

Final Report on
Professional Qualifications
and Policy regarding Science and Technology

(passed by the Executive Committee on 12 June 1987)

Subgroup on
Professional Qualifications and
Policy regarding Science and Technology

Special Group on
Culture, Education, Technology, and Religion

Foreword

The Subgroup on Professional Qualifications and Policy on Science and Technology has held eleven meetings up to May. In-depth discussions were held on the topics of professional practice, the accrediting of qualifications and the policy on the development of science and technology.

As regards professional qualifications, the subgroup has prepared the paper "professional practice in Hong Kong" to give an introduction to the functioning of professions in Hong Kong today. This is written with the purpose of enabling the Drafting Committee members to have an overview of the situation, and a thorough understanding of important concepts such as professional qualifications and qualifications for professional practice. In order to have a more complete representation of opinions, in addition to the discussion among members, the Subgroup has sent letters to various professional organisations and consulted their opinions on the accrediting of professional qualifications after 1997. After analysis of their replies and more discussions, the Subgroup reached a few points of consensus in September last year. After that, the Subgroup extracted the essence of the discussions (refer to Summaries of Meetings for details of the discussions) and referred to the Joint Declaration to lay down a number of proposed provisions under the Basic Law for the reference of the Drafting Committee members.

When analysing opinions in written submissions from outside the Consultative Committee for the Basic Law, members came to the conclusion that the background information of the bodies was crucial in gaining an understanding of the submitted opinions. In order to have a better understanding of the nature and status of the bodies, the Subgroup requested their background information -- e.g. founding date, membership qualifications, whether recognised by the government or not etc. Members analysed and discussed the background information and produced two reports -- "Analysis of the Backgrounds of Senders of Written Submissions in the Medical Field", and "Analysis of the Backgrounds of the Senders of Written Submissions" (Appendices I and II) -- to assist the Drafting Committee members in understanding the opinions in the written submissions.

As regards the policy on science and technology, members have prepared three papers (Appendices III, IV, and V) for the Subgroup's discussion. Referring to these papers and the stipulations in the Sino-British Joint Declaration, the Subgroup has drafted some proposed provisions of the Basic Law to be submitted together with the rest of the report to the Special Group on Culture, Education, Science, and Technology for submission to the Executive Committee which will forward the report to the Drafting Committee members for reference.

Contents of this report include :

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A. Professional Qualifications

Professional practice in Hong Kong

Professionals have always played a very important role in the development of the place and the working of the Government in Hong Kong. They have made significant contribution towards the successful history of Hong Kong with their professional knowledge and experience.

Nevertheless, in the course of participating in the work of the Basic Law Consultative Committee, either when meeting technical people who were originally trained in China but are now residing in Hong Kong, reading written submissions by these people from China, or during discussions with members of the Basic Law Drafting Committee from China, it becomes apparent that the term "professional" carries a different meaning in China. Professional practice in China also differs significantly from what Hong Kong and Western countries are familiar with.

Much anxiety will be aroused if the system as practised in China is to be introduced into Hong Kong. Especially in view of the increasing number of professionals of various disciplines emigrating to other countries in recent years, it is imperative that the problem is resolved expeditiously and that the Basic Law incorporates appropriate clauses to give them adequate assurances of status, respect and employment opportunities. If not, this important pillar of the community will not be able to stand up to this immense impact and test of confidence crisis.

In order to assist members of the Basic Law Drafting Committee in China to appreciate the Hong Kong conditions, the following key issues are given. It is hoped that this will further mutual understanding and lead to consensus eventually.

Definition

Basically, it is impossible to give an explicit definition of "professionals". In mainland China, the word is taken literally to mean somebody who is engaged in an occupation after some special training. In fact, such confusion resulting from loose usage of the term can also be encountered in Hong Kong. Actually, professionals can be divided into two categories: those who are subjected to professional liabilities and those who are not. This paper focuses on the first category which includes those who practise professions such as law, architecture, engineering,

medicine, accounting, surveying, town planning, and dentistry. They, after receiving tertiary education for the relevant discipline, have to complete a training programme under proper supervision. Having acquired actual working experience, they then have to pass professional examinations prior to becoming professionally qualified. In their careers, they still have to receive continuing education or in-service training.

Professional qualifications

The professionals mentioned above must acquire corporate membership of the relevant professional bodies before they are professionally qualified. These professional bodies, in order to maintain international standards, stipulate very strict membership requirements. Applicants must have completed tertiary education in the appropriate disciplines at educational institutions recognised by the professional bodies concerned and received the required professional training in accordance with an approved training programme and acquired working experience under supervision of qualified people. They will then be allowed to attend professional assessment in the form of interviews or examinations. Only after being successful at the professional assessment will they be admitted as corporate members. These professional bodies maintain frequent and regular exchanges with similar international professional bodies for the sake of maintaining international standards and achieving international recognition. They require members to abide strictly by rules of conduct and exercise disciplinary actions when necessary.

Code of practice

To ensure that professional ethics are observed by members in their practice, professional institutes have set down stringent codes of practice. Should there be any contravention, the institutes have the right to penalise the members concerned in accordance with their constitutions, including depriving such members of their memberships.

Licence to practise

For the protection of public health and the assurance of public good and safety, many of the professionals who have acquired recognised professional qualifications as mentioned above have to be registered under the relevant ordinances. Before their names are included in the register, they must have acquired minimum working experience in Hong Kong, and satisfied the registration panel in interviews. Unless they are registered and have obtained the required licences, they are only allowed to practise at the technician level. Hence, apart from the professional conduct they have to follow, they also have to abide by the law which will penalise any malpractice.

Academic qualifications

Because of requirements of professional bodies and statutory requirements in connection with licence to practise and international recognition, the professionals mentioned above must initially complete their academic study at recognised tertiary educational institutions in the relevant subjects to comply with the academic achievements as necessary.

Expectations of the community

Professionals have the responsibilities of ensuring public interests in their practice. On the other hand, because they have been trained with considerable resources of society, their working environment and employment opportunities must be safeguarded. It will be a tremendous loss to our society if they leave our society and are replaced by people from outside who possess uncertain professional abilities and are not familiar with the local conditions. This basic principle is adopted by Western countries and even countries in South East Asia and is accepted without question.

Professional independence

In addition to the laws laid down by the legislature, the professionals practise according to the rules laid down by the professional bodies and professional ethics, and are not affected by political or other factors. This professional independence must be maintained after 1997.

Differences in professional practice in China and in Hong Kong

For years, there have been increasing exchanges in the form of visits and seminars between the professionals in Hong Kong and their counterparts in China. Mutual respect has long been established. At the same time, they also appreciate the following basic differences in their practice.

- a) In China, there is no comprehensive system to ensure consistent standards of the professionals and an accrediting system.
- b) In China, there is no legislation governing professional practice.

Conclusion

- a) The Sino-British Joint Declaration stipulates the adoption of "one country, two systems". The professional practice in Hong Kong post-1997 will not have to follow the format of that in China. The fact that China resumes sovereignty in 1997 should not affect this arrangement.

- b) The government of the future Hong Kong Special Administrative Region will have complete autonomy to retain the original system of recognition of professional bodies and licence to practise.
- c) The recognised professional bodies will be autonomous in professional assessment, application of rules of conduct, and continuous and strengthened contact with international professional bodies to ensure international standards and recognition and the maintenance of independence by the professionals.
- d) Where the work of the professionals affects public interests, there will be legislation stipulating professional qualifications and requirements.
- e) To ensure international recognition, professional bodies will be autonomous in the recognition of academic qualifications although they should assess non-Hong Kong qualifications on the same basis.

II. Points of consensus on professional qualifications after 1997:

In addition to the discussion among members, the Subgroup has sent letters to various professional organisations and consulted their opinions on the accrediting of professional qualifications after 1997. Upon receipt of their replies (appended to the report), the Subgroup members analysed their opinions and carried out more thorough discussions. Subsequently, the results of the discussions were summarised into four points of consensus as follows:

- 1) Professional institutes have the right to determine the qualifications and codes of practice of their respective professions.
- 2) Professional qualifications and professional bodies recognised by the Government before 1997 should retain their status.
- 3) The qualifications for professional practice in the SAR shall be determined by the SAR Government to ensure that the professions will enjoy development and that professional standards will be maintained. The SAR Government shall also examine and approve the standards and codes of practice of new professions.
- 4) In accrediting new professional qualifications, the SAR Government shall consult the professional bodies previously recognised by the present government.

II Basic Law provisions concerning professional qualifications (proposed):

Referring to the points of concensus and the Sino-British Joint Declaration, members drafted the following proposed provisions:

1. Professional qualifications and professional bodies recognised by the Hong Kong Government before 1 July 1997 should retain their status.
2. Professional bodies shall on their own determine professional qualifications and standards of their respective professionals.
3. Professional bodies shall on their own determine and implement their codes of practice.
4. The HKSAR Government shall on its own determine the qualifications for professional practice in accordance with the professional qualifications as set down by the relevant professional bodies.
5. In accrediting new professional qualifications, the HKSAR Government shall base its decisions on the opinions of the professional bodies previously recognised by the Hong Kong Government.
6. Professionals shall have freedom and independence in their practice. Apart from abiding by the law, the professionals shall practise according to the rules laid down by the professional bodies and professional ethics, and shall not be affected by political or other factors.
7. The relationship between the HKSAR professional bodies and professional organisations in other parts of China shall be based on the principles of non-subordination, non-intervention, and mutual respect. The HKSAR may also establish relations with these organisations in China in other appropriate ways.
8. The professional bodies may on their own maintain and develop professional relations and conclude and implement relevant agreements with foreign professional organisations in order to maintain international professional standards.

V Written Submissions

Most of the opinions concerning the accrediting of professional qualifications after 1997 expressed in the written submissions from outside the CCBL were in accordance with those of the Subgroup. The main point of the opinions is that the HKSAR Government shall on its own determine the qualifications for professional practice.

However, there were also some written submissions which went contrary to the above mentioned suggestions. They were of the opinion that all the professional qualifications recognised by the Chinese Government should automatically be recognised by the HKSAR Government. Members of the Subgroup were, in unison, against this view. They were of the opinion that it violated the principle of "one country two systems," and that it confused the issue of sovereignty with that of professionalism.

Members of the Subgroup maintained that when discussing the written submissions from outside the CCBL, they should also have a clear knowledge of the status -- whether the body has leading and representative status in the relevant profession or not -- and other background information of the senders of these written submissions. The Subgroup therefore wrote to the bodies requesting that they should supply background information -- e.g. founding date, membership qualifications, whether recognised by the government or not etc. Having secured the information, members then proceeded to analyse and discuss it and as a result produced two papers -- "Analysis of Backgrounds of the Senders of Written Submissions in the Medical Field" and "Analysis of the Backgrounds of the Senders of Written Submissions" (Appendix 1, 2) -- to assist the Drafting Committee members in understanding the opinions in the written submission. The original texts of the written submissions are appended in this report.

B. Policy on Science and Technology

I. Proposals of members of the Subgroup concerning science and technology

Regarding the policy on science and technology, members' opinions have already been relatively in unison from the start of the discussions. A few members then produced papers on topics such as: policy on developing science and technology, and the transfer of high technology (Appendices 3, 4 and 5) to be discussed by the Subgroup. The Subgroup, referring to these papers and the stipulations in the Joint Declaration, has drafted some suggested provisions in the Basic Law for the consideration of Drafting Committee members.

II. Basic Law provisions concerning the policy on science and technology (proposed)

1. The HKSAR Government shall support and encourage the development of science and technology, and adopt a positive, flexible and effective policy. The policy shall promote the local development and growth of science and technology through various measures such as education, training and support.
2. Since the HKSAR shall be a separate customs territory, it may participate in agreements concerning science and technology and shall have the right to control the import and transfer of science and technology (see Appendix III, IV, and V for issues of special concern).
3. The HKSAR Government shall respect and protect the autonomy of local science and technology institutes and organisations, and allow them to maintain and develop, on their own, relations and conclude and implement agreements with states, regions and relevant international organisations.
4. The HKSAR may maintain relations with unofficial or official science and technology organisations in other parts of China under the principles of non-subordination, non-interference and mutual respect. The HKSAR may also establish relations with these organisations in China in other appropriate ways.
5. The HKSAR Government shall protect all kinds of patents and the right to set up an independent registration system.
6. The HKSAR has the right to decide to adopt appropriate standards and specifications to meet the needs of the HKSAR.

* If there is any discrepancy between the Chinese and English versions, the Chinese version shall prevail.

Analysis of the Backgrounds of
 Senders of Written Submissions in the Medical Field

In the last few months many groups of "professional" organisations have written to the CCBL to express their views on the future practice of professions after 1997. Many of these views may be conflicting. This paper attempts to analyse the "representativeness" of these groups in society for the reference of the DCBL when they peruse these opinions.

In the analysis of the significance and representativeness of a group of people/association, a few points must be taken into consideration:

1. The legal status of that body and the members forming the body. In other words, are they recognised by the administration as what they claim to represent?
2. Their actual representativeness in relation to the community of Hong Kong and not amongst their own group.
3. Are there any professional liabilities and what is their responsibility to the public?

The medical profession deals with human lives and it is imperative for the health benefit of the community that their practice must be controlled. Although their professional qualifications may be acknowledged, registration and the right to practise should only be allowed with care after satisfying stringent criteria decided by the administration.

In considering the representativeness of these bodies/organisations, therefore, we should not only be considering the number of people they represent, nor their professional qualifications, but must also consider their legal status in the community and their responsibility to society.

The list of organisations can therefore be divided into:

For the Medical

Hong Kong Medical Association should be the representative body as only registrable doctors are allowed to be members.

The other organisations represent a group of professionally qualified doctors who do not have the status and licence to practise and therefore are not responsible to the public nor are they bound by professional liabilities.

For the Dental Surgeons

The Hong Kong Dental Association should be the representative body for the same reason.

For the Paramedicals

The Hong Kong Nursing Association comprises only nurses registrable in Hong Kong and has obtained the legal status from the administration.

The other nursing bodies consists of registrable and unregistrable nurses.

There is as yet no registration ordinance for physiotherapists nor occupational therapists although it is in the process of formulation. In the absence of such and since both the Hong Kong Association of Occupational Therapists and the Physiotherapists Association of the Hong Kong Chinese Civil Servants Association consist of members qualified and registrable with equivalent organisations overseas, their opinions should be considered relevant and representative.

ANALYSIS OF THE BACKGROUNDS OF THE SENDERS OF WRITTEN SUBMISSIONS

<u>NAME</u>	<u>RELEVANT DATA</u>	<u>WHETHER OR NOT ITS PROFESSIONAL PRACTICE AND PROFESSIONAL QUALIFICATION IS REGULATED UNDER THE PROVISIONS LAID DOWN BY THE HONG KONG GOVERNMENT</u>	<u>PROFESSIONAL STATUS *</u>
1. Joint Committee of Alumni of Non-Commonwealth Medical Graduates; China Medical Graduates' Association and Hong Kong Association of Chinese Medical Workers Ltd	- Unknown - About 1700 members.	No	- No leading or representative status in the field.
2. The Hong Kong Medical Association	- Other than a small number of members who are involved in medical education, all members are practising doctors. - About 3145 members.	Members must observe Hong Kong Medical Registration Ordinance and principles laid down in the Constitution of the Association. All practising doctors in Hong Kong should register in accordance with the Ordinance.	- Having leading and representative status in the field.
3. Hong Kong Medical Technology Association	- members are engaged in medical laboratory work. - About 300 members.	At present there is no ordinance concerning the management of medical laboratory technicians.	- Having representative status in the field.

4. Hong Kong Association of Occupational Therapists	- Members are engaged in occupational therapy. - About 167 members. (student members are not included)	Hong Kong has not laid down any ordinance for accrediting the qualification of therapists or principle for exercising control.	- Having representative status in the field.
5. Hospital & Clinic Nurses Association	- Members are nurses or nursing staff working in hospitals, clinics and medical establishments. - About 410 members.	No	- Having no representative or leading status in the field.
6. Sin Hua Herbalists' & Herb Dealers' Promotion Society Ltd	- Members are practising Chinese herbalist doctors. - About 250 members.	No	- One of the several bodies of Chinese herbalist doctors.
7. Joint Conference of Medical Professional Bodies on the Basic Law	- Membership includes 17 professional bodies or trade unions in the medical field.	Apart from the registered nurses, there is no law governing the qualification of other members.	- Formed by more than ten medical bodies, concerned for the drafting of the Basic Law. Itself is not a professional body.
8. Physiotherapy Branch, Hong Kong Chinese Civil Servants' Association	- Members are in the field of physiotherapy. - About 208 members.	There is still no law governing the qualification of physiotherapists.	- Having representative status in the field.
9. Ching Wah Chinese Medical Institute	- Students are people interested in Chinese medicine.	No	- One of the Chinese medicine groups.
10. Hong Kong Chinese Medicine Research Institute	- Students are people interested in Chinese medicine.	No	- One of the Chinese medicine groups.



11. Hong Kong Nurses Association	<ul style="list-style-type: none"> - Members are in the field of nursing and midwifery. - About 3260 members. (student members are not included) 	The membership qualification is stipulated by the Hong Kong Nursing Management Society and Hong Kong Obstetrical Nursing Management Committee in accordance with the existing laws.	- Having leading and representative status in the field.
12. Hong Kong Society of Accountants	<ul style="list-style-type: none"> - Most of the members are in the field of auditing. - About 3274 members, of whom 874 are qualified for practice. 	The membership qualification is stipulated by the Board of Directors of the Society in accordance with the Professional Accountants Ordinance.	<ul style="list-style-type: none"> - The Society is the only body which has the right to issue practice licences to accountants and to set down the code of practice. - Having leading and representative status in the field.
13. Hong Kong Institution of Engineers	<ul style="list-style-type: none"> - Members are engaged in the research of engineering technology and in professional practice. - About 6000 members. 	Some of the members (e.g. those related to the Buildings Ordinance and Electricity Supply Ordinance) are subject to statutory requirements.	- Having leading and representative status in the field of engineering.
14. Institute of Electrical and Electronics Incorporated Engineers	<ul style="list-style-type: none"> - Members are engaged in electronics and electrical engineering. - About 370 Hong Kong members. 	Its professional qualification is not yet recognised by the government.	- No leading status in the field.
15. Hong Kong Social Workers' Association	<ul style="list-style-type: none"> - Members are engaged in social work. - About 1000 members. - 4 types of members: basic members, student members, patron members and life members. 	The professional qualification of social workers accredited by the Hong Kong Government is the diploma of a recognised university or institution.	- Having representative and leading status in the field.



16. Hong Kong Dental Association	<ul style="list-style-type: none"> - Members are Hong Kong registered dentists. - About 800 members. 	<p>The qualification of all dentists practising in Hong Kong is accredited by the Dental Council of the Hong Kong Government. Apart from student members, all members are registered dentists.</p>	<ul style="list-style-type: none"> - Having leading and representative status in the field of dentistry.
17. Hong Kong Institute of Architects	<ul style="list-style-type: none"> - Members are engaged in architectural design or implementation of the Buildings Ordinance. - About 800 members. 	<p>Members are qualified to be engaged in architectural design and construction projects in accordance with the Buildings Ordinance, and to implement the Ordinance.</p>	<ul style="list-style-type: none"> - Having leading and representative status in the field of dentistry.
18. Hong Kong Science and Technology Promotion Association	<ul style="list-style-type: none"> - Members are professional/academic/industrial personnel of different trades. 	<p>Members are those with long standing professional qualifications or those having publicly recognised achievements in the academic/industrial field.</p>	<ul style="list-style-type: none"> - Not a professional body.
19. The Hong Kong Institute of Planners	<ul style="list-style-type: none"> - Members are engaged in town planning or research in town planning. - About 122 members. 	<p>Despite the existence of the Town Planning Ordinance there is no provision on the qualification of town planners.</p>	<ul style="list-style-type: none"> - Having leading and representative status in the field.
20. The Hong Kong Institute of Surveyors	<ul style="list-style-type: none"> - Members are engaged in various kinds of surveying work. - About 700 members. 	<p>Some of the members are qualified to do the work stipulated in the Buildings Ordinance.</p>	<ul style="list-style-type: none"> - Having leading and representative status in the field.



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| 21. Hong Kong Bar Association | <ul style="list-style-type: none"> - Members are mainly engaged in litigation, prosecution and defence. - About 400 members. | <p>Apart from a small number of judges who are solicitors, all judges are barristers. For district courts or higher courts, only barristers have the right to represent clients in a court of law.</p> | <ul style="list-style-type: none"> - Other persons in the field are not allowed to practise. |
| 22. Hong Kong Computer Society | <ul style="list-style-type: none"> - Members are engaged in computer work. - About 2000 members. | <p>The Government has no legislation on the qualifications of persons involved in computer work.</p> | <ul style="list-style-type: none"> - Having leading and representative status in the field. |
| 23. Joint Conference of Hong Kong Education Bodies on the Basic Law | <ul style="list-style-type: none"> - Membership includes 42 major Hong Kong education bodies. The individual members have leading and representative status in the field. | <p>Registered teachers are regulated under the provisions laid down by the Government</p> | <ul style="list-style-type: none"> - Formed by 42 education bodies concerned for the drafting of the Basic Law. Itself is not a professional body. |

* Note : Leading status -- Both society and the government respect the status of that body and its operation affects the entire profession.

Representative status -- Members of that body have the highest qualifications in the profession.



專業資格、科技政策

最後報告

(1987年6月12日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會

文化教育科技宗教專責小組

專業資格、科技政策

前言

「專業資格、科技政策」分組迄五月共開會十一次，深入討論了有關專業的操作和資格的釐定及發展科學、技術的政策。

在專業方面，分組撰有「香港專業的操作」一文以介紹香港現行的專業運作情況，好讓起草委員對現時情況有一全觀，並對有關的重點例如專業資格與執業資格有明確的理解。為求得到較全面的意見，分組除在委員之間進行討論外，更曾去函專業團體徵詢對九七年後專業資格審訂的意見，回函共二十多封。經對來函意見加以分析，及再經輾轉討論後，分組於去年九月達至數項共識。其後，分組把多次會議討論（詳情見本報告附件二：各次會議紀要）的精髓抽出，並根據共識及《中英聯合聲明》寫成數項基本法條文的提議，以供起草委員會參考。

另外，在研究來函意見時，委員認為來函團體的背景資料對於其意見的理解實有莫大的幫助；為求對來函團體的性質及在行業內的代表性有進一步的理解，分組要求來函團體提供背景資料——例如創會日期、入會資格、是否受政府承認等。分組委員對所得的背景資料加以分析、研究，作出報告，寫成「來函團體（醫務界）的背景分析」及「來函團體背景分析」二文（附件一之1, 2），以協助起草委員理解來函中的意見。

在科學、技術政策方面，分組委員撰有三篇文章（見附件一之3, 4, 5）以供分組討論。分組最後依據這些文章的建議及《中英聯合聲明》的內容歸納成數項基本法條文的建議，連同整個報告，經專責小組通過，遞交執行委員會，供起草委員會參考。

本報告內容包括：

甲、專業方面：

- 一、「香港專業的操作」
- 二、共識
- 三、基本法有關專業的條文（建議）
- 四、來函意見

乙、科技方面：

- 一、委員有關科技的建議
- 二、基本法有關科技政策條文（建議）

丙、附件

一、委員撰文

- (1) 「來函團體（醫務界）的背景分析」
- (2) 「來函團體背景分析」
- (3) 「怎樣寫好基本法的科學技術政策」
- (4) 「科技政策」
- (5) 「關於九七年後香港特別行政區高科技轉移問題的意見」

二、各次會議紀要

三、外界來函

- (1) 對九七年後專業資格審訂的意見
- (2) 來函團體背景資格

甲、專業

一、「香港專業的操作」

專業人士在香港社會和政府的運作上一向擔當一個非常重要的角色，一直以來，他們提供的專業知識和專業經驗，在香港的成功史上作出過莫大的貢獻。

可是，在基本法諮詢委員會的工作過程中，從接見國內來港工作的人士與及他們書面提出的意見，以至與國內來港的起草委員會委員的交流會中，香港的專業人士了解到國內專業人士的操作與及對專業的定義，都與香港和西方國家所熟識和執行的迥然不同，因此，如把國內制度強而引用於香港，必然引起極大的憂慮，尤其是在近年香港專業人士移民外國數字的遞增，若不把問題的徵結儘快解決，好讓在未來的基本法內清楚寫出有關專業操作和專業人士的資格種種適當條款，則這重要的社會支柱，將受到極大的沖擊，甚至會因而倒下來。

為了使國內草委能進一步了解香港在這方面的情況，以祈將來可達到不可或缺的共識，以下是把有關的幾個要點作扼要的提出。

(一) 定義

基本上，要作一個嚴格的「專業人士」定義並不容易。在國內，似乎凡經過一些專業訓練而從事專門職業的人士都統稱為專業人士，而部份香港人士亦把「專業人士」作較廣泛地採用，因而間中亦會引起不必要的混淆。實際上，專業人士有分開須要承擔專業上的法律責任與不須要承擔專業上的法律責任兩類，這文章集中討論前者，他們包括從事法律、建築、工程、醫學、會計、測量、都市規劃、牙醫等行業的人士，專業上的法律責任是指在專業操作上對其他人士應負的法律責任，這些人士包括客戶、其他有關的專業人士及第三者。他們要經過專上的專業教育，繼而接受嚴格監督的專業訓練，取得實際工作經驗後，經過專業考試及格才成為合資格的專業人士，之後還要不斷接受在職訓練。

(二) 專業資格

以上提及的專業人士如要取得被承認的專業資格，必須取得有關專業學會的合格會員資格。這類專業學會，為了保持國際水準，都訂定非常嚴格的會員資格，申請人必須已在被學會承認的專上學府取得應有的學歷，再經過規定的訓練期，滿足在合資格會員監督下的訓練程序和吸取實際經驗，方可參加學會的專業考試，合格後才可成為正式會員。同時各學會都經常與香港以外的同類學會保持聯系，不時作學術上的交流，以達到互相承認會員資格的目的。

(三) 專業守則

為保證會員在專業操作上遵守專業道德，各學會均制訂有嚴謹的守則。會員如有違背，學會有權按章處分會員，包括取消其會員資格。

(四) 執業資格

為了保障市民的健康及公眾的利益和安全，許多以上提及的已取得被承認的專業資格的專業人士都要經過政府註冊方可作專業操作。註冊前，首先要在香港已工作一段期間，以取得最低限度的工作經驗，然後經過面試合格，才可被正式註冊執業。從事這些行業的人士如未經註冊，皆不可以專業人士的身份操作，只可執行技術師或技術員的工作。一經註冊，除了學會方面可以監督會員應遵守的職業道德，法律上亦可對犯規的專業人士作法例指定的制裁。

(五) 專上教育

正因為以上的專業要求、執業資格的申請和國際水準及承認的保持，以上提及的專業人士必須首先在被承認的專上學府接受專業教育及獲得畢業文憑，以證明已達到學術上的基本要求。

(六) 社會的要求

除了上面提到的專業人士對市民的健康和公眾的安全及利益所應負的責任外，他們是經社會投下大量資源才訓練出來的，當然他們的工作環境和保障亦必須得到照顧，所以他們的流失着實是社會一個重大的損失，而以不熟識本地環境的人士填補他們的空缺，亦將無濟於事。這個基本原則，在西方，甚至東南亞國家亦一直採用，而從不受質疑。

(七) 專業人士操作的獨立性

除依照本地法律外，專業人士都本着專業學會規則和專業道德精神去操作，不受政治或任何其他因素影響。九七年以後，他們必須繼續保持他專業操作上的獨立性。

(八) 國內不同的操作方式

香港的專業學會和專業人士，一直都與國內執行專門職業人士保持緊密的聯系，彼此尊重。但他們也了解到國內的操作方式，在基本上存在以下兩個不同的地方：

(甲) 國內沒有一套完善而全國劃一的專業水平和審核制度。

(乙) 國內沒有法例規定專業的操作。

(九) 結論

(甲) 《中英聯合聲明》確定了「一國兩制」的構思，將香港的專業操作不須要依照國內的操作方式，故不應因主權回歸中國而有所改變。

(乙) 將來香港特別行政區政府有權繼續維持原有的專業學會認可和執業註冊制度。

(丙) 被認可的專業學會可以獨立地釐訂專業資格、審核會員的職業道德和繼續及增強聯系香港以外的學會以保持專業上的國際水平；及維持專業人士操作的獨立性。

(丁) 專業的工作如與社會利益有關時必須有法例規定執業資格和專業要求。

(戊) 為達到國際的承認，學會有決定承認專上學府所發出的文憑的自主權，但要對香港以外的學府的評審給予同一處理程序。

二、 委員對九七年後專業方面的共識

本分組除在委員之間進行討論外，亦曾去函各專業團體徵詢對九七年後專業資格審訂的意見，收到回函後(回函原文見附件)，分組委員便對來函意見進行分析，討論亦繼而深化。其後，委員把多次討論的結果歸納，達至四項共識，如下：

1. 一切專業學會有權制訂其專業資格及守則。
2. 在九七年前已前被政府承認的專業資格及專業團體均可保留。
3. 特區內專業人士的執業資格，將由特區政府界定，使專業得以發展，水平得以確定；並對新的專業的執業水平及守則予以審核。
4. 在檢訂新的專業的資格時，特區政府須諮詢原有已被目前政府承認的的專業團體。

三、基本法有關專業的條文(建議)：

委員根據各點共識與及《中英聯合聲明》寫成以下條文：

1. 在一九九七年七月一日以前已被香港政府承認的專業及專業團體繼續保留。
2. 專業團體自行制訂專業資格，並確定有關的專業水平。
3. 專業團體自行制訂及執行專業守則。
4. 香港特別行政區政府須根據有關專業團體所訂定的專業資格自行制訂專業人士的執業資格。
5. 香港特別行政區政府在檢定新的專業的資格時，須根據原有已被香港政府承認的有關專業團體的意見。
6. 專業人士須保持專業操作上的自由性及獨立性。專業人士在操作上除依照法律外，還應本着專業學會規則和專業道德精神去操作，不受政治或任何其他因素影響。
7. 香港特別行政區的專業團體與中國內地的專業組織可以採取互不隸屬，互不干涉和互相尊重的原則保持關係，也可以採取其他適當方式與中國內地的專業組織建立關係。
8. 各專業團體可自行與國外之專業組織保持和發展專業上的關係，並簽訂和履行有關協定，以保持專業上的國際水平。

四、來函意見

大部份來函團體對九七年後專業資格的審訂的意見均與分組會吻合。重點來說，即由香港特別行政區政府自行訂定專業人士的執業資格。

但亦有部份來函團體意見與上述的提議相反，即主張所有中國政府承認的專業資格都自動得到香港特別行政區的承認。分組委員一致反對此項意見；認為其有違一國兩制的精神，並把主權與專業問題混淆。

委員認為在研究來函團體意見時，亦應瞭解其在有關行業的領導性、代表性及其他背景資料，故曾要求來函團體提供背景資料——例如創會日期、入會資格、是否受政府承認等。隨後委員對所得的背景資料加以分析、研究，作出報告，寫成「來函團體(醫務界)的背景分析」及「來函團體背景分析」二文(見附件一、二)以協助起草委員理解來函中的意見。來函原文亦附錄於本報告後。

乙、科學、技術政策

一、分組委員有關科技的建議

有關九七年後科技政策方面，委員的意見從討論之初便已頗為統一。後由數位委員撰文討論科技發展的政策及高科技轉移等的問題(見附件三、四、五)交由分組討論。分組遂根據這些文章加上《中英聯合聲明》的內容寫成有關科技政策的條文供起草委員會參考。

二、基本法有關科學、技術政策的條文(建議)

1. 香港特別行政區政府扶持和鼓勵科學、技術的發展並採取積極、靈活和有效的政策。該政策應透過教育、訓練及扶助等不同措施，以促進本地科技發展與增長。
2. 香港特別行政區既為單獨的關稅地區，將可參與有關科技的協議及有權管制科技的引進及轉移。(特別關注問題見附件一3, 4, 5)。
3. 香港特別行政區政府尊重和保障本地科學、技術學會及組織的自主性，並可允許其單獨地同世界各國、各地區及有關國際組織保持和發展關係，並簽訂和履行有關協定。
4. 香港特別行政區與中國內地的民間或政府的科學與技術機構或組織可以採取互不隸屬、互不干涉和互相尊重的原則保持關係，也可以採取其他適當的方式與中國內地的科學與技術機構或組織建立關係。
5. 香港特別行政區政府保障各類專利權及有權設立獨立的註冊系統。
6. 香港特別行政區有權決定各類標準和規格以適合香港特別行政區的需要。

附 件 一

委員撰文

「來函團體 (醫務界) 的背景分析」

過去數月，多個「專業」團體曾就一九九七年後其專業的運作向基本法諮詢委員會發表書面意見。這些意見可能有衝突的地方。本文試分析這些團體的「代表性」，供基本法起草委員會在審閱意見時參考。

分析某一團體或組織的重要性和代表性時，必須考慮下列各點：

- (1) 該組織及其成員的法定地位，即他們所宣稱的代表性是否為政府承認？
- (2) 他們在香港社會中的實際代表性，而不是在其所屬界別中的代表性。
- (3) 他們是否要盡專業上的法律責任？對公眾要承擔什麼責任？

醫務人員的職責人命攸關，為了公眾的健康利益著想，管制他們的執業是絕對必要的。醫務人員的專業資格雖然可能已被認可，但他們必須符合政府所訂的嚴格標準，才能獲准註冊和執業。我們考慮這些組織或團體的代表性時，要顧及的不單是它們所代表的人數或其專業資格，更必須顧及他們在社會的法定地位和對社會的責任。

我們可以將各團體分類如下：

代表醫務人員

香港醫學會祇收可獲註冊的醫生為會員，因此應列為代表團體。

其他的團體則代表或有專業資格但無執業資格及牌照的醫生，他們並不向公眾負責，亦不受專業上的法律責任約束。

代表牙科醫生

基於同樣理由，香港牙醫學會亦應列為代表團體。

代表醫務助理人員

香港護士學會的成員均為香港可獲註冊的護士，該會已向政府取得法定地位。

其他護士團體的成員為有註冊及非註冊資格的護士。

物理治療員及職業治療員的註冊條例目前仍在草擬階段。香港職業治療師協會和香港政府華員會物理治療分會的成員均具專業資格並可在海外同類組織註冊，所以，雖然香港暫時沒有這方面的註冊法例，該等學會的意見亦應被視為中肯而具代表性的。

「來函團體背景分析」

名稱	運作簡介	專業操作及專業資格是 否由港府制定之條例規範	專業地位※
1. 香港非英聯邦醫科畢業生協會 香港中國醫科畢業生協會 香港中國醫務工作者學 聯合委員會	不詳 會員約1700人	否	在有關專業界別內，無 領導性亦無代表性地位。
2. 香港醫學會	會員除少類肩負醫 學學科教育工作， 均為執業西醫 會員約3145人	會員須遵守香港醫生註 冊條例及會章所載原則。 所有在港執業西醫須按 上述條例註冊。	在有關專業界別內，有 領導性及代表性地位。
3. 香港醫事技術學會	會員從事醫療化驗 工作 會員約300人	在目前本港仍未有制定 任何醫療化驗人員管理 條例	在有關專業界別內，有 代表性。
4. 香港職業治療師協會	從事職業治療工作 會員：約167人 (學生會員除外)	本港仍未制定鑑定職業 治療師資格條例及管制 原則	在有關專業界別內，有 代表性。
5. 醫院診所護士協會	會員在醫院、診所 及醫療機構為護士 或護理人員 會員約410人	否	無領導性亦無代表性
6. 新中華中醫中藥促進會 有限公司	會員為執業中醫師 約250人	否	為數個中醫團體之一
7. 醫務界專業團體基本法 聯席會議	成員包括十七個從 事醫務工作者之專 業團體或工會	除註冊護士外，其他成 員資格無法律規定	為十多個醫務團體組成 關注基本法的草擬的組 織，本身並非專業團體。

8. 香港政府華員會物理治療分會	從事物理治療工作 會員約208人	本港尚無法律規定物理治療工作者的資格	在有關專業界別內有代表性地位
9. 薈華中醫學院	學員為對中國醫術 有研究興趣者	否	中醫團體之一
10. 香港中國醫學研究所	學員為對中國醫術 有研究興趣者	否	中醫團體之一
11. 香港護士會	會員從事護理及助產工作 會員約3260人 (學生會員除外)	會員資格由香港護士管理委員會及香港產科護士管理委員會按照既定法例訂定	在有關專業界別內有代表性及領導性地位
12. 香港會計師公會	大部份成員從事檢定核數工作 會員約3274人, 有執業資格者874人	會員資格由公會之理事會按照港府制定之專業會計師法例而訂定	香港會計師公會乃唯一有權發出會計師執業執照及定出有關執業守則之團體 在有關專業界別內有領導性及代表性地位
13. 香港工程師學會	會員從事各類工程技術之科研及專業工作 會員約6000人	部份成員工作 (如有關建築條例及電力(供應)條例) 須符合法定規範	在工程專業界別內有領導性及代表性地位
14. 英國電機及電子立案工程師學會	會員從事電子及電機工程工作 會員在香港人數約370人	專業資格未受政府承認	在有關專業界別內無領導性地位
15. 香港社會工作人員協會	會員從事社會工作 會員約一千人分四類: 基本會員、學生會員、贊助會員及永久會員	香港政府鑑定社會工作者的專業資格是認可大學或學院之文憑	在有關專業界別內有代表性及領導性地位
16. 香港牙醫學會	會員為在港註冊之牙醫	在港執業之牙醫由香港政府牙醫管理委員會負	在牙醫專業界別內有領導性及代表性地位

	會員人數為 800人	責鑑定其專業資格而除學生會員外，香港牙醫學會員均為註冊牙醫	
17. 香港建築師學會	會員多從事建築設計或建築條例執行工作 會員約800人	會員有資格從事按照香港建築條例進行的建築設計建築工程或條例執行工作	在有關專業界別內有領導性及代表性地位
18. 香港科技協進會	成員包括不同行業的專業／學術／工業界人事	有資深的專業資格或在學術／工業界有被公認的成就者	不是專業團體
19. 香港都市規劃師學會	會員從事都市規劃或其研究工作 會員約122人	香港雖有城市規劃條例但從事此類工作者之資格則無法律規定	在有關專業界別內有領導性及代表性地位
20. 香港測量師學會	會員從事有關各種測量工作 會員約700人	部份會員有資格進行按香港建築條例規定之工作	在有關專業界別內有領導性及代表性地位
21. 香港大律師公會	會員主要從事法律審判，控訴及辯護工作 會員約400人	法官除少部份由律師擔當外餘皆為大律師擔任。地方法院或更高之法庭則只有大律師才有權出庭進行訴訟工作	在此專業界別內其他人士不能執業
22. 香港電腦學會	會員從事電腦業工作 會員約2000人	香港政府未有法律規定電腦業工作人士的資格	在有關專業界別內有領導性及代表性地位
23. 香港教育團體關注基本法聯席會議	由42個香港主要教育團體組成。其個別成員在有關專業界別內有領導性及代表性地位	註冊教師由港府制訂的條例規範	為42個教育團體組成關注基本法的草擬的組織，本身並非專業團體

※ 註：領導性——社會及政府皆尊重該團體的地位，而其運作亦影響到整個行業。
 代表性——該團體的成員為在有關行業內資格最高者。

基本法結構草案第六章(二)「科學技術政策」一項，應怎樣把它寫好，是一個值得科學與技術界人士關注的問題。

依我的看法，要寫好這一項，我們首先需要對一些比較重要的問題建立起一些共識，比如：

(一)到底香港特別行政區是否需要制定一套整體性的科學與技術政策？

(二)「科學」這一詞語對它作怎樣的解釋？「科學」包括的範圍多大？

據了解，現今香港政府基本上並沒有一套整體性的科學與技術政策。要從香港政府歷來發展各種科學與技術的衆多措施中，總結出一套整體性的「政策」，是有一

題。

戰略性的發展原則

從歷史我們知道，科學與技術在初期是平行地發展着的，但到了近期則已趨合一。科學在其發展的初期，對技術人員的指導作用並不大，各種技術可以說基本上都是由一些工業技術人員通過實踐發展起來的；用科學來指導技術發展的概念，還未建立起來。但現今，單靠技術人員的聰明才智和經驗已不足推動技術的發展和革新。技術的進步，必須依靠科學理論和科學研究，以「科學為基礎的技術和工業」(Science based technology and industry)已佔了現今發展工業的戰略主導

科學」和「社會科學」是另一個需要我們研究的問題。考慮了以上的問題，在下面我試將基本法內科學與技術政策這一項可以包括的具體內容寫出來(旨在拋磚引玉)供大家參考：

幾點建議

(一)香港特別行政區政府對各類科學與技術積極予以支持，並鼓勵科學與技術人員開展各科學與技術活動，從而促進香港的經濟、工業、醫療等事業的發展和繁榮，使香港人的生活質素和科學文明不斷得以提高。

(二)香港特別行政區政府根據需要設立各種科學與技術發展委員會來統籌、協助各種科學與技術活動。

(三)香港特別行政區政府保障科學與技術人員有參政、流動、選擇職業、組織學會、結社、發表言論、出版刊物等自由。

(四)香港特別行政區政府允許從事科學與技術工作的組織或個人參與國際性的組織或個人參與國際性的合作、互通訊息、交流和技術轉讓等活動。

(五)香港特別行政區政府根據需要建立考核、審訂科學技術人員專業資格和職稱的機構，並尊重和保障各類專業學會、民間的科學與技術組織的自主性。

(六)香港特別行政區政府保障科技人員的發明專利權。

(七)香港特別行政區與中國內地的民間或政府的科學與技術機構或組織可以採取互不隸屬、互不干涉和互相尊重的原則保持關係，也可以採取其他適當的方式與中國內地的科學與技術機構或組織建立關係。

怎樣寫好基本法的「科學技術政策」？

* 港大教授

基本法諮詢委員會委員

徐是雄

定困難的。雖然如此，但有一點我相信大家是會同意的，那就是香港政府從來沒有像新加坡、南韓、台灣那樣，採取過任何有整體計劃性的促進科學與技術發展的政

是否需要整體性政策

但現今由於國際間貿易競爭激烈，每一個國家都越來越熱衷於要求政府參與計劃和干預科學與技術的發展。未來的香港特別行政區政府，是否需要跟從這種趨勢，要求政府對科學與技術的發展作出積極的扶持，抑或仍然保持現今積極「不干預」政策，是一個值得研究的問

地位(這一現象在高科技方面尤其突出)。在基本法內，是否需要把這一具戰略性的發展科學與技術的原則寫進去，也是一個值得大家研究的問題。其次，從五十年代後期開始，科學的高速發展不但對社會的發展起到前所未有的影響，改變了人類對世界對自身的根本看法；對「科學」本身也起了很大的變化。在科學領域內不但出現了一大羣新興的學科，如邊緣學科、橫向學科、綜合學科和科學學；而科學所包括的領域也從較狹窄的「自然科學」範圍，擴大至包括「人文科學」和「社會科學」。故此在基本法內應否把科學與技術理解為只包括「自然科學」和「技術科學」，抑或還應包括「人文

科學」和「社會科學」是另一個需要我們研究的問題。考慮了以上的問題，在下面我試將基本法內科學與技術政策這一項可以包括的具體內容寫出來(旨在拋磚引玉)供大家參考：



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科技政策

本人已獲通知將於一九八七年一月十二日及十五日的會議上，討論有關特別行政區政府的科技政策。

本人建議科技政策如下：

- (一) 在積極提高香港的科技能力，作為促進良好及持續經濟發展政策的基石方面，特別行政區政府應採取活躍、有建設性及長期方案，該政策應透過教育、訓練及工業扶助等不同途徑，促進本地科技發展與增長，同時協助成功地引進及傳播外國發展科技。
- (二) 有關抽象的工業資產權問題（如發明專利權等），特別行政區政府應設立一個最能配合香港個別需要的適當及持久制度，並嚴格執行該制度，從而在本港及海外工業資產持有人心目中建立強烈信心。
- (三) 透過獨立自主的關稅機關，未來特別行政區政府應擁有完全自主權力，禁止或管制硬件及軟件等任何項目（包括所需技術）的輸入及輸出，從而遵守特別行政區政府選擇以個別身份參與，或香港在設立特別行政區政府前已經簽訂的國際協議。
- (四) 特別行政區政府應具有自由權，根據內部及外界需求，建立其個別標準制度或推行切合其個別需要的標準制度。

基本法諮詢委員會委員陳少感

陳少感

一九八七年一月八日

關於九七年後香港特別行政區 高科技轉移問題的意見

香港科技協進會會長

基本法諮詢委員會委員

潘宗光

1986年11月

背景

香港是一個工商業發達的城市，它不單只是世界貿易金融中心，且在國際性高科技交流上，亦同樣扮演着重重要的角色。國際性高科技的交流現時是受到「多邊出口管制委員會」(COORDINATING COMMITTEE FOR MULTILATERAL EXPORT CONTROLS, 簡稱 COCOM) 的條約限制的。該會是由一個十多個科技先進國家組成的國際性組織，規定任何一個會員國的高科技產品，如果要輸送給某一個國家，特別是共產國家，都必須獲得該會的批准。但通常高科技轉移往共產國家都困難重重。

英國是「多邊出口管制委員會」的成員之一，而香港亦素以英國這個會員國的屬土身份，享有高科技轉移的權利。除在輸入科技方面不受限制外，由香港轉移科技到另外一個地方，亦只需要得到英國的許可。香港能應用到相當多的高科技，不但有利其工商業的發展，更能進一步鞏固它作為貿易轉運站的地位。這也是香港之可以保持安定繁榮的其中一個重要因素。

九七年後可能帶來的問題

九七年後香港將成為中國的特別行政區，被納入中國的版圖內，再不能享有作為「多邊出口管制委員會」成員國的英國所給予的優惠，在高科技轉移方面肯定會受到限制。但若要維持安定繁榮，則九七年後仍必需要輸入新科技，這不單只對香港有利，對中國的四個現代化也同樣有着深遠的影響。然而，這畢竟是個複雜的問題，是需要中國和英國政府合力去解決的，因此中英聯合聯絡小組應儘速對這問題作反映，以便兩國尋求對策，不可能拖延至九七年後才解決。

目前的情況

鑑於九七年的期限已逐漸迫近，很多擁有高科技的國家，特別是「多邊出口管制委員會」的成員國，已就高科技的轉移開始戒備，以防一些共產國家會把這些科技發展作為軍事用途。明顯地，現時已有一些跡象顯示，香港在輸入高科技時已面臨一些限制，即使可輸入的高科技，其速度已較前緩慢，而有關電腦及資訊方面的高科技的輸入，禁制亦比以前嚴厲，可見香港在其政治地位轉變的過渡期內，在高科技轉移方面確受到一定的影響。

未來的對策

為了保障日後高科技轉移來香港時不受限制，香港便得保存其個別關稅海港的獨立地位，以便與「多邊出口管制委員會」的成員國繼續保持聯繫，及享有高科技轉移的權利。但這些都需要得到中國的承諾，對香港實行不干預，才可實現。

至於中國方面，如要實現四個現代化，高科技的轉移是不可置疑的。事實上，中國已開始和「多邊出口管制委員會」進行接觸，希望在不久的將來可得到有關的優待。但無可否認，香港是需要繼續享有高科技轉移的權利，所以，希望中國能採取積極的態度，容許香港遵守有關條約，履行其應盡的義務，以鞏固其在高科技轉移方面的地位，使工業得以繼續發展。

而這一切工作是急不容緩的，應該在九七年前安排妥當。因此，基本法起草委員會在擬定香港的未來政制時，亦須考慮如何容許香港遵守有關的條約及履行其應盡的義務；另一方面，透過中英聯合聯絡小組的反映，希望兩國政府能共同商議，找出適當的解決方法，特別是英國能否以「多邊出口管制委員會」成員國的身份和其他成員國進行有關的疏通。

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