

THE BASIC LAW



Legal Preparation for the Establishment of the HKSAR: Chronology and Selected Documents

The Hong Kong Special Administrative Region (SAR) of the People's Republic of China was established on 1 July 1997. From a jurisprudential point of view, Hong Kong's transition from British colony to an SAR of China may be understood as a 'grundnorm shift'.¹ Before the shift occurred, Hong Kong's legal system had existed as part of the legal order constituted by various British Acts of Parliament and prerogative legislation. However, since most of the legal work authorised by the Chinese government in preparation for the establishment of the Hong Kong SAR consisted of acts done within China's legal system, they had no legal force in Hong Kong before 1 July 1997. Hence, these acts and the legal documents associated with them were not published before 1 July 1997 in any official source of Hong Kong law such as the Government Gazette. Unfortunately, they have not subsequently been published in the Hong Kong SAR Government Gazette either. Moreover, although a selection were documented as part of official sources in mainland China, these were published in the Chinese language only. The purpose of this article is thus to fill the gap in the English language literature by (a) providing a chronology of the establishment of the Hong Kong SAR, (b) describing the nature and scope of preparatory work for the same, and (c) by supplying an English translation of selected documents.

A chronology²

31 March 1993

The 1st plenary session of the 8th National People's Congress (NPC) passed a Decision to Authorise the NPC Standing Committee to Establish a

¹ The grundnorm is the most fundamental norm in a legal system from which the validity of all other norms in that legal system can be derived. The validity of the grundnorm itself must however be presupposed and cannot be explained with reference to any other legal norm. In a country with a written constitution, the grundnorm is the norm which holds that the constitution (or the first constitution in a series of constitutions with no revolutionary break in legal continuity) is valid. See my article on 'The Provisional Legislative Council of the SAR' (1997) 27 HKLJ 1, 9-10; Raymond Wacks, 'One Country, Two Grundnormen? The Basic Law and the Basic Norm' in R Wacks (ed), *Hong Kong, China and 1997: Essays in Legal Theory* (Hong Kong: Hong Kong University Press, 1993), ch 6.

² This is compiled on the basis of the Gazettes of the National People's Congress Standing Committee and State Council of China (in Chinese), Xinhua Monthly (Xinhua yuebao) (in Chinese), newspaper clippings, and the following books: Hong Kong and Macau Affairs Office of the State Council, Department for Hong Kong Social and Cultural Affairs (ed), *A Text on the Question of Hong Kong* (Xianggang wenti duban) (Beijing: Party Central School Press (Zhongyang dangxiao chubanshe), 1997); and Wang Shuwen (ed), *An Introduction to the Basic Law of the Hong Kong Special Administrative Region* (Xianggang teixingzhengqu jibanfa daolun) (Beijing: Party Central School Press (Zhongyang dangxiao chubanshe), 2nd ed 1997).

Preliminary Work Organ of the Preparatory Committee for the Hong Kong SAR. When the Basic Law of the Hong Kong SAR was enacted in March 1990, the NPC also passed a Decision on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong SAR. That Decision provides for the establishment of a Preparatory Committee for the Hong Kong SAR in 1996. The NPC's decision in 1993 to set up a preliminary work organ was not part of the original plan to prepare for the establishment of the SAR, but was a response to Governor Christopher Patten's political reform proposal released on 7 October 1992 which, from the PRC's point of view, would (if adopted) have led to the breakdown of the 'through train' model as envisaged in 1990 for the transition between the last colonial and the first SAR legislature.

2 July 1993

The NPC Standing Committee passed a Decision on the Establishment of the Preliminary Work Committee (PWC) of the Preparatory Committee for the Hong Kong SAR, and appointed members of the PWC. The Decision declares that the PWC is a 'work organ' of the NPC Standing Committee to be responsible for preparatory work (before the establishment of the Preparatory Committee) relating to the 1997 transition in Hong Kong. The Decision also provides that no less than 50 per cent of the members of the PWC should be from Hong Kong. Mr Qian Qichen, Vice-Premier and Foreign Minister, was appointed Chairman of the PWC.

A total of 57 members were originally appointed to the PWC; one subsequently retired from the committee. On 12 May 1994, the NPC Standing Committee appointed thirteen additional members. Among the 69-member committee, 37 were from Hong Kong, 32 were from the mainland.

16 July 1993

The PWC held its first meeting in Beijing. It adopted its rules of procedure, and decided to establish five sub-groups on (1) political affairs, (2) the economy, (3) law, (4) culture, (5) society and security respectively.

31 August 1994

The NPC Standing Committee passed a Decision on the Motion Proposed by Mr Zheng Yaotang and 31 Other Deputies to the NPC.³ The Decision expressly rules out the 'through train' scenario with regard to the Legislative Council, Urban Council, Regional Council, and District Boards on the ground that the relevant electoral arrangements are inconsistent with the Joint Declaration, the Basic Law, and the NPC's 1990 Decision on the Method for the Formation

³ See Document 1 in the Appendix.

of the First Government and the First Legislative Council of the Hong Kong SAR. It should be noted that, by the end of June 1994, all elements of Patten's reform had been enacted into law in Hong Kong.

16 July 1993 – 8 December 1995

The PWC held six plenary sessions and 89 sub-group meetings. Mainland members of the PWC also visited Hong Kong in May 1994 and May 1995 to consult local opinion. During the May 1995 visit, the proposal regarding the establishment of a Provisional Legislative Council was also publicised. In October 1995, mainland members of the Legal Sub-Group visited Hong Kong to explain its recommendations regarding non-adoption of certain provisions of the Hong Kong Bill of Rights Ordinance and the restoration of the old versions of six human rights-related ordinances.⁴ (Note: not all of these recommendations were subsequently accepted by the Preparatory Committee and the NPC Standing Committee.)⁵

Many other matters relating to the transition were also considered by the PWC. They included, inter alia, the establishment of the Court of Final Appeal, methods to ensure a smooth transition for the civil service, rules relating to SAR permanent resident status, the construction of the new airport, the budget of the Hong Kong government for 1997–98, public holidays, school textbooks, etc. A total of 46 documents containing recommendations and opinions were produced and subsequently forwarded to the Preparatory Committee.

26 January 1996

The Preparatory Committee (PC) for the Hong Kong SAR was appointed, and held its first plenary session in Beijing on 26 and 27 January 1996. The PC had 150 members, including 56 from the mainland and 94 from Hong Kong. The Chairman was Mr Qian Qichen. At the opening of the session, he pointed out that the PC was not merely a 'work organ' under the NPC but was itself an 'organ of power'.⁶ During this meeting, the PC adopted its rules of procedure, which provide, inter alia, for collective responsibility as regards decisions and confidentiality of deliberations. It also decided to establish six working groups on (1) the Selection Committee (for the Chief Executive of the SAR), (2) the first Chief Executive of the SAR, (3) the Provisional Legislative Council,

⁴ The six ordinances were the Societies (Amendment) Ordinance 1992 (No 75 of 1992), the Television (Amendment) Ordinance 1993 (No 22 of 1993), amendments to the Telecommunications Ordinance and the Broadcasting Authority Ordinance introduced by the Television (Amendment) Ordinance 1993 (No 22 of 1993), the Public Order (Amendment) Ordinance 1995 (No 77 of 1995), and the changes to the subsidiary legislation under the Emergency Regulations Ordinance introduced in 1995 (LN 251 to 255 of 1995). The recommendations were reported in all major Hong Kong newspapers on 18 October 1995.

⁵ See the Decision of the NPC Standing Committee passed on 23 February 1997 (Document 5 below).

⁶ [1996] 3 Xinhua Monthly (Xinhua yuebao) 28–9 (in Chinese).

(4) the law, (5) the economy, and (6) celebration activities. (Later, at its 6th plenary session in November 1996, the PC established a 7th working group on the method of formation of the first Legislative Council.)

23–24 March 1996

The second plenary session of the PC was held in Beijing. The PC passed three decisions and one set of recommendations. They were (1) a Decision on the Establishment of a Provisional Legislative Council of the Hong Kong SAR,⁷ (2) a Decision on Arrangements for Public Holidays in Hong Kong in the Second Half of 1997 and the Whole of 1998, (3) a Decision on the Establishment of the Association for Celebration of Reunification of Hong Kong with China, and (4) Recommendations (to the NPC Standing Committee) on the Implementation of the PRC Nationality Law in the Hong Kong SAR.

April 1996

The PC working group on the Selection Committee organised consultative activities in Hong Kong on the method of formation of the Selection Committee.

15 May 1996

The NPC Standing Committee accepted the Recommendations mentioned above and passed its Interpretations on Several Questions relating to the Implementation of PRC Nationality Law in the Hong Kong SAR.⁸

24–25 May 1996

The third plenary session of the PC was held in Zhuhai. Three resolutions were adopted, namely, (1) a Resolution on the Suggested Principles for the Method of Formation of the Selection Committee, (2) a Resolution on the Erection of a Memorial Stone commemorating Hong Kong's Reunification with the Motherland, and (3) a Resolution on Questions relating to Textbooks.

9–10 August 1996

The fourth plenary session of the PC was held in Beijing. It passed (1) Measures for the Formation of the Selection Committee for the First Government of the Hong Kong SAR, (2) Opinions on the Implementation of Article 24(2) of the Basic Law of the Hong Kong SAR, and (3) Provisional Measures on the Use of the Regional Flag and Regional Emblem of the Hong Kong SAR.

The Measures for the Formation of the Selection Committee were based on the NPC's 1990 Decision on the Method for the Formation of the First

⁷ The English translation of this decision has been published in (1997) 27 HKLJ 11.

⁸ See Document 2 in the Appendix.

Government and the First Legislative Council, which provides for a 400-member Selection Committee (consisting entirely of Hong Kong permanent residents) with one hundred members from each of the following sectors: (1) industry, commerce and finance, (2) the professions, (3) labour, grassroots, religious, and other sectors, and (4) 'political figures,' Hong Kong deputies to the NPC, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference (CPPCC). As regards sector (4), the Measures allocate forty seats to 'political figures,' with the remaining sixty seats given over to NPC deputies and CPPCC members. The Measures stipulate that persons may apply to be candidates provided they have been certified by a society or company (which must have been in existence prior to the formation of the PC on 26 January 1996) in the relevant group as belonging to that sector. Although this is the general rule, special provisions are made for sector (4) above. The Measures further provide that each member of the PC may, from a list of all the applicants, nominate one hundred persons in respect of each sector as 'suggested candidates.' On the basis of such suggestions a meeting of chairpersons of the PC (akin to an executive committee for the PC) will finalise a list of candidates whose total should not exceed the number of seats in the relevant sector by 20 per cent. The PC will then elect the members of the Selection Committee by secret ballot.

15 August – 14 September 1996

The one-month period for receiving applications to become candidates for the Selection Committee. 5,789 applications were received.

4–5 October 1996

The fifth plenary session of the PC was held in Beijing. Members of the PC nominated their 'suggested candidates' for election to the Selection Committee in accordance with the Measures. 2,545 applicants received nominations and these were passed to the meeting of chairpersons for consideration.

The PC also passed (1) the Measures for the Selection of the First Chief Executive of the Hong Kong SAR and (2) Measures for the Formation of the Provisional Legislative Council of the Hong Kong SAR.⁹ (1) outlines the personal qualifications for the post of Chief Executive (CE) on the basis of the relevant provisions in the Basic Law, and a three-stage process for the CE's selection. The first stage comprises receiving applications from persons interested in becoming candidates. The meeting of chairpersons of the PC will subsequently publish a list of those who have met the minimum qualifications (regarding matters such as nationality, age, and period of residence in Hong Kong) as set out in the Measures. On the basis of this list, candidates will be

⁹ See Document 3 in the Appendix.

nominated by the Selection Committee in the second stage of the process where as 'participants in the election' they must receive at least fifty nominations in order to become 'candidates.' The last stage involves presentations by these candidates of their electoral platforms before the Selection Committee and the answering of questions, leading to election by the Committee. A candidate who obtains votes exceeding half the members of the Committee will be elected.

14–28 October 1996

The period for receiving applications to become candidates for CE. 31 applications were received.

1–2 November 1996

The sixth plenary session of the PC was held in Beijing. The final list of candidates for the Selection Committee (prepared by the meeting of chairpersons which included applicants who had received the largest numbers of nominations by PC members as 'suggested candidates' in each sector) included 120 persons in each of sectors (1) to (3), and 48 candidates for the 'political field' sub-sector of sector (4). On 2 November 1996, the PC elected 340 members to the Selection Committee which added to the sixty seats allocated to NPC deputies and CPPCC members comprised the final 400-member Selection Committee.

In the course of this session of the PC, its meeting of chairpersons determined that only eight applicants met the minimum qualification rules.

15 November 1996

The first meeting of the Selection Committee was held in Hong Kong. Each member was entitled to nominate one of the eight qualified applicants to become a candidate for CE. Three applicants obtained the minimum fifty nominations. They were Mr Tung Chee-hwa (who was nominated by 206 members), Mr Yang Ti-liang (who resigned as Chief Justice after deciding to run for the CE post), and Mr Peter Woo Kwong-ching.

18 November – 9 December 1996

The period for receiving nominations of candidates for the Provisional Legislative Council (PLC). 130 candidates were validly nominated, including 26 Hong Kong permanent residents who were not 'Chinese citizens with no right of abode in a foreign country.'

27–29 November 1996

The second session of the Selection Committee was held in Hong Kong. Each of the CE candidates presented his platform before the whole Selection

Committee, and then met separately with each of the four sectors of the Committee to answer questions.

11 December 1996

The third meeting of the Selection Committee was held in Hong Kong. Mr Tung Chee-hwa was elected (with 320 votes) as the first CE of the Hong Kong SAR. Mr Yang and Mr Woo obtained 42 and 36 votes respectively.

12 December 1996

The seventh plenary session of the PC was held in Shenzhen. The PC adopted a Report on Requesting the State Council to Appoint the First Chief Executive of the Hong Kong SAR, and passed a Decision on Legislation relating to Article 23 of the Basic Law. The latter suggested that the Crimes (Amendment) (No 2) Bill 1996 introduced by the Hong Kong government (relating to treason, sedition, etc) was inconsistent with the Basic Law, and recommended to the NPC Standing Committee that, if it were passed into law, they should refuse to adopt it under Art 160 of the Basic Law as part of the law of the Hong Kong SAR.¹⁰

16 December 1996

The State Council of the PRC decided to appoint Mr Tung Chee-hwa as the first CE of the Hong Kong SAR, to assume office on 1 July 1997. The appointment was signed on the same day by Li Peng, Premier of the State Council.

21 December 1996

The fourth meeting of the Selection Committee was held in Shenzhen. The Selection Committee elected sixty members of the PLC from 130 candidates. Among the candidates were 34 members of the existing Legislative Council of Hong Kong, 33 of whom were elected into the PLC.

30 December 1996

The NPC Standing Committee passed the Law on the Garrisoning of the Hong Kong SAR.¹¹ The draft of this law had previously been considered by the Standing Committee on 23-9 October 1996. It had also been published in Hong Kong for consultation. The final version of the law contained a number of amendments to the draft.

¹⁰ The Crimes (Amendment) (No 2) Bill 1996 was passed after amendment by the Legislative Council and received the Governor's assent on 26 June 1997 as the Crimes (Amendment) (No 2) Ordinance 1997. Section 1 provides that the ordinance will come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette. No such notice has been given and the SAR government is reviewing the amendment ordinance.

¹¹ The English translation of this law has been published in Gazette No 1 of 1997 of the HKSAR Government, Legal Supplement No 2, p B133.

24 January 1997

Mr Tung Chee-hwa released a list of members of the Executive Council of the Hong Kong SAR. It consisted of the CE, the Administrative Secretary, the Financial Secretary, the Secretary of Justice, and eleven non-government members.

25 January 1997

The PLC met for the first time in Shenzhen and elected Mrs Rita Fan as its President. The PLC continued to meet in Shenzhen in the following months and passed a total of thirteen bills before 1 July 1997.

31 January – 1 February 1997

The eighth plenary session of the PC was held in Beijing. It passed (1) a Decision on the Commencement of Work by the First Chief Executive and the Provisional Legislative Council of the Hong Kong SAR before 30 June 1997,¹² (2) a Decision on the Establishment of Provisional District Organisations of the Hong Kong SAR (which relates to the Urban Council, Regional Council, and District Boards), and (3) Recommendations on the Treatment of Laws Previously in Force in Hong Kong (which formed the basis of the subsequent NPC Standing Committee decision mentioned below).

20 February 1997

The State Council accepted the nominations by Mr Tung Chee-hwa and appointed 23 principal officials of the Hong Kong SAR (all of whom were existing senior officials with the exception of Ms Elsie Leung Oi-see, the new Secretary of Justice).

23 February 1997

The NPC Standing Committee passed its Decision on the Treatment of the Laws Previously in Force in Hong Kong in accordance with Art 160 of the Basic Law.¹³ Some of the provisions of this Decision were subsequently reproduced in the Hong Kong Reunification Ordinance passed by the PLC on 1 July 1997.

14 March 1997

The 5th session of the 8th NPC adopted a Resolution on the Work Report of the Preparatory Committee for the Hong Kong SAR,¹⁴ and the Measures on the Election in the Hong Kong SAR of Deputies to the 9th NPC. The latter Measures provide for 36 seats for Hong Kong deputies to the 9th NPC, to be

¹² See Document 4 in the Appendix.

¹³ See Document 5 in the Appendix.

¹⁴ See Documents 6 and 7 in the Appendix. Document 6 is the Resolution and Document 7 is an extract from the Work Report relating to the controversial issue of the legal status of the PLC.

elected by an electoral college consisting of members of the Selection Committee (for the First Government of the Hong Kong SAR) who are Chinese citizens, members of the PLC who are Chinese citizens, and Hong Kong CPPCC 8th National Committee members who are not members of the Selection Committee (it may be noted here that all Hong Kong deputies to the 8th NPC are already members of the Selection Committee).

13 April 1997

The Hong Kong and Macau Affairs Office of the State Council published a statement on the policies relating to the nationality and rights of residence of Hong Kong residents. (The policies were subsequently implemented through the Immigration (Amendment) (No 3) Bill 1997 which was passed by the PLC on 21 June 1997 and became the Immigration (Amendment) (No 2) Ordinance 1997.)

22–23 May 1997

The ninth plenary session of the PC was held in Beijing. It passed (1) Measures for the Formation of the First Legislative Council of the Hong Kong SAR,¹⁵ (2) a Decision on Oaths of Office of Relevant Persons in the Hong Kong SAR, and (3) the Recommendations on Changes to the List of National Laws in Annex III to the Basic Law. (The latter Recommendations were subsequently accepted by the NPC Standing Committee on 1 July 1997 following consultation with the SAR government and the Committee for the Basic Law.)¹⁶

24 May 1997

The PLC at its 8th meeting in Shenzhen endorsed the proposed appointment of Mr Andrew Li Kwok-nang as the first Chief Justice of the Court of Final Appeal of the Hong Kong SAR.

5 June 1997

The State Council promulgated the Provisions on the Simultaneous Hoisting and Use of the National Flag and Regional Flag in the Hong Kong SAR.

16 June 1997

The CE's office published its lists of appointments to the Provisional Urban Council, the Provisional Regional Council, and the Provisional District Boards. All existing members of these district organisations were appointed,

¹⁵ See Document 8 in the Appendix.

¹⁶ For the national laws now applicable to the HKSAR, see Promulgation of National Laws 1997 (LN 379 of 1997, in LS No 2 to Gazette Extraordinary No 1 of 1997 of the HKSAR Government, p B5) and Promulgation of National Laws (No 2) 1997 (LN 386 of 1997), in LS No 2 to Gazette No 1 of 1997 of the HKSAR Government, p B119).

together with new members representing an additional 25 per cent of the membership of each body as prescribed in the PC's 1 February Decision on the Establishment of Provisional District Organisations.

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APPENDIX
Selected Documents[†]

DOCUMENT 1

Decision of the Standing Committee of the National People's Congress on the Motion Proposed by Mr Zheng Yaotang and 31 Other Deputies to the National People's Congress
(Adopted on 31 August 1994)

The Ninth Session of the Standing Committee of the Eighth National People's Congress (NPC) has, in accordance with the examination report of the Law Committee of the NPC, examined the motion put forward by Zheng Yaotang and 31 other Deputies to the NPC, which the Presidium of the Second Session of the Eighth NPC had passed to the Law Committee for consideration.

The Session is of the view that the last Hong Kong British Legislative Council, Urban Council and Regional Council, and District Boards will terminate on 30 June 1997. The electoral arrangements unilaterally decided by the British government in respect of the last Hong Kong British Legislative Council, Urban Council and Regional Council, and District Boards contravene the Sino-British Joint Declaration, the Basic Law of the HKSAR of the PRC, and the Decision of the NPC on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR. The Session hereby decides that the Preparatory Committee for the HKSAR shall be responsible for matters relating to the preparation of the establishment of the HKSAR, prescribe the specific method for the formation of the First Legislative Council of the HKSAR, and organise the First Legislative Council of the HKSAR in accordance with the Decision of the NPC on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR. According to the Basic Law of the HKSAR of the PRC, the powers,

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† The translations in Documents 1, 3, 4, 6, 7, and 8 were prepared and supplied by the Department of Justice of the HKSAR Government, and we are most grateful for their permission to publish the documents here. Document 2 is based on translations prepared by the Department of Justice and Mr Johannes M M Chan, Associate Professor of Law, University of Hong Kong, as modified by the author. The author is most grateful to the Department of Justice and to Mr Johannes Chan for making their translations available. Document 5 is based on the translations prepared by the Department of Justice and Ms Lily Ng Yuen-ye, professional legal translator, as modified by the author. The author is most grateful to the Department of Justice and Ms Ng for their invaluable contributions to this version of the translation.

functions, and the method for the formation of the district organisations of the HKSAR shall be prescribed by the law of the HKSAR.

DOCUMENT 2

Interpretations by the Standing Committee of the National People's Congress on Several Questions relating to the Implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region

(Adopted at the 19th Session of the Standing Committee of the Eighth National People's Congress on 15 May 1996)

According to Article 18 and Annex III of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the Nationality Law of the People's Republic of China will be implemented in the Hong Kong Special Administrative Region from 1 July 1997. Taking account of the historical background of Hong Kong and its realities, the Committee adopts the following interpretations on the implementation of the Nationality Law of the People's Republic of China in Hong Kong:

- 1 All Hong Kong residents who are of Chinese descent and born in Chinese territory (including Hong Kong) and others who satisfy the conditions set out in the Nationality Law of the PRC for Chinese nationality are Chinese nationals.
- 2 All Hong Kong Chinese compatriots, whether they are holders of the 'British Dependent Territories Citizens passport' or 'British Nationals (Overseas) passport' or not, are Chinese nationals. As from 1 July 1997, such Chinese nationals may continue to use valid travel documents issued by the government of the United Kingdom for the purpose of travelling to other states and regions, but will not be entitled to British consular protection in the Hong Kong SAR and other parts of the PRC on account of their holding the above-mentioned British travel documents.
- 3 In accordance with the Nationality Law of the People's Republic of China, any British nationality status acquired by Chinese nationals in Hong Kong through the 'British Nationality Selection Scheme' ('right of abode in Britain' scheme) will not be recognised. These people are still Chinese nationals and will not be entitled to British consular protection in the Hong Kong SAR and other parts of the PRC.
- 4 Chinese nationals in the HKSAR who have a right of abode in a foreign country may use relevant documents issued by foreign governments for the purpose of travelling to other states and regions, but will not be entitled to consular protection in the HKSAR and other parts of the PRC on account of their holding the above-mentioned documents.

- 5 If there occurs a change in the nationality of a Chinese national in the HKSAR, he or she may report with valid documents to the appropriate organ of the HKSAR responsible for nationality applications.
- 6 The HKSAR government is authorised to designate its Immigration Department as the organ in the HKSAR responsible for nationality applications. The Immigration Department of the HKSAR shall handle all matters relating to nationality applications in accordance with the Nationality Law of the PRC and the above provisions.

DOCUMENT 3

Measures for the Formation of the Provisional Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China
(Adopted by the Preparatory Committee for the Hong Kong Special Administrative Region of the National People's Congress on 5 October 1996)

Article 1 This method for the formation of the Provisional Legislative Council (PLC) of the HKSAR is hereby stipulated in accordance with the Basic Law of the HKSAR of the PRC, the Decision of the NPC on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR, and the Decision of the Preparatory Committee for the HKSAR of the NPC on the Establishment of the Provisional Legislative Council of the HKSAR.

Article 2 The PLC of the HKSAR shall be composed of sixty members. The PLC shall be composed of Chinese citizens who are permanent residents of the HKSAR with no right of abode in any foreign country. However, permanent residents of the HKSAR who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the Legislative Council, provided that the proportion of such members does not exceed 20 per cent of the total membership of the Council.

Article 3 Candidates for membership of the PLC must meet the following requirements:

- 1 not less than 18 years of age;
- 2 eligible for the status of permanent resident of the HKSAR in accordance with the stipulations in Article 24 of the Basic Law of the HKSAR of the PRC;
- 3 uphold the Basic Law of the HKSAR of the PRC; and
- 4 be willing to pledge allegiance to the HKSAR of the PRC.

The requirement stipulated in item 2 above refers to the eligibility for the status of Hong Kong permanent resident set forth in the Opinions of the Preparatory Committee for the HKSAR of the NPC on the Implementation of paragraph 2 of Article 24 of the Basic Law of the HKSAR of the PRC.

Article 4 Members of the PLC shall be nominated and elected by the Selection Committee for the First Government of the HKSAR (hereinafter

called the Selection Committee). The nomination and election exercise shall be presided over by the Preparatory Committee for the HKSAR of the NPC (hereinafter called the 'Preparatory Committee').

Article 5 Candidates for membership of the PLC shall be nominated by members of the Selection Committee from eligible persons in various social strata and constituencies. Every ten members of the Selection Committee may jointly nominate a candidate. Every member of the Selection Committee shall not take part in more than five joint nominations.

Members of the Selection Committee participating in joint nominations and persons nominated as candidates for membership of the PLC shall fill in the Candidates Nomination Form for the PLC of the HKSAR of the PRC. People filling in the forms shall be held responsible for the authenticity of the particulars therein.

Article 6 Persons who meet the requirements for candidacy for the PLC and who are willing to stand for election shall become candidates after being nominated by members of the Selection Committee with their eligibility being confirmed in Sessions of the Meeting of the Chairman and Co-Chairmen of the Preparatory Committee.

Article 7 Members of the PLC shall be elected by members of the Selection Committee by secret ballot. The Selection Committee shall select a scrutineer for the Election. Voting is valid when the number of votes cast is equal to or less than the total number of voters; voting is invalid when the number of votes cast is more than the total number of voters. In the latter case, it is necessary to vote again.

Each member of the Selection Committee has the right to cast sixty votes among the list of candidates. Votes covering more than sixty candidates or more than twelve candidates who are not of Chinese nationality or who have the right of abode in foreign countries shall be invalid.

Candidates shall be arranged in precedence according to the number of votes they get. The first sixty persons who have the highest number of votes shall be elected. Among the elected, the number of candidates who are not of Chinese nationality or who have the right of abode in foreign countries should not be more than twelve. If more than twelve candidates who are not of Chinese nationality or who have the right of abode in foreign countries are ranked among the top sixty, then candidates of this category ranking the 13th and after shall not be elected; their places shall be filled by candidates who are Chinese citizens with no right of abode in any foreign country in order of precedence according to the number of votes they get. If it is unable to determine who should be the last member to be elected because two or more candidates have obtained an equal number of votes, the Selection Committee members shall vote again to elect the last member among the candidates. The one with the highest number of votes shall be elected.

Article 8 When the preceding article is applied to determine whether a candidate is elected, the nationality and right of abode status of that candidate at the time of his or her nomination shall be used. If the nationality or right of abode status of a nominee is undergoing change when he is nominated, he should state this in his nomination form.

Article 9 If there are vacancies in the PLC, they shall be filled by the unsuccessful candidates in order of precedence according to the number of votes they obtained. However, the proportion of members who are not of Chinese nationality or who have the right of abode in foreign countries shall not exceed 20 per cent of the total membership of the PLC.

Article 10 The President of the PLC shall be a Chinese citizen of not less than 40 years of age, who does not have right of abode in any foreign country and has ordinarily resided in Hong Kong for a continuous period of not less than twenty years. He or she shall be elected by and from among the members of the PLC.

Article 11 The Meeting of the Chairman and Vice-Chairmen of the Preparatory Committee shall be responsible for handling any complaints related to the PLC election. The Preparatory Committee may require the person against whom a complaint is made to supply proof, clarifications, or explanation. It is also empowered to handle these matters in the manner it thinks fit and proper.

Article 12 The power of interpretation of these Measures shall be vested in the Meeting of the Chairman and Vice-Chairmen of the Preparatory Committee.

DOCUMENT 4

Decision of the Preparatory Committee for the Hong Kong Special Administrative Region of the National People's Congress on the Commencement of Work by the first Chief Executive and the Provisional Legislative Council of the Hong Kong Special Administrative Region before 30 June 1997
(Adopted by the Preparatory Committee for the Hong Kong Special Administrative Region of the National People's Congress at its Eighth Plenary Session on 1 February 1997)

In accordance with the Basic Law of the HKSAR of the PRC and the Decision of the NPC on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR, the Preparatory Committee for the HKSAR of the NPC hereby decides that:

- 1 the first Chief Executive of the HKSAR shall, in accordance with the Basic Law, be responsible for preparing the formation of the first Government of the HKSAR before 30 June 1997. His responsibilities: include, among other things, introduction of budgets and drafting bills

for the examination of the PLC; appointment of judges of the Court of Final Appeal, the Chief Judge of the High Court, and judges of the courts at all levels in accordance with the procedures stipulated in the Basic Law; taking part in the nomination of, in conjunction with the President of the PLC and the Chief Justice of the Court of Final Appeal, Hong Kong members to the Committee for the Basic Law for appointment by the Standing Committee of the NPC;

- 2 the PLC shall start functioning before 30 June 1997. The PLC shall, in accordance with the provisions of the Basic Law relating to the legislative procedures of the legislature of the HKSAR and the Decision of the Preparatory Committee for the HKSAR of the NPC on the Establishment of the Provisional Legislative Council of the HKSAR, formulate standing orders and voting procedures, examine and pass bills, etc. Upon the establishment of the HKSAR, the PLC shall confirm bills which have been passed and submit them for signing by the Chief Executive before promulgation and implementation so as to complete the legislative process.

DOCUMENT 5

Decision of the Standing Committee of the National People's Congress on the Treatment of the Laws Previously in Force in Hong Kong in accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China

(Adopted by the Standing Committee of the Eighth National People's Congress at its 24th session on 23 February 1997)

Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as 'the Basic Law') stipulates as follows:

Upon the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the National People's Congress declares to be in contravention of this Law. If any laws are later discovered to be in contravention of this Law, they shall be amended or cease to have force in accordance with the procedure as prescribed by this Law.

Article 8 stipulates:

The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region.

The Standing Committee of the Eighth National People's Congress at its 24th session has examined the recommendations of the Preparatory Committee of the HKSAR on the treatment of the laws previously in force in Hong Kong in accordance with the above provisions, and decides as follows:

- 1 The laws previously in force in Hong Kong, including the common law, rules of equity, ordinances, subordinate legislation and customary law, except for any which contravene the Basic Law, shall be adopted as the laws of the HKSAR.
- 2 The ordinances and subordinate legislation previously in force in Hong Kong as prescribed in Annex 1 to this Decision are in contravention of the Basic Law, and shall not be adopted as laws of the HKSAR.
- 3 Some of the provisions of the ordinances and subordinate legislation previously in force in Hong Kong as prescribed in Annex 2 to this Decision are in contravention of the Basic Law, and the contravening provisions shall not be adopted as laws of the HKSAR.
- 4 Such of the laws previously in force in Hong Kong which have been adopted as the laws of the HKSAR shall, with effect from 1 July 1997, be applied subject to such modifications, adaptations, limitations, or exceptions as may be necessary to bring them into conformity with the status of Hong Kong after resumption by the PRC of the exercise of sovereignty over Hong Kong and with relevant provisions of the Basic Law. For example, in applying the New Territories Land (Exemption) Ordinance the above principles shall be complied with.

In addition to complying with the above principles, in the ordinances and subordinate legislation previously in force:

- (a) any law making provision for foreign affairs in respect of the HKSAR which is inconsistent with any national law applied in the HKSAR shall be subject to the national law and rendered consistent with the international rights and obligations of the Central People's Government;
- (b) any provision conferring privileged treatment on the United Kingdom or other Commonwealth countries or territories shall not be maintained, except for provisions relating to reciprocal arrangements between Hong Kong and the United Kingdom or other Commonwealth countries or territories;
- (c) provisions relating to the rights, exemptions, and obligations of military forces stationed in Hong Kong by the United Kingdom which do not contravene the provisions of the Basic Law and the Law on the Garrisoning of the HKSAR of the PRC shall be maintained and shall be applicable to the military forces stationed in the HKSAR by the Central People's Government of the PRC;

- (d) provisions relating to the superior legal status of the English language as compared with the Chinese language shall be construed as providing that both the English and Chinese languages are official languages;
 - (e) provisions referring to any English law may continue to be applicable by reference as a transitional arrangement pending their amendment by the HKSAR, provided that they are not prejudicial to the sovereignty of the PRC and do not contravene the provisions of the Basic Law.
- 5 Subject to the provisions of paragraph 4 hereof, names, terms, and expressions appearing in the laws previously in force in Hong Kong that are adopted as the laws of the HKSAR shall, unless the context otherwise requires, be construed or applied in accordance with the principles of substitution provided for in Annex III to this Decision.
- 6 If any law previously in force in Hong Kong which is adopted as the law of the HKSAR is later discovered to be in contravention of the Basic Law, it shall be amended or shall cease to have force in accordance with the procedure as prescribed by the Basic Law.

Annex I

Among the laws previously in force in Hong Kong, the following ordinances and subordinate legislation are in contravention of the Basic Law and shall not be adopted as laws of the HKSAR:

- 1 Trustees (Hong Kong Government Securities) Ordinance (cap 77);
- 2 Application of English Law Ordinance (cap 88);
- 3 Foreign Marriage Ordinance (cap 180);
- 4 Chinese Extradition Ordinance (cap 235);
- 5 Colony Armorial Bearings (Protection) Ordinance (cap 315);
- 6 Secretary of State for Defence (Succession to Property) Ordinance (cap 193);
- 7 Royal Hong Kong Regiment Ordinance (cap 199);
- 8 Compulsory Service Ordinance (cap 246);
- 9 Army and Royal Air Force Legal Services Ordinance (cap 286);
- 10 British Nationality (Miscellaneous Provisions) Ordinance (cap 186);
- 11 British Nationality Act 1981 (Consequential Amendments) Ordinance (cap 373);
- 12 Electoral Provisions Ordinance (cap 367);
- 13 Legislative Council (Electoral Provisions) Ordinance (cap 381); and
- 14 Boundary and Election Commission Ordinance (cap 432).

Annex II

Among the laws previously in force in Hong Kong, the relevant provisions in the following ordinances and subordinate legislation are in contravention of the Basic Law and shall not be adopted as laws of the HKSAR:

- 1 the definition of 'Hong Kong permanent resident' in s 2 of the Immigration Ordinance (cap 115) and the provisions relating to 'Hong Kong permanent residents' in Schedule 1 of that ordinance;
- 2 any provision made for the purpose of implementing the British nationality law applicable in Hong Kong;
- 3 the provisions relating to election in the Urban Council Ordinance (cap 101);
- 4 the provisions relating to election in the Regional Council Ordinance (cap 385);
- 5 the provisions relating to election in the District Boards Ordinance (cap 366);
- 6 the Urban Council, Regional Council and District Boards Election Expenses Order (sub leg A) [sic] and the Resolution of the Legislative Council (sub leg C) made under the Corrupt and Illegal Practices Ordinance (cap 288);
- 7 the provision in s 2(3) of the Hong Kong Bill of Rights Ordinance (cap 383) relating to the interpretation and purpose of application of the ordinance, and the provisions in s 3 of the ordinance relating to its 'effect on pre-existing legislation' and in s 4 of the ordinance relating to the 'interpretation of subsequent legislation';
- 8 the provision relating to the superior status of the Personal Data (Privacy) Ordinance (cap 486) in s 3(2) of that Ordinance;
- 9 major amendments to the Societies Ordinance (cap 151) since 17 July 1992; and
- 10 major amendments to the Public Order Ordinance (cap 245) since 27 July 1995.

Annex III

Names, terms, and expressions in the laws previously in force in Hong Kong that are adopted as laws of the HKSAR should generally be construed or applied in accordance with the following principles of substitution:

- 1 Where in any provision reference is made to 'Her Majesty,' 'Crown,' 'British Government,' or 'Secretary of State' or other similar names, terms, or expressions, such names, terms, or expressions shall be construed as the Central [People's Government] or other competent authorities of the PRC if the content of the provision relates to title to land in Hong Kong or involves affairs which are the responsibility of the Central [People's Government] under the Basic Law or involves the

relationship between the Central Authorities and the HKSAR under the Basic Law, and shall be construed as the government of the HKSAR in other contexts.

- 2 Where in any provision reference is made to 'Her Majesty in Council' or 'Privy Council,' such name, term, or expression shall be construed as the Court of Final Appeal of the HKSAR if the content of the provision relates to matters of right of appeal, and in other contexts dealt with in accordance with the provisions of paragraph 1 hereof.
- 3 Any name of a government agency or a semi-official agency bearing which includes the word 'Royal' shall have the word 'Royal' removed and be construed as the corresponding agency of the HKSAR.
- 4 Any reference to 'the Colony' shall be construed as a reference to the HKSAR; and any description of the territories of Hong Kong shall be applied after being construed in accordance with the map of the administrative division of the HKSAR promulgated by the State Council.
- 5 Any reference to such names, terms, or expressions as 'Supreme Court' and 'High Court' shall be construed respectively as references to the High Court and Court of First Instance of the High Court.
- 6 Any reference to such names, terms, or expressions as 'Governor,' 'Governor in Council,' 'Chief Secretary,' 'Attorney General,' 'Chief Justice,' 'Secretary for Home Affairs,' 'Secretary for Constitutional Affairs,' 'Commissioner of Customs and Excise,' and 'Justice' ['anchasi'] shall be construed respectively as references to the Chief Executive of the HKSAR, Chief Executive in Council, Administrative Secretary, Secretary of Justice, Chief Justice of the Court of Final Appeal or Chief Judge of the High Court, Secretary for Home Affairs ['minzheng shiwuju juzhang,' or Director of the Civil Affairs Bureau], Secretary for Constitutional Affairs ['zhengzhi shiwuju juzhang,' or Director of the Political affairs Bureau], Commissioner of Customs and Excise ['haiguan guanzhang'], and Judge of the High Court.
- 7 In the Chinese version of the laws previously in force in Hong Kong, names, terms, or expressions relating to the Legislative Council, the Judiciary, or the Executive Authorities and the officers thereof shall be construed and applied in accordance with the relevant provisions of the Basic Law.
- 8 Where in any provision any reference is made to the 'People's Republic of China,' 'China,' or other similar names, terms, or expressions, such names, terms, or expressions shall be construed as the People's Republic of China including Taiwan, Hong Kong, and Macau; and where any reference is made to the names, terms, or expressions of the Mainland, Taiwan, Hong Kong, and Macau, whether separately or concurrently, such names, terms, or expressions shall be construed as a constituent part of the People's Republic of China.

- 9 Where in any provision in which any reference is made to 'foreign state' or 'foreign country' or other similar names, terms, or expressions, such names, terms, or expressions shall be construed as any country or region other than the People's Republic of China, or as 'any place other than the Hong Kong Special Administrative Region,' depending on the content of the relevant law or provision; and where in any provision any reference is made to 'foreign nationals' or other similar names, terms, or expressions, such names, terms, or expressions shall be construed as any person other than a citizen of the People's Republic of China.
- 10 Any provision that 'nothing in this Ordinance shall affect or be deemed to affect the rights of Her Majesty the Queen, her heirs or successors' shall be construed as 'nothing in this Ordinance shall affect or be deemed to affect the rights of the Central [People's Government] or the Government of the HKSAR under the provisions of the Basic Law or any other law.'

DOCUMENT 6

Resolution of the Eighth National People's Congress at its Fifth Session on the Work Report of the Preparatory Committee for the Hong Kong Special Administrative Region of the National People's Congress

(Adopted by the Eighth National People's Congress at its Fifth Session on 14 March 1997)

The Eighth National People's Congress examined at its Fifth Session the Work Report of the Preparatory Committee for the HKSAR of the NPC presented by Mr Qian Qichen, Chairman of the Preparatory Committee for the HKSAR of the NPC. The Session hereby approves the Report.

The Session recognises that the Preparatory Committee for the HKSAR of the NPC has been very effective since its formation a year ago in its work relating to the preparation for the establishment of the HKSAR. The Preparatory Committee has adopted, in accordance with the Basic Law of the HKSAR of the PRC and the principles of 'one country, two systems,' 'high degree of autonomy,' and 'Hong Kong people ruling Hong Kong' as reflected in the relevant Decisions made by the NPC and its Standing Committee, a series of decisions, resolutions, and proposals, including the Resolution on the Proposed Principles of the Method for the Formation of the Selection Committee, the Decision on the Establishment of the Provisional Legislative Council of the HKSAR, the Proposal on the Interpretation for the Implementation of the Nationality Law of the PRC in the HKSAR, the Proposal on the Issue of the Treatment of the Laws Previously in Force in Hong Kong, the Decision on the Commencement of Work by the first Chief Executive and the Provisional Legislative Council of the HKSAR before 30 June 1997; has formed the

Selection Committee for the First Government of the HKSAR; presided over the election by which the Selection Committee has elected the first Chief Executive and the members of the Provisional Legislative Council of the HKSAR; and also put forward proposals and advice on major economic and legal issues relating to the transfer of political power of Hong Kong and the smooth transition as well as the celebration arrangements for the reunification of Hong Kong [with China]. All these laid down a foundation for the establishment of the HKSAR and the smooth transition of Hong Kong and have facilitated the long-term stability and prosperity of Hong Kong.

The Session hopes that members of the Preparatory Committee for the HKSAR will make persistent efforts to continue their support for the work of the first Chief Executive of the HKSAR and to strive for the accomplishment of the tasks delegated to them by the NPC.

DOCUMENT 7

Work Report of the Preparatory Committee for the Hong Kong Special Administrative Region of the National People's Congress, presented at the Eighth National People's Congress at its Fifth Session on 10 March 1997 by the Chairman of the Preparatory Committee for the Hong Kong Special Administrative Region of the National People's Congress, Mr Qian Qichen (Extract on the issue of the Provisional Legislative Council)

3 The Establishment of the Provisional Legislative Council of the Hong Kong Special Administrative Region ...

After its establishment, the Preparatory Committee promptly considered the issue of the setting up of the Provisional Legislative Council. All members agreed that there was practical need and legal basis to set up the Provisional Legislative Council of the HKSAR ...

Hoping that co-operation with the British government would bring about a seamless convergence and smooth transition of the political system of Hong Kong, the Chinese government has made special arrangements in respect of the formation of the first Legislative Council of the HKSAR. On 4 April 1990, the Third Session of the Seventh National People's Congress adopted the Decision of the NPC on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR. The Decision provides that if the composition of the last Hong Kong Legislative Council is in conformity with the relevant provisions of that Decision and the Basic Law of the HKSAR, those of its members who uphold the Basic Law of the HKSAR of the PRC and are willing to pledge allegiance to the HKSAR of the PRC, and who meet the requirements set forth in the Basic Law of the HKSAR, may, upon confirmation by the Preparatory Committee for the HKSAR, become members of the first Legislative Council of the Region. This is commonly referred to as the

'through train' arrangement. However, the British government has scrapped this arrangement because it has, despite the Chinese government's objection, carried out the so-called 'political reform,' thus violating the Sino-British Joint Declaration, the principle of convergence with the Basic Law and the relevant agreements reached between the Chinese and British governments. The Standing Committee of the NPC therefore decided and declared in 1994 that the last Legislative Council of the British Hong Kong government will dissolve with the termination of British rule over Hong Kong on 30 June 1997.

According to the Decision of the NPC adopted on 4 April 1990, members of the first Legislative Council of the HKSAR shall be elected through three different types of elections including geographical direct elections. This cannot be conducted under the rule of the British Hong Kong government, nor can it be completed within a very short span of time after the HKSAR is established. Upon the establishment of the HKSAR on 1 July 1997, there will be a lot of issues requiring a legislature to be responsible for or to get involved in. This is indispensable to a smooth transition in Hong Kong and the effective operation of the HKSAR. Therefore, establishing a provisional legislature composed entirely of Hong Kong permanent residents as a temporary arrangement before the formation of the First Legislative Council is the most appropriate method to realise the principles of 'Hong Kong people ruling Hong Kong' and 'a high degree of autonomy.'

Some doubts have been raised in Hong Kong's public opinion about the power of the Preparatory Committee in making a decision on the formation of the Provisional Legislative Council. In fact, Art 2 of the above-mentioned Decision of the NPC provides that the Preparatory Committee 'shall be responsible for matters relating to the preparation for the establishment of the HKSAR.' The formation of the Provisional Legislative Council falls within this ambit. As a power organ established by the NPC, the Preparatory Committee has been authorised to make decisions on matters relating to the establishment of the HKSAR. This authorisation covers the power to form the Provisional Legislative Council.

In the light of the actual situation that a legislature must be in place upon the establishment of the HKSAR and in accordance with the above-mentioned Decision of the NPC, the plenary session of the Preparatory Committee in March 1996 adopted the Decision to form the Provisional Legislative Council of the HKSAR. In October, it adopted the Measures on the Formation of the Provisional Legislative Council of the HKSAR. The Measures provide that the Provisional Legislative Council of the HKSAR shall be elected by secret ballot by the Selection Committee for the First Government of the HKSAR. The Provisional Legislative Council shall be formed and start working after the appointment of the first Chief Executive of the HKSAR. Its main tasks include the enactment of laws which are indispensable to the

normal operation of the HKSAR and participation in necessary personnel arrangements. It shall function until the First Legislative Council of the HKSAR is formed but not later than 30 June 1998. The Decision of the Preparatory Committee on the Establishment of the Provisional Legislative Council of the HKSAR and the above-mentioned Measures are in compliance with the Decision of the NPC on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR adopted by the Seventh National People's Congress at its Third Session on 4 April 1990.

On 21 December 1996, the Selection Committee elected sixty members of the Provisional Legislative Council in Shenzhen. On 25 January 1997, members of the Provisional Legislative Council elected among themselves Mrs Fan Hsu Lai Tai as the President of the Provisional Legislative Council. Among these sixty members, some are businessmen and industrialists and many are representatives of the working class and grassroots. 33 out of the 34 members of the current Legislative Council of the British Hong Kong government who registered to stand for the election have been elected. In other words, the majority of the members of the current Legislative Council of the British Hong Kong government have been elected as members of the Provisional Legislative Council. With its broadly representative composition, the Provisional Legislative Council commands the recognition of the Hong Kong community.

DOCUMENT 8

Measures for the Formation of the First Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China
(Adopted by the Preparatory Committee for the Hong Kong Special Administrative Region of the National People's Congress at its Ninth Plenary Session on 23 May 1997)

Article 1 In order to establish and form the First Legislative Council of the HKSAR of the PRC (hereafter referred to as the First Legislative Council), these Measures are hereby stipulated in accordance with the Decision of the NPC on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR and the Basic Law of the HKSAR of the PRC.

Article 2 The First Legislative Council shall be composed of sixty members, with twenty members returned by geographical constituencies through direct elections, thirty members returned by functional constituencies, and ten members returned by the Election Committee.

Article 3 The candidates for the membership of the First Legislative Council must be permanent residents of the HKSAR who uphold the Basic Law of the HKSAR of the PRC, are willing to pledge allegiance to the HKSAR of the PRC, and meet the eligibility and other requirements set forth in the Basic Law.

Article 4 The geographical direct elections of the First Legislative Council shall adopt the multi-seat, single vote system or the proportional representation system. The methods are as follows:

- (1) For the multi-seat, single vote system — Hong Kong shall be divided into four to nine geographical constituencies. Each constituency shall return two to five members. Each voter shall vote for one candidate in his constituency.
- (2) For the proportional representation system — Hong Kong shall be divided into three to five geographical constituencies. The number of seats that each political organisation or electoral composition obtains shall be determined on the basis of the total votes it gets in the respective geographical constituencies in accordance with the calculation method as prescribed by law.

Article 5 The functional constituencies shall return 30 seats. Twenty-one of them shall be divided among the following groups: Commercial (First) (Hong Kong General Chamber of Commerce), Commercial (Second) (Chinese General Chamber of Commerce, Hong Kong), Industrial (First) (Federation of Hong Kong Industries), Industrial (Second) (Chinese Manufacturers' Association of Hong Kong), Finance, Financial Services, Social Welfare, Real Estate and Construction, Tourism, Urban Council, Regional Council, Heung Yee Kuk, Medical, Health Services, Education, Legal, Engineering, Architectural, Surveying and Urban Planning, Accountancy (each of them is allocated one seat), and Labour (which is allocated two seats). The remaining nine seats shall be divided among nine groups to be chosen by the HKSAR from the following fifteen groups:

- Sports, Entertainment, Culture, and Publications
- Labour
- Import and Export
- Textiles and Garment
- Wholesale and Retail
- Information Technology
- Shipping and Transport
- Hong Kong Chinese Enterprises Association
- Agriculture and Fisheries
- Insurance
- Hotel
- Chinese Medicine
- Higher Education
- Catering
- Employers' Federation of Hong Kong

Article 6 The election method for the functional constituencies shall be determined according to their respective ways of composition. For the

functional constituencies which are composed by corporate bodies, each corporate member shall cast one vote; for the constituencies which are composed by individuals with professional qualifications, each individual member shall cast one vote; and for those functional constituencies composed of corporate/individual members, each corporate/individual member shall cast one vote.

Article 7 The Election Committee shall be composed of 800 members who are Hong Kong permanent residents from the following sectors: industrial, commercial, and financial sectors — 200; the professions — 200; labour, social services, and religious sectors — 200; and members of the Provisional Legislative Council, representatives of district-based organisations, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference — 200.

Members representing the first three sectors of the Election Committee shall be elected by the seventeen functional constituencies (excluding the Urban Council, the Regional Council, and Heung Yee Kuk) and the fifteen groups available for the selection of the HKSAR specified in Art 5 above as well as the religious sector in accordance with the quota allocated. The HKSAR shall enact laws to stipulate the allocation of quota and the specific election method.

As for the fourth sector of the Election Committee, the members of the Provisional Legislative Council and the Hong Kong deputies to the National People's Congress are *ex officio* members. As for the representatives of the district-based organisations and the representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference, the HKSAR shall enact laws to stipulate the allocation of quota and the specific method for returning such representatives.

The Election Committee shall nominate candidates for membership of the First Legislative Council in accordance with the relevant laws of the HKSAR. Members of the Election Committee shall then vote in their individual capacities by secret ballot to return ten members of the First Legislative Council.

Article 8 The Legislative Council of the HKSAR shall be composed of Chinese citizens who are permanent residents of the HKSAR with no right of abode in any foreign country. However, permanent residents of the HKSAR who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the Legislative Council of the HKSAR, provided that the proportion of such members does not exceed 20 per cent of the total membership of the Council (ie twelve members). The HKSAR may adopt one of the following methods to ensure that the number of members elected who are permanent residents of the HKSAR but not of Chinese

nationality or have the right of abode in foreign countries, does not exceed twelve:

- (1) To allocate the quota (ie 20 per cent) proportionally among the three types of elections — not more than four seats in the geographical direct elections; not more than six seats in the functional constituency elections and not more than two seats in the Election Committee election. If the number of members elected who are not of Chinese nationality or who have the right of abode in foreign countries exceeds the quota allocated, it shall be handled in accordance with the following methods respectively:
 - (a) In respect of the geographical direct elections, the positions of the elected, who are not of Chinese nationality or who have the right of abode in foreign countries, shall be arranged in order of precedence according to the percentage of votes they get. Those who take the first four places shall be elected. Any unfilled place shall be taken according to the order of precedence by the candidates of the same constituency who are Chinese nationals with no right of abode in foreign countries, or a by-election shall be held. If proportional representation system shall be adopted, the HKSAR shall formulate other alternative methods.
 - (b) In respect of the functional constituency elections, the positions of the elected, who are not of Chinese nationality or who have the right of abode in foreign countries shall be arranged in order of precedence according to the percentage of votes they get. Those who take the first six places shall be elected. Any unfilled place shall be taken according to the order of precedence by the candidates of the same constituency who are Chinese nationals with no right of abode in foreign countries, or a by-election shall be held.
 - (c) In respect of the Election Committee election, the positions of the elected, who are not of Chinese nationality or who have the right of abode in foreign countries shall be arranged in order of precedence according to the number of votes they get. Those who take the first two places shall be elected. Any unfilled place shall be taken according to the order of precedence by the candidates who are Chinese nationals with no right of abode in foreign countries.
- (2) To give the entire quota of 20 per cent to the functional constituency elections — the positions of the elected, who are not of Chinese nationality or who have the right of abode in foreign countries shall be arranged in order of precedence according to the percentage of votes they get. Those who take the first twelve places shall be elected. Any unfilled place shall be taken according to the order of precedence by the

candidates of the same constituency who are Chinese nationals with no right of abode in foreign countries, or a by-election shall be held.

- (3) The allocation of the twelve seats which may be taken by permanent residents of the HKSAR who are not of Chinese nationality or who have the right of abode in foreign countries shall be prescribed by law enacted by the HKSAR before election.

Article 9 The term of office of the members of the First Legislative Council shall be two years.

Article 10 The election of the First Legislative Council shall be completed before 30 June 1998.

Article 11 The HKSAR shall enact law with respect to the election of the First Legislative Council in accordance with these Measures.