Garment	Textiles and Garment	Textiles and Garment	Textiles and Garment
			Primary, Production, Power and Construction	Textiles and Garment	Import and Export	Import and Export	Import and Export	Import and Export
			Textiles and Garment	Import and Export	Wholesale and Retail	Wholesale and Retail	Wholesale and Retail	Wholesale and Retail
			Manufacturing	Wholesale and Retail	Transport	Transport	Transport	Transport
			Import and Export	Transport	Information Technology	Information Technology	Information Technology	Information Technology
			Wholesale and Retail	Information Technology	Insurance	Insurance	Insurance	Insurance
			Hotels and Catering	Insurance	Agriculture and Fisheries	Agriculture and Fisheries	Agriculture and Fisheries	Agriculture and Fisheries
			Transport and Communication	Agriculture and Fisheries	Sports, Performing Arts, Culture and Publication	Sports, Performing Arts, Culture and Publication	Sports, Performing Arts, Culture and Publication	Sports, Performing Arts, Culture and Publication
			Financing, Insurance, Real Estate and Business Services	Sports, Performing Arts, Culture and Publication	Catering	Catering	Catering	Catering
			Community, Social and Personal Services					District Council (Second)

[Sources: LegCo Ordinance; Electoral Affairs Commission (1998, 2000, 2004, 2008 and 2012); LegCo Secretariat (2012); Loh and Civic Exchange (2006); Young and Law (2004)]



Chapter IV: Case Study: Mandatory Provident Fund & Functional Constituency Members' Mindsets

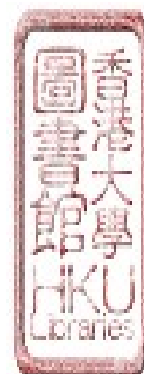
Introduction

This chapter examines how prominent the mindsets of governance, accountability and legitimacy had been demonstrated by FCMs of LegCo when they performed their roles. It would also explain how these mindsets had brought actual influences to the government's policy process through the study of the case of implementation of MPF system on 1 December 2000. The case was studied comprehensively not only at the time of implementation but also beyond, starting from the stage when the issue of proper retirement protection had first emerged and induced heated debates at the Council, to its evolvement into one of an unresolved subjects being put on the government's policy agenda, up to the stage when the system eventually came into operation. Through desktop research on past LegCo records on the long debated issue of MPF to scrutinise the performances of FCMs, this case study has an objective to illustrate the degree of consciousness of the FCMs are having towards the significance of governance, legitimacy and accountability when they performed their legislative roles and how this had generated influences over the design and implementation of a policy.

Details of the discussions and deliberations are the focus of our analysis. First of all, major FC groups who involved the most on the issue of the implementation of MPF are identified. The analysis then concentrates on how the mindsets of governance, accountability and legitimacy affect the performance of these FC groups. The related performance includes but not limited to (i) motions raised, (ii) amendments suggested for motions; (iii) questions asked; (iv) speeches made; and (v) voting patterns.

Background

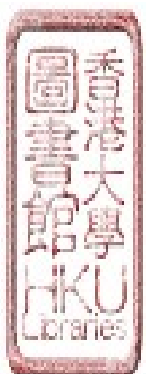
The idea of establishing a CPF was first brought to the LegCo in the 1980s. In response to the increasing requests in the community to set up some kind of protection scheme for the interest and welfare of the retired workers, it was proposed that there should be compulsion for a regulatory system for those not being covered by any privately owned provident fund or retirement schemes. Although the camp advocating the establishment of a CPF suggested that it could provide to the aging citizens independent financial support and thus relieve the social welfare burden that the government might have to



bear in the long run, the debates at the LegCo went on as the opposite camp raised arguments from economy, freedom of market and operational perspectives, saying that a CPF system or other forms of social security protection scheme featuring a statutory provident fund would not be the most desirable set-up for all workers in view of the impacts that would be associated.

The government was not in a favourable position to the introduction of a CPF or a retirement protection scheme at that time. In fact, at the LegCo in 1991, the motion to urge the government to “take immediate steps to re-examine the setting up of a CPF or other forms of compulsory retirement schemes in order that workers in Hong Kong are provided with comprehensive retirement protection” (LegCo Secretariat, 1991) was also voted against. Then in December 1993, the government proposed to adopt a compulsory contributory scheme in which a flat-rate monthly pension would be provided to all the elderly who are eligible (LegCo Secretariat, 2005). Despite of the fact that this turned out failing to receive adequate support and eventually the government announced to abandon the idea in January 1995 due to too polarized opinions in the public community, in March of the same year, the government moved a motion “to introduce as expeditiously as possible a mandatory, privately managed occupational retirement protection system with provision for the preservation and portability of benefits” at the LegCo. With the 28-21 voted support from the LegCo, the government further introduced a related bill in June and the passage of the MPFSO on 27 July 1995 marked the major leap of the development of the issue. While the MPFSO subsequently enacted in August 1995 provided a legal foundation for the formal establishment of the MPF schemes, the statutory body of the MPF Schemes Authority having the roles to regulate and supervise MPF schemes and occupational retirement schemes was only established in September 1998.

The MPF system was launched in December 2000. As defined by the government, the MPF system was first designed to form one of the “Three Pillars of Old Age Protection” conceptual framework that the World Bank has envisioned, which are comprised of “mandatory publicly managed pillar”, “mandatory privately managed pillar” and “voluntary pillar”. Such suggested combination of financial security programmes aims to satisfy the objectives of insurance, redistribution and saving for ensuring the financial independence and security of the aged. This has remained the philosophy of MPF in spite of the advocacy of two additional pillars in 2005 (i.e. “universal or means-tested basic government pension not tied to contributions pillar”, and “other sources of informal support pillar”) (LegCo Secretariat, 2011).



Identification of major FCs stakeholders: Reflection of their legislative roles and mindsets in terms of Governance, Accountability and Legitimacy

Discussions on the issue of the establishment of a CPF at the LegCo started in 1985 and fifteen years later in 2000, it evolved into a MPF system and came into operation. The major stakeholders who were proactively involved in the discussions of the issue are FCs representing the interests from two ends, namely the employees and the employers.

The one representing the interests of the employees is apparently the Labour Constituency; while those representing the interests of the employers include Commercial (First), Commercial (Second), Industrial (First) and Industrial (Second).

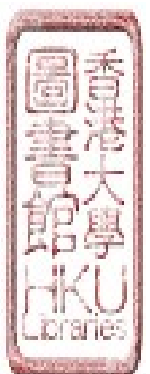
Other FCs such as Social Welfare and Legal are the more vocal ones among the rest. They spoke up at the LegCo to express their stance towards the issue from the perspective of their own professional sectors. Unlike the Labour Constituency Members who were primarily fighting for a system that could effectively protect the welfare and dignity of retired members of the public who had given good contributions, these members sought for one that could meet the best interests of the overall community of Hong Kong. Through raising concerns and questions, they helped making the MPF be designed in a more practical and feasible manner that could be put forward.

Analysis of the mindsets of FCMs

The governance, accountability and legitimacy mindsets are found significantly the beliefs affecting how FC Legislative Councilors made speeches, raised questions and voted for motions in the initially controversial issue of MPF.

FC representing employees' interests – A combination of interventionist governance, learning accountability and legitimacy mindsets

The Labour Constituency, which had been pursuing consistently the establishment of a CPF system as a means of retirement protection, represented the interests of the employees. While they kept urging the government to set up some schemes such as a CPF for retirement protection at the early stage of discussion on the establishment of retirement protection system, they considered the implementation of a CPF would be more welcomed by the employees if it is managed by the authority or a statutory body,



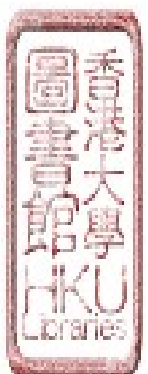
because it would give more operational confidence to the public, especially in the financial aspect. Each person at work would own an individual account to save the contributions. At the LegCo meetings in the 1980s and early 1990s, the Labour Constituency Members frequently initiated debates on the establishment of CPF. After some lengthy debates and consultation, the government finally moved a motion to set up a mandatory and privately managed occupational retirement protection scheme in 1995. It is also known as the framework of MPF scheme.

(a) Motions moved in the LegCo meetings. Labour Constituency Members always wanted the government to intervene in the retirement protection issue, which was intrinsically a reflection of an interventionist governance mindset. At the same time, they asked the government to account for its actions and decisions. Stepping into the later stage of the issue, although the OPS was introduced, the Labour Constituency Members found it not comprehensive enough and thus, they demanded the government to provide adequate and reasonable retirement protection to the elderly.

That this Council urges the Government to take immediate steps to re-examine the setting up of a CPF or other forms of compulsory retirement schemes ... I must reiterate that the objective of the motion is to urge the Government to face squarely the increasingly serious problem of retirement protection to elderly people and to work out an effective compulsory retirement protection scheme. As to the concrete approach ... should be a CPF or other approach, it is only a technical matter and is not insisted in the motion – Motion moved by Hon TAM Yiu-chung, Labour Constituency, at the LegCo meeting on 10.7.1991.

That this Council takes note of the Government's proposals in the consultation paper 'A Community-wide Retirement Protection System' and urges members of the public to comment on the proposals or to suggest alternatives before the expiry of the consultation period on 31 January 1993 – Motion moved by Hon TAM Yiu-chung, Labour Constituency, in the LegCo meeting on 18.11.1992.

That in view of the fact that the Government's recent announcement in this Council of its policy intention concerning the retirement protection system has already aroused feelings of doubt among people of all social strata, this Council urges the Government to draw up shortly, in respect of the old-age pension scheme, specific implementation details which are fair, reasonable and acceptable to the people of Hong Kong; and to put in place as soon as possible a feasible, credible and reliable system for a community-wide mandatory scheme of employees' retirement

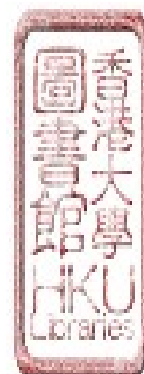


protection, so as to ensure that elderly people are provided with adequate and reasonable retirement protection now and in the future – Motion moved by Hon PANG Chun-hoi, Labour Constituency, in the LegCo meeting on 19.1.1994.

(b) Questions raised in the LegCo meetings. As abovementioned, Labour Constituency Members clearly possessed a governance mindset. They made requests and raised questions regarding the detailed composition of the CPF scheme and persuaded the government to set up the scheme with priority. They wanted the government to intervene and kick off the policy process. In the questions or requests made, two types of governance concept were reflected. The concept of interventionist governance was reflected when Labour Constituency Members urged the government to set up the CPF scheme by providing incentives. On the other hand, suggesting the private provident fund schemes and retirement schemes be approved and monitored by the government was more or less a reflection of a mindset of regulated self-governance. In the 1990s, because of the government's sudden change of direction in the retirement protection policy, which is different from OPS and also the CPF, the legislators had no time to study the feasibility of the new policy and respond to the government's new proposal. As a result, they reminded the government to exercise its power in accordance with the belief of the public, but on the other side, they blamed the government for failing to give more details on the new proposal. The legislators were calling the government to account for its action and that it should bear the responsibility of its u-turned decision.

Such an arrangement certainly greatly reduces the protection offered by retirement schemes and superannuation. So I would like to make two requests. First of all, we should encourage participation in provident fund schemes through tax exemption... Secondly, we should provide that all private provident fund schemes and retirement schemes be approved and monitored by Government – Question raised by Hon TAM Yiu-chung, Labour Constituency, in the LegCo meeting on 21.4.1988.

Mr. President, I do not object to the inclusion of a MPF system... However, in the absence of sufficient information for Members' reference, the Government has in effect asked Members to support a bare framework of the 'mandatory, privately-managed occupational retirement protection system' (MPF)... If Members vote in support of the Government's motion today, does that mean that in the future they will have to shoulder all the responsibilities which might arise from the system? I would therefore vote against the motion – Question raised by Hon TAM Yiu-chung, Labour Constituency, in the LegCo meeting on 9.3.1995.



(c) *Speeches made in the LegCo meetings.* FCMs representing the employees' camp were keen on expressing their views on behalf of their constituencies. They usually used the term "the labour sector..." in their speeches in the LegCo. This reflected that the legislators were always having the mindset of representing their constituencies to express views to the authority. On the other hand, these speeches had also sent a message to remind the government to utilize its power legitimately with the mandate of the citizens, i.e. the shared beliefs between the government and the citizens.

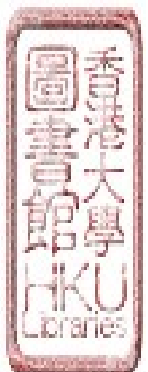
Instead of reminding the government to utilize its power legitimately with the mandate of the citizens, the labour sector's legislators sometimes expressed their consent to the government on some issues other than the retirement protection issue. Through expressing consent to the authority, the legislators implicitly made contribution to solidify the legitimacy of the government.

I think it is now time to consider setting up a CPF scheme. This is the earnest desire of the labour sector... Moreover, enhancing labour welfare measures not only helps to maintain social stability, but would also reduce excuses by trade protectionists overseas for attacking Hong Kong as engaging in 'unfair competition' or even describing Hong Kong as a labour-exploiting 'sweat shop' – Speech made by Hon PANG Chun-hoi, Labour Constituency, in the LegCo meeting on 28.11.1985.

In your policy address, Sir, there are some seemingly forward-looking items. For example, the development of infrastructure... Another example is that Kai Tak Airport is operating close ... Regarding these huge projects on paper, I will give my tentative support. But rejection of the setting up CPF, or MPF ... which I am most disappointed and dissatisfied – Speech made by Hon PANG Chun-hoi, Labour Constituency, in the LegCo meeting on 5.11.1987.

Nevertheless, as abovementioned, Labour Constituency Members possessed a governance mindset by asking the government to set up the CPF scheme with priority. They wanted the government to intervene and kick off the policy process.

Protection for employees after retirement... the importance of safeguarding the livelihood of employees after retirement should be affirmed by the Government and a CPF should be established as soon as possible – Speech made by Hon TAM Yiu-chung, Labour Constituency, in the LegCo meeting on 5.11.1986.



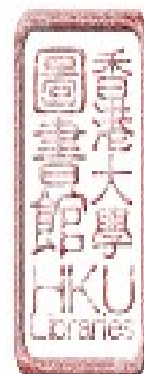
First, Sir, you cited two most unconvincing reasons to rule out a CPF. ... The first reason you gave was that compulsory funds... would benefit least those whose need is greatest, that is those who have not held steady jobs or whose pay has been low... it just cannot take care of those whose need is greatest. However, if the Government could study the submissions, arguments, and requests of advocates of a CPF objectively and sincerely ... had long proposed some very positive improvement measures – Speech made by Hon TAM Yiu-chung, Labour Constituency, in the LegCo meeting on 5.11.1987.

After a prolonged period dealing with the government on the retirement protection issue, the legislators of the labour sector seemed to have lost patience in the early 1990s. They urged the government to address the issue immediately and listen to the voice of the public. In their speeches, there were some tough wordings, such as should not, to warn the government to account for its decision and action. On the other hand, they reminded the government to exercise its power in accordance with the belief of the public.

I suggest that the Government immediately set up a working group among Government officials, employers' and employees' representatives, experts and academics familiar with retirement protection to deliberate on the issue before presenting a report to the Government and this Council for consideration – speech made by Hon PANG Chun-hoi, Labour Constituency, in the LegCo meeting on 7.10.1991.

That this Council welcomes the decision by Government to introduce legislation for the implementation of a compulsory retirement protection scheme and urges Government to draw up expeditiously, after widely seeking and fully taking into account the views of the public, a plan for solving effectively the livelihood problem of retired and elderly people... Firstly, the immediate livelihood problems of elderly people must be addressed. At present, there are over 700 000 people in Hong Kong aged over 60. To them, even if a CPF or a compulsory contributory provident fund scheme is to be implemented immediately, it will come too late – Speech made by Hon TAM Yiu-chung, Labour Constituency, in the LegCo meeting on 12.11.1991.

The Government should take into consideration the views put forward by various sectors during the consultation period and have the OPS finalized as soon as possible. Furthermore, it should examine positively the setting up of a CPF or a



compulsory private provident fund. ... to give real improvement to the livelihood of the elderly – Speech made by Hon TAM Yiu-chung, Labour Constituency, in the LegCo meeting on 20.10.1991.

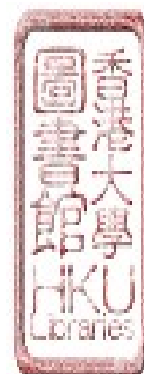
The Hong Kong Federation of Industries which I represent would support a CPF scheme. The Administration should not, in doing it by halves, come up with an imperfect scheme which would put at risk the long-term entitlement of all the employees of Hong Kong – Speech made by Hon TAM Yiu-chung, Labour Constituency, in the LegCo meeting on 18.11.1992.

The government finally abandoned the proposal of CPF in December 1993, at the same time, a Pay-As-You-Go system named “OPS” was introduced for retirement protection. After a longer period of time failing to fight for the CPF, the stance of the labour sector’s legislators became soften. Although the CPF scheme was not implemented, the labour sector’s legislators implicitly gave consent to the government by introducing OPS. On the other hand, they reminded the government of the need to take into consideration the views put forward by various sectors.

The Governor has said that the mandatory private provident fund scheme was proposed in the hope of getting a broad steer from this Council before the details would be hammered out. I think this approach is not fair to this Council, because the Governor simply said that he intended to introduce a mandatory private provident fund scheme and he was asking for our support without giving any specific details on the contents of the scheme to help us make our choice – Speech made by Hon TAM Yiu-chung, Labour Constituency, in the LegCo meeting on 23.2.1995.

The MPS makes the young people start saving now, so that they can get a lump sum as provident fund when they retire. For the high-income group, they can have a significant lump sum of provident fund if they contribute monthly according to the ratio. The MPS is therefore more beneficial to the young people and the high-income group...Some people say the OPS is a ‘good orange’ and the MPS is a ‘rotten orange’. That is really unreasonable. In fact, if only one Scheme is implemented, we only get half of a ‘good orange’; if we put the two Schemes together, we will have a whole, sweet, juicy orange – Speech made by Hon CHENG Yiu-tong, Labour Constituency, in the LegCo meeting on 13.12.1995.

Even if the Government implements the MPS now, it will take another 20 or 30



years for it to take effect. Before the provident fund takes any effect, the Government can only use public funds for its commitment to the expenditure on the elderly people's welfare for the next decade or so... The rate of return of the provident fund contributions has a direct bearing on whether or not the livelihood of elderly people will be secure after their retirement, but the MPS cannot guarantee that the rate of return will be sufficient to cover the loss through inflation. It is clear that the whole scheme was not well thought through. However, the Government was so anxious that it made a rash move to have it introduced – Speech made by Hon LEE Kai-ming, Labour Constituency, at the LegCo meeting on 13.12.1995.

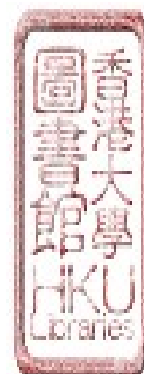
The MPF scheme finally launched on 1 December 2000, opening a new page for retirement protection policy in Hong Kong. With the establishment of the MPF, the labour sector's legislators had accomplished a mission for retirement protection. However, they have not relieved their attention on fighting for the greatest interest of their constituencies. They still bore in mind with the concept of legitimacy and accountability.

For many years, the Federation of Trade Unions have been fighting for retirement protection for workers with the hope that wage earners in Hong Kong will be able to live in dignity after retirement. However, employers have turned MPF into an excuse for wage reduction. It is not justifiable that they are not even willing to shoulder certain social responsibilities – Speech made by Hon CHAN Wing-chan, Labour Constituency, in the LegCo meeting on 1.12.2000.

FCs representing employers' interests – A combination of regulated self-governance, democratic accountability and legitimacy mindsets

The apparent opposite camp to the Labour Constituency, which actively advocated the establishment of MPF, was the group of FCs representing the interests of the employers, namely Commercial (First), Commercial (Second), Industrial (First), Industrial (Second). Considering the implementation of a CPF or a MPF an unnecessary intervention to the free market economy of Hong Kong, and bearing the primary role and responsibility to secure the interests of employers, they urged for the government's prudent consideration on whether it would really a wise move to put forward a policy that might bring more damages than benefits to the society.

(a) Questions raised in the LegCo meetings. FCs representing the employers' interests



usually raised questions to ask the Government to justify the need to set up a provident fund or to develop any form of regulated measures to administer the operations of provident fund schemes. Requesting the government to respect the important value of Hong Kong being a free market was clearly a reflection of a mindset of regulated self-governance among these related legislators. In fact, they also queried the legitimacy of an MPF system, based on the undermining conviction that there had been a lack of shared beliefs.

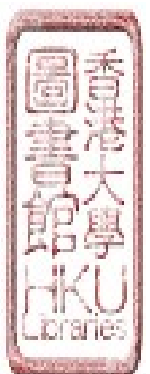
The legitimacy mindset bore by the labour sector's legislators always came with the accountability mindset. In fact, these two mindsets were inter-related as they were tools to constrain the government's behaviors. It could be seen that the legislators were always calling the government to account for its actions and decision. This is not difficult to understand as that was their inborn responsibilities and government's decisions and actions should be subjected to challenge. The legislators, in one way, requested the government to exercise its power in accordance with the beliefs of their constituencies. In the other way, they warned the government to account for its actions and decision if it was not in line with their sectors' interests.

Sir, could the Secretary say why employers are not required to give important information, namely social statistics, on the number of people covered by provident funds which have been approved? It would seem to me to be entirely necessary to have these statistics – Question raised by Hon James David McGregor, Commercial (First) Constituency, in the LegCo meeting on 10.1.1990.

Sir, will the Government encourage the development of the private sector provident fund scheme set up by principal banks in Hong Kong in order to bring about the participation by the 1.5 million workers who are employed by companies too small to set up their own provident fund schemes? – Question raised by Hon James David McGregor, Commercial (First) Constituency, in the LegCo meeting on 7.2.1990.

But the question I ask is: Is a CPF or any compulsory contributory scheme suitable for Hong Kong? – Question raised by Hon Stephen Cheong Kam-chuen, Industrial (First) Constituency, in the LegCo meeting on 10.7.1991.

(b) Speeches made in the LegCo meetings. Besides raising questions, FCMs representing the employers' camp made rather frequent speeches to express their views and to reassure their positions of opposing the establishment of any form compulsory



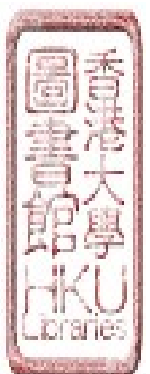
provident fund schemes. While they appreciated it as a social obligation that the well-being of the aged and retired workers were to be secured, they supported a system that would bring less negative impacts to the market economy of Hong Kong, and argued that the private provident funds already existed in the market should be further encouraged so that the more working population could be covered. All these speeches reflected a combination of cooperative and/or regulated self-governance, in addition to a democratic accountability mindset.

One naked truth perhaps needs to be said here, and that is, there is no way in our view, that any provident fund should be imposed on top of the long service payment benefits. The reality of Hong Kong business enterprises having to compete in the world markets against other countries, must be recognised. Hence of late, the business community has felt, rightly or wrongly, that the issue of central or compulsory provident fund has been pushed to the forefront by activists who sometimes deploy tactics that invariably invoke the much used phrase ‘Wishes of the people’. Their actions, though understandable for political reasons, are in my view, not really conducive to an objective detailed analysis of the important issue of provision of future retirement benefits – Speech made by Hon Stephen CHEONG Kam-chuen, Industrial (First) Constituency, in the LegCo meeting on 13.5.1987.

Mr. President, the compulsory Occupational Retirement Scheme that we propose is effectively an individual savings and investment plan. The philosophy behind it is simple: those who pay into the kitty get back what they put in with interest plus. Participants do not subsidize others the socialist way. Nor do they leave their money to depreciate because the capital collected would be invested throughout their working life. The dividends would be collected by the retiree either in a lump sum or monthly instalments when they cease to work – Speech made by Hon James TIEN Pei-chun, J.P., Industrial (First) Constituency, at the LegCo meeting on 9.11.1994.

The mindset of legitimacy was another prominent notion of which traces could be found in their speeches made. In order to prove the government for doing or not doing the right thing using its power, they challenged the government for not having taken care of the interests of the major stakeholders of the issue, the employers, thus a lack of good consent among the public and a deficiency of legitimacy.

Mr. Deputy President, a long time ago, in 1987, I already said in this Council that



compulsory retirement protection would probably affect Hong Kong's economy. It cannot be denied that, for the employer who must pay at least half of the retirement contributions of all his employees, such payments amount to an increase in operating cost. This reality is one of the operating obstacles faced by entrepreneurs in medium-sized and small business. Clearly, in deciding to implement retirement protection, the Government is overlooking the difficulties of these entrepreneurs; nor does it seem to mind the idea's side-effects on the economy – Speech made by Hon NGAI Shiu-kit, Industrial (Second) Constituency, in the LegCo meeting on 18.11.1993.

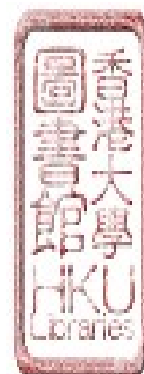
The proposed mandatory private sector provident fund scheme cannot stand alone. It cannot by itself represent a serious attempt by the Government to provide a realistic alternative to the OPS so abruptly abandoned by the Government after a mockery of consultation with Hong Kong's mostly unrepresented public – Speech made by Hon James David McGregor, Commercial (First) Constituency, in the LegCo meeting on 8.3.1995.

(c) Voting patterns in the LegCo meetings. While the FCMs representing “employers’ attempted to exert their influences by pointing out the shortcomings of the proposed MPF largely by giving speeches and asking questions, they voted in line with their position expressed for the motions which were moved by members in favour of an MPF scheme. In fact, they were reflecting a good level of significance in the context of policy formulation their governance, accountability and legitimacy mindsets, since they showcased how they could make some changes when they discharged their legislative responsibilities.

In the LegCo meeting on 19 January 1994, Labour Constituency Member Hon PANG Chun-hoi moved the following motion:

...this Council urges the Government to draw up shortly, in respect of the old-age pension scheme, specific implementation details which are fair, reasonable and acceptable to the people of Hong Kong; and to put in place as soon as possible a feasible, credible and reliable system for a community-wide mandatory scheme of employees’ retirement protection, so as to ensure that elderly people are provided with adequate and reasonable retirement protection now and in the future...

And in the LegCo meeting on 13 December 1995, Manufacturing Constituency Member Hon LEE Cheuk-yan moved the following motion:



That, as the MPS to be implemented by the Government is not expected to meet the basic needs of the elderly immediately or within the next few decades, this Council urges the Government to expeditiously introduce the OPS, so as to safeguard the livelihood of 600 000 elderly persons after their

No FCMs from the employers' camp voted for both motions. On one hand, this exemplified that they acted in the same way as they spoke, on the other, it was intrinsically another reflection of their accountability mindset - they must make themselves accountable to the sector they are representing when it comes to making decisions to vote.

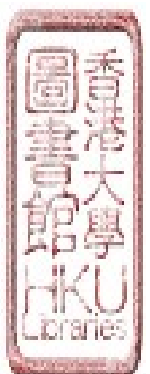
Other FCs representing other interest groups – A combination of interventionist governance, democratic accountability and legitimacy mindsets

Apart from the FCs representing the employers and employees, some other FCs were also driven by respective mindsets when they performed their legislative roles.

Among all, the Social Constituency and Legal Constituency were the more active ones to call for the government's positive response to the growing demand for a retirement protection scheme as a long term solution to the ageing problem of Hong Kong. Similar to those representing the employees and employers camps, members of both constituencies performed in a manner which effectively reflected a combination of interventionist governance and democratic accountability mindset, along with an emphasis on shared beliefs as the basis of legitimacy.

(a) Questions raised in the LegCo meetings. Both the Social Welfare and Legal Constituency members were basically advocators of the idea of MPF. Social Welfare Constituency Members were most concerned about the effectiveness in terms of the employee protection if the government rejected to put forward the CPF system. With reference to the question raised by Hon HUI Yin-fat on 10 January 1990, it was noted that not only an interventionist governance mindset was reflected, a democratic accountability mindset was also found, as he was trying to criticize that the government's decision not to pursue a proper retirement scheme could not be supported by statistics:

Mr. Governor, how can we, as LegCo Members, recommend to the general public a retirement scheme which cannot immediately provide for their retirement



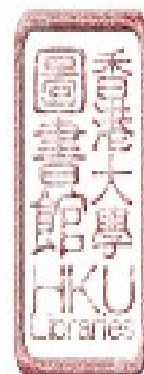
benefits and which cannot guarantee against any investment risk? And if the government scheme cannot get obvious support from this Council, does it mean that the retirement scheme will be shelved forever? – Question raised by Hon HUI Yin-fat, Social Welfare Constituency, in the LegCo meeting on 12.11.1986.

In view of Government's decision in 1987 not to set up a CPF or to make private funds compulsory, will Government inform this : (a) whether measures have since been taken to encourage more private sector employers to set up retirement schemes for their employees, and if so, how effective these measures have been; (b) of the number of government-recognized retirement schemes set up by the private sector in the past three years and the number of beneficiaries of these schemes; and (c) what progress has been made on the introduction of a regulatory framework over private retirement schemes and provident funds to ensure that assets held under these schemes for the future benefit of employees are given proper protection? – Question raised by Hon HUI Yin-fat, Social Welfare Constituency, in the LegCo meeting on 10.1.1990.

(b) *Speeches made in the LegCo meetings.* Like Social Welfare Constituency, Legal Constituency honoured that the aged people need to live with dignity, that introduction of a MPF system would be more of a social responsibility. So, the speeches made were to a large extent driven by a mindset of legitimacy based on shared beliefs (i.e. seeking solution to solve the problem of aging population), as well as a clear interventionist governance mindset:

I urgently call on the Government to consider a form of compulsory provident fund, either centrally or privately administered, in order to meet the needs of our growing elderly population. We must take action now while the ratio of young persons to retired persons is still quite high; we cannot passively await the greying of our population and only then attempt to deal with the problem – Speech made by Hon Martin LEE Chu-ming, Legal Constituency, in the LegCo meeting on 7.11.1990.

Before deciding on improvements to bedspace apartments, we must ask: Does our community acknowledge that it has the duty to provide a suitable environment for old people who are without support to enable them to live in dignity? If our answer is in the affirmative, then our social welfare policy and housing policy should head towards such a goal. Though this has nothing to do with the subject of today's debate, I nevertheless hope that the Government will, based on this consideration,



make a full study of the feasibility of instituting a compulsory provident fund – Speech made by Hon Martin LEE Chu-ming, Legal Constituency, in the LegCo meeting on 27.2.1991.

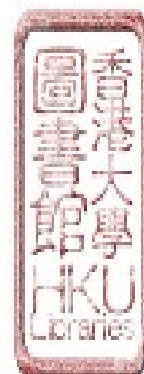
(c) Motions moved in the LegCo meetings. Hon Hui Yin-fat of the Social Welfare Constituency moved a motion in the LegCo meeting on 3 February 1993 to urge the government to seriously consider a comprehensive plan for a community-wide retirement protection scheme.

That this Council urges the Government to seriously consider all opinions expressed by the public on the consultation paper ‘A Community-wide Retirement Protection System’, including the CPF Scheme as well as the protection of those who have retired and who are approaching retirement age; to expeditiously submit to this Council proposals on the community-wide retirement protection system; and to act as the final guarantor to bear the financial risks relating to these proposals, so that the people of Hong Kong can be provided with a properly designed retirement protection system....

Obviously, rather than only giving responses and making speeches, moving a motion could bring a clearer message and more importantly, draw more attention of the public to the issue, particularly when the issue itself is controversial. Social Welfare Constituency Members took a proactive approach to urge the government to act. The above motion, which had been amended, was eventually carried. It also suggested an interventionist governance mindset.

(d) Amendments Suggested for Motions. Social Welfare Constituency endeavoring to advocate a proper retirement protection system also made attempts to ensure that even if the MPF system was to be launched, it had to be a fairly designed one for the employees and that it would not be inclined to the interests of employers. In the LegCo meeting on 15 March 2000, Hon Sophie LEUNG Lau Yau-fun of the Textile and Garment Constituency moved the motion:

That, as the MPF schemes will affect the vast majority of industrial and commercial enterprises and employees in Hong Kong, in order to ensure that both employers and employees understand the schemes fully in order to protect their interests, this Council urges the Government and the authorities concerned to explain to this Council expeditiously the details in promoting the schemes and make full efforts to promote and publicize the schemes for their smooth



implementation...

Hon LAW Chi-kwong from the Social Welfare Constituency also moved the following amendment to Hon Sophie LEUNG's motion, with a view to optimizing the MPF system to be put in place:

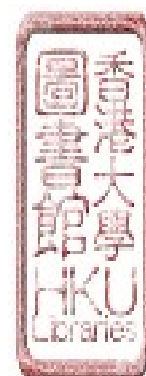
To delete 'in order to protect their interests' and substitute with 'and to prevent employers from cutting back the salaries and benefits of their employees through the implementation of the schemes'; to add 'take positive measures to encourage employers to retain the existing occupational retirement schemes that are more favourable than the statutory requirements, publicize and educate the public about the respective rights and interests of employees and employers under the MPF Schemes Ordinance, and,' after 'the authorities concerned to'; to delete 'and make full efforts to promote and publicize the schemes for their' and substitute with 'so as to facilitate the'; and to add 'of the schemes and provide more reasonable safeguards for employees' after 'smooth implementation...

From the above amendments made to the motion, interventionist governance mindset could be reflected, trying to assure the government to make prudent considerations when designing the actual scope of the MPF system to better protect the interests of employees.

Concluding Comments

In this chapter, how certain FCMs acted towards the policy issue of MPF as the major stakeholders was examined. Although people in the society of Hong Kong holding pan-democratic views often have reserved opinions over the concept of FCs, querying that they could only represent the minorities whereas their legislators were enjoying too much power, these FCMs' persistent efforts in advocating MPF, especially Labour Constituency in pressing the government for a clear blueprint of its retirement protection plan, were significant and they were eventually proven effective.

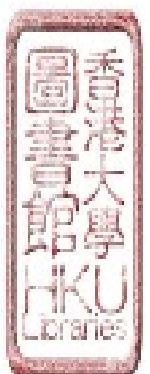
FCMs performed their duties by protecting the best interests of their sectors, though the stance of their respective political affiliations could sometimes be another factor to determine how they should act. The influence of FCMs' mindsets of governance, accountability and legitimacy could be illustrated through the speeches they had delivered and the motions they had moved in the LegCo meetings. In this case study, mindsets in terms of governance, accountability and legitimacy could bring actual



influences to the government's agenda setting and policy implementation processes.

FCMs, being the representatives of their respective constituencies, are the delegated individuals having a mission to monitor the public actors so that they would execute their tasks in a way that is at least acceptable by the constituencies. With the possession of an accountability mindset to control and legitimize government's action as well as to scrutinize and evaluate the behavior of government agencies, FCMs also took a role to stimulate public executives to perform their duties in a smart and sharp manner. They would examine whether the government was executing its powers under a high level of conformity to the established rules and whether it would be in line with the beliefs shared by their constituencies. From this perspective, all the three interrelated mindsets of governance, accountability and legitimacy carry equal weight of importance to a capable FCM.

In fact, when FCMs demonstrated their governance mindset, they actually help shaped the government's direction and policy position. When they spoke for their own constituencies in the LegCo, they were at the same time reminding the government not to neglect to look after the interests of their constituencies. On the other hand, when FCMs asked the government to explain the reasons for not pursuing the demanded retirement protection scheme, demonstrating an accountability mindset, they were concurrently giving alerts to the government that they must bear in mind the possible impacts caused by its misjudgment. Lastly, the legitimacy mindset of the FCMs gave hints to the government on how they should frame the policy that would satisfy a particular group of people. For example, when the government take actions in a way that is considered "legitimized" by a certain constituencies, they could at least gain support from those constituencies. All of the above show that mindsets of governance, accountability and legitimacy are of high significance when FCMs perform their legislative roles.



Chapter V: Case Study: Statutory Minimum Wage & Functional Constituency Members' Mindsets

Introduction

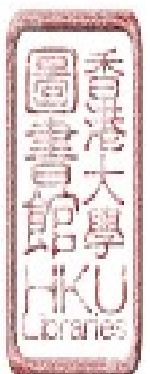
This chapter makes use of another case study – the implementation of statutory minimum wage – to illustrate how the mindsets in terms of governance, accountability and legitimacy affect the FC when they perform their legislative roles.

The issue of minimum wage has long been discussed in the LegCo. When tracing back the past records, it was found that the issue was first noted by the LegCo Panel on Manpower in 1998 when the Hong Kong Social Security Society submitted a research paper on “Proposal on Minimum Wage in Hong Kong” to the panel members for consideration. Panel members finally agreed at that meeting to invite views from employers' associations, labour organizations and academics regarding the implementation of minimum wage. Since then, there have been continued discussions and deliberations from legislators on the detailed plan and timetable for the introduction of the minimum wage.

Details of the discussions and deliberations are the focus of our analysis. First of all, major FC groups who involved the most in the issue of the implementation of statutory minimum wage are identified. The analysis then concentrates on how the mindsets of governance, accountability and legitimacy affect the performance of these FC groups. The related performance includes but not limited to (i) motions raised, (ii) questions asked; and (iii) speeches made.

Identification of major FCs stakeholders: Reflection of their legislative roles and mindsets in terms of Governance, Accountability and Legitimacy

Discussions on the issue of minimum wage started in 1998 and went through years until July 2010 when the Minimum Wage Ordinance was passed. Throughout the past years, the major stakeholders who were proactively involved are the FCs representing the



interests from two ends, namely the employees and the employers.

Obviously, the one representing the interests of the employees is the Labour Constituency; while those representing the interests of the employers include Commercial (First), Commercial (Second), Industrial (First), Industrial (Second) and Catering Constituencies.

As regards other FCs such as Social Welfare, Legal, Medical, Insurance and Tourism Constituencies, etc., they did not perform in a way to allege protection of the employees' rights or the employers' interests. They were performing more like a "middle man" – to raise concerns which might be overlooked and to check whether the government was doing good for the society as a whole.

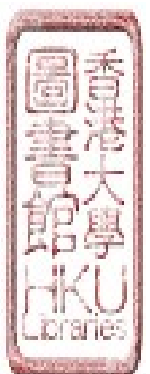
Analysis of the mindsets of FCMs

It is worth noting that notions of governance, accountability and legitimacy are all interrelated. Accordingly, it is not uncommon to see mindsets of legislators as reflecting a combination of governance, accountability and legitimacy.

FC representing employees' interests – A combination of interventionist governance, democratic / constitutional accountability and legitimacy mindsets

When discussing the issue on statutory minimum wage, it is not difficult to find that the Labour Constituency always possessed an interventionist governance mindset, along with democratic / constitutional accountability mindset and a rule-based type of legitimacy mindset. Such a combination of mindsets has been reflected in their corresponding performances in the LegCo meetings, such as moving motions and raising questions with a view to urging the government to intervene and to establish clear rules and procedures for implementation of statutory minimum wage.

(a) Motions moved in the LegCo meetings. Throughout the process of discussions on statutory minimum wage, it is observed that FCMs are comparatively inactive in moving motions on the issue in general. Among the 8 motions moved, three of the motions are moved by FCMs on behalf of the issue, and only two of the motions are advocating to the government to specify a minimum wage level and the rates of overtime pay to safeguard the livelihood of employees, and suggesting ways of implementation like starting minimum wage level with the cleansing and guarding services sectors. However, the Labour Constituency is one of the most proactive FCs



in moving motion for minimum wage issue, and trying to engage the government during the policy process.

That, as the 2006-2007 Policy Address proposes to launch a Wage Protection Movement for employees in the cleansing and guarding services sectors, but participation in the movement is entirely voluntary and employers who do not participate are not bound by it, this Council urges the government to expeditiously:

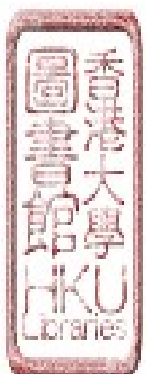
(a) apply the Trade Boards Ordinance to specify a minimum wage level and the rates of overtime pay, starting with the cleansing and guarding services sectors; and

(b) regulate the number of working hours, reasonable rest breaks during working hours and the rates of overtime pay, so as to ensure that employees have sufficient time for rest and studies. - Motion moved by Hon WONG Kwok-Hing, Labour Constituency, in the LegCo meeting on 1.11.2006.

From the above motion, it can be observed that the Labour Constituency was not satisfied that the 2006-2007 Policy Address proposed that the Wage Protection Movement being only a *voluntary basis, and employers were not bound by any Ordinance for participating in the movement compulsorily*. Here, it can be seen that the Labour Constituency was assuming the government to take a dominant role to specify a minimum wage level and the rates of overtime pay, and the government should take the role to “force” the private sectors and employers of cleansing and guarding services to follow a specific minimum wage level in practice.

The motion moved has also shown the *mindset of constitutional accountability* of the Labour Constituency. Constitutional accountability is about the decentralization of various powers by establishing different public institutions for preventing abuse of power. For the Labour Constituency, through raising motions in the LegCo, they were trying to urge the government to regulate the working conditions of employees, in accordance with the Trade Boards Ordinance. By making use of independent judicial power, it reflects that the Labour Constituency was trying to make impact, or even to bring some kind of legal binding power to bind the private sectors and employers with legislative rules, on the existing “corporate-regime”, which is described as business-government coalition by Ma (2007).

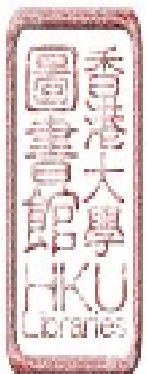
(b) Speeches made in the LegCo meetings. Apart from the motions raised, *mindsets of governance and accountability* can also be observed in their speeches made throughout the meetings:



...although the SAR government has given the labour sector an honour by way of a holiday, the way it has dealt with the current economic recession and financial turmoil is disappointing. *If it would be too harsh for us to criticize the SAR government for “doing nothing”, then at least we should criticize it for “taking inadequate measures”.* ... *In fact, what can the government do? The concept of free market and free economy does not mean that there should absolutely be no intervention.* For instance, there are anti-dumping intervention, anti-monopoly intervention and even “anti-cut-throat” intervention. Even a free economy and a free market exercise self-intervention. The problem lies in whether or not intervention is beneficial to the community as a whole. But as far as unemployment is concerned, *I fail to see what concrete measures the government has in mind to solve the problem...* what solutions will the Secretary offer to these problems? I can only criticize the government for “doing nothing and taking inadequate measures”. - Speech made by Hon LEE Kai-Ming, Labour Constituency, in the LegCo meeting on 28.4.1999.

...Or are the wage levels so unreasonable that *there is a need for government intervention?* - Speech made by Hon KWONG Chi-kin, Labour Constituency, in the LegCo meeting on 28.4.1999.

Now, it is the wish of the government to protect the interests of workers through the Wage Protection Movement, but this is only wishful thinking. The government cannot evade the issue of legislation on minimum wage and standard working hours in the end. The reason is very simple as there are only two possibilities for the review to be carried out two years later: First, the Wage Protection Movement achieves the desirable results — which I am not optimistic about — where nearly all employers of security guards and cleansing workers have joined the scheme and paid the sector’s median wage. *However, this conclusion does not obviate the need for legislation on minimum wage, but only highlights that the legislation will not have any impact on employers.* Therefore, Members representing the employers should have no reason to oppose the legislation on minimum wage. It is necessary to legislate for minimum wage for Hong Kong workers because once the Movement comes to an end, the grass-roots workers will again stand totally defenseless in the labour market, and their wages will have to count on the conscience of employers. Second, the Wage Protection Movement fails to achieve the desirable results. *In that event, the government has undertaken to legislate for minimum wage to protect the workers.* – Speech made by Hon LI Fung-ying,

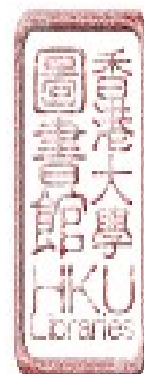


Labour Constituency, in the LegCo meeting on 1.11.2006.

The speeches made above reflected a *mindset of interventionist governance* in the Labour Constituency urging for an active role of the government to intervene the free market in order to specify a minimum wage level, and the government should enact the legislation for minimum wage for protecting workers. The government should be dominant in setting the wage level rather than seeking private sectors or employers' participation to set up the minimum wage level. The Labour Constituency Members were playing the roles to defend and advocate the legislation of minimum wage, and they were not expecting to reach a consensus with employers as they thought that only with an enforcement of minimum wage could employers and private sectors be sure to offer decent levels of wage levels to workers.

...in order to enact a law to implement minimum wage and standard working hours, *the prerequisite is the government must recognize that workers are now being exploited as their present wages are too low and working hours too long, and that necessitates an enactment of legislation to give them protection.* Unfortunately, the government's mentality on the issue of minimum wage and standard working hours can at best be described as having no stance, and if put in harsher terms, then it is “passing the buck” — *letting the business sector and the labour sector take on each other in a deadly fight. At the end of the fierce battle, none of them will emerge as the winner. By then, the government can close the case by saying that “no consensus has been reached”, so “no action can be taken”.* This kind of *Tai Chi Boxing (太極拳), or Shadow Boxing, is great for diverting the force of one attacker to ward off the assault of another. This exactly explains why the minimum wage has not been implemented to date...* - Speech made by Hon KWONG Chi-kin, Labour Constituency, in the LegCo meeting on 9.11.2005.

Regarding the enactment of legislation on minimum wages and standard working hours, the Secretary for Economic Development and Labour has time and again reiterated that for any proposal relating to employees and employers with far-reaching implications on the development of the community and economy of Hong Kong, a consensus through consultation must be reached. Therefore, I have looked up all legislation relating to employees and employers with far-reaching implications on the development of the community and economy of Hong Kong. *Were the legislation enacted only after a consensus between employees and employers had been reached? Actually, the so-called reasons such as adversely affecting economic development and undermining the competitiveness of Hong*



Kong have been the “all-fitting” arguments of the business sector against improvement of employees' rights, and can be applied to all legislation for the protection of workers without exception, ranging from those relating to employees' sickness allowance, maternity protection and long service payment, and so on. – Speech made by Hon LI Fung-ying, Labour Constituency, in the LegCo meeting on 9.11.2005.

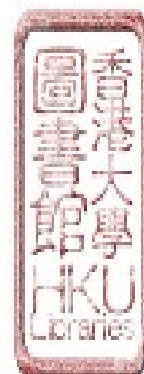
Beside a mindset of *interventionist governance* to urge the government to take a more active role to the protection of the employees who were “exploited”, more vulnerable and powerless, the Labour Constituency also consistently sought chances to enact legislation on minimum wage. Such an attempt for using independent judicial power as countervailing powers to the business-government coalition also reflected a combination of *mindset of constitutional accountability* among the Labour Constituency Members.

In fact, *mindset of democratic accountability* is also observed in the speeches made by members of the Labour Constituency, as they always stressed that they were ‘representatives’ of the labour sector:

The labour sector is of the view that discussions on the issue of minimum wage can continue. Now the proposal on assisting the low-income people has been forwarded. This is all because we see that the current unemployment problem is very serious and that the number of unemployed people receiving Comprehensive Social Security Assistance (CSSA) has been rising sharply... originally I did not intend to speak. But being a representative of the labour sector, I cannot refrain from speaking on this important issue... The concept of a minimum wage does not necessarily mean a uniform minimum wage. Each trade, each type of job can determine its own minimum wage. The labour sector is of the view that discussions on the issue of minimum wage can continue. - Speech made by Hon LEE Kai-ming, Labour Constituency, in the LegCo meeting on 28.4.1999.

Yet, I do think there was certain originality in today's debate, which at least has reflected that *we Members of the FTU and the labour sector* are still fighting for this cause persistently, and we shall go on doing this until our goal has been reached. - Speech made by Hon WONG Kwok-hing, Labour Constituency, in the LegCo meeting on 9.11.2005.

If the Minimum Wage Commission proposes to raise the minimum wage level to



\$30 and this is accepted by the Chief Executive, the *labour sector and people who are concerned about the living of the grassroots will be disappointed*. - Speech made by Hon POON Siu-ping, Labour Constituency, in the LegCo meeting on 31.10.2012.

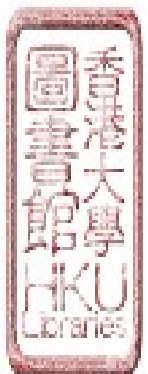
From the speeches made above, it is clear that the Labour Constituency regarded themselves as the representatives of the labour sector, and they treated themselves as the agent between the government and the employees. Such behavior reflected a mindset of *democratic accountability* enabling them to be part of the ‘democratic chain of delegation’, although actually they were not elected under a fully democratic election system.

(c) Questions raised in the LegCo meetings. At the time when the LegCo started the discussions on statutory minimum wage, the Labour Constituency proactively raised questions such as what measures the government had taken to ensure that the employees’ rights are protected and employees are paid reasonable wages. It clearly reflected an *interventionist governance mindset* emphasizing the involvement of the government, along with a *constitutional type accountability mindset* concerning whether the government has done the right thing on behalf of the common good.

...how many cases involved wage reduction made unilaterally by employers? What measures does the government have in place to protect the rights of employees whose wages has been reduced unilaterally? How many employers have received punishment as a result of the breach of relevant legislation”...What measures has the government taken to ensure that employers act in accordance with the employment contract and the Employment Ordinance and that employees’ statutory and contractual rights are protected?... – Question raised by Hon LEE Kai-ming, Labour Constituency, in the LegCo meeting on 23.9.1998.

...will the government inform this Council...whether any measures are in place to ensure that these employees (i.e. contractors of outsourced government services) are paid reasonable wages and provide with statutory rest days; if so, of the details; if not, the reasons for that?... – Question raised by Hon LI Fung-ying, Labour Constituency, in the LegCo meeting on 12.2.2003.

...will the government inform this Council...whether it has assessed the effectiveness of its monitoring efforts regarding whether the contractors have given their workers reasonable wages; if it has, of the assessment results and the



follow-up actions taken; if not, the reasons for that; and any specific measures to implement the Chief Executive's pledge in his Policy Address this year that the Administration "will pay attention to whether those working on government contracts are receiving a reasonable wage"... – Question raised by Hon LEUNG Fu-wah, Labour Constituency, in the LegCo meeting on 28.4.2004.

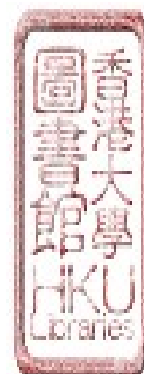
When the LegCo started to discuss on the details of the implementation of statutory minimum wage, the Labour Constituency further urged the government to enact a new law and raised questions about the implementation timetable. All these reflected a further combination of a rule-based type of *legitimacy mindset*.

...will the government inform this Council...of the progress of the research on the issue of statutory minimum wage conducted by the Administration, and which countries' experience in implementing a minimum wage system it has referred to...and whether the Administration has drawn up any timetable for formulating and implementing a minimum wage system; if it has, of the details; if not, the reasons for that?... – Question raised by Hon KWONG Chi-kin, Labour Constituency, in the LegCo meeting on 15.6.2005.

...I certainly hope that the Secretary will enact a new law in the next few months to fulfill the aspiration of the labour sector. However, it seems difficult to achieve, that is a new law cannot be introduced. In this connection, may I ask the Secretary, since the Trade Boards Ordinance is already in place, though it has never been invoked and that the content of the Ordinance is less than desirable, it could be used in the interim after making some amendments to its content...whether he will consider this option?... – Question raised by Hon KWONG Chi-kin, Labour Constituency, in the LegCo meeting on 3.5.2006.

FCs representing employers' interests – A combination of cooperative / regulated self-governance, democratic / learning accountability and legitimacy mindsets

On the other hand, FCs representing the interests of the employers, including Commercial (First), Commercial (Second), Industrial (First), Industrial (Second), Catering, Real Estate and Construction, Transport, and Wholesale and Retail Constituencies performed differently in the LegCo discussions. Their performances reflected a combination of cooperative and/or regulated self-governance mindset and democratic accountability mindset, along with an emphasis on consent as a basis of legitimacy. They supported the idea of free market with minimal government



intervention. They emphasized market-oriented governance and supported cooperation between public and private sectors. They also emphasized the importance of collecting views from various sectors as a way to achieve legitimacy.

(a) Speeches made in the LegCo meetings. It is observed that FCs representing employers' interests were taking proactive roles in the LegCo meetings by making frequent speeches:

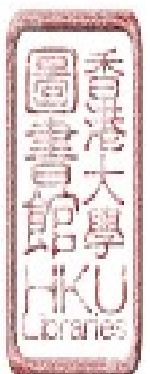
I intended to speak only after I have listened to more Members' speeches but *as no representative of the business sector or employers has spoken yet, I would like to express my views first...* – Speech made by James TIEN Pei-chun. J.P., Commercial (First) Constituency, in the LegCo meeting on 28.4.1999.

The Federation of Hong Kong Industries has repeatedly opposed the proposal to set a minimum wage. – Speech made by Hon Kenneth TING Woo-shou, Industrial (First) Constituency, in the LegCo meeting on 17.5.2000.

...the Hong Kong government has all along been practising free economy, *which is also supported by members of the public...* If Hong Kong is to set up a minimum wage system and there is no minimum price to back it, how can manufacturers in Hong Kong operate their business? – Speech made by James TIEN Pei-chun. J.P., Commercial (First) Constituency, in the LegCo meeting on 17.5.2000.

Recently, because of this motion, *I have received a lot of telephone calls from people of my industry — be they members of the management or investors, who all indicated objection.* If you do not know how keen the competition we are facing, you may take a look at the situation in Shenzhen, a place not too away from us. You can see that the rent they are paying is only about 20% to 30% of that in Hong Kong, whereas our wages are 800% of those for the same work type... Therefore, you can see that, while we are having such a tough time, the enactment of laws on minimum wage and maximum working hours will certainly *undermine the competitiveness of our catering industry*, and it will not be fair to both employees and employers. – Speech made by Hon Tommy CHEUNG Yu-yan, Catering Constituency, in the LegCo meeting on 13.10.2004.

As the representative of the business sector in this Council, I fully understand the significance of a good business environment, which includes policy flexibility... – Speech made by Hon Jeffrey LAM Kin-fung, Commercial (First) Constituency,



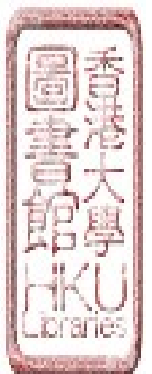
in the LegCo meeting on 13.10.2004.

Neither do they understand *the plight of the employers of small and medium enterprises* who are really looking for workers to help them. Honourable Members, this is part of our livelihood too. How can these people possibly have no knowledge of it? – Speech made by Mrs. Sophie LEUNG Lau Yau-fun, Textile and Garments Constituency, in the LegCo meeting on 9.11.2005.

From the above quotes, there is no doubt that these FCs regarded themselves as the representatives of *employers, business sectors, the Federation of Hong Kong Industries, and the small and medium enterprises*, and even business sectors as a whole. *Mindset of democratic accountability* is observed as FCs consistently spoke for their representing sectors and kept reminding the government whom they were representing. They also hold the government accountable throughout the policy processes on the issue of minimum wage.

Besides, these FCs also showed a *mindset of learning accountability*, in which they were trying to remind the government that the wage level should be determined by the market, emphasizing that the market and the private sectors were smart and effective enough to determine different wage levels of employees, prompting the government to remain hands-off in the wage issue. In fact, their speeches also reflected a *mindset of co-operated / regulated self-governance*, emphasizing private and public actors should be working on a voluntary basis (like the Wage Protection Movement for employees mentioned in the 2006-2007 Policy Address), and the government should keep minimum intervention on the issue. They believed that free-market is the best way for the private sectors to deal with the wage level. They kept concerning about consensus of different stakeholders, especially the employers, had not been reached for the legislation on statutory minimum wage.

I oppose the setting up of a minimum wage system due to the following reasons: Firstly, *it violates the market-driven principle in determining the wage level*. As a result, business operators' flexibility in deploying manpower resources would be greatly reduced. This is neither fair nor right for both the employers and the employees. Secondly, *it will neither bring a rise in the wage level nor will it improve the employment situation of our local workers*. Probably, it would adversely affect the employment opportunities of our workers. Thirdly, it will not enhance the productivity of our economy. Instead, it may constrain the improvement of our competitive edge. – Speech made by Hon Abraham SHEK



Lai-him, Real Estate and Construction Constituency, in the LegCo meeting in 24.4.2002.

...But Hong Kong has always *upheld free market economy*, which relies heavily on supply and demand as its foundation. Therefore, the proposition of setting a minimum wage and maximum working hours is definitely not compatible with the overall interests and the long-term development of Hong Kong... *It is unwise to interfere with the economic affairs by employing political methods such as enacting laws...* Should we accord priorities to those policies that we are more likely to come to a *consensus*, as well as those that are constructive and will help to promote a better environment for Hong Kong as a whole, instead of doing something which you still prefer to do though you know only too well that it will not be passed? – Speech made by Hon Andrew LEUNG Kwan-yuen, Industrial (First) Constituency, in the LegCo meeting in 13.10.2004.

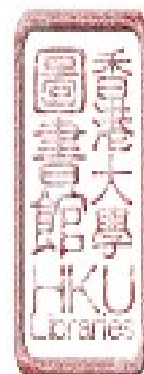
But can legislation on a standard or so-called “minimum wage” be able to ensure a reasonable wage for these people? Are we justified in destroying all of a sudden the advantage of a *free economy* which has underpinned our society for so long just because there happens to be a small number of employers who are not law-abiding? – Speech made by Hon Vincent FANG Kang, Wholesale and Retail Constituency, in the LegCo meeting in 9.11.2005.

(b) Questions raised in the LegCo meetings. FCs representing employers’ interests usually raised questions to request the government to consult and listen to views from different sectors before implementing the statutory minimum wage.

...May I ask the government what it has done to consult employers, trade associations and small and medium enterprises? – Question raised by Hon Jeffrey LAM Kin-fung, Commercial (First) Constituency, in the LegCo meeting on 15.6.2005.

...I hope the Secretary can take a major stride and really hold discussions with the catering industry when conducting the consultation and study... – Question raised by Hon Tommy CHEUNG Yu-yan, Catering Constituency, in the LegCo meeting on 15.6.2005.

...May I ask the Secretary how different views expressed by different sectors will be taken stock...so that detailed consideration can be given to these views?... –



Question raised by Hon Andrew LEUNG Kwan-yuen, Industrial (First) Constituency, in the LegCo meeting on 3.5.2006.

In fact, even after the enactment of the Minimum Wage Ordinance in July 2010, some FCs still raised questions to urge the government to review the impact of the implementation of statutory minimum wage on the market, including the recruitment of low-paid jobs, the business of small and medium enterprises and the operational costs transferred to the consumers. FCs performing such behavior reflected a learning accountability mindset, inducing the government to learn and accept feedbacks so as to increase the effectiveness and efficiency.

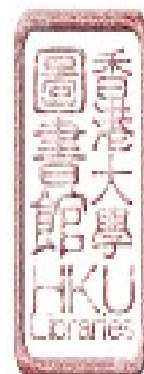
It has been reported that the implementation of the statutory minimum wage has changed the salary structure of the labour market, resulting in a “reshuffle effect” and quite a number of restaurants as well as small and medium enterprises have therefore encountered great difficulties in recruitment of staff. In this connection, will the government inform this Council:

(a) ...whether the government has conducted any survey on the impact of the implementation of the statutory minimum wage on the business environment; if it has, of the rates of increase in wage cost for various trades (particularly the catering and retail trades);

(b) whether it has surveyed how the implementation of the statutory minimum wage has caused a “reshuffle effect” in the labour market, as well as the difficulties in staff recruitment posed to restaurants and small and medium enterprises by such a situation; if it has, of the number of trades affected and the extent to which they have been affected; if not, the reasons for that; and

(c) whether it has surveyed the situation where enterprises passed onto consumers the cost increases arising from the implementation of the statutory minimum wage (eg property management companies raising management fees), as well as the ripple effect on commodity prices triggered by such a situation; if it has conducted such a survey, of the rates of increase in commodity prices?... – Question raised by Hon Jeffery LAM Kin-fung, Commercial (First) Constituency, in the LegCo meeting on 21.11.2012.

Quite a number of employers have relayed to me that since the implementation of the statutory minimum wage regime in 2011, some vacancies have remained



unfilled despite their wages having been raised to a level above the minimum wage It has been reported that some academics anticipate that if the statutory minimum wage rate is raised further, some jobs with less favourable working environment will face greater difficulty in recruiting staff, causing the aggravation of the manpower shortage situation. In this connection, will the government inform this Council:

...(3) whether it has studied the impacts of the implementation of the statutory minimum wage regime on enterprises, particularly small and medium enterprises, in respect of business operation and recruitment of staff; if it has, of the details; if not, the reasons for that?... - Question raised by Hon WONG Ting-kwong, Import and Export Constituency, in the LegCo meeting on 20.5.2015.

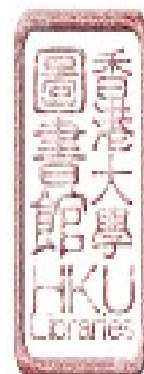
Other FCs representing other interest groups – A combination of interventionist governance and constitutional / learning accountability mindset, along with a rule-based type of legitimacy mindset

Apart from the FCs representing employers and employees, some other FCs were also driven by respective mindsets when they performed their legislative roles.

Before the enactment of the Minimum Wage Ordinance, the Legal Constituency, the Medical Constituency and the Insurance Constituency urged the government to take the lead to implement statutory minimum wage, so as to provide protection for low-income people and vulnerable groups (such as the older and less educated workers) and to comply with the International Covenant on Economic, Social and Cultural Rights. These behaviours reflected a combination of *interventionist governance and constitutional accountability mindset*, along with an emphasis on established rules as the basis of legitimacy.

(a) Questions raised in the LegCo meetings.

Madam President, as far as I understand it, the International Covenant on Economic, Social and Cultural Rights has stipulated certain minimum standards only. Since the situation varies from place to place, it may take some time before the minimum standards can be reached. Madam President, may I ask the Secretary whether she agrees that we can fulfill those obligations on a selective basis? Concerning reasonable wages and maximum hours of work, does the Secretary consider that we can choose not to fulfill the relevant obligations? –



Question raised by Hon Margaret NG, Legal Constituency, in the LegCo meeting on 13.6.2001.

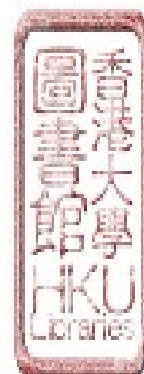
...May I ask the government what measures are in place for those low-income people other than security guards and general cleaners, so that they can also be accorded due protection?... – Question raised by Hon KWOK Ka-ki, Medical Constituency, in the LegCo meeting on 7.11.2007.

...whether special measures would be put in place under the future minimum wage regime to protect the vulnerable groups, particularly the older and less educated workers and young people with less or even no working experience, from the risk of displacement... – Question raised by Hon CHAN Kin-por, Insurance Constituency, in the LegCo Panel on Manpower meeting on 20.11.2008.

The Social Welfare Constituency, in particular, even pointed out that it has already taken a very long time for discussion and a lot of people have passed away before a consensus could be reached for the implementation of statutory minimum wage, asking whether the government found it morally acceptable. Such behavior clearly reflected a *constitutional accountability mindset* which emphasized that the government should do the right thing on behalf of the common good.

Madam President, the Secretary said that it is necessary to continue to seek a consensus, however, we have discussed this matter for more than 20 years and a consensus is still being sought. In the course of such discussion, a lot of people have passed away...May I ask if the Secretary finds this acceptable according to his value judgment? According to the Secretary's moral judgment, does he find it acceptable that members of the public should toil away, work very hard and decline any Comprehensive Social Security Assistance payment, and yet not getting a reward that is enough for supporting their families?... – Question raised by Hon Fernando CHEUNG Chiu-hung, Social Welfare Constituency, in the LegCo meeting on 15.6.2005.

Similarly, after the enactment of the Minimum Wage Ordinance, these FCs expressed concerns about the magnitude of inflation and job loss due to the implementation of the statutory minimum wage. They changed their mindsets to become a combination of *interventionist governance and learning accountability, along with a rule-based type of legitimacy mindset*.



...Any measures would be adopted by the Administration to address the possible inflation and unemployment problems?... – Question raised by Hon CHAN Kin-por, Insurance Constituency, in the LegCo Panel on Manpower meeting on 18.11.2010.

...whether the government was overly optimistic about the impact of the statutory minimum wage on inflation and whether the increase was within tolerable limits... – Question raised by Hon Paul TSE Wai-chun, Tourism Constituency, in the LegCo Panel on Manpower meeting on 18.11.2010.

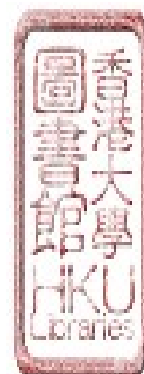
(b) Speeches made in the LegCo meetings.

Since the Chief Executive undertook to begin the work on establishing a minimum wage and standard working hours when he assumed office, I believe there is no reason for the government to procrastinate yet again at a time when we are about to attain our goal. I hope that the government can work out a reasonable mechanism and timetable as soon as possible, so that two pieces of legislation which the Hong Kong public and many low-income people have long been yearning for can be implemented as soon as possible. – Speech made by Dr. Kwok Ka-ki, Medical Constituency, in the LegCo meeting on 9.11.2005.

I agree that the *government should make active efforts* to introduce a minimum wage. I think that a minimum wage is in fact meant to protect workers, so that their work can be rewarded by a basic living. – Speech made by Hon TAM Heung-man, Accountancy Constituency, in the LegCo meeting on 1.11.2006.

Furthermore, the Social Welfare Constituency had also pointed out the limitation of the existing political system, and it clearly stressed that prescribing a minimum wage through bills and legislation was the way to make it “practically possible” to protect the grassroots from the existing “distorted political system”. Mistrust of the Social Welfare Constituency to the existing public system can be observed.

The voting result at that time was that 38 persons were in favour of the motion, 18 were against it and one abstained. In any normal legislature, there is practically no need to discuss any further because the motion was passed. However, *under the distorted political system in Hong Kong, even though a motion has been passed, it is not legally binding*. Moreover, since it is necessary to vote in groups, even though the motion was supported by a majority of directly elected Members, the



fact is that it was still negated eventually. If we are not subject to the provision of Article 74 of the Basic Law, which makes it practically impossible for Members to propose any Members' bill, it will be possible for us to *prescribe a minimum wage and standard working hours by way of a Members' bill and make it legally binding*. In that way, a minimum wage and standard working hours would have already been implemented in Hong Kong nowadays. - Speech made by Hon Fernando CHEUNG Chiu-hung, Social Welfare Constituency, in the LegCo meeting on 9.11.2005.

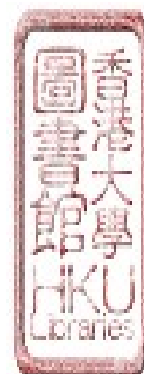
Concluding Comments

To conclude, in this case study of statutory minimum wage, it is found that the major FC stakeholders were mainly the Labour Constituency and those Constituencies representing the employers' interests.

Discussions related to statutory minimum wage started very early in 1998 and had been carried on until 2015, even after the implementation of the Minimum Wage Ordinance in 2010.

The Labour Constituency, representing the interests of employees, had been keeping a combination of interventionist governance, democratic/constitutional accountability and legitimacy mindsets. They moved motions to push the government to take a dominating role to specify a minimum wage level and the rates of overtime pay, and they assume the government should take the role to 'force' the private sectors and employers of cleansing and guarding services to follow a specific minimum wage level in practice. Also, they raised questions urging the government to implement measures to ensure that the employees' rights are protected. They also urged the government to enact a new law and to list out clear procedures and timetable for the implementation of statutory minimum wage.

On the other hand, FCs representing the interests of employers had been keeping a combination of cooperative / regulated self-governance, democratic / learning accountability and legitimacy mindsets. They have given speeches as the representatives of the business sectors, and they tried to remind the government the wage level should be determined by the market), and how smart and effective of market and private sectors were in determining different wage levels of employees. They raised questions to ensure that different sectors are involved to offer views towards the implementation of statutory minimum wage. Upon enactment of the Minimum Wage

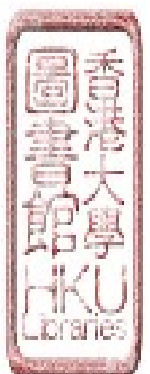


Ordinance, they also raised questions to urge the government to review the impact on the market and to accept feedbacks so as to increase the effectiveness and efficiency.

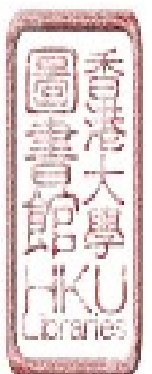
As regards other FCs, they were neither employer-oriented nor employee-oriented. Some of them had a combination of interventionist governance and constitutional accountability mindset. They were more prone to ensure that there is sufficient protection for the low-income ones and consider that it is morally right for the government to implement minimum wage protection. Some of them had a combination of interventionist governance and learning accountability, along with a rule-based type of legitimacy mindset. They emphasized the importance to follow the international standards when implementing the statutory minimum wage in Hong Kong. Some also concerned about the impact on the economy after the implementation of statutory minimum wage.

When comparing mindsets of the Labour Constituency and the FCs representing the interests of employers, it is interesting to see the tension between different mindsets. For instance, the Labour Constituency was with the mindset of interventionist governance, while FCs representing the interests of employers were with the mindset of cooperative / regulated self-governance. This stipulates the argument whether “the interventionist state based on hierarchical governance is ill-equipped to resolve the newly emerging social and economic problems of modern states”. From the perspectives of FCs representing interests of employers, they were with strong minds of market liberalization. Top-down policy making approaches, which are based on command-and-control instruments and coercive techniques of policy implementation, have been regarded as old-fashioned and ineffective for increasing public welfare (Knill and Tosen, 2012). However, for the Labour Constituency, they were with the mind to “fight” for the rights of workers, and to prevent employers from “exploiting” employees. Therefore, they urged for an active intervention by the government and an increase in hierarchical governance. In the issue of minimum wage, it can be well-observed how mindsets of legislators vary with their roles, and how mindsets of FCs affect their performances, including the way they moved motions, gave speeches and raised related questions accordingly.

The long discussions on minimum wage have been over 10 years. After scrutinising details of the policy processes, it is not difficult to see how mindsets of governance, accountability and legitimacy affected the policy outcome. Mindsets of FCs were driving them with very different point of concerns throughout the policy processes, and this might lead to elite fragmentation which has been mentioned in Chapter I, and that



might be the reason why it has been taking years for the enactment of the Minimum Wage Ordinance, as the “push” and “pull” between mindsets of legislators was making impacts on the implementation of the policy processes.



Chapter VI: Conclusions and Recommendations for Functional Constituency System and Way Forward

Introduction

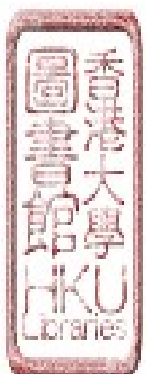
This chapter outlines the observations on the limitations and way forward for the FC system in Hong Kong, so as to cater for the dual objectives of optimizing the FC system to cater for the latest political situation, and advancing the democratic development to facilitate the implementation of election of all LegCo Members by universal suffrage.

Confronting Attitudes towards FC

Several surveys conducted since 2000s revealed that more than half of the Hong Kong citizens interviewed in respective surveys would support the advent of democratic development in the LegCo by reforming the modus operandi and enhancing democratic elements in the FC system (Hong Kong Transition Project, 2005; Chan and Chan, 2006). The debate over the way forward of the FC system had become more acute subsequent to the waves of political movements since 2014 in respect of the proposed reform to the selection method of the CE in 2017, and there had been suggestions for the Administration to abolish the FC system in return for their support of said CE election reform in the LegCo (HKSAR government, 2015).

Nevertheless, the Chinese Government is adhered to its beliefs in the values of the FC system, and is reluctant to conduct any institutional changes at the expense of the FC system. The Chinese Government made its stance crystal clear in the decision handed down by the Standing Committee of the National People's Congress (NPC) on 31 August 2014 in respect of the selection of the CE in 2017 and forming of the LegCo in 2016, which stipulated, *inter alia*, that-

- a) The existing formation method and voting procedures for the sixth term LegCo in 2016 as prescribed in Annex II to the Hong Kong basic Law will not be amended; and
- b) Election of all LegCo members may be implemented by the method of universal suffrage after the election of the CE by universal suffrage (South China Morning Post, 2014).



Given the controversies involved in the election method of LegCo, not to mention the one in relation to the CE election, it is anticipated that the existing LegCo structure as well as the FC system would still persist in the foreseeable future.

Objectives

Taken into consideration the actual political situation, and the frameworks laid down by Standing Committee of the NPC on 31 August 2014, it is envisaged that in order to make any proposed changes feasible and acceptable to all stakeholders, any changes shall uphold the dual virtues of-

- a) Achieving the ultimate goal of implementing election of all LegCo Members by universal suffrage as laid down in Article 68 of the Basic Law on the one end; and
- b) Preserving the salient features of the existing political system, including the balanced participation and representation of different sectors' interests in the LgeCo under an executive-led government on the other end.

Proposed Way Forwards

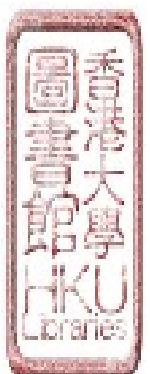
The proposed way forwards will comprise measures to optimize the FC from the governance, accountability, and legitimacy perspectives:

Changes to FC System: A Governance Perspective

Under the existing political structure, the FCs would hinder the sustainable political development, result in the fragmentation of LegCo and non-cohesive governing alliance with the Administration, which would in turn undermine the effective governance in several ways.

Fragmentation of LegCo

Since the socio-economic sectors and professionals are already endowed with representation through FCs in the LegCo, this would hinder their incentives to collaborate with other politicians or political parties in the LegCo or to engage in the political activities. However, one of the important roles of the political parties in the democratic society are to serve as the platform of interest aggregation in a political



system, nurturing political talents to mediate interests across different spectrums, which are vital to consensus building in a democratic society. The narrow-sighted FC Members and its electorates, which put emphasis on own sector's interests, would hinder the political parties' participation in the FCs and nourishment of political talents, which would in turn leads to the fragmentation of the LegCo, and make it more difficult to forge on the consensus on controversial issues as the interests of different FCs are at stake (Kuan and Lau, 2002; Leung, 1990; Ma, 2007).

Non-cohesive Governing Alliance

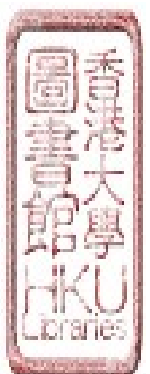
The FC system would not only jeopardize the political parties and the LegCo's operation, the Administration would also suffer from the absence of a cohesive governing alliance in the LegCo to facilitate effective governance. The wide diversity in the composition of FCs as well as the interests of different constituencies add difficulties for the Administration to barter interests exchange in return for their support at LegCo. In fact, the interests of the business sectors are pluralistic and pragmatic, whereas the degree of unity through cross-sector, common interests are even lower among the professional sectors. The absence of political parties' active participation in the FCs implies there would not be any single overarching political organization that is capable of representing the diverse interests in political adjudication, offering authoritative mechanism to mediate between different sectors, and deriving a coherent policy package to the Administration, not to mention establishing an institutionalised bargaining mechanism in policy formulation and implementation processes (Chan, 2013; Cheung, 2007; Sing, 2005).

Such being the case, there is few guaranteed support for the Administration in the FCs, and pose additional difficulties for the Administration to appeal for FCs' support to launch new policy / initiatives should the vested interests of any constituency of the FCs be involved.

Bicameral Voting Mechanism

In addition, the bicameral voting mechanism adopted by the LegCo after the handover of sovereignty in 1997 results in the "veto power of the minority" in the LegCo, which further hamper the LegCo's capacity to pass the bills, conduct meaningful motion debates in pursuit of better governance (Loh and Civic Exchange, 2006; Ma, 2007).

The voting procedures in the Standing Orders of the pre-1997 Legislature have made



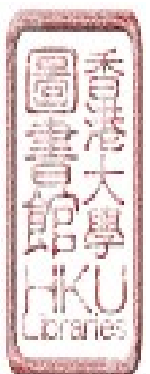
no distinction between Members of FC and GC. All LegCo Members voted as members of the same group for any motion tabled before the Council. The motion would be passed should the Members who voted in favour of that motion were in the majority among those who voted.

The voting procedures after the establishment of HKSAR is provided in Article 74 and Annex II of the Basic Law. While the passage of bills or motions moved by the Administration only requires a simple majority vote of the Members present, the passage of motions, bills, or amendments to government bills initiated by individual LegCo Member requires a simple majority vote in each of the two groups of Members present⁴ (Legislative Council Secretariat, 2012).

Because of the “bicameral voting mechanism” under the Basic Law, Member’s private motion / bill / amendment may not necessarily be passed even if there is a majority of LegCo Members in support of the matter, should it fails to secure a majority vote of support from Members in both FC and GC. Such being the case, the “bicameral voting mechanism” minimises the possibility and amount of the legislation introduced by the LegCo Member to pass any motion / bill / amendment. Researchers conducted by Ma and Sing reveals that during the four terms of LegCo during the legislative years between 1991 and 2004, while the passage rate for Government bills stay on the high side of over 91% over the period, the passage rate for Members’ amendments to Government bills experienced a landslide fall from 62.1% and 71% during the 1991-1995 and 1995-1997 terms respectively, to just 14.7% and 10.9% during the 1998-2000 and 2000-2004 terms respectively. Also, 161 nos. of private motions, bills and amendments that were defeated by the bicameral voting system during the legislative years between 1998 and 2004 could actually be passed under the “unicameral voting mechanism” adopted in pre-handover period, which accounts for more than two times of the total number of private motions, bills and amendments actually passed under the “bicameral voting mechanism” during the period (Ma, 2007; Scott, 2008; Sing, 2005).

In the premises, the “bicameral voting mechanism” has in effect resulted in the “veto power of the minority” that any FC or GC 16 Members could exercise such veto power in respect of a private motion / bill / amendment. Since the franchise of FC’s seats are much constrained in comparison with GC who are elected by and represent citizenry at large, the exercise of such “veto power” by FC Members may arouse potential social strife between them, and jeopardize the legitimacy of the LegCo in terms of

⁴ Nevertheless, the voting procedures adopted by the Committees remain unchanged before and after the establishment of HKSAR, i.e. by a majority of the votes of the Members present and voting, and there is no distinction between Members from two groups of constituencies.



representing general public opinions and deliberation on public policies (Chan 2013; Loh and Civic Exchange, 2006).

Because of the “bicameral voting mechanism”, it curtailed the capacity of the LegCo to pass the votes, weakened the motion debates as a policy influencing tool. The LegCo Members also tend to move a motion less controversial in return for a better passage chance, which turns the debate in the Council Meeting a general discussion on public policies (Ma, 2007; Sing, 2005).

Proposal: Refinements of Self-regulated Governance

In order to strike a balance between advancing the democratic development facilitating the Administration to solicit policy support in the LegCo, and sustaining the balanced participation of different sectors’ interests in the LegCo, the introduction of the Bicameral System of LegCo may be considered to tackle the dilemma.

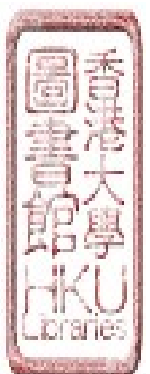
It could safeguard the representation of economic and professional interest on the one end, and achieve the ultimate goal of the Basic Law and society’s aspiration that the Members of the LegCo would be returned by fair and equal suffrage on the other end. The Bicameral System could mediate the interests of two significant camps: pro-business and pro-democracy in the local society, and take into account the concerns of the Chinese authorities that substantial representation of business and professional allies could still be guaranteed without hindrance to the pursuit of direct election for the LegCo. Furthermore, an elected LegCo by universal suffrage could ensure its effective representation of the aggregate interest of the society, and provide a fair playing field to adjudicate interests of different sectors, which would facilitate the formulation of policy that would be well received by the society at large (Lo, 2006; Serfaty, 2006).

Changes to FC’s Electorate: An Accountability Perspective

The existing FC system has long been criticized for its relatively small electorate size which has a great bearing on its corporate voter mechanism, which has been under disputes on the equality and fairness in the votes in comparison with those individual voters of FC and registered voters of GC.

Classification of FC Electorate

Unlike the electorate for GCs whose franchise are determined in accordance with the



residency in specifically defined geographical regions, the principles for determining electorate for different constituencies of the FCs system are delineated under the Legislative Council Ordinance, which can be classified into following three major principles: (a) Corporate or Individual Membership of “Umbrella Organizations” entitled to Vote at General Meetings of Such Organizations; (b) Major Organizations’ Representatives of Relevant Sectors; and (c) Professionals Registered under Relevant Legislation (Constitutional and Mainland Affairs Bureau, 2003).

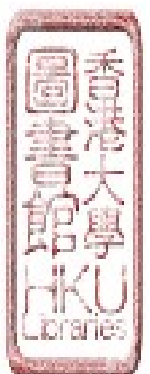
A breakdown of the FCs adopting different principles to determine the electorate is at Table 6.1. Further elaboration on the methods of determining the electorate, as well as an analysis of the electorate characteristics under different methods and their implications on the FC system, will be deliberated in the ensuing paragraphs.

Corporate or Individual Membership of “Umbrella Organizations” entitled to Vote at General Meetings of Such Organizations

As per the Administration’s paper to the LegCo furnishing detailed description of the determination methods for FCs’ electorate, the “umbrella organizations” refers to those incorporated or unincorporated organizations that have either individual or corporate members, or both of them. While the “umbrella organizations” themselves are not FC electors, it is their members who are determined as such pursuant to membership rules of respective organizations, and who are entitled to vote at the general meetings, be accorded the electors’ status in FC elections. Such being the case, there would be both individual and corporate electors in the same constituency of FC, depending on the membership rules of respective “umbrella organizations”. The Table 6.2 summarizes the composition of individual and cooperate voters of different FCs. A notable example is the FC “Commercial (First)”, whose electors are confined to the members of the HKGCC who are entitled to vote at the general meetings of the HKGCC (Constitutional and Mainland Affairs Bureau, 2003).

While the method offers much convenience to the Administration in identifying and verifying the relevant individuals and bodies of respective constituencies, it may have some far-reaching implications and potential loopholes that arouse public concerns over the years.

Under the Basic Law, only the Administration is empowered to initiate any changes to the political structure, such as the scope of “umbrella organizations” to be recognised. In reality, not all relevant “umbrella organizations” engaging in similar field of business



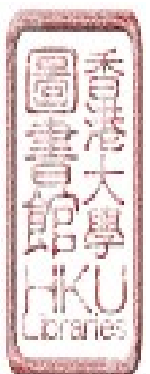
would be recognized as “umbrella organizations” of the FC concerned. For instance, the recognized “umbrella organizations” for the FCs “Commercial (First)” and “Commercial (Second)” are confined to the HKGCC and the Chinese General Chamber of Commerce respectively, whereas numerous other chambers of commerce of similar history and structure are excluded without apparent justifications. The public may cast doubts on whether the principle of fairness to include all relevant “umbrella organizations” as electorate of respective FC is duly observed, and whether the elected FC Member could represent the sector at large.

Also, while the eligibility to vote depends on one’s membership in recognized “umbrella organizations”, the legislation does not stipulate any verification procedures on the eligibility and authenticity of any particular elector, and the performance of such verification would normally be rested on the “umbrella organizations” in practice. Such practice of “delegated responsibility” in verifying the FC electorate arouse serious concerns as potential source of corruption (Sing, 2005; Young and Law, 2004).

Major Organizations’ Representatives of Relevant Sectors

Under this method, only the representatives of the prescribed representative organizations’ representatives would be endowed with the right to vote (Constitutional and Mainland Affairs Bureau, 2003). Such prescribed representative organizations may either be specified in the Legislative Council Ordinance, such as the 190-strong prescribed bodies specified as electors in the Transport FC under section 20D of the Legislative Council Ordinance, or may be listed by reference to being registered or authorized under other sections / chapters of the legislation, such as the section 20L of the Legislative Council Ordinance stipulates that the electorate status for the Labour FC be conferred to those bodies which are trade unions registered under the Trade Unions Ordinance [Cap. 332] of which all the voting members are employees.

This determination method of granting voting right to prescribed representative organizations would inevitably encounter potential disputes on the definition and scope of such “representative organizations” as well as the authority who is empowered to decide whether or not a particular body could be incorporated into the list of “representative organization” of the sector (Ma, 2007; Young and Law, 2004). Also, this method would result in the absence of individual vote and comprise a limited amount of corporate voters in the FCs concerned. It is especially obvious in the cases of four FCs, notably the Finance FC, Labour FC, Transport FC and Insurance FC, which, as releveled in Table 6.1 and Table 6.2, adopt this method to determine electors and



comprise the corporate electors only, constitute a very narrow base of electorate of not more than 1 000 registered corporate electors in the last LegCo election in 2012.

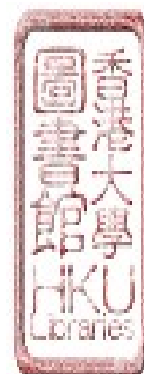
Professionals Registered under Relevant Legislation

The electorate status for those FCs adopting this method would be conferred to certain recognized individual professionals from relevant fields. As shown in Table 6.1, there are at present six FCs which are solely composed of recognized professionals, whereas individual professionals as well as their counterparts in the capacity of cooperate bodies, constitute the electorate for another four FCs.

Under this determination method, the electorate status would normally be granted to individuals who are, with the exception of Catering FC, registered under the Ordinance or whose profession which is subject to regulation by the Government, and applied specialised knowledge gained from advanced tertiary educational qualifications. Nevertheless, some anomalies may still be identified that some professions or occupations, which are well recognized by the society and subject to similar regulations as their counterparts in other fields, being excluded from the list of recognized professionals under the method. Notable example is the exclusion of investment banking sector professionals in the Finance FC that only consists of corporate voters (Leung, 1990; Young and Law, 2004).

Size of FC's Electorate and Implications for Voting Procedures

In view of the variations in the methods adopted for different FCs to determine the electorate status, substantial discrepancy in the size of electorate between different FCs exists. In the 2012 LegCo Election, the Education FC had the largest electorate size with more than 92 000 eligible registered voters, whereas the smallest electorate size could be found in the Finance FC which consisted of 127 registered voters only. It is noteworthy that of those 28 FCs (the newly introduced District Council (Second) FC, whose electorate are those registered voters who did not have a vote in the original FC system, is excluded), only 5 of them have more than 10 000 registered voters, while 12 of them only have the electorate size of less than 1 000. Furthermore, the number of registered voters of the largest three FCs (*viz* the Education, Health Services and Accountancy FCs, which comprised 92 957, 37 556, and 25 174 registered voters respectively) had already accounted for over 64% of the total number of 240 735 registered voters of all FCs.

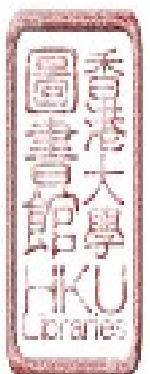


On account of the relatively small electorate size of FCs in general, it is quite common for the FC Members to be chosen from a small pool of electorate in respective sector to represent the constituency. It is hence foreseeable that the FC Members would tend to accord priority to the sectoral interests and concerns, especially the vested interests groups who possess the voting rights, rather than the interests of the society as a whole, which would attenuate the original objective for the FC Members to represent a broad range of different sectors' interests and encourage "balanced participation" (Loh, 2004; Sing, 2005; Young and Law, 2004).

The variation in the electorate size for different FCs also has profound impact on the voting power of each individual vote within a particular constituency. In general, the weight of each individual vote would be more significant in the smaller constituency, and *vice versa*. In this connection, the substantial variation in the electorate size for different FCs would in effect endow greater weight to individual vote in small constituency, which would result on the inequality in the voting power and deviation from the prevailing "one-man, one-vote" principle (Loh, 2004; Sing, 2005).

The limited size of electorate as well as the prevailing methods to determine electorate of FCs would tend to attract few competing candidates to run for the FC constituency election. There is a unique high rate of uncontested seats that the FC would return legislator without contest. There have been at least 30% of the FC seats in each of the nine LegCo elections held during the period have returned legislators uncontested. In the past two LegCo elections held in 2008 and 2012, the percentage of uncontested seats account for 50% (i.e. 14 uncontested seats) and 57% (i.e. 16 uncontested seats) of the total 28 nos. FC seats in respective elections. In addition, plenty of the FC constituencies summarised in Table 6.3 have multiple uncontested seats during the period, amongst which the Commercial (Second) FC even did not have returned any legislator with contest during the period between 1985 and 2012.

Another distinctive feature of the FC voting system is the emergence of corporate votes in a variety of FC constituencies. As revealed in Table 6.2, and there are a total of nine FCs whose Members will solely be returned by corporate voters, whereas the corporate voters would, in conjunction with individual counterparts, cast votes in other nine FCs. Such being the case, this would endow recognized organizations the privilege to select their representatives to protect and advance their interest in the LegCo through the corporate voter status. Since the electorate size for those FCs comprising cooperate voters only would be smaller than those FC with mixed individual and corporate voters or with individual voters only, this would in effect accord a more significant degree of



weight to each vote of corporate voters than individual voters (Leung, 1990; Ma, 2007).

Proposal: Democratic Accountability

In the light of the narrow electorate base and corporate voter method, the FC Members would primarily be held accountable to the vested interest groups of respective sectors rather than be accountable to the society as a whole. They would hence be inclined to act as the lobbyists of respective sectors in the LegCo, and their primary duty would therefore rest on protecting and expanding the sectoral interests, which may override the society's interests as a whole and reluctant to compromise when the sectoral interests were at stake. This would flaw the FC system and the "balancing role" as intended, but to accord undue influence to vested interest groups through their FC seats (Lam, 2013; Ma, 2007; Sing, 2004).

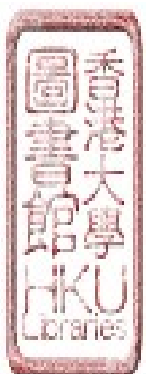
It is therefore proposed to broaden the electorate franchise by replacing the corporate votes with individual votes. The proposed changes can not only facilitate the effective representation of respective sector's practitioners and stakeholders, but also reduce the likelihood of uncontested seats, which would in turn encourage more competitors and/or political party participation in the FC elections, offers broader choice to the FC electorate in the kinds of candidates which would not be too narrowly focused (Loh and Civic Exchange, 2006; Ma, 2007).

Changes to Recognition and Grouping of FC's Constituencies: A Legitimacy Perspective

In view of the limited amount of seats available at the LegCo to return members from FC, it is inevitable to encounter difficulties over which function(s) are to be recognised and not others in the FC system. Nevertheless, the existing recognition and grouping of functions under the FC system are inclined to be driven by political forces and compromises rather than by coherent principles, which may underline the legitimacy of the FC Members in representing respective sectors at large.

Recognition of FC's Constituencies

Prior to the introduction of FC election in 1985, the Hong Kong Government stated in the Green Paper of 1984 that "*economic and social constituencies*" should be "*based on well-organized major organizations, associations, and institutions with a territory-wide coverage*", while the "*professional constituencies*" should be "*based on*



membership of those professions with well-established and recognized qualifications”
(Hong Kong Government, 1984 a).

The Hong Kong Government provided more explicit guidelines in the White Paper of 1988 on whether a group or groups should be recognized as a constituency in the FC system as follows-

- (1) *FC should be substantial and of importance in the community;*
 - (2) *Any new constituency should be clearly defined to avoid difficulties over who qualifies for inclusion and how the electorate be prescribed;*
 - (3) *Constituencies should not be based on ideology, dogma or religion; and*
 - (4) *Particular groups or bodies should not be represented in more than one FC.*
- (Hong Kong Government, 1988)

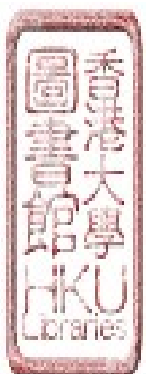
Although it has never been the Administration’s intention or attempt to incorporate or reflect all the major social, economic and professional interests / sectors in Hong Kong into the FC system; nevertheless, the recognition of constituencies still arouses controversies in the following aspects-

Firstly, there is absence of single or coherent guiding theory / principle on what sector or function should be recognized, and political forces and constitutional development the rather than informed policy-making appear to be the major driving force on the recognition of constituency in order to cater for political necessity (Young and Law, 2004). A typical example is the recognition of agricultural and fisheries as a constituency since 1998, which is perceived to be driven by the considerations to enhance the pro-establishment base in the LegCo instead of the importance of the sectoral interests in the modern Hong Kong economy.

Secondly, the FC system is also slow to recognize non-mainstream sectors / interests in the community, such as domestic helpers, part-time / freelance professionals, as well as the peripheral professionals who provide support services to the cognized sectors (such as legal secretaries, barrister pupils, solicitor trainees of the legal sector).

Grouping of FC’s Constituencies

Although criteria has been set out in the recognition of sectors / interest in the FC system, the substantial variations of sectors, interests and professions that should be recognized and the limited number of FC seats means the grouping of functions be necessary.



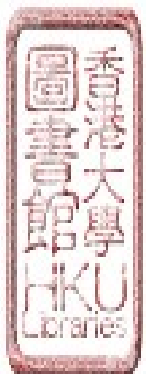
While the grouping of functions is appeared to be decision driven by political force and exchange rather than a principled or well-informed one by principles of fairness and reasons, the grouping of functions in the FC systems could be classified into two major categories. First type of grouping is expressly specified in the name of respective FC, which could be found in the constituencies of professions, such as engineering, accountancy. The second type of grouping is a kind of encompassed grouping by virtue of the broad nature, definition or common characteristics of the FC's name, such as the constituencies "Commercial (First)", "Commercial (Second)", "Industrial (First)" and "Industrial (Second)", which group together electors from a diverse range of sectors / interests.

The diversity in the composition of electorate of the aforementioned second type of broad encompassed grouping may pose difficulties in the effective representation. Also, the rationale behind the grouping of some FC may be dubious, which is most obvious in the constituency "Sports, Performing Arts, Culture and Publication", which not only comprise a wide variety of sectors, but also of different nature that both profit-oriented and non-profit-oriented functions are incorporated into the same constituency.

Proposal: Legitimacy with Expressed Consent and Shared Beliefs pursuant to rules

It has never been the Administration's attempt to reflect all the major social, economic and professional sectors in the FC. The last major attempt to reflect the major socio-economic sectors and professions was the introduction of nine new FCs by then Governor Christopher Patten in the 1995 LegCo election, which intended to cover all working population through over 80 enumerated Major Industrial Groups. However, the Patten's reforms was a kind of remedial rather than an overhaul of the recognition and grouping arrangements that the status quo for the existing FC constituencies was remain unchanged (Legislative Council Secretariat, 2012; Young and Law, 2004).

In view of the diversity of the modern socio-economic conditions and the limited number of FC seats, it is deemed necessary to have a comprehensive re-thinking of the grouping of functions by re-grouping the existing constituencies, and co-opting new constituencies in accordance with coherent principles, so as to attain the objectives of balanced participation, and more equal representation of different sectors' interests by the FCs, which would in turn enhance the legitimacy of the FC Members as the authorized representative of respective sectors (Loh, 2004; Leung, 1990; Young and Law, 2004).



Concluding Comments

The current FC system has been put in place for 30 years and becomes a unique feature of the Hong Kong political structure. Our case studies of MPF and statutory minimum wage legislative processes reveal that it is undeniable the FCMs are, although to variety of extents, aware of the mindsets of governance, accountability and legitimacy, which would be reflected in their performance of their roles in the LegCo, so as to assume the role as the authorised representative of respective sectors.

Nevertheless, in the light of their adherence to the mindsets of governance, accountability and legitimacy from their own perspectives, as well as the defects in the modus operandi of the current FC system, which would in turn make it difficult for FCMs to meditate among their confronting views, reluctant to engage in interest exchanges during the policy formulation and implementation processes at the expense of their accountability to respective sectors should the sectors' interests are at stake. This could best be illustrated in the prolonged legislative proceedings for both MPF and statutory minimum wage so as to forge consensus among FCMs from confronting camps. It is hence understandable that the FCs has been the cause of political disputes and tensions in the society, especially in the post-handover period.

Although Hong Kong has witnessed the soaring awareness for democracy of the local community, and gradual development of democratic elements in the local political system over the years, which should have laid down solid foundation for further advent of democracy towards the ultimate goal of direct election for LegCo; nevertheless, Chinese Government is determined to the preservations of the salient features of the FCs, notably the balanced representation and participation by different sectors and interests in the LegCo. In the premises, it is necessary to optimize the current FC system, so as to retain the salient features of the FC system on the one end, and refine the modus operandi of the FC to lay down the stepping stones for the further advancement of democracy on the other end. The proposed changes to the FC system is targets at exploring a pragmatic approach towards the accomplishment of the ultimate goal of introducing direct election for LegCo Members by universal suffrage and preserving the key features of the FC.

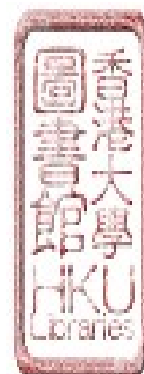


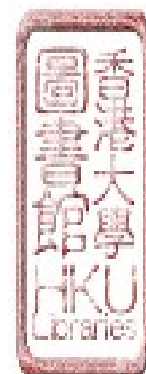
Table 6.1—**Summary of Principles Adopted to Determine Electorate of Functional Constituencies**

Corporate or Individual Membership of “Umbrella Organizations” Entitled to Vote at General Meetings of Such Organizations	Major Organizations’ Representatives of Relevant Sectors	Professionals Registered under Relevant Legislation
Heung Yee Kuk	Agricultural and Fisheries *	Education
Architectural, Surveying and Planning *	Insurance	Legal
Engineering *	Transport	Accountancy
Real Estate and Construction	Labour	Social Welfare
Tourism	Finance	Medical
Commercial (First)	Sports, Performing Arts, Culture and Publication *	Health Services
Commercial (Second)	Import and Export *	Architectural, Surveying and Planning *
Industrial (First)	Textiles and Garment *	Engineering *
Industrial (Second)	Information Technology *	Financial Services *
Financial Services *	Catering *	Catering *
Sports, Performing Arts, Culture and Publication *		
Import and Export *		
Textiles and Garment *		
Wholesale and Retail		
Information Technology *		
District Council (First)		
Agricultural and Fisheries *		

Legends:

- (1) The newly established FC “District Council (Second)”, whose electorate are those registered voters who did not have a vote in the original FC system, is excluded; and
- (2) *: More than one principle has been applied to determine the electorate of the subject FC(s).

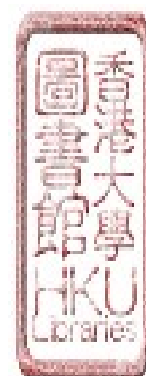
[Sources: Legislative Council Ordinance; Electoral Affairs Commission (1998, 2000, 2004, 2008 and 2012); Legislative Council Secretariat (2012); Young and Law (2004)]



**Table 6.2—
Composition of Individual and Corporate Voters for Functional Constituencies**

Corporate Bodies as Electros only	Both Corporate Bodies and Individuals as Electros	Individuals as Electros only
Commercial (First)	Commercial (Second)	Accountancy
Industrial (First)	Real Estate and Construction	Social Welfare
Industrial (Second)	Financial Services	Medical
Finance	Textiles and Garment	Health Services
Labour	Import and Export	Education
Tourism	Wholesale and Retail	Legal
Transport	Information Technology	Engineering
Agricultural and Fisheries	Sports, Performing Arts, Culture and Publication	Architectural, Surveying and Planning
Insurance	Catering	Heung Yee Kuk
		District Council (First)
		District Council (Second)

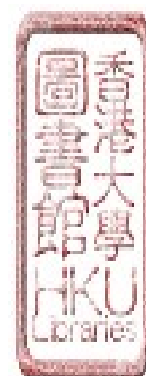
[Sources: Legislative Council Ordinance; Electoral Affairs Commission (1998, 2000, 2004, 2008 and 2012); Legislative Council Secretariat (2012); Ma (2007); Young and Law (2004)]



**Table 6.3—
Summary of Functional Constituencies with Multiple Uncontested Seats (1995-2012)**

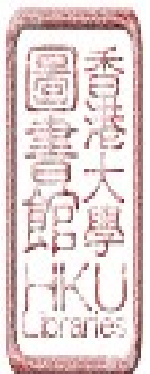
FC with Uncontested Seat	Number of Uncontested Seat from 1995 to 2012 (a total of 9 elections)
Commercial (Second)	9
Industrial (First)	8
Finance <i>[formerly known as “Financial” in 1985]</i>	8
Heung Yee Kuk <i>[formerly known as “Rural” in 1991 and 1995]</i>	7
Industrial (Second)	6
Commercial (First)	5
Real Estate and Construction	5
Import and Export	5
Labour	5
Architectural, Surveying and Planning	3
Insurance	3
Agricultural and Fisheries	3
Textiles and Garment	2
Social Welfare <i>[formerly known as “Social Service” in 1991]</i>	2
Urban Council <i>[Existed before 2000 election]</i>	2

[Sources: Legislative Council Ordinance; Electoral Affairs Commission (1998, 2000, 2004, 2008 and 2012); Legislative Council Secretariat (2012); Loh and Civic Exchange (2006)]



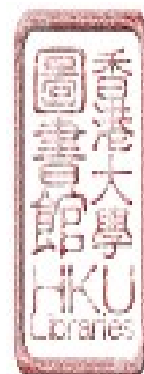
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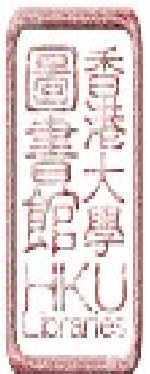


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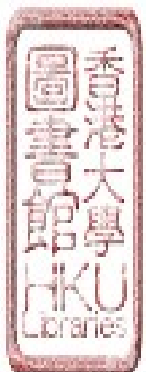
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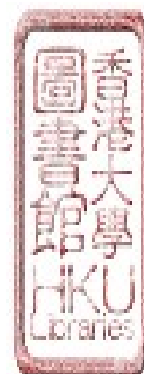
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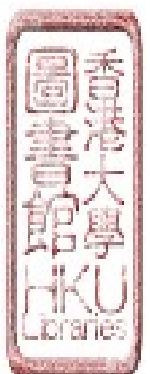
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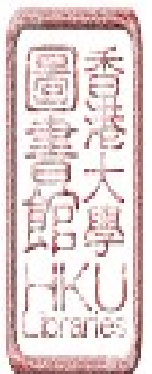
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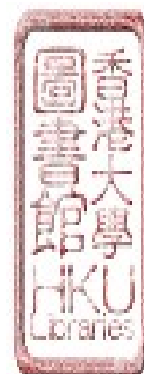


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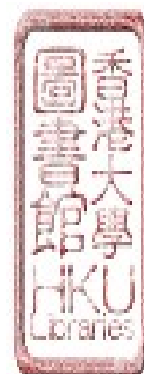


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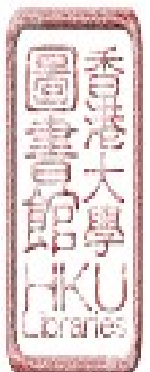
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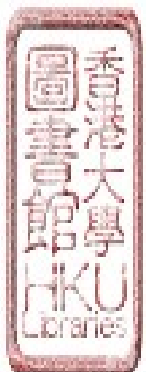
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