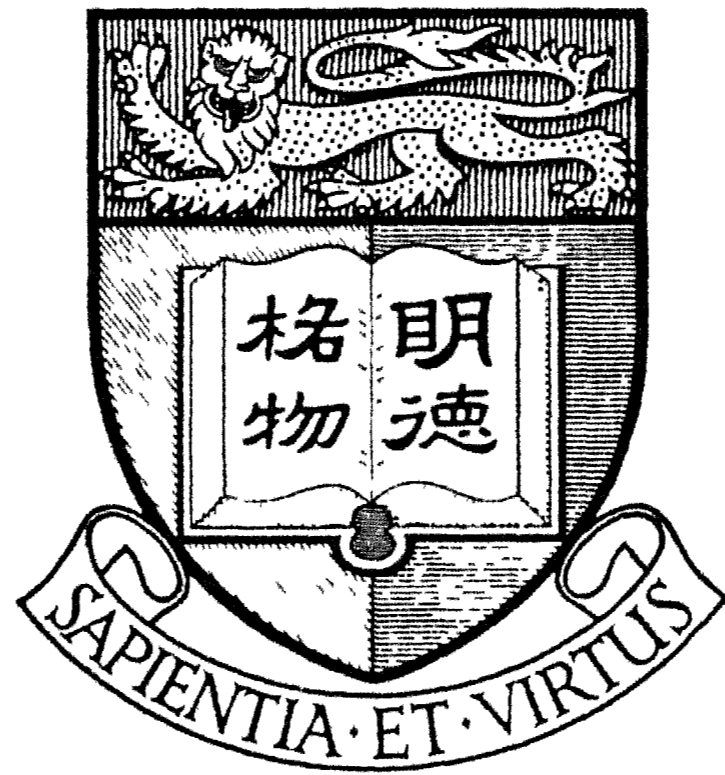


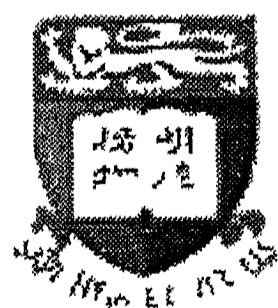
**The Basic Law of the Hong Kong
Special Administrative Region of
the People's Republic of China : a
Compilation of Preparatory
Materials**

Volume 4

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The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China : a Compilation of Preparatory Materials

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2	23-Apr-86	H.K. Standard : The Final Draft of the Basic Law
3	Nov/Dec 86	中華人民共和國香港特別行政區基本法起草委員會第三次全體會議文件匯編
4	Apr-87	中華人民共和國香港特別行政區基本法起草委員會第四次全體會議文件匯編
5	Apr-87	Collection of Documents for The Fourth Plenary Session of the Drafting Committee
6	22-May-87	香港基本法起草委員會第四次全體會議委員們對基本法序言`總則及第二`二`七`九章條文草案的意見匯集

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10	Aug-87	Opinions on the Preamble and Charters 1, 2, 7, & 9 of the Draft (August 1987) of the Basic Law
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68	4-Aug-88	The Consultative Committee for the Basic Law of the Hong Kong Special Administrative Region of The People's Republic of China
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73	26-Aug-88	Discussion Paper (2) Follow-up questions (1) on Articles 9, 16, 17, 18, 22 and 169 and Annex III
74	26-Aug-88	參考資料(九)[越權無效]與[違憲審查]
75	26-Aug-88	參考資料(十)人大、人大常委與法律解釋
76	26-Aug-88	Reference (10) The National People's Congress. The Standing Committee of the National People's Congress, and the Interpretation of the Law
77	14-Jan-89	(Translation) The Draft Basic Law of the Hong Kong SAR of the PRC

This compilation is based on materials collected by Professor Johannes Chan, who has generously lent it to the Law Library to make a duplicate set for its Basic Law Collection.

Lui Che Woo Law Library
30-Oct-02

選舉團、大選舉團選舉方法 方案歸納報告

(1987年11月23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
政制專責小組

前言

本文是就各方案有關大選舉團或選舉團這類建議作出歸納的。在「立法機關」及「行政長官」兩份最後報告中，已將各有關方案詳列，現嘗試就這些方案的不同性質作出歸納。下文所用之歸納標準主要是選舉團或大選舉團之功能，就是

- (I) 產生行政長官
 - (1) 只負責提名：i) 後交全民投票；ii) 後交中央；iii) 後交立法機關
 - (2) 只負責選舉
 - (3) 負責提名與選舉
- (II) 產生立法機關
 - (1) 根據現行之選舉團制度
 - (2) 其他
- (III) 產生行政長官與立法機關

1. 產生行政長官

(1) 大選舉團負責提名

i) 後交全民投票

①學友社 -- 遴選委員會

行政長官候選人須經20名合格選民提名，而每提名人只能提名一位候選人。若候選人數超過5人，則由一「遴選委員會」經協商或選舉產生5名正式候選人。「遴選委員會」人數約150至200人，由各功能團體代表組成，職責為檢查行政長官候選人的資格。待行政長官宣誓就職後，「遴選委員會」會自動解散。行政長官候選人經認可為正式候選人後，便由普及性直接選舉產生行政長官。

②辛維思 -- 遴選委員會

由中央主持協商，即由中央組成一個包括港人在內的「遴選委員會」，諮詢立法局議員和各界社團的意見，產生一個不超過三個人的最後候選人名單，交全港市民選舉。

③雷競旋 -- 提名委員會

設立一個由中央政府組織和任命的「提名委員會」，人數不宜太多，其中包括有當然成員，例如國務院港澳辦公室主任(或將來的相應職位)，或香港人(是否硬性規定要有港人參與尚待考慮)。然後經全民投票(可以用兩輪多數的投票方法)產生行政長官。

④大學畢業同學會 -- 提名團

本港立法機關全體成員及同等數目之中央委任之當地人士組成「提名團」，行政長官候選人須得到兩類提名團成員各1/8支持，然後經全民選舉產生。

⑤吳康民 -- 行政官候選人提名委員會

設立一「行政長官候選人提名委員會」，推出行政長官候選人三至五名，再經普及性直接選舉產生行政長官。「行政長官候選人提名委員會」由37人組成，包括香港全國人大代表5人，香港全國政協委員5人，立法機關代表10人，司級官員代表3人，市政局及區域市政局代表2人，區議會代表3人，社會團體代表11人。上述各方面的代表，將由有關方面人士選舉產生。

⑥38人方案 -- 行政長官候選人提名團

設一由128人組成的「行政長官候選人提名團」，提名三位行政長官候選人，再交全民投票選舉。提名團的組成如下：

	提名團議席數目
第一大類職業組別共佔	32席
其中 商界 (1)	12
工業界 (2)	8
銀行界 (3)	4
其他僱主	8
第二大類職業組別共佔	32席
其中 醫學界 (註冊醫生)	2
其他護理人員	2
教學界	4
法律界	2
社會服務界	4
工程、建築、測量及城市設計師	2
會計、核數師	2
資訊、傳媒專業人士	2
文化、藝術專業人士	2
行政人員	4
其他專業人士	6
第三大類職業組別共佔	32席
其中 文員	4
銷售人員	4
服務業工作人員	4
農、林、牧、漁人士	4

製造、建造、運輸工作人員	1 2
學生、退休人士、料理家務者 及其他非從事經濟活動人士	4
立法機關成員	1 6 席
人大代表、政協委員	1 6 席
總數	1 2 8 席

- 註： a. 商界可界定為香港總商會及香港中華總商會成員商號的董事。
 b. 工業界可界定為香港工業總會及香港中華廠商聯合會成員廠號的董事。
 c. 銀行界可界定為香港銀行公會成員的董事。

⑦ 基督教弘道社 -- 候選人團體*(本身為候選人)

行政長官必須從一個「候選人團體」(candidates pool)中選出,由已登記為選民的港人提名,全港選民一人一票選出。

候選人團體成員包括所有曾任或現任立法機關、市政局、區域市政局、區議會之民選成員,現任行政長官,以及指定數目由功能組別選舉之代表。

ii) 後交中央

① 羅桂祥 -- 十人提名小組

由立法局成員中互選五人,加上中國香港人大代表互選五人,組成一公平而平衡的「十人提名小組」,然後提名小組以(-)立法局(-)公務人員(-)其他各界人士,各推薦一名賢達,通過協商取得一致通過,然後由北京中央政府以三人中選出一位作為香港特別行政區的長官。

② 陳協平 -- 香港各界提名行政長官委員會

經國家委托組成「香港各界提名行政長官委員會」,負責提出若干人選報請國家任命,擔任行政長官,輔政司、財政司、律政司和司法長。

iii) 後交立法機關

① 香港民主協會 -- 顧問委員會

行政長官應由一個比較超然的由 3 0 人至 6 0 人組成的顧問委員會提名,經立法機關 2/3 通過,然後提交中央委任,顧問委員會的成員是由一些在本港有深長歷史的立法、行政、司法和工商金融、投資方面有豐富經驗的人士擔任,而且他們應該是 6 0 歲以上的退休或退出政壇的人物,對行政長官的權力和地位都沒有直接或間接的利益關係,這樣方能專心一致為香港市民作出公平和合理而有價值的決定。顧問委員的人選除第一屆應由中英聯合聯絡小組協商外,第二屆以後人選應由上一任的行政長官諮詢其顧問委員會決定,其餘一半則由立法機關選舉。

(2) 大選舉團負責選舉

①三方學會 -- 選舉團

行政長官由選舉團選舉產生，而選舉團由立法機關及地區議會成員組成。

②香港基督教關注基本法委員會政制小組 -- 選舉團

行政長官可由選舉團(由立法局議員、市政局及區域議局議員、區議員組成)選出。望在特區成立後，邁向「行政首長應由一人一票選出」這個目標。

③張熾標 -- 大選舉團

行政長官參選人需要十位立法局議員提名，經「大選舉團」投票，由獲得絕大多數票的候選人當選，並由中央人民政府任命。「大選舉團」的成員包括立法局、區域議局、市政局及區議會的議員(在1994年，應取消各議會的委任議員制度)。

(3) 大選舉團負責提名及選舉

①華員會 -- 提名團、選舉團

建議先由一個500—600人的選舉團選出一個五人提名團，提名團提名候選人若干名，交由選舉團選舉。

選舉團包括功能團體代表，區議會主席、市政局及區域市政局代表。

②醫務界專業團體基本法聯席會議 -- 提名團、選舉團

先由各界人士(包括各功能團體、市政局地方區議會代表)共同組成500—600人之選舉團，選舉團選出一個提名團，提名團提名若干行政長官候選人，交由選舉團選出。

③張世林 -- 提名團、選舉團

第一任行政長官以協商辦法產生。

第二任行政長官由提名團提名，以差額選舉方法由選舉團產生。

④古星輝 -- 行政顧問院

先由起草委員會在香港的委員安排物色人選組成「行政顧問院」，「行政顧問院」可提名行政長官候選人，再由「行政顧問院」以六個月的諮詢期收集各階層人士的意見，再以民主協商或投票選出。

⑤薛鳳旋 -- 協商團

行政長官由協商團協商產生。協商團由行政局全體非官守議員、立法局全體議員、功能團體、社會團體組成，以協商為基礎，商討合適的人選，必要時以一人(或單位)一票的方式選出。

⑥港人協會 -- 選舉團

由功能團體和地區議會產生一個有420—560人的選舉團，再由這個選舉團提名及選舉產生行政長官，選舉團成員不能是現任立法機關議員，具體組成如下：--

工商界 30 - 35%

基層 30 - 35%

專業 15 - 20%

地方議會 15 - 20%

II. 產生立法機關

(1) 主要是基於現行的選舉團選舉

①吳夢珍

25%立法機關成員由現在的區議會、市政局、區域市政局及由政府委任的各種諮詢委員的成員選舉產生。

②190人方案

25%立法機關成員由地區的議會如區議會、市政局和區域市政局選舉產生，就是現有的選舉團選舉，但要擴大各地區選舉團的投票人數。

③基督教協進會公共政策委員會

15%立法機關成員由選舉團選舉產生、選舉團是按現行代議政制的選舉團方式，在港區議會、市政局和區域市政局全體成員中選出各區代表。

④基督徒弘道社

25%立法機關成員由地區議會，如市政局、區域市政局和區議會選舉產生。

⑤港人協會

20%立法機關成員由地區議會間接選出。

(2) 其他

①吳康民 -- 顧問委員會

30%立法機關成員由顧問委員會選舉產生。顧問委員會由180人組成，具體成份如下：

a. 在任或已卸任的香港人大代表、政協委員

b. 已卸任行政、立法局代表

c. 已卸任的司級官員

d. 曾任基本法起草委員會或諮詢委員會委員

②陳弘毅 -- 顧問院

1/3(即20人)立法機關成員由顧問院以協商或推選產生。被顧問院推選人士，本身可以是顧問院成員，也可以不是。顧問院的成員人數不固定，但不少於60人，不多於120人。顧問院由中央人民政府委託在港若干人士發起及籌組。籌組方式類似成立基本法諮詢委員會的辦法。部份成員由發起人根據各界團體的推薦而邀請參加，部份成員由發起人主動邀請。

III. 產生行政長官、立法機關

①曹宏威、唐一柱、何鍾泰 -- 遴選委員會

組成：設立一個「遴選委員會」，成員約60--80人，人選分別由各「界定團體」推選，再經人大委任。「界定團體」的名單及每團體推選的委員數目，大約應與現有的「基本法諮詢委員會」組合的情況相同。任何有關「遴選委員會」成員組合的細節修訂，應由人大或其委任機關擔當。所有遴選委員都應該是有代表性的香港居民，熟悉香港的情況及需要。

立法機關：

由遴選委員會推選出15名立法機關成員(必須是遴選委員會以外人仕)

行政長官：

由遴選委員會推選3至5名行政長官候選人(必須是遴選委員會以外人仕)，得中央批准後，經協商或投票產生。

②查濟民 -- 顧問局

組成：在九七年前成立，由港督提名，中央批准後任命，終身制。人數無限制，由有資望的香港人擔任，例如退休的行政立法局議員，工商財經、法律教育、各種專業人士及來自其他各個方面的有資望人士。現任的行政立法局議員不能兼任顧問。一般來說顧問多數是退休或年長者出任，但並不以此為必要條件。

立法機關：

1/3立法機關成員由顧問局就顧問中間互選產生。

行政長官：

經顧問局協商後提名一位顧問以外的香港人，由中央政府同意後任命。約於2010年後，需經顧問局協商後提名2至3名香港人，由北京同意後交由香港全體選民普選，得票多數者由中央任命。

③徐是雄 -- 大選舉團

組成：由人大委任香港多位具有一定代表性的人士組成一個籌備小組(籌備小組沒有被選權)，由這個小組組成一個有300至600人的大選舉團或選舉委員會。若大選舉團成員有多過一個代表身份，也只能投一票。具體成份如下：

(-)由直接選舉和功能團體選舉產生的立法機關成員或代表【這些人士無被選舉權】

(二) 市政局及區域市政局議員或代表

(三) 區議會議員或代表

(四) 各界定團體代表包括：

a. 工商界 -- 工業、貿易、航運、航空、旅遊。

b. 金融、地產界 -- 銀行、保險、証券、地產、建造。

c. 法律界 -- 大律師、業務律師、法官。

d. 專業人士 -- 學者、工程師、建築師、測量師、會計師、醫務、教育、文藝、體育、科技。

e. 傳播媒介 -- 電視、電台、新聞、雜誌、出版。

f. 社團、基層 -- 勞工、公務員、社工、論政、慈善、漁農、街坊組織。

鄉事會、鄉議局、小販、學生。【公務員被選中後必須放棄公職】

g. 宗教界 -- 基督教、佛教、天主教、回教、道教、孔教。

h. 外籍人士。

i. 婦女界。

(五) 香港區全國人大代表或部分代表。

(六) 政協委員或代表。

立法機關：

1/3立法機關成員由「大選舉團」選舉產。

行政長官：

「大選舉團」提名2—3位行政長官候選人，報請中央同意，然後作普選。假如以後「大選舉團」被取消，各屆行政長官候選人改由立法局提名，報請中央同意然後作普選。

④ 76人方案 -- 選舉團、提名委員會

組成：選舉團的具體組成如下：

a. 立法機	80人
b. 法定團體及永久性非法定團體	50人
c. 市政局、區域市政局及區議會	50人
d. 社會服務、慈善及體育團體	60人
e. 專業人士	60人
f. 勞工界	60人
g. 工業界	80人
h. 商界	50人
i. 金融界	50人
j. 宗教/教育界	30人
k. 公務員	30人

共600人

提名委員會則由選舉團互相推選20人組成，成員本身不得競選行政長官，並在選舉團選舉行政長官時不可投票。

立法機關：

由提名委員會提名若干候選人，由選舉團投票，選出25%立法機關成員。

行政長官：

由提名委員會提名3名候選人，經由選舉團全體成員選舉產生。

REPORT ON THE SUMMARY OF PROPOSALS
REGARDING ELECTIONS BY AN ELECTORAL COLLEGE OR
A GRAND ELECTORAL COLLEGE

(passed by the Executive Committee on 23 November 1987)

Special Group on
The Political Structure of the SAR

I Selection of the Chief Executive

(1) Be responsible for nomination only:

1) Then a referendum will be held

1) Hok Yau Club -- Selection Committee

A candidate for the chief executive is to be nominated by twenty qualified electors and each qualified elector can only nominate one candidate. If the number of candidates exceeds five, a selection committee will select five official candidates through consultation or election. The selection committee comprising 150 to 200 members who are representatives of various functional constituencies will be responsible for examining the qualifications of the candidates. After the selected chief executive takes the oath of office, the selection committee will be dissolved. Once the candidates for the chief executive are recognised as official candidates, they will stand for direct election with universal franchise.

2) Sun Wai See -- Selection Committee

Consultations will be held by the Central Government i.e. the Central Government will set up a selection committee comprising Hong Kong people for consulting the Legislative Councillors and people of the various community bodies. A list of not more than 3 candidates will be drawn up and given to the people of Hong Kong for election.

3) Louie King Sheun -- Nomination Committee

A nomination committee will be constituted and appointed by the Central Government. Its membership which should not be large, will include ex-officio members such as Director of the Hong Kong and Macau Affairs Office (or corresponding position in the future), or Hong Kong people (it is still under consideration whether participation of Hong Kong people will be compulsory). The Chief Executive will then be selected by universal franchise (the method of two-round majority voting may be adopted).

4) University Graduates' Association of Hong Kong Limited -- Nomination College

A nomination college is to be formed by all members of the legislature and the same number of local people appointed by the Central Government. Candidates for the Chief Executive must be supported by 1/8 of the members of each of the two parties.

5) Ng Hong Mun -- Nomination Committee for the Chief Executive

A nomination committee for the Chief Executive will be established to nominate 3 to 5 candidates who will then

Introduction

This is a summary of the proposals regarding elections by an electoral college or a grand electoral college. The relevant proposals have already been listed in the final reports on the "legislature" and on the "selection of the Chief Executive". The paper attempts to summarise these proposals with reference to their different natures. The proposals are grouped according to the function of the electoral college or the grand electoral college:

I Selection of the Chief Executive

(1) Be responsible for nomination only:

- i) then a referendum will be held.
- ii) then the Central Government will be responsible.
- iii) then the legislature will be responsible.

(2) Be responsible for election only

(3) Be responsible for nomination and election

II Formation of the Legislature

(1) Based on the existing electoral college system

(2) Others

III Selection of the Chief Executive and Formation of the Legislature

stand for direct election with universal franchise. The nomination committee for the Chief Executive will be composed of 37 members including 5 Hong Kong delegates to the National People's Congress; 3 Hong Kong members of the Political Consultative Conference; 10 representatives of the legislature; 3 representatives of principal officials (equivalent to Secretaries); 2 representatives of the Urban Council and the Regional Council; 3 representatives of the District Boards; and 11 representatives of community organisations. These representatives will be elected by their respective organisations.

6) 38-member Proposal -- Nomination Committee for the Chief Executive

A nomination committee for the chief executive with 128 members should be set up to nominate three candidates who will stand for election with universal franchise. The composition of the nomination committee will be as follows:

	number of seats in the nomination committee
The first category of professional divisions should have a total number of	32 seats
including: commerical sector [1]	12
industrial sector [2]	8
financial sector [3]	4
other employers	8
The second category of professional divisions should have a total number of	32 seats
including: medical sector (registered practitioners)	2
other medical staff	2
educational sector	4
legal sector	2
social workers	4
engineers, architects, surveyors, and town-planners	2
accountants and auditors	2
information and mass media	2
culture and art	2
administrators	4
other professionals	6

The third category of professional divisions should have a total number of	32 seats
including: clerical staff	4
sales personnel	4
service personnel	4
Those engaged in agriculture, forestry, livestock husbandry, and fishing	4
manufacturing, construction, and transportation personnel	12
students, retired persons, house-keepers, and others who are involved in non-economic activities	4
Members of the legislature	16 seats
Deputies to the NPC, members of the Political Consultative Conference	16 seats
TOTAL	128 seats

Footnotes:

[1] Commerical sector refers to directors of the member-corporations of the Hong Kong General Chamber of Commerce and the Chinese Chamber of Commerce.

[2] Industrial sector refers to directors of the member-corporations of the Federation of Hong Kong Industries and the Chinese Manufacturers Association of Hong Kong.

[3] Financial sector refers to directors of the member-banks of the Hong Kong Association of Banks.

7) Fraternity for the Sharing of the Christian Way -- Candidates Pool (which is composed of the candidates themselves)

The Chief Executive should be elected from the "candidates pool". The candidates will be nominated by registered electors in Hong Kong. A one-man-one-vote general election will then be held in Hong Kong.

ii) Then the Central Government will be responsible

- 1) K.S. Lo -- Ten-member Nomination Group
With 5 members selected from among the Legislative Councillors and another 5 members selected from among the Hong Kong delegates to the NPC, an impartial and balanced "ten-member nomination group" will be formed. The group will through consultations recommend a candidate from each of the following: (1) the Legislative Council, (2) the civil service, and (3) the various sectors of society. Then the Central Government will appoint one of the three candidates as Chief Executive of the HKSAR.
- 2) Chan Hip Ping -- Nomination Committee for the Chief Executive, comprising Hong Kong people from various sectors
Under the authorisation of the State, a nomination committee for the Chief Executive, comprising Hong Kong people from various sectors is to be formed. It will be responsible for nominating a certain number of candidates and reporting the nominations to the State which will appoint the Chief Executive, the Chief Secretary, the Financial Secretary, the Attorney General and the Chief Justice.

iii) Then the legislature will be responsible

- 1) Association for Democracy of Hong Kong Ltd
The Chief Executive is to be nominated by a relatively detached advisory committee composed of 30 to 60 members. The nomination should be passed by 2/3 of the legislative members and then forwarded to the Central Government for appointment. Members of the advisory committee should be people who have substantial experience in legislation, administration, law, industry, commerce, finance, or investment; they should be retired persons over 60 years of age or people who have withdrawn from the political arena. Also, they must have no vested interests in the power and status of the chief executive. In this way, they can make impartial, reasonable and valuable judgments for the benefits of Hong Kong people.

Members of the first advisory committee should be selected through consultations by the Joint Liaison Group, but those of the ensuing terms should be selected by the last Chief Executive in consultation with its advisory committee, the other half of the members should be elected by the legislature.

(2) Be responsible for election only

- 1) Tritolaire Academy -- Electoral College
The Chief Executive is to be elected by an electoral college which is formed by members of the legislature and district authorities.
- 2) Political Structure Group of the Christian Concern Committee for the Basic Law -- Electoral College
The Chief Executive may be elected by an electoral college (comprising Legislative Councillors, Urban Councillors, Regional Councillors, and members of District Boards). It is hoped that this arrangement will develop towards the goal of "the Chief Executive being elected on a one-man-one-vote basis" after the establishment of the SAR.
- 3) Albert Cheung -- Grand Electoral College
Any candidate for the Chief Executive must be nominated by 10 Legislative Councillors. The grand electoral college will vote on the candidates. The candidate with the largest number of votes will be the Chief Executive to be appointed by the Central People's Government. The grand electoral college will include members of the Legislature Council, Urban Council, and District Boards. (The system of having appointed members in these bodies should be abolished in 1994.)

(3) Be responsible for nomination and election

- 1) Hong Kong Chinese Civil Servants' Association -- Nomination Committee; Electoral College
An electoral college of 500-600 members will elect a 5-member nomination committee which will be responsible for nominating a certain number of candidates for the Chief Executive. The electoral college will then elect the Chief Executive from these candidates. The electoral college will comprise representatives of functional groups, Chairmen of District Boards, and representatives of the Urban Council and of the Regional Council.
- 2) Joint Conference of Health Care Professional Organisations on the Basic Law -- Nomination Committee; Electoral College
An electoral college (of 500-600 members) comprising people from various sectors (functional constituencies, representatives of the Urban Council, and the Regional Council) is to elect a nomination committee which will be responsible for nominating a certain number of candidates for the Chief Executive. The Chief Executive will then be elected by the electoral college.

3) Cheung Sai Lam -- Nomination Committee; Electoral College
The first Chief Executive is to be selected through consultations.

The second Chief Executive is to be nominated by a nomination committee and selected by an electoral college in a differential election (election where the number of candidates exceeds the number of posts to be filled).

4) Ku Sing Fai -- Administrative Advisory Council
The Hong Kong members of the Drafting Committee for the Basic Law will look for suitable persons to form an "administrative advisory council" which may nominate candidates for the Chief Executive. The "administrative advisory council" will then collect views from the public within a six-month consultation period, after which the Chief Executive will be selected either through democratic consultations or by election.

5) Victor Sit -- Consultative College
The Chief Executive is to be selected through consultations by a consultative college. The consultative college will comprise all unofficial members of the Executive Council, all Legislative Councillors, functional bodies and community organisations. On the basis of consultation, the members are to discuss the suitable choice of person for the post of the Chief Executive. If necessary, the Chief Executive may be elected on a one-man-(or unit)-one-vote basis.

6) Hong Kong People's Association -- Electoral College
The Chief Executive is to be nominated and elected by an electoral college (comprising 420-560 members) formed by functional constituencies and district authorities. Members of the electoral college should not be the incumbent legislators. The composition of the electoral college will be as follows:

industrial and commercial sector	30-35%
grassrooters	30-35%
professionals	15-20%
district authorities	15-20%

II Formation of the Legislature

(1) Mainly based on the existing electoral college system

1) Agnes Ng
25% of the legislators are to be elected by members of the existing district boards, the Urban Council and the Regional Council, and members of various advisory committees appointed by the government.

2) 190-member Proposal
25% of the legislators are to be elected by district authorities such as the District Boards, the Urban Council and the Regional Council, which is comparable to the existing electoral college election but the number of electors in each district electoral college should be increased.

3) Commission on Public Policy of Hong Kong Christian Council
15% of the legislators are to be elected by an electoral college. The electoral college will be modelled on the existing electoral college in representative government where the representatives of the various districts are elected from members of the District Boards, the Urban Council and the Regional Council.

4) Fraternity for the Sharing of the Christian Way
25% of the legislators are to be elected by district authorities such as the Urban Council, the Regional Council and District Boards.

5) Hong Kong People's Association
20% of the legislators are to be indirectly elected by district authorities.

(2) Others

1) Ng Hong Mun -- Advisory Committee
30% of the legislators are to be elected by a 180-member advisory committee. The composition of the advisory committee will be as follows:
a) The current or former Hong Kong delegates to the NPC and the current or former members of the Political Consultative Conference.
b) Former Executive and Legislative Councillors
c) Former Secretary-level officials
d) Members of the Drafting Committee for the Basic Law or the CCBL

2) Albert Chen -- Consultative Council
1/3 of the legislators (i.e. 20 legislators) are to be selected by the consultative council through consultation or recommendation. Those selected upon recommendation by the consultative council may or may not be members of the consultative council. The membership of the consultative council will not be fixed but it should not be less than 60 or more than 120. The Central Government should delegate authority to certain local people to form and organise the consultative council. The method of formation should be similar to that of the CCBL. Some members should be invited by the organisers upon recommendations of organisations from various sectors, while some should be invited by the organisers on their own initiative.

III Selection of the Chief Executive and Formation of the Legislature

1) Tso Wung Wai, Tong Yat Chu, and Raymond Ho -- Selection Committee

Composition:

A "selection committee" will be established. It will comprise about 60-80 members who are selected by various "designated organisations" and appointed by the NPC. The list of "designated organisations" and the number of members selected by each "designated organisation" should be more or less the same as those in the formation of the Consultative Committee for the Basic Law. Any amendment to the details of the composition of the "selection committee" should be the responsibility of the NPC or the organisation appointed by the NPC. All members of the selection committee must be representative Hong Kong inhabitants who are familiar with the conditions and needs of Hong Kong.

The Legislature:

The selection committee is to recommend 15 members of the legislature. (They should not be members of the selection committee.)

The Chief Executive:

The selection committee is to recommend 3 to 5 candidates (who should not be members of the selection committee). With the approval of the Central Government, the Chief Executive will be selected by consultation or voting.

2) Cha Chi Man -- Advisory Council

Composition:

An advisory council should be established before 1997, nominated by the Hong Kong Governor, and approved by the Central Government. Its members will serve a lifelong term of office. There should be no restriction on the number of members. Advisors should be eminent local personages e.g. ex-members of the Executive Council and Legislative Council, people from such sectors as industry, commerce, finance, law, and education and other professions. Serving members of the Executive Council and Legislative Council may not concurrently be members of the advisory council. In general, advisors will mostly be retired or senior persons, but this is not a prerequisite.

The Legislature:

1/3 of the legislators are to be elected from among members of the advisory council.

The Chief Executive:

After consultations by the advisory council, a Hong Kong person who is not a member of the advisory council is to be nominated. With the approval of the Central Government, the nominee will be appointed. From about 2010 onward, 2 or 3 Hong Kong persons are to be nominated after consultations by the advisory council. With the

approval of the Central Government, the nominees will stand for a general election. The candidate with the largest number of vote will be appointed by the Central Government as Chief Executive.

3) Zee Sze Yong -- Grand Electoral College

Composition:

The NPC will appoint a number of representative people to form a preparatory group. (Members of the group will not be eligible to be members of the grand electoral college.) This preparatory group will form a grand electoral college or an election committee of 300 to 600 members. Each member of the grand electoral college may cast only one vote even if he represents more than one sectors.

- 1) Representatives or members of the legislature selected by direct elections and functional constituencies elections. [These persons shall not enjoy the right to stand for election.]
- 2) Representatives or members of the Urban Council and Regional Council
- 3) Representatives or members of District Boards.
- 4) Representatives of designated organisations including:
 - a. Commercial/industrial sector
-- industry, trade, shipping, aviation, tourism.
 - b. Finance; real estate
-- banking, insurance, securities, real estate, building, and construction.
 - c. Legal sector
-- barristers, solicitors, judges.
 - d. Professionals
-- academics, engineers, architects, surveyors, accountants, medical personnel, educationalists, artists, sports, science, and technology.
 - e. Mass media
-- television, radio, newspapers, magazines, publishers.
 - f. Community bodies; grassroots
-- labour, civil servants, social workers, political groups, charities, agriculture and fisheries, kaifong associations, rural committees, Heung Yee Kuk, hawkers, students. [Any civil servant who is selected must relinquish his/her public office.]
 - g. Religions
-- Protestantism, Buddhism, Catholicism, Islam, Taoism, Confucianism.
 - h. Foreign nationals
 - i. Women
- 5) All or some of the Hong Kong delegates to the National People's Congress.
- 6) Representative or members of the Political Consultative Committee.

The Legislature:

1/3 of the legislators are to be elected by "the grand electoral college".

The Chief Executive:

The grand electoral college will nominate 2 to 3 candidates. After the nominations are approved by the Central Government, the Chief Executive will be elected by universal franchise. If the "grand electoral college" is abolished, candidates for the Chief Executive will be nominated by the Legislative Council. With the approval of the Central Government, the Chief Executive will be elected by universal franchise.

4) 76-member Proposal -- Electoral College; Nomination Committee

Composition:

The composition of the electoral college will be as follows:

a) Legislative Councillors	80
b) Statutory bodies and permanent non-statutory bodies	50
c) Urban Council, Regional Council, and District Boards	50
d) Social service, charitable, and sports organisations	60
e) Professionals	60
f) Labour	60
g) Industrial sector	80
h) Commercial sector	50
i) Financial sector	50
j) Religious/Educational sector	30
k) Civil service	30

Total:600

Members of the electoral college are to elect a 20-member nomination committee from among themselves. Members of the nomination committee may not be candidates or electors in the election of the Chief Executive.

The Legislature:

The nomination committee will nominate a certain number of candidates from whom the electoral college will elect 25% of the legislators.

The Chief Executive:

The nomination committee will nominate 3 candidates from whom the electoral college will elect the Chief Executive.

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

香港特别行政区基本法(草案)

(汇编稿)

中华人民共和国香港特别行政区
基本法起草委员会秘书处
一九八七年十二月

香港特别行政区基本法(草案)

(汇编稿)

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序 言

香港自古以来就是中国的领土，一八四〇年鸦片战争以后被英国占领。一九八四年十二月十九日，中英两国政府签署了关于香港问题的联合声明，确认中华人民共和国政府于一九九七年七月一日恢复对香港行使主权，从而实现了长期以来全中国人民收回香港的共同愿望。

为了维护国家的统一和领土完整，保持香港的繁荣与稳定，并考虑到香港的历史和现实情况，国家决定，在对香港恢复行使主权时，根据中华人民共和国宪法第三十一条的规定，设立香港特别行政区，并按照“一个国家，两种制度”的方针，实行不同于内地的制度和政策，五十年不变。国家对香港的基本方针政策，已由我国政府在中英联合声明中予以阐明。

根据中华人民共和国宪法，特制定中华人民共和国香港特别行政区基本法，规定香港特别行政区实行的制度，以保障国家对香港的基本方针政策的实施。

〔说明〕委员们建议，在全国人大颁布基本法时，由国务院发布香港特别行政区的行政区域图。

第一章 总 则

第一条 香港特别行政区是中华人民共和国不可分离的部分。

第二条 全国人民代表大会授权香港特别行政区按照本法的规定实行高度自治。

第三条 香港特别行政区的行政机关和立法机关由香港永久性居民按本法有关规定组成。

第四条 香港特别行政区不实行社会主义制度和政策，保持原有的资本主义制度和生活方式。

第五条 香港特别行政区依法保障香港特别行政区居民和其他人的权利和自由。

第六条 财产所有权，包括财产的取得、使用、处置和继承的权利，以及依法征用财产得到补偿的权利，均受法律保护。补偿相当于该财产的实际价值、可自由兑换、不无故迟延支付。

第七条 香港特别行政区境内的土地和自然资源属于国家所有，由香港特别行政区政府负责管理、使用、出租或批给个人或法人团体使用，其收入全归香港特别行政区

政府支配。

第八条 香港原有法律，即普通法及衡平法、条例、附属立法、习惯法，除与本法相抵触或经香港特别行政区的立法机关作出修改者外，予以保留。

第九条 香港特别行政区的行政机关、立法机关和司法机关，除使用中文外，还可以使用英文。

第十条 根据中华人民共和国宪法第三十一条，香港特别行政区的政策和制度，包括社会、经济制度，有关保障基本权利和自由的制度，以及行政管理、立法和司法方面的制度，均以本法的规定为依据。

香港特别行政区立法机关制定的任何法律，均不得与本法相抵触。

〔说明〕关系组委员的其他意见：

第二条

有的委员建议改为：“全国人民代表大会授权香港特别行政区按照本法的规定实行高度自治。对本法实施的监督权属于全国人民代表大会常务委员会。凡逾越本法所授之权力的行政、立法和司法行为均可由全国人民代表大会常务委员会宣布无效”。

还有的委员建议改为：“除外交和国防事务属中央人民政府管理外，香港特别行政区享有高度的自治权”。

有的委员建议在第二条之后增写新的一条为：“香港特别行政区享

有行政管理权、立法权、独立的司法权和终审权”。

第十条

有的委员建议第一款最后一句改为：“均以本法的规定为最终的依据”。并将第二款单列一条。

第二章 中央与香港特别行政区的关系

第十一条 香港特别行政区是中华人民共和国的一个享有高度自治权的地方行政区域，直辖于中央人民政府。

第十二条 中央人民政府依照本法第四章的规定任命香港特别行政区行政长官和行政机关的主要官员。

第十三条 中央人民政府负责管理与香港特别行政区有关的外交事务。

中央人民政府授权香港特别行政区依照本法自行处理有关的对外事务。

中华人民共和国外交部在香港设立机构处理外交事务。

第十四条 中央人民政府负责管理香港特别行政区的防务。

中央人民政府派驻香港特别行政区负责防务的军队不干预香港特别行政区的地方事务。香港特别行政区政府在

必要时，可以向中央人民政府请求驻军协助维持社会治安和救助灾害。

驻军人员除应遵守全国性的法律外，还应遵守香港特别行政区的法律。

驻军费用由中央人民政府负担。

第十五条 香港特别行政区享有行政管理权，按本法的有关规定自行处理财政、金融、经济、工商业、贸易、税务、邮政、民航、海事、交通运输、渔业、农业、人事、民政、劳工、教育、医疗卫生、社会福利、文化康乐、市政建设、城市规划、房屋、房地产、治安、出入境、天文气象、通讯、科技、体育以及其他方面的行政事务。

第十六条 香港特别行政区享有立法权。

香港特别行政区的立法机关制定的法律须报全国人民代表大会常务委员会备案。备案不影响该法律的生效。

全国人民代表大会常务委员会在征询香港特别行政区基本法委员会后，如果认为香港特别行政区的任何法律不符合本法或法定程序，可将有关法律发回重议或撤销，但不作修改。经全国人民代表大会常务委员会发回重议或撤

销的法律立即失效。该法律的失效无溯及力。

第十七条 在香港特别行政区实行的法律为本法，以及本法总则第八条规定的香港原有法律和香港特别行政区立法机关制定的法律。

全国人民代表大会和全国人民代表大会常务委员会制定的法律，除以下(一)、(二)两项所列者外，不在香港特别行政区实施：

(一) 有关国防、外交的法律；

(二) 其他有关体现国家统一和领土完整并且按本法规定不属于香港特别行政区高度自治范围的法律。

本条前款(一)、(二)所列的法律，凡须在香港特别行政区实施的，由国务院指令香港特别行政区政府在当地公布或立法实施。

除紧急情况外，国务院在发布上述指令前，均事先征询香港特别行政区基本法委员会和香港特别行政区政府的意见。

香港特别行政区政府如未能遵照国务院的指令行事，国务院可发布命令将上述法律在香港特别行政区实施。

第十八条 香港特别行政区享有独立的司法权和终审

权。

第十九条 香港特别行政区可以享有全国人民代表大会和全国人民代表大会常务委员会及国务院授予的其他权力。

第二十条 香港特别行政区居民中的中国公民可以依照法律参与国家事务的管理。

根据全国人民代表大会常务委员会确定的名额和代表产生办法，由香港居民中的中国公民在香港选出香港特别行政区的全国人民代表大会代表。

第二十一条 中央人民政府所属各部门、各省、自治区、直辖市均不得干预香港特别行政区根据本法自行管理的事务。

中央各部门、各省、自治区、直辖市如需在香港设立机构，须征得香港特别行政区政府的同意和中央人民政府的批准。

中央各部门、各省、自治区、直辖市在香港设立的一切机构及其人员均应遵守香港特别行政区的法律。

中国其他地区的人进入香港特别行政区需办理批准手续。

香港特别行政区可以在北京设立办事机构。

第二十二条 香港特别行政区应以法律禁止任何破坏国家统一和颠覆中央人民政府的行为。

〔说明〕关系组委员的其他意见：

委员们建议，在全国人民代表大会常务委员会下设立一个咨询机构，暂定名为香港特别行政区基本法委员会，由内地和香港人士参加，负责就基本法的解释和修改、香港特别行政区制定的法律是否符合基本法及法定程序、以及少数全国性法律在香港的适用等问题，向全国人民代表大会或其常务委员会提供意见。这个委员会的成立和隶属关系以及其职责、组成等须待全国人民代表大会决定。

第十四条

有的委员建议，关于驻军人员犯罪如何处理应另有法律规定。

第十六条 第三款

有的委员建议改为：“全国人民代表大会常务委员会在咨询香港特别行政区基本法委员会后，如果认为香港特别行政区的任何法律有不符合本法或法定程序的可能，可将有关法律转交香港特别行政区的终审法庭审议。若终审法庭认为有关法律之部分或全部不符合本法或法定程序，可宣布该法律之有关部分或全部无效，但其失效无溯及力”。

有的委员建议第十六条第三款最后一句改为：“该法律的失效除涉及刑事和宪制问题外无溯及力”。

第十七条

有的委员建议改为：“在香港特别行政区实行的法律为本法，以及本法总则第八条规定的香港原有法律和香港特别行政区立法机关制订的法律。

全国人民代表大会和全国人民代表大会常务委员会制定的法律，除

有关国防、外交并且按本法规定不属于香港特别行政区高度自治范围者外，不在香港特别行政区实施。

上述有关国防、外交的法律，凡须在香港特别行政区实施的，由全国人民代表大会常务委员会指令香港特别行政区立法机关立法实施。

除紧急情况外，全国人民代表大会常务委员会在发布上述指令前，均事先征询香港特别行政区基本法委员会和香港特别行政区政府的意见。

香港特别行政区立法机关如未能遵照全国人民代表大会常务委员会的指令行事，全国人民代表大会常务委员会可透过香港特别行政区行政长官将上述法律在香港特别行政区公布实施。

除上述有关国防、外交的法律外，少数有关体现国家统一和领土完整的全国性法律，即本法附件中所列者，适用于香港特别行政区。”

第二十条

有的委员建议改为：“具有香港特别行政区永久性居民身份的中国公民可以依照法律参与国家事务管理。根据全国人民代表大会常务委员会确定的名额和代表产生办法，由具有香港特别行政区永久性居民身份的中国公民选出同等身份的中国公民为香港特别行政区的全国人民代表大会代表。

香港特别行政区的全国人民代表大会代表不得干预香港特别行政区根据本法自行管理的事务。”

第三章 香港特别行政区居民的基本权利和义务

第二十三条 香港特别行政区居民包括永久性居民和

非永久性居民。

香港特别行政区永久性居民为：

(一) 在香港特别行政区成立以前或者以后在香港出生的中国公民；

(二) 在香港特别行政区成立以前或者以后在香港通常居住连续七年以上的中国公民；

(三) 第(一)、(二)两项所列居民在香港以外所生的中国籍子女；

(四) 在香港特别行政区成立以前或者以后在香港通常居住连续七年以上并以香港为永久居住地的非中国籍的人；

(五) 在香港特别行政区成立以前或者以后第(四)项所列居民在香港所生的未满二十一周岁的子女；

(六) 第(一)至(五)项所列居民以外在香港特别行政区成立前只在香港有居留权的人。

以上居民在香港特别行政区享有居留权和有资格依照香港特别行政区法律获得载明其居留权的永久性居民身份证。

香港特别行政区非永久性居民为：有资格依照香港特

别行政区法律获得香港居民身份证，但没有居留权的人。

第二十四条 香港居民，不分国籍、种族、民族、语言、性别、职业、宗教信仰、政见、教育程度、财产状况，在法律面前一律平等。

〔说明〕有的委员建议，本条可改写成：“香港居民在法律面前一律平等。不因国籍、种族、民族、语言、性别、职业、宗教信仰、政见、教育程度、财产状况而受歧视。”

第二十五条 年满二十一周岁的香港特别行政区永久性居民，都依照法律享有选举权和被选举权。

〔说明〕有些委员提议本条改写为：香港特别行政区永久性居民都依照法律享有选举权和被选举权。

第二十六条 香港居民享有：

(一) 言论、新闻、出版的自由；

(二) 结社、组织和参加工会、罢工的自由；

(三) 集会、游行的自由。

〔说明〕有些委员主张仍保留“香港居民依照法律享有：”的表述。

第二十七条 香港居民的人身自由不受侵犯。

香港居民不受非法逮捕、拘留或者监禁。禁止以任何方法非法剥夺或者限制居民的人身自由。禁止非法搜查居民的身体。

第二十八条 香港居民的住宅和其他房屋不受侵犯。禁止非法搜查或者非法侵入居民的住宅和其他房屋。

(说明) 本小组一致认为不宜在第二十七、二十八条中的“非法”之前加上“无理或”三个字，也不同意将“非法”改为“任意”。

第二十九条 香港居民的通讯自由和通讯秘密受法律的保护。除因公共安全和追查刑事犯罪的需要，由有关机关依照法律程序对通讯进行检查外，任何部门或个人不得以任何理由侵犯居民的通讯自由和通讯秘密。

(说明) 有的委员提出，删去“除因公共安全和追查刑事犯罪的需要，……通讯秘密。”这一句，经小组研究结果，予以保留。

第三十条 香港居民有在香港特别行政区境内迁徙的自由，有移居其他国家和地区的自由。持有有效旅行证件的香港居民有旅行和出入境的自由，除非受到法律限制，可自由离开香港特别行政区，无需特别批准。

第三十一条 香港居民有信仰的自由。

香港居民有宗教信仰的自由，有传教和公开举行、参

与宗教活动的自由。

(说明)

1、有些委员建议本条加写第三款：“任何人士不应因宗教信仰而受歧视或致使其公民权利受亏损。”

2、有些委员建议本条改写为：“香港特别行政区居民有思想、信念及宗教之自由。此种权利包括保有或采奉自择宗教或信仰之自由，及单独或集体、公开或私自以礼拜、戒律、躬行及讲授表示其宗教或信仰之自由。”

第三十二条 香港居民有选择职业的自由。

第三十三条 香港居民有进行学术研究、文学艺术创作和其他文化活动的自由。

第三十四条 香港居民有权得到秘密法律咨询、向法院提起诉讼、选择律师及时保护自己的合法权益或者在法庭上为其代理以及获得司法补救。

香港居民有权对行政部门和行政人员的行为向法院申诉。

(说明)

1、有些委员建议删去“合法权益”中的“合法”二字。

2、香港居民是否有权对中央驻港机关及其工作人员的行为向香港法院起诉的问题，本组建议由有关专题小组在司法管辖问题中加以规定。

第三十五条 香港居民有享受社会福利的权利，劳工的福利待遇受法律保护。

第三十六条 香港居民的婚姻自由和自愿生育的权利受法律的保护。

第三十七条 香港居民享有香港特别行政区法律保障的其他权利和自由。

第三十八条 《公民权利和政治权利国际公约》和《经济、社会与文化权利的国际公约》适用于香港的有关规定，通过香港特别行政区的法律予以实施。

第三十九条 香港居民享有的权利和自由，除依法律规定外不得限制。但此种限制需以维护国家安全、社会秩序、社会公安、公共卫生、公共道德以及保障他人的权利和自由所必需为限。

第四十条 “新界”原居民的合法传统权益受香港特别行政区的保护。

第四十一条 在香港特别行政区内的香港居民以外的其他人，依法享有本章规定的香港居民的权利和自由。

〔说明〕有的意见建议将本条规定改为：“香港居民以外的其他人，依法享有本章规定的（除了选举权和被选举权）香港居民的权利和

自由”，经小组研究，“其他人”除不能享受选举权和被选举权外，还有个别的权利，如自由进入香港，也不能享有，因此未改。

第四十二条 香港居民和在香港的其他人有遵守香港特别行政区法律的义务。

第四章 香港特别行政区的政治体制

第一节 行政长官

第四十三条 香港特别行政区行政长官是香港特别行政区的首长，依照本法规定对中央人民政府和香港特别行政区负责。

〔说明〕有的委员提出，“依照本法规定”六字可以删去；有的委员提出，在“首长”之前加“最高”两字；有的委员提出，在“首长”之后加“代表香港特别行政区”；有的委员提出，在“负责”之前加“政府”两字。

有的委员建议，本条改为：“香港特别行政区行政长官是香港特别行政区的首长及香港特别行政区行政机关的首长，代表香港特别行政区及领导香港特别行政区行政机关，依照本法规定对中央人民政府、香港特别行政区及香港特别行政区立法机关负责。”

第四十四条 香港特别行政区行政长官由年满四十周岁，在香港通常连续居住满二十年的香港特别行政区永久

性居民中的中国公民担任。

第四十五条

（第一款）香港特别行政区行政长官在当地通过选举或协商产生，由中央人民政府任命。

〔说明〕写成正式条文时，（第一款）、（第二款）等字样删去。

（第二款）行政长官的具体产生办法有以下四种方案：

1、由一个有广泛代表性的大选举团选举产生。

2、由立法机关成员（例如十分之一）提名，全港一人一票直接选举产生。

〔说明〕有的委员主张，由一个有广泛代表性的提名团提名候选人，全港一人一票直接选举产生。

3、由功能团体选举产生。

4、首三届行政长官由顾问团在当地协商产生，报中央任命；此后由顾问团提名三名候选人经中央同意后，交由选举团选举产生。

〔说明〕部分委员赞成第一方案，有些委员赞成第二方案，有些委员赞成第三方案，有的委员赞成第四方案。

（第三款）前款规定的行政长官的产生办法可根据香

港特别行政区的实际情况予以变更。此项变更须经香港特别行政区立法机关全体成员三分之二多数通过，行政长官同意，并报全国人民代表大会常务委员会批准。

〔说明〕有的委员建议本条第二、三款次序调换，将第三款写成第二款，并修改为：“香港特别行政区行政长官的产生办法，除第一、二、三届外，可根据香港特别行政区的实际情况予以变更。此项变更须经香港特别行政区的全国人民代表大会代表三分之二的多数通过，香港特别行政区立法机关成员三分之二的多数通过及香港特别行政区行政长官同意，并报全国人民代表大会常务委员会批准”。

第四十六条 香港特别行政区行政长官的任期为五年，可以连任一次。

〔说明〕

有的委员主张行政长官的任期为四年，可以连任两次；

有些委员主张行政长官的任期须联系立法机关成员的任期来考虑；

有些委员主张行政长官的任期应与立法机关成员相同。

第四十七条 香港特别行政区行政长官行使下列职权：

（一）代表香港特别行政区。

（二）领导香港特别行政区政府。

〔说明〕委员们认为，本章所提“政府”一词的概念应有统一的理解。有些委员主张“政府”仅指行政机关；有些委员主张采用大政府的

概念，多数委员同意待进一步研究后再作确定，暂时可先按大政府的概念草拟本章条文。

有些委员认为，如采用大政府概念，本项应写成“领导香港特别行政区行政机关”。

(三) 负责执行本法及依照本法适用于香港特别行政区的其他法律。

(说明) 有些委员主张将本项内容写入第一条。

(四) 签署立法机关通过的法案，公布法律。

行政长官如认为立法机关通过的法案不符合香港特别行政区之整体利益，可于三个月内将法案发回重议；如立法机关以不少于全体成员三分之二的多数再次通过，行政长官必须在一个月內签署并公布，或运用本条(十三)项规定的权力解散立法机关。

(五) 决定政府政策和发布行政命令。

(六) 提名并报请中央人民政府任命下列主要官员：各厅厅长、副厅长、各司司长、廉政专员、审计署长、警察局长、外事局长；建议中央人民政府免除上述官员职务；

根据需要并经中央人民政府批准，聘请(及终止聘

请) 相当于司级或司级以上的顾问。

(说明) 各厅厅长，即相当于目前的布政司、财政司、律政司，暂定名为政务厅长、财政厅长、律政厅长。各司司长，即相当于目前各综合决策科的负责官员。

有些委员认为，审计署长不是司级官员，不必报请中央政府任命，但须经立法机关同意，由行政长官任命。

有的委员认为，将来不会有政治顾问，对外事局长的职权应先予阐明。

有些委员认为，本条应大体上按联合声明的写法，不必列出各种职位。

(七) 依照法定程序任免各级法院法官。

(八) 依照法定程序任免公职人员。

(九) 执行中央人民政府就本法规定的有关事务发出的指令。

(十) 代表香港特别行政区政府处理中央授权的对外事务及其他事务。

(十一) 批准任何向立法机关提出有关税项或动用政府公款的动议。

(十二) 根据安全和公共利益的考虑，决定政府官员是否向法庭或立法机关作证和提供证据。

(说明) 有的委员建议本项改为“批准(或不批准)公职人员出席

立法机关所辖的委员会就关于海、陆、空军事宜、香港的安全、中央人民政府对香港特别行政区的管治责任等事宜作证和提供证据。”

有的委员建议，本条第(十一)(十二)两项删去。

(十三) 有下列情况之一，在征询行政会议意见后，可解散立法机关：

1、立法机关拒绝通过财政预算法案、拨款条例草案、或行政长官认为符合香港特别行政区利益的其他重要法案，经协商仍不能取得一致意见；

2、立法机关制订或修改法律草案，行政长官认为这些法案的内容不符合香港特别行政区的利益，发回重议，立法机关仍以全体成员三分之二多数通过原案，行政长官再次拒绝签署。

行政长官在其一次任期内只能解散立法机关一次。

如立法机关拒绝批准财政预算法案或拨款条例草案，或由于立法机关已被解散而不能批准拨款时，行政长官可在选出新的立法机关之前的一段时期内批准临时短期拨款，以维持政府开支。

(说明) 有的委员主张，行政长官不能解散立法机关；如保留此项，则在立法机关的职权中加上“可对行政长官或主要官员投不信任票”的规定。

有些委员认为，本项1、中的“协商”必须经一定程序，建议改写为“立法机关拒绝通过财政预算法案、拨款条例草案、或行政长官认为必要的其他重要法案，经由(九名)立法机关成员组成之特别委员会与行政机关协商，在六十天内建议解决方法，而立法机关或行政长官拒绝接受特别委员会之建议”。

(十四) 依法批准将危害公安之刑事罪犯递解出境。

(说明) 有的委员提出，英国在认准公民及政治权利国际盟约时，保留对其中的规定“对合法居留之外国人非经依法判定，不得驱逐出境”不在香港实施，故这条如何写需进一步研究。有些委员同意这条暂时写上，待继续研究。

有的委员建议将本条改写为：“决定将个别在香港特别行政区内合法居留的外籍人，非经依法判定，驱逐出境；并拒绝让被驱逐者提出不服驱逐出境之理由，要求复判，或委托代表进行申诉”。

(十五) 赦免或减轻刑事罪犯的刑罚。

(十六) 处理居民请愿、申诉的事项。

(十七) 在按照本法执行职务时应有的其他权力。

(说明) 有的委员主张删去第(十七)项。

第四十八条 香港特别行政区行政长官必须尽忠职守。

行政长官在就任时必须向香港特别行政区终审法院首席法官申报财产，秘密记录在案。

(说明) 有些委员提出，行政长官和主要官员退休后的职业限制问

题，留待研究。

第四十九条 香港特别行政区行政长官在下列情况下必须辞职：

- (一) 因严重病患或其他原因而长期不能履行职务；或
- (二) 因两次拒绝签署立法机关通过之法案而解散立法机关，重选之立法机关仍以全体成员三分之二多数通过所争议之原案；或
- (三) 因立法机关拒绝通过财政预算法案或其他重要法案而解散立法机关，重选之立法机关继续拒绝通过所争议之原案。

〔说明〕有的委员认为，第(一)项应写成“无力”履行职责；有的委员认为，应写成“不适合”履行职责。

有的委员主张本条增写第(四)项，即“立法机关全体成员以三分之二多数通过对行政长官的不信任票”；有的委员主张，如要这样写，必须是立法机关投不信任票后，行政长官可解散立法机关，如重新选出的立法机关再次投不信任票，行政长官才必须辞职。

第五十条 香港特别行政区行政长官短期不能履行职务时，依次由政务厅厅长、财政厅厅长、律政厅厅长临时代理其职务。

香港特别行政区行政长官缺位时，应在六个月内选出新的行政长官。在新的行政长官选出前，依照上款规定办理。

第五十一条 香港特别行政区行政会议（暂定名）是协助行政长官决策的机构。

〔说明〕有的委员建议，将行政会议的条文写进行政机关一节中；有的委员不赞成设立行政会议。有些委员认为，行政会议是行政长官的咨询机构，不是行政机关的一部分。

第五十二条 香港特别行政区行政会议的成员由行政长官从行政机关的主要官员、立法机关成员和社会人士中委任，其任期或任期未满时终止委任，由行政长官决定。行政会议成员的任期应不超过委任他的行政长官的任期。

香港特别行政区行政会议成员由香港特别行政区永久性居民中的中国公民担任，宣誓效忠于香港特别行政区。

行政长官认为必要时可邀请有关人士列席会议。

〔说明〕有些委员主张参加行政会议的立法机关成员必须通过立法机关互选产生，社会人士也须经立法机关过半数成员的同意；有的委员主张，如果不是通过互选，则立法机关成员不必参加行政会议。

关于行政会议人数及各部份成员是否需要一个比例等问题，有的委员主张，行政会议成员全部由主要官员组成；有的委员主张，行政会议

的成员不少于半数为立法机关成员。委员们同意暂不作规定，待进一步研究。

第五十三条 香港特别行政区行政会议由行政长官主持。

行政长官在作出重要决策、向立法机关提交法案、制订附属法规和解散立法机关前，须征询行政会议的意见，但人事任免、纪律制裁和紧急情况者除外。

行政长官如不采纳行政会议多数成员的意见，应将具体理由记录在案。

第五十四条 香港特别行政区设立廉政机构，独立工作，向行政长官负责。

第五十五条 香港特别行政区设立审计机构，独立工作，向行政长官负责。

〔说明〕有的委员建议，将本条改写为“行政长官经香港特别行政区立法机关批准后可任命审计署署长或将其撤职。审计署署长和其辖下的审计署根据法律执行职责时，不受任何人士或机关的指令或管制所限制”。

〔说明〕有些委员建议本节加进一条：“司级以上顾问可以组成一个顾问团，执行本法赋予的职责”。

第二节 行政机关

第五十六条 香港特别行政区××（名称待定）是香港特别行政区行政机关。

香港特别行政区行政机关的首长是香港特别行政区行政长官。

〔说明〕香港特别行政区行政机关的名称，有些委员建议为“政府”，有的委员建议为“行政总署”，有些委员建议为“行政公署”，有的委员建议为“行政管理署”，或“行政管理局”。

第五十七条 香港特别行政区行政机关的主要官员由香港特别行政区行政长官提名，报请中央人民政府任命。

香港特别行政区的主要官员由在香港通常连续居住满十五年的香港永久性居民中的中国公民担任。

〔说明〕委员们认为，主要官员一般应从公务员中挑选，但也可从公务员以外的社会人士中挑选，后者担任主要官员期间，按合约公务员待遇，任满后即脱离公职；主要官员工作调动及增加司级官员编制须报中央人民政府批准。

关于主要官员在香港居住年限问题，还有些委员主张十年，有的委员主张二十年，有的委员主张不作规定。

第五十八条 香港特别行政区行政机关的组成如下：

行政长官，
各厅厅长，
各司司长，
其他相当于司级的官员。

香港特别行政区行政机关的组织由法律规定。

〔说明〕香港特别行政区行政机关属下各部门的机构设置由法律规定，各行政部门首长，即目前布政司属下的各部门首长，依其主管工作性质和规模，分别称局长（如：警察局长、外事局长等）、处长（如：海事处长、人民入境事务处长等）、署长（如：注册总署署长、库务署长等）。銓叙司可考虑改为人事司长。

有的委员建议，本条改写为：“行政机关成员包括：（1）行政长官；（2）由行政长官提名，经中央政府任命的主要官员（相当于‘司’级官员）；（3）由行政长官和他委任的主要官员所组成的行政局。”

有些委员对“厅长”的名称有保留。

第五十九条 香港特别行政区行政机关行使下列职权：

- （一）制定并执行政府政策；
- （二）管理本法第十五条所规定的各项行政事务；
- （三）办理本法第七章规定的中央人民政府所授权的对外事务；
- （四）编制并提出财政预算、决算；

- （五）拟定并提出法案、议案、附属法规；
- （六）在按照本法规定执行职务时必要和合理的其他权力。

〔说明〕有些委员主张删去第（六）项。

第六十条 香港特别行政区行政机关的检察部门独立处理刑事检控工作，不受任何干涉。

第六十一条 香港特别行政区行政机关必须遵守法律，对香港特别行政区立法机关负责；执行立法机关通过并已生效的法律；定期向立法机关作施政报告；答复立法机关成员的质询；征税和公共开支须经立法机关批准。

〔说明〕有些委员不同意上述条文中“负责”之后用冒号，理由是“负责”的内容比条文所说的广泛。

有些委员建议，本条改为：“香港特别行政区行政机关必须遵守法律，对香港特别行政区立法机关负责。行政机关必须：（一）执行立法机关通过并已生效的法律；（二）定期向立法机关作施政报告；（三）接受立法机关的监察；（四）答复立法机关成员的质询，接受并协助立法机关就专门问题进行调查；（五）征税及公共开支经立法机关批准，接受立法机关对公共开支的运用情况进行监察”。

但多数委员不同意上述意见。

第六十二条 行政长官和行政机关设立咨询组织的制

度继续保留。

第三节 立法机关

第六十三条 香港特别行政区××（名称待定）是香港特别行政区的立法机关。

〔说明〕关于立法机关的名称，委员们提出下列建议：立法委员会、立法局、立法会（英文仍称LEGISLATIVE COUNCIL）、立法会议、立法议会。

有些委员建议，第一条加第二款：“香港特别行政区的立法权属于香港特别行政区立法机关。”有的委员则认为，“香港特别行政区立法权属于香港特别行政区”。

第六十四条

（第一款）香港特别行政区的立法机关由选举产生。

（第二款）立法机关具体的产生办法有以下三种方案：

1、功能团体选出的成员占百分之五十；由地域性选区直接选出的成员占百分之二十五；经大选举团选出的成员占百分之二十五。

2、不少于百分之五十经由普及而直接之选举产生；不多于百分之二十五经功能团体选举产生；不多于百分之

二十五由地区的议会如区议会、市政局和区域市政局选举产生。

3、百分之三十的成员由顾问团推选非顾问入立法机关，其中至少三分之一为主要官员，其余为行政会议成员及社会上其他人士；百分之四十的成员由功能团体选出；百分之三十的成员由各地区直接选出。

〔说明〕多数委员主张混合选举，其中较多委员赞成条文中的第1种方案，有些委员赞同第2种方案，有的委员赞同第3种方案。提出第1、3两种方案的委员主张，他们方案中立法机关成员的各种产生办法是“一揽子”办法，即是否有地域性直接选举，须视其他两种选举方式是否一并被接受为条件。

此外，有些委员建议，香港特别行政区立法机关的成员全部由功能团体选举产生。

有的委员提出，香港特别行政区立法机关的成员全部由地域性的、一人一票的普及选举方式产生。

（第三款）前款规定的选举办法可根据香港特别行政区的实际情况予以变更。此项变更须经香港特别行政区立法机关全体成员的三分之二多数通过，行政长官同意并报全国人民代表大会常务委员会批准。

〔说明〕有的委员提出，本条第二、三款的次序应相互调换，即将现在的第三款写成第二款，并改写为“香港特别行政区立法机关的具体

产生办法，可根据第一届立法机关的产生办法，并按照香港特别行政区的实际情况，循序渐进予以改变。此项变更须经香港特别行政区的全国人民代表大会代表三分之二的多数通过，香港特别行政区立法机关成员三分之二多数通过，及香港特别行政区行政长官同意并报全国人民代表大会常务委员会批准”。

第六十五条 香港特别行政区立法机关成员的任期为四年。

第六十六条 香港特别行政区立法机关如经行政长官依本法规定解散，须于六个月内依照本法第六十四条的规定，重行选举产生。

第六十七条

方案一：

香港特别行政区立法机关主席由立法机关成员互选产生。

方案二：

香港特别行政区立法机关主席由行政长官兼任。

〔说明〕许多委员赞成方案一，有些委员赞成方案二。

第六十八条 香港特别行政区立法机关的主席由年满四十周岁，在香港通常连续居住满二十年的香港特别行政区永久性居民中的中国公民担任。

第六十九条 香港特别行政区立法机关主席行使下列职权：

- (一) 主持立法机关的会议；
- (二) 决定、控制议程；
- (三) 决定会议暂停、休会及开会时间；
- (四) 在休会期间可以召开特别会议；
- (五) 根据立法机关会议常规的规定行使的其他职权。

〔说明〕有些委员提出，立法机关是否设立委员会及立法机关主席是否有权提名委员会的成员和主席，留待研究。

第七十条 香港特别行政区立法机关行使下列职权：

- (一) 根据本法规定并依照法定程序制定、废除和修改法律；
- (二) 根据行政机关的提案，审核、通过财政预算、决算；
- (三) 批准税收和公共开支；
- (四) 听取行政机关的施政报告并进行辩论；
- (五) 对行政机关的工作提出质询；

〔说明〕有的委员建议改为“对行政机关的工作加以审查和提出质

询”。

(六) 就任何有关公共利益的问题进行辩论；

(七) 同意终审法院法官和高等法院首席法官的任免；

(八) 接受香港居民申诉并作出处理；

(九) 行政长官如有严重违法或渎职行为，经立法机关全体成员的四分之一联合动议，可依法组成一独立的调查委员会，其主席由终审法院首席法官担任，负责进行调查并向立法机关提出报告。若该委员会认为有足够证据构成上述指控，立法机关以全体成员三分之二多数通过，可以提出弹劾案，报请中央人民政府决定。

〔说明〕有的委员提出，立法机关经全体成员的四分之一联合动议，并经三分之二多数通过，可以提出对行政长官和任何主要官员的不信任案，报请中央人民政府罢免行政长官或有关主要官员。但多数委员不同意。

此外，有的委员建议加进一项：“立法机关及其所辖委员会，有权传召有关人士出席作证和提供证据。但如该等人士为政府官员，则须得到行政长官批准”。

有的委员提出，本条应加进一项规定，立法机关可以设立常设委员会和专责委员会。但有的委员认为，这些内容宜在立法机关会议常规中规定。

(十) 在按照本法规定执行职务时应有的其他权

力。

〔说明〕有些委员主张删去本条第(十)项。

第七十一条

方案一：

香港特别行政区立法机关成员可根据本法规定并依照法定程序个别或联名提出法律草案，但下列三项在提出前必须得到行政长官之书面同意：

(一) 涉及税项及政府开支者；

(二) 涉及政府政策者；

(三) 涉及行政机关之结构及管理运作者。

方案二：

香港特别行政区立法机关成员根据本法规定并依照法定程序提出法律草案，制订和修改法律，凡不涉及公共开支和公共政策之法律草案，可由立法机关成员个别或联名提出。

〔说明〕有的委员主张，凡涉及公共开支或公共政策之法律草案，必须由不少于十分之一的立法机关成员联名提出，但不必得到行政长官之书面同意。

第七十二条 香港特别行政区立法机关举行会议的法

定人数为不少于全体成员的二分之一。

除本法另有规定者外，香港特别行政区立法机关对法案和议案的表决，须经出席会议的过半数成员通过。

立法机关的会议常规由立法机关自行制订，但不得与本法相抵触。

〔说明〕有些委员提出，立法机关举行会议的人数可少于半数或不少于三分之一，如法定人数太高，不易召集会议。

第七十三条 香港特别行政区立法机关通过的法案，须经行政长官签署、公布，方能生效。

第七十四条 香港特别行政区立法机关成员在立法机关会议上发言，不受法律追究。

第七十五条 香港特别行政区立法机关成员在出席会议时和赴会途中不受逮捕。

第七十六条 香港特别行政区立法机关成员必须宣誓忠于香港特别行政区。

第七十七条 香港特别行政区立法机关成员如有下列情况之一，由立法机关主席宣告其丧失立法机关成员之资格：

(一) 因严重病患或其他情况而长期无力履行职务；

(二) 未得到立法机关主席的同意，连续三个月不出席立法机关会议；

(三) 丧失或放弃香港特别行政区永久性居民之身份；

(四) 破产或经法庭裁定偿还债务而不履行；

(五) 在香港特别行政区区内或区外被判犯有刑事罪行，判处入狱一个月或以上，并经立法机关出席会议的成员三分之二通过解除其职务；

(六) 行为不检而经立法机关出席会议的成员三分之二以上通过谴责；

(七) 违反誓言而经立法机关出席会议的成员三分之二通过谴责。

〔说明〕关于立法机关成员被任命为行政机关的主要官员后，是否要辞去其立法机关成员职务，留待研究。

第四节 司法机关

第七十八条 香港特别行政区各级法院是香港特别行政区的司法机关，行使香港特别行政区的审判权。

第七十九条 香港特别行政区设立终审法院、高等法

院、区域法院、裁判署法庭和其他专门法庭。高等法院设上诉法庭和原讼法庭。

原在香港实行的司法体制，除因设立香港特别行政区终审法院而产生变化外，予以保留。

第八十条 香港特别行政区的终审权属于香港特别行政区终审法院。终审法院可根据需要邀请其他普通法适用地区的法官参加审判。

第八十一条 香港特别行政区法院除依照香港原有法律制度对有关国防、外交和中央政府行政行为的案件无管辖权外，对其他在香港特别行政区境内的案件均有审判权。

香港特别行政区法院在审理案件中，凡涉及国防、外交和中央政府行政行为的问题时，应征询行政长官的意见。行政长官就该等问题发出的证明文件对法院有约束力。

行政长官在发出上述证明文件前，须取得全国人民代表大会常务委员会或国务院之证明书。

〔说明〕关于本条，委员们还提出了如下方案：

方案一：

香港特别行政区各级法院除依照普通法和判例对有关国防、外交和纯属政治性的行政行为案件不受理外，对其他在香港特别行政区内的案

件均有审判权。

香港特别行政区法院对某些案件是否涉及国防、外交或纯属政治性的行政行为有疑问时，得征询行政长官的意见，行政长官就该等问题发出的证明文件对法院有约束力。

行政长官在发出上述证明文件前应取得全国人民代表大会常务委员会或国务院的证明。

方案二：

香港特别行政区法院除依照香港原有法律制度中对法院审判权的限制外，对其他在香港特别行政区境内的案件均有审判权。

在审理任何案件的过程中，香港特别行政区法庭有权决定其是否有审判权而不受任何外界影响。

方案三：

香港特别行政区法院对：

- 1、与香港特别行政区内部的行政管理有关；或
- 2、与香港特别行政区境内个人、法人的权利和义务有关；或
- 3、与香港特别行政区境内的财物有关的案件，

除下列问题外，享有管辖权：

- （1）中央与香港特别行政区的关系；
- （2）中央行政行为的有效性；
- （3）香港特别行政区政府按本法规定执行有关国防、外交的中央指令时的行政行为的有效性；
- （4）香港特别行政区政府按本法规定在中央授权下自行处理有关对外事务时的行政行为，按香港原有法律属“国家行为”者的有效性及属“国家事实”者的内容；

- （5）涉及公民对国家的基本责任的问题（叛国一类的案件）。

香港特别行政区法院在审理案件中，凡涉及上述1至4类问题时，

应征询行政长官的意见，行政长官就该等问题发出的证明文件对法院有约束力。

行政长官在发出上述证明文件前，须取得全国人民代表大会常务委员会或国务院之证明书。

凡涉及上述第5类问题的案件，应由法院知会行政长官。行政长官在征询全国人民代表大会常务委员会的意见后，决定是否将该案件转由中央人民法院审理或由中央人民法院就个别案件授权香港特别行政区法院审理或以其他办法设立法庭审理之。

方案四：

香港特别行政区法院除依照原有法律对有关国防、外交和中央政府及香港特别行政区政府以国家名义所作行为无管辖权外……（其余同方案一，但方案一中“纯属政治性的行政行为”改为“以国家名义所作行为”。）

第八十二条 香港特别行政区各级法院的职权划分由香港特别行政区的法律规定。

第八十三条 香港特别行政区法院依照本法第十七条所规定的适用于香港特别行政区的法律审判案件，其他普通法适用地区的司法判例可作参考。

第八十四条 香港特别行政区法院的法官，根据当地法官和法律界及其他方面知名人士组成的独立委员会推荐，由行政长官予以任命。

〔说明〕香港特别行政区法院的法官指区域法院以上的法官，其他

司法人员指裁判署法庭及专门法庭的审判人员，其他在司法组织工作的人员均属公务员。

第八十五条 香港特别行政区法院的法官在无力履行职责或行为不检的情况下，行政长官可根据终审法院首席法官任命的不少于三名当地法官组成的审议庭的建议，予以免职。

香港特别行政区终审法院的首席法官在无力履行职责或行为不检的情况下，行政长官可任命不少于五名当地法官组成的审议庭进行审议，行政长官可根据其建议，按照本法规定的程序，予以免职。

第八十六条 除本法第八十四条和第八十五条规定的程序外，香港特别行政区终审法院的法官及高等法院首席法官的任命和免职，还须由行政长官征得香港特别行政区立法机关的同意，并报全国人民代表大会常务委员会备案。

第八十七条 香港特别行政区法官以外的其他司法人员原有的任免制度继续保持。

第八十八条 香港特别行政区的法官和其他司法人员应根据本人的司法和专业才能选用，并可从其他普通法适

用地区聘用。

第八十九条 香港特别行政区成立前在香港任职的法官和其他司法人员均可留用，其年资予以保留，薪金、津贴、福利待遇和服务条件不低于原来的标准。

第九十条 对退休或符合规定离职的法官和其他司法人员，包括香港特别行政区成立前已退休或离职者，不论其所属国籍或居住地点，香港特别行政区政府按不低于原来的标准，向他们或其家属支付应得的退休金、酬金、津贴及福利费。

第九十一条 香港特别行政区法院独立进行审判，不受任何干涉。司法人员履行审判职责的行为不受法律追究。

第九十二条 原在香港实行的陪审制度的原则予以保留。

第九十三条 香港特别行政区的刑事诉讼和民事诉讼中保留原在香港适用的原则和当事人享有的权利。

〔说明〕有的委员建议上述条文中所提到的原则和权利写入第三章。

第九十四条 香港特别行政区可与全国其他地区的司

法机关通过协商依法进行司法方面的联系和提供协助。

第九十五条 在中央人民政府协助或授权下，香港特别行政区政府可与外国就司法互助关系作出适当安排。

〔说明〕有的委员提出，司法机关的财政独立或专门拨款，在本法中是否可明文规定。

第五节 区域组织

第九十六条 香港特别行政区可设立非地方政权性的区域组织，接受香港特别行政区政府就有关地区管理及其他事务的咨询，或负责提供文化、康乐、环境卫生等服务。

〔说明〕委员们认为，如果保留三层架构，则区议会仍应为地区性咨询机构。

第九十七条 区域组织的具体职权及组成方法，由法律规定。

第六节 公务人员

第九十八条 在香港特别行政区政府各部门任职的公务人员必须是香港特别行政区永久性居民。本法第一百条规定者或法律规定某一薪级点以下者不在此限。

公务人员必须尽忠职守，对香港特别行政区政府负责。

第九十九条 香港特别行政区成立前在香港政府各部门（包括警察部门）任职的公务人员均可留用，其年资予以保留，薪金、津贴、福利待遇和服务条件不低于原来的标准。

第一百条 香港特别行政区政府可任用原香港公务人员中的或持有香港特别行政区永久性居民身份证的英籍和其他外籍人士担任政府部门的各级公务人员，但下列各职级的官员除外：各厅厅长、副厅长、各司司长以及保安司、人事司、行政司的副司长、廉政专员、审计署长、警察局长、副局长、外事局长、副局长、人民入境事务处处长、海关总监。

香港特别行政区政府还可聘请英籍和其他外籍人士担任政府部门的顾问；必要时并可从香港特别行政区以外聘请合格人士担任政府部门的专门和技术职务。上述外籍人士只能以个人身份受聘，对香港特别行政区政府负责。

〔说明〕有的委员提出，人事司、行政司的副司长是否可以考虑不一定限制外籍人士担任。

有的委员提出，人民入境事务处处长和海关总监不是司级官员，是否需要限制，可以研究。

第一百零一条 对退休或符合规定离职的公务人员，包括香港特别行政区成立以前退休或符合规定离职的公务人员，不论其所属国籍或居住地点，香港特别行政区政府按不低于原来的标准向他们或其家属支付应得的退休金、酬金、津贴及福利费（包括抚恤金）。

第一百零二条 公务人员应根据本人的资格、经验和才能予以任用和提升。香港原有关于公务人员的招聘、雇用、考核、纪律、培训和管理的制度（包括负责公务人员的任用、薪金、服务条件的专门机构），除有关给予外籍人员特权待遇的规定外，予以保留。

〔说明〕有的委员主张，在本条的最后，加下列一句：“对上述制度，香港特别行政区政府可根据实际情况，为提高工作效率和公务人员的素质，依法加以发展和改进”。

第五章 香港特别行政区的经济

第一节 财政和税收

第一百零三条 香港特别行政区的财政独立。

香港特别行政区的财政收入全部用于自身需要，不上缴中央人民政府。

第一百零四条 香港特别行政区政府财政预算的编制，贯彻收支基本平衡的方针。

香港特别行政区财政预算收支的增长率，以不超过本地生产总值的增长率为原则。

〔说明〕有些委员认为，第二款可不写进基本法。

第一百零五条 香港特别行政区实行独立的税收制度。

中央人民政府不在香港特别行政区征税。

第一百零六条 香港特别行政区继续实行低税政策。

第一百零七条 香港特别行政区的税种、税率和税收宽免，由特别行政区以法律规定。

第二节 金融和货币

第一百零八条 香港特别行政区政府提供必要条件和采取适当措施，以保持香港特别行政区的国际金融中心地位。

第一百零九条 香港特别行政区自行制定货币金融制

度，继续实行自由开放的货币金融政策。

第一百一十条 香港特别行政区不实行外汇管制政策。继续开放外汇、外币、黄金、证券市场和期货市场。

〔说明〕有的委员认为，外汇本身就包含“外币”在内，不必另加。

第一百一十一条 香港特别行政区政府保障一切资金在香港特别行政区流动和进出香港特别行政区的自由。

第一百一十二条 香港特别行政区政府保障金融企业和金融市场的经营自由，并依法进行管理和监督。

第一百一十三条 港元为香港特别行政区法定货币，继续流通，自由兑换。

第一百一十四条 港币的发行权属于香港特别行政区政府。

港币的发行制度，由特别行政区法律规定。

港币的发行，必须有不低于百分之百的可自由兑换外币作为准备金。

香港特别行政区政府，在确知港币的发行基础健全和发行安排符合保持港币稳定的条件下，可授权指定银行根据法定权限发行或者继续发行港币。

第一百一十五条 香港特别行政区的外汇基金，由香港特别行政区政府管理和支配，主要用于调节港元汇价。

第三节 对外经济贸易

第一百一十六条 香港特别行政区实行自由的经济贸易制度，自行制定对外经济贸易政策。

香港特别行政区政府保障货物、无形财产和资本的流动自由。

第一百一十七条 香港特别行政区为自由港。

香港特别行政区除法律另有规定外不征收关税。

第一百一十八条 香港特别行政区为单独的关税地区。

香港特别行政区可以“中国香港”的名义参加关税和贸易总协定、关于国际纺织品贸易安排等有关国际组织和国际贸易协定，包括优惠贸易安排。

第一百一十九条 香港特别行政区根据所参加的国际协定取得的及以前取得仍继续有效的出口配额、关税优惠和达成的其他类似安排，全由香港特别行政区享有。

第一百二十条 香港特别行政区根据当时的产地规

则，可对本地产品签发产地来源证。

第四节 工商业和其他行业

第一百二十一条 香港特别行政区对工商业和其他行业，实行自由、开放的政策。

第一百二十二条 香港特别行政区政府提供必要环境和条件，鼓励工业投资、技术进步并开拓新兴产业。

第一百二十三条 香港特别行政区政府制定适当政策，促进商业、旅游业、房地产业、运输业、公用事业、服务性行业、渔农业等各类行业的发展。

第五节 土地契约

第一百二十四条 香港特别行政区政府可自行制定有关土地的开发、管理和使用的政策。

第一百二十五条 香港特别行政区成立之前已经批出、决定、或者续期的超越一九九七年六月三十日年期的所有土地契约和与土地契约有关的一切权利，均按照香港特别行政区的法律继续予以承认和保护。

第一百二十六条 从一九八五年五月二十七日至一九

九七年六月三十日期间批出的，或者原没有续期权利而获得续期的，超出一九九七年六月三十日年期而不超过二〇四七年六月三十日的一切土地契约，承租人从一九九七年七月一日起不补地价，但需每年缴纳相当于当日该土地应课差餉租值百分之三的租金。此后，随应课差餉租值的改变而调整租金。

第一百二十七条 原旧批约地段、乡村屋地、丁屋地和类似的农村土地，如该土地在一九八四年六月三十日的承租人，或在该日以后批出的丁屋地承租人，其父系为一八九八年在香港的原有乡村居民，只要该土地的承租人仍为该人或其合法父系继承人，原定租金维持不变。

第一百二十八条 香港特别行政区成立以后满期而没有续期权利的土地契约，由特别行政区自行制定法律及政策处理。

第六节 航运管理

第一百二十九条 香港特别行政区保持原在香港实行的航运经营和管理体制。

香港特别行政区政府自行规定在航运方面的具体职能

和责任。

第一百三十条 香港特别行政区经中央人民政府授权继续进行船舶登记，并可根据其自定的法律以“中国香港”名义颁发有关证件。

第一百三十一条 一切民用船舶可根据香港特别行政区法律进出其港口。外国军用船只进入香港特别行政区须经中央人民政府特别许可。

第一百三十二条 香港特别行政区的私营航运企业及与航运有关的企业和私营集装箱码头，可继续自由经营。

第七节 民航管理

第一百三十三条 香港特别行政区政府应提供必要条件和采取适当措施，以保持其国际和区域航空中心的地位。

第一百三十四条 香港特别行政区继续实行原在香港实行的民用航空管理制度，并按中央人民政府关于飞机国籍标志和登记标志的规定，设置自己的飞机登记册。

外国军用航空器进入香港特别行政区须经中央人民政府特别许可。

第一百三十五条 香港特别行政区自行负责民用航空的日常业务和技术管理，自行负责机场管理。

香港特别行政区负责在特别行政区飞行情报区内提供空中交通服务，履行国际民用航空组织的区域性航行规划程序所规定的其他职责。

第一百三十六条 中央人民政府经同香港特别行政区政府磋商作出安排，为在香港特别行政区注册并以香港特别行政区为主要营业地的航空公司和中华人民共和国的其他航空公司，提供香港特别行政区和中华人民共和国其他地区之间的往返航班。

第一百三十七条 涉及中华人民共和国其他地区与其他国家和地区的往返并经停香港特别行政区的航班，和涉及香港特别行政区与其他国家和地区的往返并经停中华人民共和国其他地区航班的民用航空运输协定，由中央人民政府签订。

中央人民政府在签订本条第一款所指国际民用航空运输协定时，应考虑香港特别行政区的特殊情况和经济利益，并同香港特别行政区政府磋商。

中央人民政府在同外国政府商谈有关本条第一款所指

航班的安排时，香港特别行政区政府的代表可作为中华人民共和国政府代表团成员参加。

第一百三十八条 香港特别行政区政府经中央人民政府具体授权可：

（一）续签或者修改原有的民用航空运输协定和协议；

（二）签订新的民用航空运输协定，为在香港特别行政区注册并以香港特别行政区为主要营业地的航空公司提供航线，以及过境和技术停降权利；

（三）同没有签订民用航空运输协定的外国或地区签订临时协议。

不涉及往返、经停中国内地而只往返、经停香港特别行政区的定期航班，均可由本条所指的民用航空运输协定或者临时协议予以规定。

第一百三十九条 中央人民政府授权香港特别行政区政府：

（一）同其他当局商谈并签订有关执行本法第一百三十八条所指民用航空运输协定和临时协议的各项安排；

（二）对在香港特别行政区注册并以香港特别行政区

为主要营业地的航空公司签发执照；

(三) 按照本法第一百三十八条所指民用航空运输协定和临时协议指定航空公司；

(四) 对外国航空公司除往返、经停中国内地的航班以外的其他航班签发许可证。

第一百四十条 在香港注册并以香港为主要营业地的航空公司和与民用航空有关的行业，可继续经营。

第六章 香港特别行政区的教育、科学、技术、文化、体育和宗教

第一百四十一条 香港特别行政区保持原在香港实行的教育制度。

第一百四十二条 香港特别行政区政府自行制定本行教育方面的政策，包括教育体制及管理、教学语言、经费分配、考试制度和承认学历等政策。

社会团体和私人可依法在香港特别行政区兴办各种教育事业。

第一百四十三条 各类院校均可保留其自主性并享有学术自由，可继续从香港特别行政区以外招聘教职员和选

用教材。宗教团体所办的学校得继续提供宗教教育，包括开设宗教课程。

学生享有选择院校和在香港特别行政区以外求学的自由。

第一百四十四条 香港特别行政区政府发展医疗卫生服务，发展中、西医药，鼓励社会团体和私人提供各种医疗卫生服务。

第一百四十五条 香港特别行政区政府自行制定科学技术政策。香港特别行政区的法律保护科学技术的研究成果、专利和发明创造。

香港特别行政区政府自行确定适用于香港的各类科学、技术标准和规格。

第一百四十六条 香港特别行政区政府自行制定文化政策，保护作者在文学艺术创作中所获得的成果和合法权益。

第一百四十七条 香港特别行政区政府不干预宗教团体的内部事务，不限制与香港特别行政区法律没有抵触的宗教活动。

宗教团体依法享有财产的取得、使用、处置、继承以

及接受资助的权利。财产方面的原有权益仍予保持和保护。

宗教团体可按照原有办法继续兴办宗教院校、其他学校、医院和福利机构以及提供其他社会服务。

第一百四十八条 香港特别行政区的宗教组织和教徒可同其他地方的宗教组织和教徒保持和发展关系。

第一百四十九条 香港特别行政区政府自行制定关于各种专业的执业资格的审定和授予办法。原在香港实行的各种专业的执业资格的审定和授予办法则予保留和改进。

在香港特别行政区成立以前原已取得专业和专业资格者，可以保持原有的资格。

香港特别行政区保留在特别行政区成立以前已承认的专业和专业团体，照原有办法由各该专业团体审定和授予专业资格。

香港特别行政区政府可根据社会发展需要并咨询有关方面的意见，承认新的专业和专业团体。

〔说明〕有的委员认为该条第一款前后两句自相矛盾，建议将后一句删去。有的委员认为《中英联合声明》附件一第十条规定：“香港特别行政区政府自行制定有关文化、教育和科学技术方面的政策，包括……技术资格等政策”。按照《中英联合声明》上述精神，审定和授予

专业资格的办法应由香港特别行政区政府自行制定；而且基本法只宜订明“香港特别行政区政府自行制定专业资格的审定和授予办法”，不宜规定专业团体本身的权责。建议第三款删去“照原有办法由该专业团体审定和授予专业资格”等字。有些委员则提议，将上述意见作为本条的第二方案，一并提交大会讨论。

第一百五十条 香港特别行政区政府自行制定体育方面的政策。香港原有的民间体育团体可依法继续存在和发展。

第一百五十一条 香港特别行政区保持原在香港实行的对教育、医疗、文化、艺术、康乐、体育、社会福利、社会工作等机构的资助政策。香港特别行政区成立后，原在香港各资助机构任职的人员均可根据原有制度继续聘用。

第一百五十二条 香港特别行政区政府保持原有的社会福利制度，并根据经济条件和社会需要，自行制定其发展和改进的政策。

第一百五十三条 香港特别行政区从事社会服务的志愿团体可自行决定其服务方式。

〔说明〕有的委员认为志愿团体自行决定其服务方式而不受政府约束是否合适？建议在“志愿团体”之后加上“在政府有关规定下”。有

些委员建议请香港志愿团体有关组织对条文拟定提出建议。有的委员认为本条可删去。

第一百五十四条 香港特别行政区根据经济发展、社会需要和劳资协商的实际情况，自行制定有关劳工的法律和政策。

第一百五十五条 香港特别行政区的教育、科学、技术、文化、体育、专业、社会福利等方面的民间团体以及宗教团体同内地相应的团体的关系，应遵守互不隶属、互不干涉和互相尊重的原则。

第一百五十六条 香港特别行政区的教育、科学、技术、文化、体育、卫生、专业、社会福利以及宗教等组织可以“中国香港”的名义，同世界各国、各地区及有关国际组织保持和发展关系。

〔说明〕如果第七章“香港特别行政区的对外事务”的有关条文包括上述内容，则本条可删去。

第七章 香港特别行政区的对外事务

第一百五十七条 香港特别行政区政府的代表，可作为中华人民共和国政府代表团的成员，参加由中央人民政

府进行的与香港特别行政区直接有关的外交谈判。

第一百五十八条 香港特别行政区可以“中国香港”的名义，在经济、贸易、金融、航运、通讯、旅游、文化、体育等领域单独地同世界各国、各地区及有关国际组织保持和发展关系，签订和履行有关协议。

第一百五十九条 对以国家为单位参加的、与香港特别行政区有关的、适当领域的国际组织和国际会议，香港特别行政区可派遣代表作为中华人民共和国代表团的成员或以中央人民政府和上述有关国际组织或国际会议允许的身份参加，并以“中国香港”的名义发表意见。

香港特别行政区可以“中国香港”的名义参加不以国家为单位参加的国际组织和国际会议。

对中华人民共和国已经参加而香港也以某种形式参加了的国际组织，中央人民政府将采取必要措施使香港特别行政区以适当形式继续保持在这些组织中的地位。

对中华人民共和国尚未参加而香港已经以某种形式参加的国际组织，中央人民政府将根据需要使香港特别行政区以适当形式继续参加这些组织。

第一百六十条 中华人民共和国缔结的国际协议，中

中央人民政府可根据香港特别行政区的情况和需要，在征询香港特别行政区政府的意见后，决定是否适用于香港特别行政区。

中华人民共和国尚未参加但已适用于香港的国际协议仍可继续适用。中央人民政府根据需要授权或协助香港特别行政区政府作出适当安排，使其他有关国际协议适用于香港特别行政区。

第一百六十一条 中央人民政府授权香港特别行政区政府依照法律给持有香港特别行政区永久性居民身份证的中国公民签发中华人民共和国香港特别行政区护照，给在香港特别行政区的其他合法居留者签发中华人民共和国香港特别行政区的其他旅行证件。上述护照和证件，前往各国和各地区有效，并载明持有人有返回香港特别行政区的权利。

世界各国或各地区的人入境、逗留和离境，香港特别行政区政府可实行出入境管制。

第一百六十二条 中央人民政府协助或授权香港特别行政区政府同各国或各地区缔结互免签证协议。

第一百六十三条 香港特别行政区可根据需要在外国

设立官方或半官方的经济和贸易机构，报中央人民政府备案。

第一百六十四条 外国在香港特别行政区设立领事机构或其他官方、半官方机构，须经中央人民政府批准。

已同中华人民共和国建立正式外交关系的国家在香港设立的领事机构和其他官方机构，可予保留。

尚未同中华人民共和国建立正式外交关系国家的领事机构和其他官方机构，可根据情况允许保留或改为半官方机构。

尚未为中华人民共和国承认的国家，只能设立民间机构。

第八章 香港特别行政区的区旗、区徽

第一百六十五条 香港特别行政区除挂国旗和国徽外，可使用区旗和区徽（待拟）。

第一百六十六条 香港特别行政区的区旗（待拟）。

第一百六十七条 香港特别行政区的区徽（待拟）。

第九章 香港特别行政区基本法的 解释和修改

第一百六十八条 基本法的解释权属于全国人民代表大会常务委员会。

全国人民代表大会常务委员会如对基本法的条款作出解释，香港特别行政区法院引用该条款时，即应以全国人民代表大会常务委员会的解释为准，但在此以前作出的判决不受影响。

香港特别行政区法院在审理案件时可以对基本法的条款进行解释。如果案件涉及基本法关于国防、外交及其他由中央管理的事务的条款的解释，香港特别行政区法院在对案件作出终局判决前，应提请全国人民代表大会常务委员会对有关条款作出解释。

全国人民代表大会常务委员会在对本法进行解释前征询香港特别行政区基本法委员会的意见。

第一百六十九条 本法的修改权属于全国人民代表大会。

本法的修改提案权属于全国人民代表大会常务委员

会、国务院和香港特别行政区。香港特别行政区的修改议案，须经香港特别行政区的全国人民代表大会代表三分之二的多数、香港特别行政区立法机关成员三分之二的多数及香港特别行政区行政长官同意后，交由香港特别行政区出席全国人民代表大会的代表团向全国人民代表大会提出。

本法的修改议案在列入全国人民代表大会的议程前，先由香港特别行政区基本法委员会研究并提出意见。

本法的任何修改，都不得与中华人民共和国对香港既定的基本方针政策相抵触。

〔说明〕关系组委员的其他意见：

第一百六十八条

有的委员建议改为：“本法的解释权属于全国人民代表大会常务委员会。香港特别行政区法院可以对本法中所有条款进行解释。

本法中关于香港特别行政区自治范围内的条款，全国人民代表大会常务委员会将授权予香港特别行政区法院在审理案件中全权进行解释。

全国人民代表大会常务委员会如对本法中关于香港特别行政区自治范围外的条款作出解释，香港特别行政区法院引用该条款时，即应以全国人民代表大会常务委员会的解释为准，但在审理中的案件和在此以前作出的判决不受影响。

全国人民代表大会常务委员会在对本法进行解释前将先征询香港特别行政区基本法委员会的意见。

本法中第三、四、五、六、十各章的所有条款皆为香港特别行政区自治范围内的条款。其他各章的条文是否属于香港特别行政区自治范围内可由香港特别行政区法院或全国人民代表大会常务委员会决定。全国人民代表大会常务委员会在作出决定前将先征询香港特别行政区基本法委员会的意见。全国人民代表大会常务委员会的决定为最后的决定。”

第一百六十九条

有的委员建议改为：“本法的修改权属于全国人民代表大会。

本法的修改提案权属于全国人民代表大会常务委员会、国务院和香港特别行政区。香港特别行政区的修改议案，须经香港特别行政区立法机关成员三分之二的多数及香港特别行政区行政长官同意后，交由国务院向全国人民代表大会提出。

本法的修改议案在列入全国人民代表大会的议程前，先由香港特别行政区基本法委员会研究并提出意见。本法的任何修改，都不得与序言所述的中华人民共和国对香港既定的基本方针政策相抵触。”

有的委员建议第二款改为：“本法的修改提案权属于全国人民代表大会常务委员会、国务院和香港特别行政区。香港特别行政区的修改议案，须经香港特别行政区的全国人民代表大会代表三分之二的多数及香港特别行政区行政长官同意后，交由香港特别行政区出席全国人民代表大会的代表团向全国人民代表大会提出。”

第十章 附 则

第一百七十条 关于香港特别行政区第一届政府的产生办法，有下列六种方案：

方案一：

1、在一九九七年前由中央委任不少于五十人的香港各界人士，组织顾问团，在当地协商产生行政长官，报中央任命。

2、由行政长官组织行政会议，并提名主要官员，请中央任命。

3、由行政长官会同行政会议提名，由顾问团选出立法委员成立临时立法会议。

4、第一届政府所有成员，任期均不得超过三年。在三年内必须依照本法，产生常规性政府。

方案二：

香港特别行政区第一届行政长官候任人选在一九九六年十二月一日在当地按附件一所列办法协商产生，经中央人民政府认许后，成为第一届候任行政长官。

第一届候任行政长官在一九九七年四月一日前提名第一届候任行政会议成员人选，成为第一届候任行政会议成员。

第一届候任行政长官会同第一届候任行政会议成员组织“第一届政府成立筹备委员会”。一九九七年七月一日

零时经中央人民政府正式任命后，第一届行政长官在第一届行政会议成员的协助下，按本法规定宣布香港特别行政区第一届政府成立，在中央授权下，从全国人民代表大会常务委员会接管香港特别行政区的行政管理。第一届立法机关尚未产生前，临时立法机关行使临时立法权，在必要时，可制定暂行法例。

〔说明〕临时立法机关在当地按附件所列办法由选举团选举产生。

候选人不排除在一九九七年六月三十日卸任的原香港立法局议员。

香港特别行政区第一届政府成立后，六个月内按附件所列办法举行第一届区议会及市政局选举，十二个月内按附件二所列办法举行第一届立法机关选举，成立第一届立法机关。

附件一：由香港各界在当地协商产生第一届行政长官的程序

基本法公布后，由全国人大委任不少于五十名委员，组织“基本法实施筹备委员会”。其任务多元化，包括咨询各界意见后，制定（或由其属下专责小组制定）“协商程序”草案，交人大审核通过。

一九九五年七月一日，“基本法实施筹备委员会”成员互选不少于十人，组织“协商委员会”，按“协商程序”主持公开协商。“协商委员会”成员本身不能做行政长官候选人，也不能提名或支持任何行政长官候选人。

“协商委员会”推动及监督协商的进行，本身必须保持客观、公正。

一九九六年十二月一日产生第一届行政长官候任人选，提请中央认许，

并在一九九七年七月一日正式任命为行政长官。

附件二：第一届立法机关选举办法

选举团：二分之一由拥有广泛代表性的大选举团选举产生，其中不少于三分之二应为中国公民。

间选：四分之一由区议会及市政局的议员中属中国公民者互选产生。

功能组别直选：四分之一按功能组别直接选举产生（功能组别均按当地法律注册成为法人，属中华人民共和国国籍。按功能组别直接选举产生的立法机关成员，不论其本身属何国籍，均可借重其所属之功能组别的中国国籍关系，在任期内行使本应由中国公民享有的公民权）。

方案三：

1、在一九九七年七月一日前的适当时候，全国人民代表大会设立香港特别行政区筹备委员会，由内地和香港委员组成，负责筹备成立香港特别行政区的有关事宜。

2、第一届香港特别行政区行政长官由香港各界人士组成的代表组织在当地协商或选举产生，报中央人民政府任命。该代表组织由香港特别行政区筹备委员会负责筹组。

第一届香港特别行政区政府由香港特别行政区行政长官按本法规定负责筹组。

3、第一届香港特别行政区立法机关在香港特别行政区成立后一或二年内按本法规定选举产生。

在第一届香港特别行政区立法机关产生前由香港特别行政区临时立法机关代行职权。临时立法机关按前款规定的办法选举产生。

方案四：

香港特别行政区第一届政府按照附件“香港特别行政区第一届政府产生办法”的规定而成立。

附件：

1、中华人民共和国全国人民代表大会常务委员会委任一个“香港特别行政区第一届政府筹备委员会”，筹备委员会成员均为中国公民。半数为内地居民，半数为香港永久性居民，主任委员由人大常委会之委员担任。

2、“香港特别行政区第一届政府筹备委员会”委托香港委员在香港地区内邀请各界具有广泛代表性之人士，组织“香港特别行政区第一届行政长官推举委员会”。

3、“推举委员会”在香港协商或选举香港特别行政区第一届行政长官候任人，报请中央人民政府任命。

4、中央人民政府根据“推举委员会”所推举之人选，任命该行政长官候任人为香港特别行政区第一届行政长官。

5、第一届行政长官委任行政会议成员，组成行政会议。行政长官提名香港特别行政区行政机关之各主要官员，报请中央任命。

6、中华人民共和国主席宣布，中华人民共和国于一九九七年七月一日起恢复对香港行使主权，“香港特别行政区基本法”全部生效，并委派行政长官在香港特别行政区按照本法规定，实行高度自治。

(以上1至6项，均于一九九七年七月一日前完成。)

7、行政长官及各主要官员宣誓就职。

8、香港特别行政区第一届行政长官宣布：香港原有之政府各级公务人员(除各主要官员外)，各级法院之法官及司法人员，一律留任原有职位，至另有任免为止。

9、行政长官宣布：于一年内按照本法第四章第三节的规定，产生香港特别行政区第一届立法机关。

10、香港特别行政区第一届政府的公共开支，在第一届立法机关选出并通过财政预算之前，由行政长官批准财政厅长所提出之临时拨款建议支付，于第一届立法机关成立后提交追认。

11、行政长官依照本法第八十四条、第八十六条的规定，任命香港特别行政区终审法院及高等法院的首席法官。

(以上7至11项，于一九九七年七月一日或其后完成。)

方案五：

1、中华人民共和国全国人民代表大会常务委员会委任一个“香港特别行政区第一届政府筹备委员会”，筹备委员会成员均为中国公民，包括内地居民和香港永久性居民，主任委员由人大常委会之委员担任。

2、“香港特别行政区第一届政府筹备委员会”委托香港委员在香港地区内组织一选举团，成员包括香港特别行政区成立前之立法机构、区域组织机构代表，以及各法定团体、永久性非法定团体、各阶层界别市民的代表。该选举团必须有广泛代表性，名为“香港特别行政区第一届

政府选举团”。

3、香港特别行政区第一届政府选举团负责拟定程序以协商方法或协商提名后，投票选出第一届行政长官。

（行政长官之资格，职权等均依照本法第四章规定。）

4、香港特别行政区第一届政府选举团负责拟定程序，选举第一届立法机关。在香港特别行政区成立前之立法机构成员，凡符合本法第四章的规定者，均可被选为第一届立法机关成员。

（立法机关成员的资格、职权等均依照本法第四章规定。）

5、香港特别行政区成立前之政府官员及公务、司法人员，凡符合本法之规定者，均任职于第一届政府。

（行政机关之组成及职权，均依照本法第四章规定。）

方案六：

1、行政长官

中华人民共和国全国人民代表大会常务委员会委任一个“香港特别行政区第一届政府筹备委员会”。筹备委员会成员均为香港永久性居民中的中国公民，主任委员由委员会互选产生。

在一九九六年中或年底，第一届政府筹备委员会在香

港依照本法主持选举，经一人一票的直接选举产生候任行政长官。

一九九七年七月一日，候任行政长官接受中央人民政府的任命，正式宣誓就职。

2、主要官员

候任行政长官于一九九七年七月一日前提名香港特别行政区行政机关之各主要官员，报请中央人民政府任命。各主要官员于一九九七年七月一日宣誓就职。

3、立法机关

一九九七年六月时的香港立法局议员到了七月一日自动成为香港特别行政区第一届立法机关成员，至其任期终结为止，除宣誓效忠香港特别行政区等仪式外，不作特别安排。

第一百七十一条

方案一：

香港特别行政区成立时，香港原有法律（即普通法及衡平法、条例、附属立法、习惯法）除附件所列者外，采用为香港特别行政区法律。

上述香港原有法律的采用，不影响全国人民代表大会

常务委员会在香港特别行政区成立后，通过行使其对本法的解释权宣布日后发现与本法相抵触的上述香港原有法律为无效的权力。

在香港原有法律下有效的文件、证件、契约、及权利与义务，在不抵触本法的前提下继续有效，受香港特别行政区法律的承认和保护。

〔说明〕附件上所列的法律，是全国人大常委会认为明显与基本法相抵触的香港原有法律。

方案二：

香港原有的法律，如经基本法委员会审核认为与本法相抵触者，可向全国人民代表大会常务委员会报告，由全国人民代表大会常务委员会在香港特别行政区成立时宣布废除。

在香港原有法律下有效的文件、证件、契约、及权利与义务，在不抵触本法的前提下继续有效，受香港特别行政区的法律承认和保护。

方案三：

香港原有的条例及附属立法，除由人大常委会在香港特别行政区成立时根据本法第一百六十八条的规定宣布为

与本法相抵触者外，就本法第八条之规定而言将被视为继续有法律效力，直至根据本法规定的程序撤销或修订为止。

根据香港特别行政区成立后继续有法律效力的香港原有法律而有效的权利和义务，继续有效，并受香港特别行政区的法律保护和承认。

第一百七十二条 本法经中华人民共和国全国人民代表大会通过，中华人民共和国主席公布后成为法律，除本法第一百七十条、第一百七十一条的有关规定外，于一九九七年七月一日零时起生效。

〔说明〕有些委员认为：本法应于中华人民共和国主席公布成为法律之日起生效。

COLLECTION OF DRAFT PROVISIONS
OF THE VARIOUS CHAPTERS PREPARED BY
THE SUBGROUPS OF THE DRAFTING COMMITTEE

Compiled by the Secretariat of
the Drafting Committee for the Basic Law
December 1987

Translated by the Secretariat of
the Consultative Committee for the Basic Law

TRANSLATOR'S NOTE

The "*" indicates that the difference in wording, when compared with the last version, is due to change in translation style.

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Preamble

Hong Kong, which has been part of Chinese territory from ancient times, was occupied by Britain after the Opium War of 1840. In December 1984, the Chinese and British Governments signed a Joint Declaration on the question of Hong Kong, and affirmed that the PRC will resume the exercise of sovereignty over Hong Kong on 1 July 1997, so as to realise the long-held common aspirations of the entire Chinese people to restore Hong Kong to the PRC.

For the purpose of upholding national unity and territorial integrity and maintaining the prosperity and stability of Hong Kong, the State, taking account of the history of Hong Kong and its realities*, has decided to establish in accordance with the provisions of Article 31 of the Constitution of the PRC a HKSAR when resuming the exercise of sovereignty over Hong Kong. Under the guidance of the policy of "one country, two systems" the systems and policies practised in Hong Kong shall be different from those in the mainland, and shall remain unchanged* for 50 years. The basic policies of the State regarding Hong Kong have been set out by our Government in the Sino-British Joint Declaration.

The Basic Law of the HKSAR is hereby* enacted in accordance with the provisions of the Constitution of the PRC, setting out the systems to be implemented* in the HKSAR, so as to ensure the implementation of the basic policies of the State regarding Hong Kong.

[Note] It was proposed that a map showing the geographical boundary* of the Hong Kong Special Administrative Region be published by the State Council when the Basic Law was promulgated by the National People's Congress.

Chapter 1 . General Provisions

Article 1: The HKSAR is an inalienable part of the PRC.

Article 2: The NPC authorises the HKSAR to exercise a high degree of autonomy in accordance with the provisions of this Law.

Article 3: The executive authorities and the legislature of the HKSAR shall, in accordance with the provisions of this Law, be composed of permanent inhabitants of the HKSAR.

Article 4: The socialist system and socialist policies shall not be practised in the HKSAR and the previous capitalist system and life-style shall remain unchanged.

Article 5: The HKSAR shall protect the rights and freedoms of HKSAR inhabitants and other persons in accordance with law.

Article 6: Rights concerning the ownership of property, including those relating to acquisition, use, disposal, inheritance, and compensation for lawful deprivation* shall be protected by law. The compensation shall correspond to the real value of the property concerned, freely converted and paid without undue delay.

Article 7: Land and natural resources within the HKSAR belong to the State. The HKSAR Government shall be responsible for their management, use and their leasing out or grant for the use of individuals or legal persons*. The resultant income shall be at the disposal of the HKSAR Government.

Article 8: 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, save for any that contravene this Law and subject to any amendment by the HKSAR legislature.

Article 9: In addition to Chinese, English may also be used by the executive authorities, the legislature and the judiciary of the HKSAR.

Article 10: In accordance with Article 31 of the Constitution of the PRC, the policies and systems of the HKSAR, including the social and economic systems, those relating to the protection of fundamental rights and freedoms, and those relating to executive, legislative and judicial matters*, shall be based on the stipulations of this Law.

Any law enacted by the HKSAR legislature shall not contravene this Law.

[Note] Other views expressed by members of the Subgroup on Central-SAR Relationship.

Article 2

A member proposed the article be amended as follows:

"The NPC authorises the HKSAR to exercise a high degree of autonomy in accordance with the provisions of this Law. The power of supervision on the implementation of this Law shall be vested in the NPC Standing Committee. Any executive, legislative or judicial act which goes beyond the powers prescribed by this Law may be nullified by the NPC Standing Committee.

Another member proposed the following amendment: "Except for foreign and defence affairs which are the responsibilities of the Central People's Government, the HKSAR shall enjoy a high degree of autonomy."

A member proposed that a new article be added after Article 2: "The HKSAR shall be vested with executive, legislative, and independent judicial power, including that of final adjudication."

Article 10

A member proposed that the last phrase of paragraph 1 be amended to read "shall ultimately be based on the stipulations of this Law." And the second paragraph should become a separate article.

Chapter 2 The Relationship between the Central Government and the HKSAR

Article 11: The HKSAR is a local administrative region of the PRC with a high degree of autonomy directly under the authority of the Central People's Government (CPG).

Article 12: The Chief Executive and principal officials of the executive authorities of the HKSAR shall be appointed by the CPG in accordance with Chapter 4 of this Law.

Article 13: The CPG shall be responsible for the foreign affairs of the HKSAR.

The CPG authorises the HKSAR Government to deal with on its own relevant external affairs in accordance with this Law.

The Ministry of Foreign Affairs of the PRC shall establish an office in Hong Kong to handle foreign affairs.

Article 14: The CPG shall be responsible for the defence of the HKSAR.

Military forces sent by the CPG to be stationed in the HKSAR for the purpose of defence shall not interfere in the local affairs of the HKSAR. The HKSAR Government may, in times of need, request the CPG for the military forces to assist in maintaining public order and relieving disasters.

Apart from abiding by the national laws of the country, members of the military forces shall also abide by the laws of the HKSAR.

Expenditure for the military forces shall be borne by the CPG.

Article 15: The HKSAR shall be vested with executive power. It shall, in accordance with the relevant provisions of this Law, on its own manage executive affairs relating to finance, monetary affairs, economy, industry and commerce, trade, taxation, postal service, civil aviation, maritime affairs, transport, agriculture and fishery, civil service, home affairs, labour, education, medical and health affairs, social welfare, recreation and culture, municipal construction, town planning, housing, land and

real property, public order, immigration, climatology, communications, science and technology, sports and other areas.

Article 16: The HKSAR shall be vested with legislative power.

Laws enacted by the HKSAR legislature shall be reported to the NPC Standing Committee for the record, and such reporting shall not affect the coming into operation of the laws.

If the NPC Standing Committee, after consulting the HKSAR Basic Law Committee, considers that any law of the HKSAR is not in accordance with this Law or legal procedures, it may return the relevant law* for reconsideration or revoke it, but it shall not amend* it. Any law which is returned for reconsideration or revoked by the NPC Standing Committee shall immediately cease to have force, but this cessation shall not have retrospective effect.

Article 17: The laws of the HKSAR shall be this Law, the laws previously in force in Hong Kong as provided in Article 8 of the General Provisions of this Law, and laws enacted by the HKSAR legislature.

The laws enacted by the National People's Congress and its Standing Committee shall not apply in the HKSAR except for the following:

- 1) laws concerning defence and foreign affairs;
- 2) other laws relating to the expression of national unity and territorial integrity which, in accordance with the provisions of

this Law, are outside the scope of the high degree of autonomy of the HKSAR.

Regarding the laws set out in 1) and 2) above, those which need to be applied in the HKSAR shall be applied by way of proclamation or legislation by the HKSAR Government upon the directive of the State Council.

Except in emergencies, the State Council shall consult the HKSAR Basic Law Committee and the HKSAR Government before giving the above-mentioned directive.

If the HKSAR Government does not act in accordance with the directives given by the State Council, the State Council may apply the above-stated law in the HKSAR by issuing an order*.

Article 18: The HKSAR shall be vested with independent judicial power, including that of final adjudication.

Article 19: The HKSAR shall be vested with other powers conferred by the NPC, the NPC Standing Committee, and the State Council.

Article 20: HKSAR inhabitants who are Chinese nationals may, in accordance with law, participate in the management of state affairs.

The delegates of the HKSAR to the NPC shall be elected in Hong Kong from the Chinese nationals among Hong Kong inhabitants in accordance with the number of seats and selection procedures

specified by the NPC Standing Committee.

Article 21: The departments under the Central People's Government, the provinces, autonomous regions and municipalities directly under the Central Government shall not interfere in the affairs administered by the HKSAR on its own in accordance with this Law.

The departments under the Central Government, the provinces, autonomous regions and municipalities directly under the Central Government which need to establish offices in the HKSAR shall obtain the consent* of the HKSAR Government and the approval of the CPG.

All offices established in Hong Kong by the departments under the Central Government, the provinces, autonomous regions and municipalities directly under the Central Government, and their personnel shall abide by the laws of the HKSAR.

People from other parts of China who wish to enter the HKSAR shall have to apply for permission*.

The HKSAR may establish an office in Beijing.

Article 22: The HKSAR shall make laws to prohibit any activity that would damage the unity of the State or subvert the CPG.

[Note] Other views expressed by members of the Subgroup on Central-SAR Relationship:

Members also suggested that a consultative body, tentatively called the HKSAR Basic Law Committee, be set up under the NPC Standing Committee. The Committee, comprising both Hong Kong and mainland

members, should be responsible for advising the NPC or its Standing Committee on matters concerning the interpretation and amendment of the Basic Law, whether the laws enacted by the HKSAR legislature were in accordance with the Basic Law and legal procedures, and the applicability of the national laws to the HKSAR. The establishment, affiliation and duties of this Committee were yet to be decided by the National People's Congress.

Article 14

A member suggested that there should be separate laws to deal with members of the military forces who had committed crimes.

Paragraph 3 of Article 16

A member proposed that the paragraph be amended to read: "If the NPC Standing Committee, after consulting the Basic Law Committee of the HKSAR, considers that any law enacted by the SAR legislature may not be in accordance with this Law or legal procedures, then it may refer such law to the court of final appeal for its consideration. If that court considers that such law or a part thereof is not enacted in accordance with the Basic Law or legal procedures, it may declare the law or the part thereof invalid, but the declaration shall not have retrospective effect."

A member proposed that the last clause of paragraph 3 of Article 16 be amended to read: "but this cessation shall not have retrospective effect except for criminal and constitutional matters."

Article 17

A member proposed that the article be amended to read: "The laws of the HKSAR shall be this Law, the laws previously in force in Hong Kong as provided in Article 8 of the General Provisions of this Law, and laws enacted by the HKSAR legislature.

"The laws enacted by the National People's Congress and its Standing Committee shall not apply in the HKSAR except for those concerning defence and foreign affairs which, in accordance with the provisions of this Law, are outside the scope of the high degree of autonomy of the HKSAR.

"Regarding the laws concerning defence and foreign affairs mentioned above, those which need to be applied in HKSAR shall be applied by way of legislation by the legislature of the HKSAR upon the directive of the NPC Standing Committee.

"Except in emergencies, the NPC Standing Committee shall consult the HKSAR Basic Law Committee and the

HKSAR Government before giving the above-mentioned directive.

"If the HKSAR Government does not act in accordance with the directive given by the NPC Standing Committee, the NPC Standing Committee may apply the above-stated law in the HKSAR by proclamation through the Chief Executive of the HKSAR.

"Apart from the laws concerning defence and foreign affairs mentioned above, a small number of national laws relating to the realisation of national unity and territorial integrity, that is, those listed in the appendix, shall be applicable to the HKSAR."

Article 20

A member proposed that the article be amended to read: "Chinese nationals who are permanent inhabitants of the HKSAR may, in accordance with law, participate in the management of state affairs. Chinese nationals who are permanent inhabitants of the HKSAR shall select from among themselves the delegates of the HKSAR to the NPC in accordance with the number of seats and election procedures specified by the NPC Standing Committee.

"The HKSAR delegates to the NPC shall not interfere in the affairs which are administered by the HKSAR on its own in accordance with this Law."

Chapter 3 Fundamental Rights and Duties of HKSAR Inhabitants

Article 23: HKSAR inhabitants include permanent inhabitants and non-permanent inhabitants.

Permanent inhabitants of the HKSAR are:

- (1) Chinese nationals who were born in Hong Kong before or after the establishment of the HKSAR;
- (2) Chinese nationals who have ordinarily resided in Hong Kong for a continuous period of at least seven years before or after the establishment of the HKSAR;

- (3) Persons of Chinese nationality who were born outside Hong Kong of the inhabitants specified in sub-paragraphs (1) and (2);
- (4) Non-Chinese nationals who have ordinarily resided in Hong Kong before or after the establishment of the HKSAR for a continuous period of at least seven years and who have taken Hong Kong as their place of permanent residence before or after the establishment of the HKSAR;
- (5) Persons under 21 years of age who were born of the inhabitants specified in sub-paragraph (4) before or after the establishment of the HKSAR; and
- (6) Persons who had the right of abode only in Hong Kong before the establishment of the HKSAR.

The above-mentioned inhabitants shall have the right of abode in the HKSAR and be qualified to obtain permanent identity cards in accordance with the laws of the HKSAR.

Non-permanent inhabitants of the HKSAR are persons who are qualified to obtain Hong Kong identity cards in accordance with the laws of the HKSAR* but do not have the right of abode.

Article 24: Hong Kong inhabitants, irrespective of their nationality, race, ethnic origin*, language, sex, occupation, religious belief, political view, education level, and financial condition, shall be equal before the law.

[Note] A member proposed that the article be rewritten as follows: "Hong Kong inhabitants shall be equal before the law and shall not be subject to discrimination on the grounds of nationality, race, ethnic origin, language, sex, occupation, religious belief, political view, education level, and financial condition."

Article 25: Permanent inhabitants of the HKSAR who have attained 21 years of age shall have the right to vote and the right to stand for election in accordance with law.

[Note] Some members suggested that this article be amended as follows: "Permanent inhabitants of HKSAR shall have the right to vote and the right to stand for election in accordance with law."

Article 26: Hong Kong inhabitants shall have

- (1) freedoms of speech, of the press and of publication;
- (2) freedom of association, freedom to form and join trade unions and freedom of strike*; and
- (3) freedoms of assembly and of demonstration.

[Note] Some members still held that the expression "Hong Kong inhabitants shall, in accordance with law, have" should be retained.

Article 27: The freedom of the person* of Hong Kong inhabitants shall not be violated.

Hong Kong inhabitants shall not be unlawfully arrested, detained or imprisoned. Unlawful deprivation or restriction of the freedom of the person* of any inhabitant in any manner* shall be prohibited. Unlawful search of the person of any inhabitant shall be prohibited.

Article 28: The home and other premises of any Hong Kong inhabitant shall not be violated. Any unlawful search or unlawful entry into the home or other premises of any inhabitant shall be prohibited.

[Note] The Subgroup unanimously held that in Articles 28 and 29, "unreasonable or" should not be added before "unlawful", and that "unlawful" should not be amended to read "arbitrary".

Article 29: Freedom of communication and secrecy of communication of Hong Kong inhabitants shall be protected by law. Any department or individual shall not for any reason infringe upon the freedom of communication and secrecy of communication of inhabitants* save that the relevant organ may inspect communication according to legal procedures, which is necessary for the purposes of maintaining public security and investigation of crime.

[Note] A member proposed the deletion of "save that the relevant organisation may inspect... investigation of crime" from the article. But after the Subgroup's deliberation, the clause is retained.

Article 30: Hong Kong inhabitants shall have freedom of movement within the HKSAR and freedom of emigration to other countries or territories, and Hong Kong inhabitants who hold valid travel documents shall have freedoms of travel and of departure and entry, and shall, unless restricted by law, be free to leave the HKSAR without special authorisation

Article 31: Hong Kong inhabitants shall have freedom of belief.

Hong Kong inhabitants shall have freedom of religious belief and the freedoms to spread religions and to hold and participate in religious activities in public.

[Note]

1. Some members proposed that the following paragraph be added to this article: "No person shall be subject to discrimination or deprivation of his civil rights on the grounds of religious belief."
2. Some members proposed that the article be rewritten as follows: "HKSAR inhabitants shall have the freedom of thought, of faith and of religion. This right includes the freedom to maintain or select the religion or belief of one's choice, and the freedom either in public or private to manifest one's religion or belief in worship, observance, practice, and teaching."

Article 32: Hong Kong inhabitants shall have freedom of choice of occupation.

Article 33: Hong Kong inhabitants shall have freedoms of academic research, of literary or artistic creation and of other cultural activities.

Article 34: Hong Kong inhabitants shall have the right to confidential legal advice, access to the courts, prompt protection of their lawful rights and interests by lawyers of their own choice, representation in the courts by lawyers of their choice, and to obtain judicial remedies.

Hong Kong inhabitants shall have the right to challenge the actions of the executive or members of the executive in the

courts.

[Note]

1. Some members proposed that the word "lawful" as in "lawful rights" be deleted.
2. As to whether Hong Kong inhabitants shall have the right to challenge the actions of Central State organs or their personnel in the courts, the Subgroup proposed that relevant provisions be laid down under the topic of "jurisdiction of HKSAR courts" by the subgroup concerned.

Article 35: Hong Kong inhabitants shall have the right to enjoy social welfare. The welfare and benefits* of labour shall be protected by law.

Article 36: Hong Kong inhabitants' freedom of marriage and right to raise a family freely shall be protected by law.

Article 37: Hong Kong inhabitants shall have all other rights and freedoms which are ensured by the laws of the HKSAR.

Article 38: The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall be enforced in accordance with the laws of the HKSAR.

Article 39: The rights and freedoms of Hong Kong inhabitants shall not be restricted unless in accordance with law. Such restrictions shall be limited to those which are necessary for the maintenance of national security, public order, public safety, public health, public morals or the protection of the

rights and freedoms of others.

Article 40: The lawful and traditional rights and interests of the indigenous "New Territories" inhabitants shall be protected by the HKSAR.

Article 41: Persons in the HKSAR other than Hong Kong inhabitants shall, in accordance with law, have the rights and freedoms of Hong Kong inhabitants stipulated in this Chapter.

Article 42: Hong Kong inhabitants and all other persons in the HKSAR shall have the duty to abide by the laws of the HKSAR.

Chapter 4 The Political Structure of the HKSAR

Section 1 The Chief Executive

Article 43: The Chief Executive of the HKSAR shall be the head of the HKSAR and shall be accountable to the Central People's Government and the HKSAR in accordance with the provisions of this Law.

[Note] A member proposed that the phrase "in accordance with the provisions of this Law" be deleted. With regard to the phrase "the head of the HKSAR", a member proposed adding the word "supreme" before the word "head". A member suggested that "representing the HKSAR" be added after "the head of the HKSAR". A member suggested that "the Central People's Government and the HKSAR" should read "the Central People's Government and the HKSAR Government".

A member proposed that this article should read: "The

Chief Executive of the HKSAR shall be the head of the HKSAR and the head of the executive authorities of the HKSAR and, representing the HKSAR and leading the executive authorities of the HKSAR, shall be accountable to the Central People's Government, the HKSAR and the legislature of the HKSAR in accordance with the provisions of this Law."

Article 44: The Chief Executive shall be a Chinese national who is a permanent inhabitant of the HKSAR of no less than 40 years of age and having ordinarily resided in Hong Kong for a continuous period of 20 years or more.

Article 45:

(Paragraph 1) The Chief Executive of the HKSAR shall be selected by election or through consultations held locally and be appointed by the Central People's Government.

[Note] The words "(Paragraph 1)" and "(Paragraph 2)" and the like shall be deleted in the official version.

(Paragraph 2) There are the following four proposals as regards the specific methods of selecting the Chief Executive:

1. That he be elected by a grand electoral college with wide representation.

2. That he be nominated by members of the legislature (e.g., one-tenth) and directly elected on a one-man-one-vote basis in Hong Kong.

[Note] A member proposed that several candidates nominated by a widely-representative nomination body would stand for direct election on a one-man-one-vote basis in Hong Kong.

3. That he be elected by functional constituencies.

4. That the first three Chief Executives be selected through local consultations by an advisory board and the nomination be

submitted to the Central Government for appointment. In subsequent selection of the Chief Executive, the advisory board shall nominate three candidates who, with the approval of the Central Government, will stand for election by an electoral college.

[Note] Some members favoured the first proposal; some favoured the second; some favoured the third; and a member favoured the fourth proposal.

(Paragraph 3) The above-mentioned method for the selection of the Chief Executive can be modified in the light of the actual situation in the HKSAR. Such modifications shall require the endorsement of a two-thirds majority of the members of the legislature and the consent of the Chief Executive, and shall be submitted to the NPC Standing Committee for approval.

[Note] A member suggested reversing the order of Paragraphs 2 and 3 and amending the original Paragraph 3 to read: "Except in the selection of the first, second and third Chief Executives, the method of selecting the Chief Executive of the HKSAR can be modified in the light of the actual situation in the HKSAR. Such modifications shall require the endorsement of two-thirds of the HKSAR delegates to the NPC, the endorsement a two-thirds majority of the members of the legislature of the HKSAR and the consent of the Chief Executive of the HKSAR, and shall be submitted to the NPC Standing Committee for approval."

Article 46: The term of office of the Chief Executive shall be five years; the Chief Executive may be re-selected for at most one further term of office*.

[Note] A member held that the term of office should be 4 years, with the holder of the office being allowed to serve three successive terms.

Some members were of the opinion that the term of office of the Chief Executive should be considered in

relation to the term of office of the legislators.

Some members considered that the term of office of the Chief Executive and that of the legislators should be the same.

Article 47: The Chief Executive of the HKSAR shall exercise the following functions and powers:

- (1) To represent the HKSAR.
- (2) To lead the HKSAR Government.

[Note] Members considered that the meaning of the term denoted by "Government" should be consistent throughout this Chapter. Some members held that "Government" referred to the executive authorities, whereas some members maintained that "Government" should be understood in the general sense. The majority of members agreed to determine the meaning after further study but for the time being, the meaning of "Government" in the general sense should be adopted for the drafting of the provisions of this Chapter.

Some members held that if the meaning of "Government" in the general sense was adopted, this clause should read "to lead the executive authorities of the HKSAR".

- (3) To be responsible for implementing this Law and other laws which, in accordance with this Law, apply to the HKSAR.

[Note] Some members held that this clause should be included in Article 1.

- (4) To sign the bills passed by the legislature, and promulgating laws.

If the Chief Executive thinks that a bill passed by the legislature is not in the overall interests of the HKSAR, he may refer it back to the legislature within three months for reconsideration. If the bill is again passed by no less than a two-thirds majority of the legislature, the Chief

Executive shall sign and promulgate it within one month, or exercise the power prescribed by sub-paragraph (13) of this Article to dissolve the legislature.

- (5) To decide policies and issue administrative* orders.
- (6) To nominate the following principal officials and report such nominations to the Central People's Government for appointment: Directors and Deputy Directors of Offices, Secretaries, Commissioner Against Corruption, Director of Audit, Commissioner of Police and Commissioner of External Affairs; and to propose to the Central People's Government the removal of the above-mentioned officials.

As required, and with the approval of the Central People's Government, to employ (or terminate the employment of) advisors corresponding to Secretary level or above.

[Note] Directors of various Offices, corresponding to the present Chief Secretary, Financial Secretary, and Attorney General, are tentatively called Director of Administration, Director of Finance, and Director of Justice. Secretaries are equivalent to those in charge of the present policy-making branches. (Translator's note. The Chinese titles for "Directors and Deputy Directors of Offices" conform to the terminology used in Mainland China.)

Some members held that nomination for the post of the Director of Audit, which is not a Secretary-level position, need not be reported to the Central People's Government for appointment, but that the consent of the legislature should be required before he is appointed by the Chief Executive.

A member held that since there would not be any Political Advisers in the future, the terms of reference of the Director of External Affairs should first be defined.

Some members held that since this article was basically modelled after the Joint Declaration, there was no need

to list the various job titles.

- (7) To appoint or remove judges of the courts at various levels in accordance with the provisions under this Law
- (8) To appoint or remove public servants according to legal procedures.
- (9) To execute the directives* given by the Central People's Government in respect of matters provided by this Law.
- (10) To representing the HKSAR to deal with external affairs and other affairs as authorised by the Central People's Government.
- (11) To assent to any motions presented to the legislature regarding taxation or appropriation of public funds.
- (12) To decide in the light of security and public interest considerations whether government officials shall appear before the court or the legislature to testify or give evidence.

[Note] A member suggested that this sub-paragraph be amended to read: "To allow (or refuse to allow) public officers to appear before any committee under the legislature to testify or give evidence in respect of any matters relating to the navy, army or air force, the security of Hong Kong, or the responsibility of the Central People's Government regarding the administration of the HKSAR."

A member suggested that sub-paragraphs (11) and (12) of this article be deleted.

- (13) May dissolve the legislature after consulting the Executive Assembly when:

1. the legislature refuses to pass a budget, an appropriation bill or any other major bill which the Chief Executive deems to be in the interests of the HKSAR, and consensus cannot be reached after consultations; or
2. a new or amending bill which has been passed by the legislature, but which the Chief Executive has returned to the legislature for reconsideration on the grounds that its contents are not in the interests of the HKSAR, is again passed by a two-thirds majority of the members of the legislature but the Chief Executive still refuses to sign it.

During each term of office, the Chief Executive may dissolve the legislature only once.

If the legislature refuses to approve any budget or appropriation bill or it is impossible to approve any appropriations as the legislature has been dissolved, the Chief Executive may approve temporary short-term appropriations to maintain government expenditure during the interim period prior to the formation of a new legislature.

[Note] A member held that the Chief Executive should not be able to dissolve the legislature. However, if this clause was to be retained, he proposed that the provision "may pass a vote of no-confidence in the Chief Executive or any principal official" should be added to the terms of reference of the legislature.

Some members proposed that since "consultation" will necessarily involve a certain procedure, item 1 of this sub-paragraph should be amended to read: "the legislature refuses to pass a proposed budget, an appropriation bill or any other major bill which the Chief executive deems necessary and, when a special

committee formed by (nine) members of the legislature has put forward a solution within 60 days after consulting the executive authorities, the legislature or the Chief Executive still refuses to accept the solution proposed by the special committee."

- (14) To approve, in accordance with law, the deportation of criminal offenders who are detrimental to public security.

[Note] A member held that the wording of this sub-paragraph needed further deliberation because when Britain ratified the International Covenant on Civil and Political Rights, it reserved the right not to implement in Hong Kong the following provision: "an alien lawfully residing in the territory may be expelled therefrom only in pursuance of a decision reached in accordance with law." Some members agreed that this provision be included tentatively subject to further study.

A member suggested amending this sub-paragraph to read: "To decide on the expulsion of individual aliens lawfully residing in the HKSAR without the need for a decision to be reached in accordance with law; and to refuse to allow the deportee to submit the reasons against his expulsion or to have his case reviewed or be represented for this purpose."

- (15) To pardon or remit the punishment of persons convicted of criminal offences.

- (16) To handle matters relating to petitions and complaints by the public.

- (17) Other powers as required for the discharge of his duties in accordance with the provisions under this Law.

[Note] A member suggested that sub-paragraph (17) be deleted.

Article 48: The Chief Executive of the HKSAR shall perform his duties conscientiously.

Upon assumption of office, the Chief Executive shall declare his wealth and property to the chief judge of the Court of Final Appeal of the HKSAR and the declaration shall be put on confidential record.

[Note] Some members pointed out that the question of the restrictions on the occupation of retired Chief Executives and principal officials had yet to be discussed.

Article 49: The Chief Executive of the HKSAR shall resign when:

(1) he fails to discharge the functions of his office for a long period because of serious illness or other reasons; or

(2) the newly elected legislature still passes by a two-thirds majority of its total membership the bill which the Chief Executive has twice refused to sign, leading to the dissolution of the previous legislature; or

(3) the newly elected legislature still refuses to pass a budget or any other major bill which the previous legislature has refused to pass.

[Note] A member held that the phrase "he fails to" in sub-paragraph (1) should be amended to "he is unable to"; another member suggested changing it to "he is not fit to".

A member suggested adding the clause "a two-thirds majority of the members of the legislature pass a vote of non-confidence on the Chief Executive" as sub-paragraph (4) of this Article. Another member maintained that if this clause was to be included, the Chief Executive should be able to dissolve the legislature after it had passed a vote of non-confidence on him, and the Chief Executive would have to resign only when the newly formed legislature again passed a vote of non-confidence on him.

Article 50: When the Chief Executive of the HKSAR is unable to discharge the functions of his office temporarily, the Director of Administration, Director of Finance, Director of Justice, or Deputy Director of Administration shall, in order of precedence, assume his duties on a provisional basis.

When the position of the Chief Executive of the HKSAR is left vacant, a new Chief Executive shall be selected within six months. Before the new Chief Executive is selected, the provision in the preceding paragraph shall be implemented.

Article 51: The Executive Assembly (tentatively named) shall be a body for assisting the Chief Executive in policy-making.

[Note] A member proposed that the provisions regarding the Executive Assembly be contained in the section on the executive authorities. A member objected to the establishment of an Executive Assembly. Some members considered the Executive Assembly to be an advisory body for the Chief Executive and not part of the executive authorities.

Article 52: Members of the Executive Assembly of the HKSAR shall be appointed by the Chief Executive from amongst the principal officials of the executive authorities, members of the legislature and members of the public. Their terms of office or the termination thereof before expiry shall be decided by the Chief Executive. The terms of office of members of the Executive Assembly shall not exceed that of the Chief Executive who appointed them.

Members of the Executive Assembly of the HKSAR shall be Chinese nationals who are permanent inhabitants of the HKSAR and

shall take their oath of allegiance to the HKSAR.

The Chief Executive may invite persons concerned to attend meetings of the Executive Assembly as non-voting members if he deems it necessary

[Note] Some members held that members of the legislature who were to sit on the Executive Assembly should be chosen from amongst the legislators themselves by election, whereas members of the public who were to sit on the Executive Assembly should also be approved by a majority of the members of the legislature. A member maintained that if the legislators in the Executive Assembly were not elected through this process, there should not be any legislators sitting on the Executive Assembly.

As to the size of the Executive Assembly and the proportion of its various types of members, a member held that the Executive Assembly should be entirely composed of principal officials; another member held that at least half of the membership of the Executive Assembly should be members of the legislature. Members agreed that for the time being no stipulations would be made but that further study would be carried out.

Article 53: The Executive Assembly of the HKSAR shall be presided by the Chief Executive.

Except for appointments and removals, disciplinary sanctions and emergencies, the Chief Executive shall consult the Executive Assembly before making any important policy decisions, submitting bills to the legislature, making subordinate legislation or dissolving the legislature.

If the Chief Executive does not accept the advice of the majority of the members of the Executive Assembly, he shall put on record the specific reasons.

Article 54: The HKSAR shall set up an anti-corruption body

which shall function independently and be accountable to the Chief Executive.

Article 55: The HKSAR shall set up an audit department which shall function independently and be accountable to the Chief Executive.

[Note] A member suggested amending this Article to read: "The Chief Executive may appoint or remove the Director of Audit with the approval of the legislature of the HKSAR. The Director of Audit and the Audit Department under him shall not be subject to the orders or control of any person or organ in the discharge of their functions in accordance with law."

[Note] Some members suggested adding the following article to this section: "An advisory board comprising advisers above Secretary level may be established to carry out the functions prescribed by this Law."

Section 2 The Executive Authorities

Article 56: The _____ (has yet to be named) of the HKSAR shall be the executive authorities of the HKSAR.

The head of the executive authorities shall be the Chief Executive of the HKSAR.

[Note] There are various suggestions as to what the executive authorities of the HKSAR should be called. Some members suggested calling it the "government". A member proposed calling it the "Executive Department". Some members proposed calling it the "Executive Commission". A member proposed calling it the "Executive Management Department" or the "Executive Management Council".

Article 57: Principal officials of the various departments of the HKSAR executive authorities shall be nominated by the Chief Executive of the HKSAR and the nomination shall be submitted to

the Central People's Government for appointment.

Principal officials of the HKSAR shall be Chinese nationals and Hong Kong permanent inhabitants who have ordinarily resided in Hong Kong for a continuous period of 15 years or more.

[Note] Members held that principal officials should generally be selected from public servants but could also be selected from outside the public service. The terms of employment for principal officials of the latter kind should be equivalent to those of the contract staff in the public service; such principal officials should leave the public service upon completion of their terms of office. Deployment of principal officials and expansion of the establishment of principal officials should be approved by the Central People's Government.

Regarding the period of residence in Hong Kong required of principal officials, some members still maintained that it be set at 10 years; a member proposed that it should be 20 years; some members held that it should not be stipulated at all.

Article 58: The executive authorities of the HKSAR shall be composed of the following:

The Chief Executive;
Directors of Offices;
Secretaries;
Other officials equivalent to Secretaries.

The composition of the executive authorities of the HKSAR shall be provided by law.

[Note] The structure of the various departments under the executive authorities of the HKSAR shall be provided by law. The heads of these departments, corresponding to the heads of various departments under the Chief Secretary at present, shall be called commissioners (e.g., Commissioner of Police, Commissioner of External Affairs), directors (e.g., Director of Maritime Affairs, Director of Immigration), or other titles (such as Registrar General, Treasurer),

depending on the nature and scope of their work. The Secretary for the Civil Service may be called the Secretary for Personnel Affairs.

A member suggested amending this article to read: "Members of the executive authorities shall include: (1) The Chief Executive; (2) principal officials nominated by the Chief Executive and appointed by the Central Government (officials corresponding to Secretaries); (3) The executive council comprising the Chief Executive and principal officials appointed by him."

Some members expressed reservations about the Chinese title for "Directors of Offices".

Article 59: The executive authorities of the HKSAR shall exercise the following functions and powers:

- (1) To formulate and implement government policies;
- (2) To administer executive affairs prescribed by Article 15 of this Law;
- (3) To deal with external affairs as authorised by the Central People's Government under Chapter 7 of this Law;
- (4) To draw up and present budgets and final accounts;
- (5) To formulate and present bills, motions, and subordinate legislation; and
- (6) Other necessary and reasonable powers for the discharge of its duties in accordance with the provisions under this Law.

[Note] Some members suggested deleting paragraph (6).

Article 60: The prosecuting department of* the executive authorities of the HKSAR shall independently deal with criminal prosecutions free from interference.

Article 61: The executive authorities of the HKSAR shall abide by

law and shall be accountable to the legislature of the HKSAR; they shall implement the laws which have taken* effect after having been passed by the legislature; they shall submit periodic administrative reports to the legislature; they shall answer queries by members of the legislature; taxation and public expenditure must be approved by the legislature.

[Note] Some members objected to the use of a colon after the phrase "accountable to the legislature" on the grounds that "accountability" was not confined to the contents listed in the provision.

Some members proposed that this Article should read: "The Executive Authorities of the HKSAR shall abide by the law and shall be accountable to the legislature. The Executive Authorities shall: (1) implement the laws which take effect after having been passed by the legislature; (2) submit periodic reports to the legislature; (3) be subject to monitoring by the legislature; (4) answer queries from members of the legislature and respond to and assist in investigations by the legislature on special issues; and (5) seek the approval of the legislature on matters of taxation and public expenditure, and be subject to monitoring by the legislature on the use of public expenditure."

However, the majority of members objected to this proposal.

Article 62: The system of advisory bodies established by the Chief Executive and the executive authorities shall be maintained.

Section 3 The Legislature

Article 63: The _____ (has yet to be named) of the HKSAR shall be the legislature of the HKSAR.

[Note] A number of suggestions for the Chinese name of the legislature were put forward, and they included: Legislative Commission, Legislative Council and

Legislative Assembly

Some members proposed that a second paragraph be added to this article: "The legislative power of the HKSAR shall be vested in the legislature of the HKSAR." However, a member held that the wording should be "The legislative power of the HKSAR shall be vested in the HKSAR."

Article 64:

(Paragraph 1) The legislature of the HKSAR shall be constituted by elections.

(Paragraph 2) Regarding the specific method of forming the legislature, there are the following three proposals:

1. 50% shall be elected by functional constituencies; 25% shall be directly elected by geographical constituencies; and 25% shall be elected by a grand electoral college.

2. Not less than 50% shall be selected by direct elections with universal suffrage; not more than 25% shall be selected by functional constituencies elections; and not more than 25% shall be selected by regional authorities elections such as elections by the District Boards, the Urban Council, and the Regional Council.

3. 30% of the members shall be selected by an advisory board from non-advisors, of whom at least one-third shall be principal officials while the rest shall be members of the Executive Assembly or members of the public; 40% shall be elected by functional constituencies; and 30% shall be directly elected by geographical constituencies.

[Note] The majority of members supported mixed elections; with most of them favouring the first proposal and some favouring the second or the third.

Members who put forward Proposals 1 and 3 maintained that the various methods of selecting members of the legislature listed in their respective proposals are "package" arrangements, that is, the adoption of direct elections by geographical constituencies would be conditional upon the acceptance of the other two methods of selection.

In addition, some members suggested that all members of the legislature of the HKSAR be elected by functional constituencies.

A member suggested that all members of the legislature be elected by geographical constituencies in general elections on a one-man-one-vote basis.

(Paragraph 3) The methods of election provided in the previous paragraph can be modified in the light of the actual situation in the HKSAR. Such modifications shall require the endorsement of a two-thirds majority of the members of the legislature of the HKSAR and the consent of the Chief Executive, and shall be submitted to the NPC Standing Committee for approval.

[Note] A member suggested reversing the order of Paragraphs 2 and 3 of this Article and proposed that the original Paragraph 3 should be amended to read: "The specific method of forming the legislature of the HKSAR can be modified step by step on the basis of the method of the formation of the first legislature and in the light of the actual situation in the HKSAR. Such modifications shall require the endorsement of a two-thirds majority of the HKSAR delegate to the NPC, the endorsement of a two-thirds majority of the members of the legislature of the HKSAR and the consent of the Chief Executive of the HKSAR, and shall be submitted to the NPC Standing Committee for approval."

Article 65: The terms of office of members of the HKSAR legislature shall be four years.

Article 66: Should the HKSAR legislature be dissolved by the Chief Executive in accordance with the provisions under this Law,

it shall be re-elected in accordance with Article 64 of this Law within six months.

Article 67:

Proposal 1:

The president of the legislature shall be elected from amongst the members of the legislature.

Proposal 2:

The Chief Executive shall concurrently be the president of the legislature.

[Note] Most members were in favour of Proposal 1; some members were in favour of Proposal 2.

Article 68: The president of the HKSAR legislature shall be a Chinese national who is a permanent inhabitant of the HKSAR of no less than 40 years of age and having ordinarily resided in Hong Kong for a continuous period of 20 years or more.

Article 69: The president of the legislature of the HKSAR shall exercise the following functions and powers:

- (1) To preside at meetings of the legislature;
- (2) To decide and control the agenda of meetings;
- (3) To decide the time for suspension, adjournment and commencement of meetings;
- (4) To call special meetings between sessions;
- (5) Other functions and powers provided by the standing orders of the legislature.

[Note] Some members held that the questions as to whether committees should be set up under the legislature and

whether the president of the legislature should have the power to nominate the members and chairmen of committees had to be further studied.

Article 70: The HKSAR legislature shall exercise the following functions and powers:

- (1) To enact, repeal, and amending laws in accordance with the provisions under this Law and legal procedures;
- (2) To examine and pass the budgets and final accounts as proposed by the executive authorities;
- (3) To approve taxation and public expenditure;
- (4) To receive the administrative reports of the executive authorities and to debate thereon;
- (5) To question the work of the executive authorities;

[Note] A member suggested amending this to read: "To review and question the work of the executive authorities".

- (6) To debate on any issue relating to the public interest;
- (7) To assent to the appointment or removal of judges of the court of final appeal and the chief judge of the supreme court.
- (8) To receive and deal with complaints from Hong Kong inhabitants;
- (9) If the Chief Executive is guilty of serious breach of law or dereliction of duty, with a motion proposed by 1/4 of the members of the legislature, an investigation committee headed by the chief judge of the court of final appeal may be set up in accordance with law to carry out an investigation and to report to the legislature. If the

committee deems that there is sufficient proof to support the above-mentioned allegation, an impeachment proposal, if passed by a two-thirds majority of the members of the legislature, may be presented and reported to the Central People's Government for decision.

[Note] A member proposed that the legislature be able to pass a vote of non-confidence on the Chief Executive or any principal official with a motion jointly proposed by 1/4 of the members of the legislature and endorsed by a 2/3 majority, and then to report the Central People's Government for the removal of the Chief Executive or the principal official concerned. But the majority of members objected to the proposal.

In addition, a member proposed the inclusion of this clause: "The legislature and its subordinate committees shall have the power to summon the persons concerned to appear before them to testify and give evidence. If the persons concerned are Government officials, the approval of the Chief Executive must be obtained."

A member suggested that a clause providing for the establishment of standing committees and select committees be added to this Article. But a member held that these points should be covered by the standing orders of the legislature.

(10) Other powers as required for the discharge of its duties in accordance with the provisions under this Law.

[Note] Some members suggested deleting sub-paragraph (10) of this Article.

Article 71: |

Proposal 1:

Members of the HKSAR legislature may, in accordance with the provisions of this Law and legal procedures, separately or jointly present any bills, save for the following three areas which will require the prior written approval of the Chief

Executive:

- (1) Bills relating to taxation and government expenditure;
- (2) Bills relating to government policies; and
- (3) Bills relating to the structure and operation of the executive authorities.

Proposal 2:

Members of the legislature of the HKSAR may, in accordance with the provisions of this Law and legal procedures, present bills to enact and amend laws. Bills not relating to public expenditure or public policies may be presented separately or jointly by members of the legislature.

[Note] A member suggested that all bills relating to public expenditure and public policies should be jointly proposed by no less than one-tenth of the members of the legislature, but that the prior written consent of the Chief Executive should not be required.

Article 72: The quorum for meetings of the HKSAR legislature shall be at least half of its total membership.

Unless otherwise provided under this Law, the passage of any bill or motion in the HKSAR legislature shall require the votes of more than half of its members present at the meeting.

The standing orders of the legislature shall be drawn up by the legislature on its own, but they shall not contravene this Law.

[Note] Some members pointed out that the quorum for meetings of the legislature could be less than half but no less than one-third of the total membership. He noted that if the quorum was set too high, it would not be easy to call a meeting.

Article 73: A bill passed by the legislature of the HKSAR may only take effect after it has been signed and promulgated by the Chief Executive.

Article 74: Members of the legislature shall not be legally liable for speeches made at meetings of the legislature.

Article 75: Members of the legislature shall not be subject, to arrest during or on their way to meetings of the legislature.

Article 76: Members of the HKSAR legislature shall take an oath of allegiance to the HKSAR.

Article 77: Under any one of the following conditions, the president of the HKSAR legislature shall declare that the member in question is no longer qualified to be a member of the legislature:

- (1) Where the member is unable to discharge the functions of his office for a long period of time due to serious illness or other reasons;
- (2) Where the member has been absent from meetings of the legislature continuously for three months without the consent of the president of the legislature;
- (3) Where the member loses or abandons his status as a permanent inhabitant of the HKSAR;

(4) Where the member commits an act of bankruptcy or is unable, to pay his debts as ruled by the court,

(5) Where the member is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the HKSAR and is relieved of his duties by a motion passed by two-thirds of the members of the legislature present at the meeting,

(6) Where the member is subject to a vote of censure for misbehaviour passed by more than two-thirds of the members of the legislature present,

(7) Where the member is subject to a vote of censure for breach of oath passed by two-thirds of the members of the legislature present.

[Note] Whether or not members of the legislature have to resign after being appointed as principal officials in the executive authorities has yet to be studied.

Section 4: Judicial Organs

Article 78: The judicial organs of the HKSAR shall be the HKSAR courts at various levels which exercise the power of adjudication in the HKSAR.

Article 79: A court of final appeal, a supreme court, regional courts, magistrates' courts and other special courts shall be established in the HKSAR. The supreme court shall comprise the court of appeal and the high court

The judicial system previously in force in Hong Kong shall be maintained except for those changes consequent upon the establishment of the court of final appeal of the HKSAR.

Article 80: The power of final adjudication of the HKSAR shall be vested in the court of final appeal of the HKSAR, which may as required invite judges from other common law jurisdictions to sit on the court of final appeal.

Article 81: The courts of the HKSAR shall have the power to adjudicate all cases in the HKSAR other than those relating to defence, foreign affairs, and the executive acts of the Central Committee, over which the courts do not have jurisdiction under the legal system previously in force in Hong Kong.

Where an issue relating to defence, foreign affairs, or the executive acts of the Central Government, is raised in any proceedings before the courts of the HKSAR, the Chief Executive shall be consulted, and a certificate by the Chief Executive regarding this matter shall be binding on the courts.

Prior to the issue of the above-mentioned certificate, the Chief Executive shall obtain a certificate from the NPC Standing Committee or the State Council.

[Note] Other proposals for this article include:

Proposal 1:

The courts of the HKSAR shall have the power to adjudicate all cases in the HKSAR other than those relating to defence, foreign affairs, and executive acts of a purely political nature which the courts do

not handle under the common law and its precedents.

The courts of the HKSAR shall consult the Chief Executive should they have doubts as to whether or not a certain case is related to defence, foreign affairs or executive acts of a purely political nature, and a certificate by the Chief Executive regarding this matter shall be binding on the courts.

Prior to the issue of the above-mentioned certificate, the Chief Executive shall obtain a certificate from the NPC Standing Committee or the State Council.

Proposal 2:

The courts of the HKSAR shall have the power to adjudicate all cases in the HKSAR except in situations where, under the legal system previously in force in Hong Kong, there are restrictions on the courts' power of adjudication.

In any proceedings, the courts of the HKSAR shall have the power to decide, without being subject to any external influence, whether or not they have the power of adjudication.

Proposal 3:

The courts of the HKSAR shall have jurisdiction over cases:

1. relating to the internal administration of the HKSAR; or

2. relating to the rights and obligations of individuals and legal persons in the HKSAR; or

3. relating to property in the HKSAR,

except where they concern:

(1) the relationship between the Central Government and the HKSAR;

(2) the validity of executive acts of the Central Government;

(3) the validity of those executive acts relating to defence and foreign affairs carried out by the HKSAR Government upon the directive of the Central Government under the provisions of this Law;

(4) The validity of those executive acts relating to external affairs which the HKSAR Government is authorised by the Central Government to handle on its own under the provisions of this Law and which are deemed to be "acts of state" under the laws previously in force in Hong Kong, and the contents of the same which are deemed to be "facts of state" under the laws previously in force in Hong Kong;

(5) The basic responsibilities of a citizen towards his country (such as cases of high treason).

In handling cases relating to items (1) to (4), the courts of the HKSAR shall consult the Chief Executive, and a certificate by the Chief Executive regarding this matter shall be binding on the courts.

Prior to the issue of the above-mentioned certificate, the Chief Executive shall obtain a certificate from the NPC Standing Committee or the State Council.

The courts shall inform the Chief Executive of cases relating to item (5). The Chief Executive shall, after consulting the NPC Standing Committee, decide whether such cases should be referred to the Central People's Court, or to a court of the HKSAR with specific authorisation from the Central People's Court, or to a court set up by other means.

Proposal 4:

The courts of the HKSAR shall have the power to adjudicate all cases in the HKSAR other than those relating to defence, foreign affairs and acts carried out by the Central Government and the HKSAR Government in the name of the state over which the courts do not have jurisdiction under the laws previously in force in Hong Kong. (This proposal is identical to Proposal 1 except that "executive acts of a purely political nature" in Proposal 1 is changed to "acts carried out ... in the name of the state".)

Article 82: The jurisdiction of the courts of the HKSAR at various levels shall be prescribed by the laws of the HKSAR

Article 83: The courts of the HKSAR shall decide cases in accordance with the laws of the HKSAR as provided in Article 17

of this Law and may refer to precedents in other common law jurisdictions

Article 84: Judges of the HKSAR courts shall be appointed by the Chief Executive of the HKSAR acting in accordance with the recommendation of an independent commission composed of local judges, persons from the legal profession and other eminent persons.

[Note] Judges of the HKSAR courts refer to district court judges or above. Other judicial officers include magistrates and presiding officers at other special tribunals. Other personnel working in the judiciary are considered public servants.

Article 85: The Chief Executive of the HKSAR may, acting in accordance with the recommendation of a tribunal appointed by the chief judge of the court of final appeal, consisting of not fewer than three local judges, remove a judge of the HKSAR courts for inability to discharge the functions of his office or for misbehaviour.

The chief judge of the court of final appeal may, under the procedures prescribed by this Law, be removed for inability to discharge the functions of his office or for misbehaviour by the Chief Executive acting in accordance with the recommendation of a tribunal consisting of not fewer than five local judges appointed by the Chief Executive.

Article 86: In addition to the procedures prescribed by Articles 84 and 85 of this Law, the appointment and removal of the chief judges of the court of final appeal and of the supreme court of

the HKSAR shall be made by the Chief Executive with the consent of the HKSAR legislature and reported to the NPC Standing Committee for the record.

Article 87: The existing system of appointment and removal of judicial officers other than judges of the HKSAR shall be maintained.

Article 88: Judges and judicial officers of the HKSAR shall be chosen by reference to their judicial and professional qualities and may be recruited from other common law jurisdictions.

Article 89: Judges and judicial officers serving in Hong Kong before the establishment of the HKSAR may remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.

Article 90: The HKSAR Government shall pay to judges and other judicial officers who retire or leave the service in compliance with regulations, as well as those who have retired or left the service before the establishment of the HKSAR, or to their dependants, all pensions, gratuities, allowances, and benefits due to them on terms no less favourable than before, and irrespective of their nationality or place of residence.

Article 91: The courts of the HKSAR shall exercise judicial power independently and free from any interference. Members of

the judiciary shall be immune from legal action in respect of their judicial functions

Article 92: The principle of the jury system previously practised in Hong Kong shall be maintained

Article 93: In respect of the conduct of criminal or civil proceedings in the HKSAR, the principles previously applied in Hong Kong and the rights previously enjoyed by parties to the proceedings shall be maintained.

[Note] A member suggested that the principles and rights mentioned in this article should be written into Chapter Three.

Article 94: The HKSAR may, in accordance with law, maintain judicial links with and render assistance to the judicial organs of other parts of the country through consultation.

Article 95: Under the assistance or authorisation of the Central People's Government, the HKSAR Government may make appropriate arrangements with foreign states for reciprocal juridical assistance.

[Note] A member asked whether the financial independence of the judiciary or a special appropriation for the judiciary could be laid down as a separate article.

Section 5 Regional Organisations

Article 96: Regional organisations which are not of the nature of local organs of political power may be established in the HKSAR, to be consulted by the HKSAR Government on district administration and other matters, or to be responsible for the provision of services in such fields as culture, recreation, and environmental health*.

[Note] Members held that if the present three-tier structure was retained, district boards should still be district consultative bodies.

Article 97: The specific powers and functions of the regional organisations and their composition shall be prescribed by law.

Section 6 Public Service

Article 98: Public servants serving in all government departments of the HKSAR shall be permanent inhabitants of the HKSAR except where otherwise provided in Article 100 of this Law and except for those below a certain salary point as prescribed by law.

Public servants shall perform their duties conscientiously and be accountable to the HKSAR Government.

Article 99: Public servants serving in all government departments (including the police department)* before the establishment of the HKSAR may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.

Article 100: The HKSAR Government may employ British and other foreign nationals previously serving in the public service in Hong Kong, and may recruit British and other foreign nationals holding permanent identity cards of the HKSAR to serve as public servants at all level, except for the following posts: the Directors and Deputy Directors of Offices, Secretaries, Deputy Secretary for Security, Deputy Secretary for the Civil Service, and Deputy Secretary for Administration, Commissioner Against Corruption, Director of Audit, Commissioner and Deputy Commissioner of Police, Director and Deputy Director of External Affairs, Director of Immigration, Commissioner of Customs and Excise.

The HKSAR Government may also employ British and other foreign nationals as advisors to government departments and, when there is a need, may recruit qualified candidates from outside the HKSAR to professional and technical posts in government departments. The above foreign nationals shall be employed only in their individual capacities and be responsible to the HKSAR Government.

[Note] A member suggested that foreign nationals should be considered for the posts of Deputy Secretary for Civil Service and Deputy Secretary for Administration.

A member questioned whether the posts of Director of Immigration and Commissioner of Customs, which were not at the Secretary level, should be subject to restriction.

Article 101: The HKSAR Government shall pay to public servants who retire or leave the service in compliance with regulations,

as well as those who have retired or left the service in compliance with regulations before the establishment of the HKSAR, or to their dependants, and irrespective of their nationality or place of residence, all pensions, gratuities, allowances, and benefits (including pensions for the disabled or for the family of the deceased) due to them on terms no less favourable than before.

Article 102: The appointment and promotion of public servants shall be on the basis of qualifications, experience, and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training, and management for the public service (including special bodies for appointment, pay, and conditions of service) shall, save for any provisions providing privileged treatment for foreign nationals, be maintained.

[Note] A member proposed that the following be added at the end of this article: "The HKSAR Government may develop and improve the above system in the light of actual conditions in order to promote the efficiency of work and the quality of public servants."

Chapter 5 The Economy of the HKSAR

Section 1 Public Finance and Taxation

Article 103: The HKSAR shall be financially independent.

The HKSAR shall use its financial revenue exclusively for its own purposes and they shall not be handed over to the Central

People's Government.

Article 104: The drawing up of the HKSAR budgets shall follow the policy of maintaining a basic balance between income and expenditure.

The rate of increase of income and expenditure in the HKSAR budget shall not in principle exceed the growth rate of the Gross Domestic Product.

[Note] Some members held that paragraph 2 should not be written in the Basic Law.

Article 105: The HKSAR shall adopt an independent taxation system.

The Central People's Government shall not levy taxes on the HKSAR.

Article 106: The HKSAR shall continue to maintain a policy of low tax rate.

Article 107: The type, rate, and exemption of taxation in* the HKSAR shall be stipulated by the HKSAR in law.

Section 2 Finance and Monetary Affairs

Article 108: The HKSAR Government shall provide the necessary conditions and take appropriate measures to maintain the status of the HKSAR as an international financial centre.

Article 109: The HKSAR shall decide its monetary and financial systems on its own, and continue to adopt free and open monetary and financial policies.

Article 110: No exchange control policy shall be applied in the HKSAR. Markets for foreign exchange, foreign currencies, gold, securities and futures shall continue to open.

[Note] A member considered that as foreign exchange already included foreign currencies, the mention of the latter was unnecessary.

Article 111: The HKSAR Government shall safeguard the free flow of all capital within, into and out of the HKSAR.

Article 112: The HKSAR Government shall safeguard the free operation of financial business and financial markets, and regulate and supervise such businesses and markets in accordance with law.

Article 113: The Hong Kong dollar, as the legal tender of the HKSAR, shall continue to circulate and remain freely convertible.

Article 114: The authority to issue Hong Kong currency shall be vested in the HKSAR Government.

The system regarding the issue of Hong Kong currency shall be prescribed by the laws of the SAR.

The Hong Kong currency at issue shall be covered by freely

convertible foreign currency reserves of no less than 100%.

The HKSAR Government may authorise designated banks to issue or continue to issue Hong Kong currency under statutory authority, after satisfying itself that any issue of currency will be soundly based and that the arrangements for such issue are consistent with the maintenance of the stability of the currency.

Article 115: The Exchange Fund of the HKSAR shall be managed and controlled by the HKSAR Government, primarily for regulating the exchange rate of the Hong Kong dollar.

Section 3 External Trade and Economic Relations

Article 116: The HKSAR shall adopt a free trade and economic system, and decide on its own policies regarding external trade and economic relations.

The HKSAR shall protect the free movement of goods, intangible property and capital.

Article 117: The HKSAR shall be a free port.

The HKSAR shall not impose any tariff unless otherwise stipulated by law.

Article 118: The HKSAR shall be a separate customs territory.

The HKSAR may, using the name "Hong Kong, China", participate in relevant international organisations and

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or by one of his lawful successors in the male line.

Article 128: Where leases of land not having a right of renewal expire after the establishment of the HKSAR, they shall be dealt with in accordance with the laws and policies decided by the HKSAR on its own.

Section 6 Shipping Management

Article 129: The HKSAR shall maintain Hong Kong's previous systems of shipping management and shipping regulation.

The specific functions and responsibilities of the HKSAR Government in the field of shipping shall be defined by the HKSAR Government on its own.

Article 130: The HKSAR shall be authorised by the Central People's Government to continue to maintain a shipping register and issue related certificates under its own legislation in the name of "Hong Kong, China".

Article 131: All ships for civil use shall enjoy access to the ports of the HKSAR in accordance with the laws of the HKSAR. Access of foreign warships to the HKSAR shall require the permission of the Central People's Government.

Article 132: Private shipping businesses and shipping-related

businesses and private container terminals in Hong Kong may continue to operate freely.

Section 7 Civil Aviation Management

Article 133: The HKSAR Government shall provide necessary conditions and take appropriate measures to maintain the status of Hong Kong as a centre of international and regional aviation.

Article 134: The HKSAR shall maintain the previous system of civil aviation management in Hong Kong, and keep its own aircraft register in accordance with provisions laid down by the Central People's Government concerning nationality marks and registration marks of aircraft.

Access of foreign military aircraft to the HKSAR shall require permission of the Central People's Government.

Article 135: The HKSAR shall be responsible on its own for matters of routine business and technical management of civil aviation, and the management of airports.

The HKSAR shall be responsible for the provision of air traffic services within the flight information region of the HKSAR, and the discharge of other responsibilities allocated under the regional air navigation procedures of the International Civil Aviation Organisation.

Article 136: The Central People's Government shall, in consultation with the HKSAR Government, make arrangements providing for air services between the HKSAR and other parts of the People's Republic of China for airlines incorporated and having their principal place of business in the HKSAR and other airlines of the People's Republic of China.

Article 137: All Air Service Agreements providing for air services between other parts of the People's Republic of China and other states and regions with stops at the HKSAR and air services between the HKSAR and other states and regions with stops at other parts of the People's Republic of China shall be concluded by the Central People's Government.

In concluding the Air Service Agreements mentioned in the first paragraph of this Article, the Central People's Government shall take account of the special conditions and economic interests of the HKSAR and consult the HKSAR Government.

Representatives of the HKSAR Government may participate as members of delegations of the Government of the People's Republic of China in air service consultations with foreign governments concerning arrangements for the services mentioned in the first paragraph of this Article.

Article 138: Acting under specific authorisations from the Central People's Government, the HKSAR Government may:

- (1) renew or amend Air Service Agreements and arrangements previously in force;

- (2) conclude new Air Service Agreements providing routes for airlines incorporated and having their principal place of business in the HKSAR and rights for overflights and technical stops, and

- (3) conclude provisional arrangements where no Air Service Agreement with a foreign state or other region is in force.

All scheduled air services to, from, or through the HKSAR which do not operate to, from, or through the mainland of China shall be regulated by Air Service Agreements or provisional arrangements referred to in this Article

Article 139: The Central People's Government shall give the HKSAR Government the authority to:

- (1) negotiate and conclude with other authorities all arrangements concerning the implementation of the Air Service Agreements and provisional arrangements mentioned in Article 46 of this Law;
- (2) issue licences to airlines incorporated and having their principal place of business in the HKSAR;
- (3) designate such airlines under the Air Service Agreements and provisional arrangements mentioned in Article 46 of this Law; and
- (4) issue permits to foreign airlines for services other than those to, from, or through the mainland of China.

Article 140: Airlines incorporated and having their principal place of business in Hong Kong and civil aviation related

businesses may continue to operate

Chapter 6 Education, Science, Technology, Culture, Sports,
and Religion in the HKSAR

Article 141: The HKSAR shall maintain the educational system previously practised in Hong Kong.

Article 142: The HKSAR Government shall on its own decide policies of this SAR in the field of education, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational qualifications*.

Community organisations and individuals may operate various* kinds of educational undertakings in the HKSAR in accordance with law.

Article 143: Educational institutions of all kinds may retain their autonomy and have academic freedom. They may continue to recruit staff and use teaching material from outside the HKSAR. Educational institutions run by religious organisations will continue to provide religious education including running courses on religion.

Students shall enjoy freedom of choice of education and

freedom to pursue their education outside the HKSAR.

Article 144: The HKSAR Government shall develop medical and health services, develop Chinese and Western medicine, and encourage community organisations and individuals to provide medical and health services of all kinds.

Article 145: The HKSAR Government shall decide on its own policies in the fields of science and technology. It shall protect achievements in scientific and technological research, and scientific and technological patents, inventions and discoveries.

The HKSAR Government shall determine on its own standards and specifications relating to science and technology applicable to Hong Kong.

Article 146: The HKSAR Government shall decide its cultural policies on its own and protect the achievements and the legitimate rights and interests acquired by authors in literary and artistic creation.

Article 147: The HKSAR Government shall not interfere with the internal affairs of religious organisations and shall not restrict the religious activities which do not contravene the laws of the HKSAR.

Religious organisations shall, in accordance with law, enjoy rights concerning the acquisition, use, disposal, and inheritance

of property and the right to receive financial assistance. The previous rights and interests in respect of property shall be maintained and protected.

Religious organisations may continue to run educational institutions and other educational institutions, hospitals and welfare institutions, and provide other social services in accordance with previous practice.

Article 148: Religious organisations and followers of religions* in the HKSAR may maintain and develop relations with religious organisations and believers elsewhere.

Article 149: The HKSAR Government shall on its own decide the manner and procedure for* accrediting and conferring qualifications for various types of professional practice*. The previous manner and procedure for accrediting and conferring qualifications for various types of professional practice in Hong Kong will be retained and improved.

Those who have acquired professions and professional qualifications before the establishment of the HKSAR may retain* their previous qualifications.

The HKSAR shall maintain the professions and professional organisations which have been recognised before the establishment of the HKSAR. Those professional organisations shall accredit and confer professional qualifications in accordance with their previous practice.

The HKSAR Government may recognise new professions and professional organisations in accordance with the needs of social development after consulting the parties concerned.

[Note] A member held that as the first and second sentences of paragraph 1 were contradictory, the second sentence should be deleted. A member pointed out that according to the spirit of the following provision in Section X of Annex I to the Joint Declaration: "The HKSAR shall maintain the educational system previously practised in Hong Kong. The HKSAR Government shall on its own decide policies in the fields of culture, education, science and technology, including policies regarding ... technological qualifications", the manner and procedure for accrediting and conferring professional qualifications should be decided by the HKSAR Government on its own; the Basic Law should simply provide that "The HKSAR shall on its own decide the manner and procedure for accrediting and conferring professional qualifications," and should not stipulate the terms of reference of professional organisations. It was proposed that the clause "Those professional organisations shall accredit and confer professional qualifications in accordance with the previous practice." be deleted from paragraph 3. Some members suggested that the above-mentioned opinions be treated as Proposal 2 of this article, to be submitted for discussion at the plenary session.

Article 150: The HKSAR Government shall decide on its own policies in the field of sports. Previous non-governmental sports organisations may continue to exist and develop in accordance with law.

Article 151: The HKSAR shall maintain the policy previously practised in Hong Kong regarding the provision of subventions to organisations in fields such as* education, medicine, culture, arts, recreation, sports, social welfare, and social work. After the establishment of the HKSAR, personnel previously serving in

subvented organisations in Hong Kong may remain in employment in accordance with the previous system

Article 152: The HKSAR Government shall maintain the previous social welfare system and decide on its own the development and improvement of social welfare in accordance with economic conditions and social needs.

Article 153: Voluntary organisations engaged in social service in the HKSAR may on their own decide their forms of service.

[Note] A member queried whether it was appropriate for voluntary organisations to decide their forms of service on their own without being subject to any restraints by the government. It was proposed that the phrase "in accordance with the relevant provisions of the government" be added at the end of the article. Some members suggested that relevant voluntary organisations in Hong Kong be invited to submit proposals on this article. A member held that this article could be deleted.

Article 154: The HKSAR shall on its own formulate laws and policies regarding labour in the light of economic development, social needs, and the actual circumstances of labour-management consultations.

Article 155: The relationship between non-governmental organisations in fields such as* education, science, technology, culture, sports, the professions, and social welfare, in the HKSAR as well as religious organisations in the HKSAR, and their counterparts in the mainland shall abide by the principles of non-subordination, non-interference, and mutual respect.

Article 156: Organisations in fields such as* education, science, technology, culture, sports, health, the professions, social welfare and religion in the HKSAR may, using the name "Hong Kong, China", maintain and develop relations with other states, regions and relevant international organisations.

[Note] If the above contents were included in a relevant provision in Chapter 7 on External Affairs of the HKSAR, this article could be deleted.

Chapter 7 The External Affairs of the HKSAR

Article 157: Representative of the HKSAR may participate, as members of delegations of the Government of the PRC, in negotiations at the diplomatic level directly affecting the HKSAR conducted by the CPG

Article 158: The HKSAR may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with states, regions and relevant international organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, touristic, cultural and sporting fields.

Article 159: The HKSAR may send representatives to participate, as members of delegations of the Government of the PRC, in international organisations or conferences in appropriate fields limited to states and affecting the HKSAR, or may attend in such

other capacity as may be permitted by the CPG and the organisation or conference concerned, and may express their views in the name of "Hong Kong, China".

The HKSAR may, using the name "Hong Kong, China", participate in international organisations and conferences not limited to states.

The CPG shall take the necessary steps to ensure that the HKSAR shall continue to retain its status in an appropriate capacity in those international organisations of which the PRC is a member and in which Hong Kong participates in one capacity or another.

The CPG shall, where necessary, facilitate the continued participation of the HKSAR in an appropriate capacity in those international organisations in which Hong Kong is a participant in one capacity or another, but of which the PRC is not a member.

Article 160: The application to the HKSAR of international agreements to which the PRC is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the HKSAR, and after seeking the views of the HKSAR Government.

International agreements to which the PRC is not a party but which are implemented in Hong Kong may remain implemented in the HKSAR. The CPG shall, as necessary, authorise or assist the HKSAR Government to make appropriate arrangements for the application to the HSKAR of other relevant international

agreements.

Article 161: The CPG shall authorise the HKSAR to issue, in accordance with law, passports of the HKSAR of the PRC to all Chinese nationals who hold permanent identity cards of the HKSAR, and travel documents of the HKSAR of the PRC to all other persons lawfully residing in the HKSAR. The above passports and documents shall be valid for all states and regions and shall record the holder's right to return to the HKSAR.

The HKSAR Government may apply immigration controls on entry, stay in and departure from the HKSAR by persons from various states and regions.

Article 162: The CPG shall assist or authorise the HKSAR Government to conclude visa abolition agreements with states or regions.

Article 163: The HKSAR may, as necessary, establish official and semi-official economic and trade missions in foreign countries, reporting the establishment of such missions to the CPG for the record.

Article 164: Foreign consular and other official or semi-official missions may be established in the HKSAR with the approval of the CPG.

Consular and other official missions established in Hong Kong by states which have established formal diplomatic relations

with the PRC may be maintained.

According to the circumstances of each case, consular and other official missions of states having no formal diplomatic relations with the PRC may either be maintained or changed to semi-official missions.

States not recognised by the PRC can only establish non-governmental institutions.

Chapter 8 The Regional Flag and the Regional Emblem of the HKSAR

Article 165: Apart from displaying the national flag and national emblem, the HKSAR may use a regional flag and regional emblem on its own (has yet to be drafted).

Article 166: The regional flag of the HKSAR (has yet to be drafted).

Article 167: The regional emblem of the HKSAR (has yet to be drafted).

Chapter 9 The Interpretation and Amendment of the Basic Law of the HKSAR

Article 168: The power of interpretation of the Basic Law shall be vested in the NPC Standing Committee.

If the NPC Standing Committee has given an interpretation of a provision of the Basic Law, the courts of the HKSAR shall in applying such provision follow the interpretation of the NPC Standing Committee. However, judgments previously given shall not be affected.

The courts in the HKSAR may, in adjudicating cases before them, interpret provisions* of the Basic Law. If a case involves the interpretation of a provision of the Basic Law concerning defence, foreign affairs and other affairs which are the responsibilities of the Central Government, the courts of the HKSAR shall ask the NPC Standing Committee to give an interpretation of the relevant provision before giving their final judgment on the case.

The NPC Standing Committee shall consult the HKSAR Basic Law Committee before giving an interpretation of this Law.

Article 169: The power of amendment of the Basic Law shall be vested in the NPC.

The power to propose an amendment to this Law shall be vested in the NPC Standing Committee, the State Council and the HKSAR. Amendment proposals from the HKSAR shall be submitted* to the NPC by the HKSAR's delegation* to the NPC after obtaining the consent of no less than two-thirds of the HKSAR delegates to the NPC, two-thirds of members of the HKSAR legislature and the Chief Executive of the HKSAR.

Before a proposal for amendment to this Law is put on the agenda of the NPC, the HKSAR Basic Law Committee shall first study it and give advice on it. |

No amendment to this Law shall contravene the established basic policies of the PRC regarding the HKSAR.

[Note] Other views expressed by members of the Subgroup on Central-SAR Relationship:

Article 168

A member proposed that the article be rewritten as follows: "The power of interpretation of this Law shall be vested in the NPC Standing Committee. The courts of the HKSAR may interpret all provisions of this Law.

"Regarding the provisions which are within the scope of the SAR's autonomy, the NPC Standing Committee will give full power to the courts of the HKSAR to interpret them when adjudicating cases.

"If the NPC Standing Committee has given an interpretation of a provision which is outside the scope of the SAR's autonomy, the courts of the HKSAR shall in applying such provision follow the interpretation of the NPC Standing Committee. However, cases under adjudication and previous judgments shall not be affected.

"The NPC Standing Committee will consult the HKSAR Basic Law Committee before giving an interpretation of this Law.

"All provisions under Chapters 3,4,5,6, and 10 are within the scope of the SAR's autonomy. Whether the provisions under other Chapters are within the scope of the SAR's autonomy may be decided by the courts of the HKSAR or the NPC Standing Committee. The NPC Standing Committee will consult the HKSAR Basic Law Committee before making the decision. The decision of the NPC Standing Committee shall be final."

Article 169

A member proposed that the article be rewritten as follows: "The power of amendment of the Basic Law shall be vested in the NPC Standing Committee.

"The power to propose an amendment to this Law shall be vested in the NPC Standing Committee. Amendment proposals from the HKSAR shall be submitted to the NPC

by the State Council after obtaining the consent of two-thirds of the members of the HKSAR legislature and the Chief Executive of the HKSAR.

"Before a proposal for amendment to this Law is put on the agenda of the NPC, the HKSAR Basic Law Committee shall first study it and give advice on it.

"No amendment to this Law shall contravene the established basic policies of the PRC regarding the HKSAR stated in the Preamble."

A member proposed that paragraph 2 be amended as follows: "The power to propose an amendment to this Law shall be vested in the NPC Standing Committee, the State Council and the HKSAR. Amendment proposals from the HKSAR shall be submitted to the NPC after obtaining the consent of no less than two-thirds of the HKSAR delegates to the NPC and the Chief Executive of the HKSAR."

Chapter 10: Supplementary Provisions

Article 170: Regarding the formation of the first government of the HKSAR, there are the following six proposals:

Proposal 1:

1. Before 1997, the Central Government shall appoint no less than 50 persons from various sectors in Hong Kong to form an advisory board, which will then select the Chief Executive through local consultations and submit the nomination to the Central Government for appointment.

2. The Chief Executive shall form the Executive Assembly and nominate the principal officials, and then submit the nomination to the Central Government for appointment.

3. A provisional Legislative Assembly comprising legislative members jointly nominated by the Chief Executive and the Executive Assembly and elected by the advisory board shall be set

up.

4. The terms of office of all members of the first government shall not exceed three years. A regular government must be formed within three years in accordance with this Law.

Proposal 2:

The first Chief Executive designate of the HKSAR shall be selected through local consultations on 1 December 1996 in accordance with the method listed in Appendix I. With the approval of the Central People's Government, the person selected shall be the first Chief Executive designate.

Before 1 April 1997, the first Chief Executive designate shall nominate members of the first Executive Assembly who shall be the members designate of the first Executive Assembly.

The first Chief Executive designate, and the members designate of the first Executive Assembly shall jointly organise the "Preparatory Committee for the Formation of the First Government". At zero hour on 1 July 1997, with the assistance of members of the first Executive Assembly, the first Chief Executive who will have been officially appointed by the Central People's Government shall, in accordance with the provisions of this Law, announce the formation of the first government of the HKSAR which, as authorised by the Central Government, shall take up the administration of the HKSAR from the NPC Standing Committee. Before the formation of the first legislature, a provisional legislature may exercise its provisional legislative power, and may enact provisional legislation if necessary.

[Note] The provisional legislature shall be elected by the electoral college locally in accordance with the

method listed in the appendix. The previous Legislative Councillors who are relieved of their office on 30 June 1997 shall not be excluded as candidates.

After the establishment of the first HKSAR Government, elections for the District Boards and the Urban Council shall be held in accordance with the method listed in the appendix within 6 months; and the first legislature shall be formed in accordance with the method listed in Appendix II within 12 months.

Appendix I: Procedures for the Selection of the First Chief Executive through Local Consultations by the Various Sectors in Hong Kong.

After the promulgation of the Basic Law, the National People's Congress appoint no less than 50 members to form the "Preparatory Committee for the Implementation of the Basic Law". The Committee will have diverse tasks which will include, after consultation with the various sectors, formulation (by the Committee itself or by its special groups) of the draft on "consultation procedures" to be submitted to the NPC for review and endorsement.

On 1 July 1995, members of the "Preparatory Committee for the Implementation of the Basic Law" will elect amongst themselves no less than 10 persons to form a "consultation committee" which will carry out open consultation in accordance with the "consultation procedures". Members of the "consultation committee" will not be allowed to stand as candidates for the Chief Executive, nor will they be allowed to nominate or support any of the candidates for the Chief Executive. The "consultation

committee" responsible for promoting and supervising the consultations shall be objective and impartial.

A candidate for the first Chief Executive designate shall be selected on 1 December, 1996. With the approval of the Central Government, the candidate shall be appointed officially as Chief Executive on 1 July 1997.

Appendix II : Method of Election to the First Legislature

Electoral college - 1/2 of the members of the legislature shall be elected by a widely representative grand electoral college. Not less than 2/3 of the members shall be Chinese nationals.

Indirect election - 1/4 of the members of the legislature shall be elected from among members of the District Boards and the Urban Council who are Chinese nationals.

Direct election by functional constituencies - 1/4 of the members of the legislature shall be directly elected by functional constituencies (the functional constituencies shall be registered as legal entities in accordance with local laws, and shall be of Chinese nationality. Regardless of their own nationalities, members of the legislature who are directly elected by functional constituencies may, by virtue of the Chinese nationality of the functional constituencies to which they belong, exercise the civil rights of Chinese nationals during their terms of office.)

Proposal 3:

1. At an appropriate time before 1 July 1997, the National People's Congress shall set up a preparatory committee for the HKSAR that comprises mainland and Hong Kong members. The committee shall prepare for the establishment of the HKSAR.

2. The first Chief Executive of the HKSAR shall be selected through consultations or elections held locally by a representative body that comprises people from various sectors in Hong Kong and the name of the person thus selected shall be submitted to the Central People's Government for appointment. The preparatory committee for the HKSAR shall be responsible for the setting up of this representative body.

The Chief Executive of the HKSAR shall, in accordance with the provisions of this Law, be responsible for the formation of the first HKSAR Government.

2. The first legislature of the HKSAR shall, in accordance with the provisions of this Law, be formed through election one or two years after the establishment of the HKSAR.

Prior to the formation of the first legislature of the HKSAR, a provisional legislature of the HKSAR shall function in an acting capacity. The provisional legislature shall be formed in accordance with the method prescribed in the preceding paragraph.

Proposal 4:

The first government of the HKSAR shall be formed in accordance with the method listed in the following appendix on "The Formation of the First Government of the HKSAR":

Appendix:

1. The NPC Standing Committee of the People's Republic of China shall set up a "Preparatory Committee for the Formation of the First Government of the HKSAR" that comprises Chinese nationals with equal number of mainlanders and Hong Kong permanent inhabitants. The chairman of the committee shall be a member of the NPC Standing Committee.
2. The "Preparatory Committee for the Formation of the First Government of the HKSAR" shall entrust its Hong Kong members with the responsibility of inviting people who are widely representative of the various sectors in Hong Kong to set up a "Nomination Committee for the First Chief Executive of the HKSAR".
3. The "Nomination Committee" shall nominate the first Chief Executive designate of the SAR through consultations or elections in Hong Kong. The nomination shall then be submitted to the Central Government for appointment.
4. The Central People's Government shall, in accordance with the recommendation of the "Nomination Committee", appoint the Chief Executive designate as the first Chief Executive of the HKSAR.
5. The first Chief Executive shall set up an Executive Assembly by appointing its members. The Chief Executive shall nominate the principal officials in the executive authorities of the HKSAR and submit the nominations to the Central Government for appointment.
6. The president of the People's Republic of China shall

declare that on 1 July 1997 the People's Republic of China will resume the exercise of sovereignty over Hong Kong and that the "Basic Law of the HKSAR" will take effect, and shall delegate the Chief Executive of the HKSAR to implement a high degree of autonomy in the HKSAR in accordance with this Law.

(Items 1 to 6 listed above shall be completed before 1 July 1997.)

7. The Chief Executive and other principal officials shall take an oath of office.
8. The first Chief Executive of the HKSAR shall declare that previous public servants (except principal officials) at various levels in the Hong Kong Government, judges and judicial officers of the courts at various levels may all remain in employment until their new appointments or removal.
9. The Chief Executive shall declare that within one year the first legislature of the HKSAR shall be formed in accordance with the provisions of Section 3 of Chapter 4 of this Law.
10. Before the first legislature is elected and passes the budget, the public expenditure of the first government of the HKSAR shall be met by a provisional appropriation of funds proposed by the Director of Finance and approved by the Chief Executive. It shall be ratified retroactively after the first legislature is formed.
11. The chief judges of the Court of Final Appeal and of the Supreme Court shall be appointed by the Chief Executive in accordance with Articles 84 and 86 of this Law.

(Items 7 to 11 listed above shall be completed after 1 July

1997.)

Proposal 5:

1. The NPC Standing Committee of the People's Republic of China shall appoint a "Preparatory Committee for the First Government of the HKSAR". Members of the Committee shall be Chinese nationals, including mainlanders and permanent inhabitants of Hong Kong. The chairman of the committee shall be a member of the NPC Standing Committee.

2. The "Preparatory Committee for the First Government of the HKSAR" shall entrust its Hong Kong members to set up an electoral college which comprises representatives of the legislative and regional organisations prior to the establishment of the HKSAR, as well as representatives of various statutory bodies, permanent non-statutory bodies, and citizens of various sectors. The electoral college, which must be widely representative, shall be called the "Electoral College for the First Government of the HKSAR".

3. The electoral college for the First Government of the HKSAR shall be responsible for the drafting of the relevant procedures for the selection of the first Chief Executive, who will then be selected by consultations or elected from candidates nominated through consultations.

(The qualifications, functions and powers, and so on of the Chief Executive will be as set down in the provisions of Chapter 4 of this Law.)

4. The electoral college for the First Government of the HKSAR shall be responsible for the drafting of the procedures for

the election of the first legislature. Members of the legislature in office before the establishment of the HKSAR who satisfy the requirements of Chapter 4 of this Law may be elected as members of the first legislature.

(The qualifications, functions and powers, and so on of the members of the legislature will be as set down in the provisions of Chapter 4 of this Law.)

5. Government officials, public servants and judicial officers in office before the establishment of the HKSAR who satisfy the requirements of this Law shall be employed by the first government.

(The composition, functions and powers of the executive authorities will be as set down in the provisions of Chapter 4 of this Law.)

Proposal 6:

1. The Chief Executive

The NPC Standing Committee of the People's Republic of China shall appoint a "Preparatory Committee for the First Government of the HKSAR". Members of the Committee shall be Chinese nationals who are permanent inhabitants of Hong Kong and the chairman of the Committee shall be elected from amongst the members themselves.

In mid- or late 1996, the Preparatory Committee for the First Government of the HKSAR shall, in accordance with this Law, hold elections in Hong Kong to select the Chief Executive designate through direct elections on a one-man-one-vote basis.

On 1 July 1997 the Chief Executive designate shall be appointed by the Central People's Government and take the oath of office.

2. The Principal Officials

The Chief Executive designate shall, before 1 July 1997, nominate principal officials for the executive authorities of the HKSAR and submit the nominations to the Central People's Government for appointment. The principal officials shall take the oath of office on 1 July 1997.

3. The Legislature

Members of the Legislative Council in June 1997 shall automatically become members of the first legislature of the HKSAR on 1 July until their terms of office expire. Apart from taking an oath of allegiance to the SAR, there shall not be any other special arrangements.

Article 171:

Proposal 1:

At the time of the establishment of the HKSAR, laws previously in force in Hong Kong (that is, the Common Law, rules of equity, ordinances, subordinate legislation and customary law), save for those listed in the Appendix, shall be adopted as the laws of the HKSAR.

The adoption of the above-mentioned laws shall not affect the power of the NPC Standing Committee to, through the exercise of its power of interpretation of this Law, repeal any of the above-mentioned laws previously in force in Hong Kong which are

found to be in contravention of the Basic Law after the establishment of the HKSAR.

Documents, certificates, contracts, and the rights and obligations that are effective under the laws previously in force in Hong Kong shall continue to be effective and be recognized and protected by the laws of the HKSAR provided that they do not contravene this Law.

[Note] The laws listed in the Appendix are laws previously in force in Hong Kong which the NPC Standing Committee considers to be obviously in contravention of the Basic Law.

Proposal 2:

Where the Basic Law Committee considers upon examination that any legislation previously in force in Hong Kong contravenes the Basic Law, it may report it to the NPC Standing Committee to be repealed upon the establishment of the HKSAR.

Documents, certificates, contracts and the rights and obligations that are effective under the laws previously in force in Hong Kong shall continue to be effective and be recognized and protected by the laws of the HKSAR provided that they do not contravene this Law.

Proposal 3:

Ordinances and subordinate legislation previously in force in Hong Kong shall, under the provisions of Article 8 of this Law, be considered effective until they are revoked or amended in accordance with the procedures prescribed by this Law, save for any that are declared to be in contravention of the Basic Law under the provisions of Article 168 of this Law upon the

establishment of the HKSAR.

Rights and duties effective under the laws previously in force in Hong Kong which continue to be in force upon the establishment of the HKSAR shall continue to be effective and be protected and recognised by the laws of the HKSAR.

Article 172: This Law shall be enacted after it is passed by the National People's Congress of the People's Republic of China and promulgated by the President of the People's Republic of China, and shall, save for the relevant provisions under Articles 170 and 171 of this Law, take effect at zero hour on 1 July 1997.

[Note] A member held that this Law should take effect on the date of its promulgation by the President of the PRC.

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

「基本法委員會」
最後報告

(1987年12月5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
法律專責小組

法律專責小組舉行了三次會議討論有關基本法委員會的問題，例如該委員會的結構、組成、職權、隸屬關係。中央與特區關係專責小組已完成一份有關基本法委員會的最後報告，因此本小組只處理該委員會在法律方面的問題。以下為經整理後的意見，將提交起草委員會參考。

(一) 一般原則

1. 不得以任何方法削弱中英聯合聲明所規定的終審權。
2. 終審權包括對所有法律(連基本法在內)的解釋權。香港法院應有權在審判過程中解釋基本法，而就所判的案件而言，其權力應是最終的。人大的決定不應影響香港法院對該案件已作的判決。
3. 根據香港現行的普通法制度，由司法機構(而非政治機構)享有法律解釋權是個基本原則。
4. 基本法應有條文規定基本法委員會的成立。基本法委員會應是兩個制度的「聯繫」、「相交處」或「緩衝」，發揮有效而可信的作用。該委員會的職權、成員等都應在基本法中明文規定。但有委員認為該委員會的組成和職權應由人大常委決定，這些規定應由人大在頒佈基本法時同時頒佈。但無論如何，基本法委員會都應該是個諮詢的題目，而有關該委員會的決定也應在頒佈基本法最後草案前公佈。如果一方面要香港市民討論並接受基本法草案中有關基本法委員會的條文，一方面又不讓他們知道該委員會確實的職權、成員資格等，對香港市民是不公平的。
5. 對法例的司法審查(即決定某一法律是否因違憲而失效，或是否抵觸法定程序)，也是設有成文憲法的普通法制度所具備的特色。香港的法院曾決定並宣佈某法例是否屬立法機關的越權立法，但法院是在聽過對抗的辯論後才作出裁決的。

(二) 結構

1. 可分為兩種功能：
 - a. 政治功能，例如考慮
 - i) 全國性法律的實施問題
 - ii) 修改基本法的建議
 - b. 法律功能，例如考慮
 - i) 特區法律的效力
 - ii) 基本法的解釋
2. 法律功能應由一「法律委員會」負責，政治功能則應由另一委員會負責。即使就結構而言，「法律委員會」是基本法委員會屬下的組織，但其決定應不必受其他基本法委員會成員(即非「法律委員會」成員)審定。

3. 「法律委員會」將根據以下一般原則制定其工作程序細則：

- i) 公開審訊
- ii) 符合自然公正定律
- iii) 有利害關係的當事人各獲代表
- iv) 任何裁決都應申述理由。

(三) 成員

1. 在整個基本法委員會中，香港成員及內地成員應各佔一半。「法律委員會」的成員必須是法律專業人士，香港與內地成員各佔一半。所有問題應以大多數票決定。部份委員認為「法律委員會」的成員應盡可能由法官出任；如不可能，則由律師出任。香港的司法成員須經特區的司法人員叙用委員會推薦，由人大委任；律師成員則經法律專業團體推薦，由人大委任。
2. 有委員認為「法律委員會」的香港成員應從終審法院的法官名單中選出。其他委員則認為只要所有成員都是法律專業人士便可。
3. 有委員提議「法律委員會」應包括六位法律專業人士（三位香港成員，由香港法律專業人士通過選舉產生；三位中央成員，由中央委任中國內地法律界人士出任）。
4. 部份委員認為基本法委員會內的政治委員會成員應包括立法機關成員、香港人大代表及一些法律專業人士。
5. 為避免利益衝突，及令人覺得公平合理，「法律委員會」的成員不應參與基本法委員會就政治方面的商議，或至少應可在基本法委員會商議政治方面的問題時，有權選擇退出。
6. 基本法委員會（包括法律委員會）的成員資格，不應有國籍限制。

(四) 職權

1. 基本法委員會屬下的政治委員會就下列問題發揮純諮詢性的功能：修改基本法或在特區實施某條全國性法律等建議。但應特別指出的，就是即使是全國性法律的實施問題，也會產生純法律方面的問題。例如建議在香港實施的法律是否違反基本法或既定的法定程序。在這類情況下，法律方面的問題應交由「法律委員會」處理。
2. 「法律委員會」應按基本法規定處理有關的法律問題。在參考了委員在多次討論中的建議後，基本法委員會的功能與運作可採用以下模式：

在不違反「一般原則」1、2點的情況下

- i) a. 凡不涉及國防與外交的事務，香港法院對基本法享有最終解釋權。
- b. 如在決定某問題是否屬國防、外交以外範圍時出現爭議，應先交由香港終審法院處理。
- c. 如人大常委不同意香港終審法院決定（預料該不同意見只限於兩機構對該問題是否屬香港自治範圍所持的不同見解），人大常委則有權要求將終審法院的決定交由基本法委員會處理。
- d. 根據指示性原則，人大得接納基本法委員會透過「法律委員會」所提交的意見。人大常委的決定對香港法院已終審的案件，並無回溯力。
- e. 如香港終審法院裁定某一案件不屬香港法院的管轄範圍內，則應有一機構使此類案件得以轉交適當的司法機構處理。

- ii) a. 特區法例應以同樣辦法處理。首先由香港法院決定某特區法例是否符合基本法及法定程序。
 - b. 如人大常委不同意該法例有效，則可要求把終審法院的決定交由「法律委員會」處理。
 - c. 即使香港法院沒有對某香港法例提出質疑，人大依然有權把該法例直接交由「法律委員會」決定其效力。
 - d. 根據指示性原則，人大得接納基本法委員會透過「法律委員會」所提交的意見。但人大常委的決定對該法律宣告失效前已取得權利，並無回溯力。
 - e. 除涉及國防與外交事務的法律外，其他法律不得由基本法委員會審查。
 - iii) 如「法律委員會」內出現僵持情況，對過去及將來的有關案件都應以香港終審法院的解釋為準。
3. 另一模式則根據下列原則：香港法院的司法管轄範圍，其類別及大小基本上與目前的相同。除受目前已有的限制外（可見於「國家行為」與「國家事實」的分別），司法管轄範圍擴及所有一般及憲制性法律。目前制度的限制已足以確保凡真正屬於國防與外交的事務，法院不會干預行政行為。但如果因不能決定是否屬於國防或外交而發生爭議，則應交由「法律委員會」確定其類別。
 4. 凡涉及基本法的事情，人大常委與國務院均不能在未取得基本法委員會的意見前採取行動。有委員認為「法律委員會」的意見對人大常委應有約束力。另有委員則認為「法律委員會」僅屬諮詢性質。權宜之策是採用指示性原則——即根據法理，技術上人大是不受基本法委員會的意見約束的，但作為憲法慣例，人大常委得接納該委員會的意見。
 5. 在會議中其他委員的意見，可參閱各附件。

* 本報告的討論過程以英語進行，故可參考英文本。

基本法委員會

吳少鵬委員

我們主要關注的，是建議中的「基本法委員會」在法律方面的問題。

提議一：

起草委員會在中央與特區關係專題小組的報告中提及「基本法委員會」，並提出該委員會應有四種功能(見附表一)。要發揮這些功能，先要成立「基本法委員會」。但該報告卻完全没有提及基本法委員會的成立問題。只提出基本法委員會發揮法定功能，而不以同樣方式規定其組成，實在並不妥善。

提議二：

基本法委員會應根據基本法組成，理由很簡單，因為除此以外並沒有適當的法律可規定其產生，但其他有關成員組織及運作的細節安排，則不必在基本法內列出。

提議三：

「基本法委員會」應在人大常委之下工作。其成員組織及運作的細節安排也由人大常委負責。

提議四：

1. 人大常委在決定以下問題前，必須先徵詢基本法委員會的意見。
 - a. 某香港特區法例是否符合基本法的規定及法定程序。
 - b. 哪條全國性法律適用於香港特區？
 - c. 修改基本法的建議。
2. 在解釋基本法條文前，人大常委在程序上必須先徵詢基本法委員會的意見。中國憲法第六十七條授權人大常委解釋基本法，而這權力是沒有限制的。如人大常委在行使這種極少引用的權力前，在程序上先徵詢基本法委員會的意見，是個很好的做法。
3. 由於有建議認為國務院可向人大常委提出基本法修正案，並可指令部份全國性法律適用於香港特區，基本法委員會必須就這兩方面向人大提意見。

提議五：

1. 基本法委員會是人大常委與國務院的諮詢機構(advisory body)。「諮詢」(advisory)的意思就是「提出意見」。
2. 基本法委員會並非權力機關，其運作應保持低調，並應屬工作委員會性質，而非意見收集機構。該委員會是非政治性的。

附表一

基本法委員會的職權：

1. 基本法第二章第六條第二款：

全國人民代表大會常務委員會在諮詢香港特別行政區基本法委員會後，如果認為香港特別行政區的任何法律不符合本法或法定程序，可將有關法律發回重議或撤銷，但不作修改。經全國人民代表大會常務委員會發回重議或撤銷的法律立即失效。該法律的失效無溯及力。

2. 基本法第二章第七條第四款：

除緊急情況外，國務院在發佈上述指令（即指令香港特別行政區政府公佈或立法實施全國性法律）前，均事先徵詢香港特別行政區基本法委員會和香港特別行政區政府的意見。

3. 基本法第九章第一條第四款：

全國人民代表大會常務委員會在對本法進行解釋前，可徵詢香港特別行政區基本法委員會的意見。

4. 基本法第九章第二條第三款：

本法的修改議案在列入全國人民代表大會的議程前，先由香港特別行政區基本法委員會研究並提出意見。

* 此附件原文為英文。

基本法委員會

羅傑志委員

一般原則

1. 香港法院應對香港自治範圍內的案件有終審權。
2. 終審權包括解釋所有法律的權力。
3. 為了保障現存的法律制度，法律必須由法官而非由一些沒有司法經驗的政治家或其他公眾人士解釋。

有關基本法委員會的條文建議

1. 法院對所有在香港自治範圍內的問題都有權處理，這不單包括解釋基本法，也包括決定某法律是否符合基本法及法定程序。
2. 至於其他案件，包括香港法院管轄範圍以外的案件（即在香港自治範圍以外的案件），應由有普通法司法經驗的人士處理。在這些人士當中，最少應有半數為香港人。再者，絕對不能讓非司法人員解釋在香港實施的法律或決定這些法律是否有效。否則，現存的法律制度將遭受破壞。
3. 當案件的劃分出現問題時（即要決定某案件是否在香港的管轄範圍內），該案件必須循普通法制度的方式處理；換言之，須首先由香港法院處理。若香港法院認為該案件在香港的自治範圍外，或任何一方當事人欲就該案件是否在香港自治範圍內而提出起訴時，該案件的上訴可由一個由法官組成的委員會處理，這委員會半數成員應由香港法官或有資格擔任終審庭法官者出任。
4. 在沒有普通法中辯論式的訴訟制度的情況下，任何法律均不應由任何機構（委員會或法庭）進行審查。故此，不應在沒有辯論式的訴訟和抽空（in vacuo）^①的情況下審查任何法律。

^①孤立處理；不管事實與證據。

基本法委員會

麥嘉霖委員

在討論設立基本法委員會時，需認真考慮以下各點：

I. 一般原則

1. 香港應按聯合聲明的規定享有終審權；
2. 在任何情況下，終審權不應被剝奪或削減；
3. “審判”包括以司法方式解決爭議，所以亦牽涉對所有法律（連基本法在內）的解釋。因此，香港法庭在審理案件時有權解釋基本法，而對該案件而言，其權力應是最終的。人大的任何決定對於已審結的案件均沒有影響。

II. 1. 建議基本法委員會應有以下兩種功能：

a) 政治功能

i) 全國性法律的實施問題

ii) 修改基本法的建議

b) 法律功能

i) 特區法律的效力

ii) 就有關國防外交的事務對基本法的解釋

2. 設立基本法委員會的構想是個能顧及中國及香港意願的權宜之計：中國希望人大能對所有有關基本法的事情都有最終權力，而香港則認為既然基本法將是特區的憲法，所有有關基本法的問題都應由香港處理。若我們同意基本法委員會的構想是必要的權宜之計，我們便需考慮以下各點：

- a) 鑒於基本法委員會將負起的兩種不同功能，基本法委員會整體將會是一個政治組織，其屬下應設有一個法律小組，專門負責處理法律問題。
- b) 基本法本身應有明確條文，規定基本法委員會及其法律小組之成立，職權及成員等問題。對香港市民來說，把這些問題交給全無職權限制的人大來處理，是不可接受的。基本法委員會將在基本法中扮演一重要角色，所以必須列入基本法範圍內。
- c) 法律小組應盡量由法官組成（包括退休法官），否則，可以由律師組成。香港的司法界成員將由人大按司法人員叙用委員會的推薦而委任；律師成員則由人大按法律專業團體的推薦而委任。
- d) 為了避免利益衝突，法律小組的成員不應參加基本法委員會的政治性討論。

- e) 建議法律小組應由六名成員組成：香港和中國成員各佔一半，所有問題應以大多數票決定。
 - f) 若法律小組內發生僵持，則以香港法庭的決定為準。
 - g) 法律小組得制定其工作程序細則。這些細則應包含下列各點：
 - i) 公開的聆訊；
 - ii) 符合自然公正定律；
 - iii) 任何裁決都應申述理由。
3. a) 香港法庭將對基本法中不涉及國防外交的條文享有最終解釋權。
- b) 如在決定某問題是否屬國防外交以外範圍時出現爭議，應先交由香港終審法院處理。
- c) 如人大不同意香港終審法院的決定（預料人大只會不同意香港終審法院指某案件屬特區自治範圍內的決定），人大應有權要求把終審法院的決定轉交基本法委員會處理。
- d) 基於指示性原則，人大得接納基本法委員會透過法律小組所提交的意見。人大的決定不具回溯力。
- e) 如香港的終審法院裁定某一案件不屬特區自治範圍內，應有一機構使這類案件得以轉交中國的司法機關審理。
4. a) 有關特區的法律應以同樣辦法處理。首先應由香港法庭決定某法律是否符合基本法及法定程序。
- b) 若人大不同意該法律有效，則應要求把特區終審法院的決定轉交法律小組處理。
- c) 即使香港法院沒有對某香港法律提出質疑，人大依然有權把該法律直接轉交法律小組決定其是否有效。
- d) 人大應同樣基於指示性原則接納基本法委員會透過法律小組所提交的意見，但人大的決定不具回溯力。

說明

若出現一些需要緊急處理的問題時，應有特快途徑，讓該等憲法性問題毋需經過所有上訴階段而能直接由終審法院處理。

* 此附件原文為英文。

有關設立「基本法委員會」的問題

基本法諮詢委員會委員 徐是雄

根據基本法起草委員會第五次全體會議文件匯編顯示，將來在基本法內以下幾條條文所涉及的問題需要一個「基本法委員會」作出處理：

第二章第六條：「全國人民代表大會常務委員會在諮詢香港特別行政區基本法委員會後，如果認為香港特別行政區的任何法律不符合本法或法定程序，可將有關法律發回重議或撤銷，但不作修改。」

第二章第七條：「除緊急情況外，國務院在發佈上述指令前，均事先徵詢香港特別行政區基本法委員會和香港特別行政區政府的意見。」

第九章第一條：「全國人民代表大會常務委員會在對本法進行解釋前，可徵詢香港特別行政區基本法委員會的意見。」

第九章第二條：「本法的修改議案在列入全國人民代表大會的議程前，先由香港特別行政區基本法委員會研究並提出意見。」

從以上的幾條條文我們可以看到在基本法內將有兩方面問題需要諮詢基本法委員會予以解決的：(一)政治方面的問題和(二)法律方面的問題。因此基本法委員會的組成必須包括能解決以上兩類問題的人士，並且還必須有香港和中央兩方面人士的參與。香港方面應有一位法官(經互選產生)，一位立法機關議員(經互選產生)，兩位法律界人士(經法律界人士互選產生)，三位香港的人大代表(經香港的人大代表互選產生)；而中央方面也委出相同性質的中國內地七位人士出任。在基本法之下還應設立一個法律專責小組，由另六位法律界人士出任(三位香港成員，可以全是法官，由香港法律界人士通過選舉產生；三位中央成員，由中央委任中國內地法律界人士出任)。純法律性的問題，一般由法律專責小組處理便可，基本法委員會與及屬下之法律專責小組成員產生後由人大常務委員會任命。

由於基本法委員會的組成和權限由人大常務委員會決定，故此在基本法正式公佈之時，人大常委應同時公佈有關基本法委員會的組成、權限和工作章程。故此在基本法內只要寫入以下條文便可：「有關第二章第六條、第七條以及第九章第一條、第二條所提及的基本法委員會的職權由全國人民代表大會常務委員會規定。」

這裡順便提一下有關將來香港的全國人大代表的職責問題。我認為除在基本法內所規定的職責之外，香港的全國人大代表還應在基本法委員會內負起中央與特區之間的溝通和緩沖作用。為了達致以上目的，我希望在過渡期香港的人大代表人數應予以擴大，通過廣東省多增加一些政治中立和態度持平的港人參加人大的工作和監督中央政府；而在九七年後香港的人大代表則改由香港的立法機關和大選舉團的中國籍成員提名和選舉產生。

FINAL REPORT ON
THE BASIC LAW COMMITTEE

(passed by the Executive Committee on 5 December 1987)

The Special Group on Law

FINAL REPORT ON THE BASIC LAW COMMITTEE

The Special Group on Law held three meetings to discuss issues regarding the Basic Law Committee (hereinafter referred to as the "BLC") such as its structure, composition, terms of reference, affiliation. Since the Special Group on the Relationship between the Central Government and the SAR has also compiled a report on the BLC, this Special Group only deals with its legal aspects. The views which are collated and listed out as follows will be submitted for the reference of the Drafting Committee:

I. General Principles

1. The power of final adjudication as stipulated in the Joint Declaration must not be diluted in any way.
2. The power of final adjudication includes the power of interpretation of all laws including the Basic Law. The Hong Kong courts shall therefore have jurisdiction to interpret the Basic Law in the course of deciding cases and their jurisdiction will be final in relation to the case adjudicated upon. No decision of the NPC shall affect a decision previously made by the Hong Kong courts so far as that case is concerned.
3. It is a basic tenet of the common law system as practised in Hong Kong that the power of interpretation of laws is vested in judicial bodies and not political bodies.
4. The Basic Law should contain a provision on the setting up of the BLC. The BLC has to play an effective and credible role as a "link", "interface", or "buffer" between the two systems. The terms of reference, membership, etc. of the BLC should be laid down in the Basic Law. A member however held that the composition and the terms of reference of the BLC should be decided by the NPC Standing Committee, and these should be promulgated concurrently with the Basic Law by the NPC. But in any event, the BLC should have been the subject of consultation and the decision thereon should be made known prior to the promulgation of the final draft of the Basic Law. It would not be fair to the Hong Kong public to keep them in the dark about the precise terms of reference, criteria for membership (as distinguished from actual membership), etc. of the BLC while expecting them to discuss

and accept the provisions of the draft Basic Law which refers to the BLC.

5. Judicial review of legislation, i.e. to decide whether any particular law is unconstitutional and therefore invalid or contrary to legal procedures, is likewise a feature of a common law system with a written constitution. The function is vested in the courts. In Hong Kong, the courts have experience in deciding and declaring whether a particular piece of legislation is ultra vires the legislature. Such decision is reached by the court only after hearing adversarial argument.

II. Structure

1. Two functions can be distinguished :-

- i) A political function, e.g. to consider:
 - a) the application of National Laws;
 - b) any proposals to amend the Basic Law.
- ii) A legal function, e.g. to consider:
 - a) the validity of any SAR laws;
 - b) the interpretation of the Basic Law.

2. There should therefore be a Legal Committee to perform the legal functions and another to perform the political functions. Even when the Legal Committee is structured within a larger body its decisions should not be the subject of review by the non-legal committee members of the BLC.

3. The Legal Committee would work out its own rules of procedure in accordance with general principles providing for :-

- i) open public hearings;
- ii) observance of the rules of natural justice;
- iii) representation of interested parties;
- iv) reasons to be given for every decision.

III. Membership

1. The BLC as a whole should comprise Hong Kong and mainland members in equal number. The Legal Committee should be composed of legally qualified Hong Kong and mainland members in equal number. Decision should be by majority vote. Some members held that as far as possible the Legal Committee should be composed of judges and if judges are not available

then of lawyers. The Hong Kong judicial members should be appointed by the NPC on the recommendation of the Judicial Service Commission of the SAR, and the lawyer members should be appointed by the NPC on the recommendation of the legal professional organisations.

2. A member held that the Hong Kong members of the Legal Committee should be chosen from the panel of the Court of Final Appeal. Other members held that it would suffice that all members of the Legal Committee be legal professionals.
3. One suggestion is that the Legal Committee should include 6 legal professionals (3 from Hong Kong elected by the legal professionals in Hong Kong from among themselves; 3 from the Central Government appointed by the Central Government from the legal professionals in Mainland China).
4. Some members were of the view that the Hong Kong members of the political committee of the BLC should comprise members of the legislature, Hong Kong delegates to the NPC and should also include some legal professionals.
5. To avoid any appearance of a conflict of interest and to ensure that justice is seen to be done, the members of the Legal committee should not participate in the political deliberations of the BLC or at least should be allowed to opt out of the main body in its political deliberations.
6. Membership to the BLC including its Legal Committee should not be subject to nationality restriction.

IV. Terms of reference

1. The political committee of the BLC will have a purely consultative function on such matters as proposals to amend the Basic Law or to apply any particular national law to the SAR although it should be emphasised that even in the case of application of national laws, strictly legal questions can arise e.g. as to whether such proposed application will be contrary to the Basic Law or against established legal procedures. In such cases the strictly legal questions should be referred to the Legal Committee.
2. The Legal Committee will have the function of dealing with legal issues which the Basic Law stipulates should be referred to it. One model of the function and operation of the BLC, incorporating suggestions from members in the course of more than one discussion, is as follows :-

Without prejudice to General Principles 1 and 2,

- 1) a. the Hong Kong courts will have final power of interpretation of the Basic Law in matters not relating to foreign affairs and defence.
 - b. If there is a conflict over whether the issue in dispute relates to matters other than foreign affairs and defence then the issue will be dealt with by the Hong Kong Court of Final Appeal in the first instance.
 - c. If the Standing Committee of the NPC disagrees with the decision on the issue of the Hong Kong Court of Final Appeal (presumably such disagreement would be confined to the question of whether the matter was within Hong Kong's autonomy), then the Standing Committee of the NPC should have the right to require the decision of the Court of Final Appeal to be referred to the BLC.
 - d. By way of a directive principle the NPC will accept the advice of the BLC as given through its Legal Committee. The decision of the Standing Committee of the NPC will not have retrospective effect in relation to any case finally adjudicated upon by the Hong Kong court.
 - e. If the Hong Kong Court of Final Appeal decides that a case is not within the jurisdiction of the Hong Kong courts, then machinery must be established to enable such cases to be transferred into the appropriate jurisdiction.
- ii) a. A similar situation will apply with regard to SAR legislation. Initially the decision as to whether such legislation is in accordance with the Basic Law and legal procedures should be dealt with by the courts of Hong Kong.
 - b. If the Standing Committee of the NPC disagrees that the legislation is valid, then it may require the decision of the Court of Final Appeal to be referred to the Legal Committee.
 - c. If there is no challenge in the courts of Hong Kong to a particular piece of Hong Kong legislation, the NPC should still have the right to refer that piece of legislation directly to the Legal Committee for a decision on its validity.
 - d. Here again the Standing Committee of the NPC should by way of a directive principle accept the advice of the BLC through its Legal Committee but the decision of the Standing Committee of the NPC will not have retrospective effect in relation to rights acquired or accrued prior to the declaration of invalidity.

- e. No legislation should be reviewed by the BLC unless it involved defence and foreign affairs.
- iii) In case a deadlock arises in the Legal Committee, the interpretation of the Final Court of Appeal of Hong Kong stands not only as to the past but also as to the future.

3. Another model proceeds on the following basis : the Hong Kong courts will have essentially the same kind and scope of jurisdiction as they have under the existing system, a jurisdiction that extends to all aspects of ordinary as well as constitutional laws, subject to such limits as are already found in the existing system (illustrated by the distinction between "facts of state" and "acts of state"). Such limits as already exist are sufficient to ensure that in matters that truly fall within defence and foreign affairs, the courts will not trespass into executive acts. If, however, a dispute arises as to whether a particular matter is or is not in the category of defence and foreign affairs, then it should be referred to the Legal Committee for classification.
4. In relation to matters touching on the Basic Law, both the Standing Committee of the NPC and the State Council should never act without consulting the BLC. Some members held that the advice of the Legal Committee should be binding on the Standing Committee of the NPC, others held that it should be consultative only. A compromise solution is to introduce the concept of a directive principle, namely, that although in legal theory the Standing Committee is technically not bound, it will as a matter of constitutional convention accept the advice of the Legal Committee.
5. Other views expressed by members during the meetings are reflected in the papers appended.

Appendix 1

Our main concern is to look into the legal aspect of the proposed "Basic Law Committee" (hereinafter called "BLC").

SUGGESTION A

"BLC" is mentioned in the Report of the Central-SAR sub-committee of the Drafting Committee. It is mentioned that "BLC" shall have 4 functions (please see Schedule 1). It's establishment is a pre-condition of its suggested functions. But its establishment is not mentioned at all. It is not balance to have "BLC" carrying on statutory functions without itself incorporated under the same way.

SUGGESTION B

"BLC" should be incorporated under the Basic Law for the simple reason that there is no other suitable legislation to accommodate its formation. However, detail arrangements as to the composition of membership and its operation need not to be stated therein.

SUGGESTION C

"BLC" shall work under NPC Standing Committee which is responsible for its detail arrangements as to the composition of membership and its operation.

SUGGESTION D

1. NPC Standing Committee is obliged to obtain BLC's opinion before it shall decide on ;-
 - a. Whether any particular SAR legislation is not in accordance with the provision of Basic Law and legal procedure.
 - b. Which national law applicable to SAR ?
 - c. Proposing any amendment to the Basic Law.
2. NPC Standing Committee is obliged to obtain BLC's opinion as a matter of procedure before it shall interpret the provisos of Basic Law. Article 67 of Chinese constitution empowers NPC Standing Committee to interpret Laws and it is an unconditional power. However, it is a good practice as a matter of procedure to seek opinion from "BLC" first before it shall exercise this rarely exercised power.
3. Since it is proposed that State Council can initiate an amendment bill in NPC and that it can direct how some national laws are applicable to SAR, "BLC" shall also be obliged to give its opinion in these two matters to the State Council.

SUGGESTION E

1. The Basic Law Committee is an advisory body to NPC Standing Committee and the State Council respectively on specific matters. Advisory means 'giving advice'.
2. "BLC" is not an organ of power. "BLC" should operate on low profile. It's nature is a working committee rather than opinion gathering body. The Committee is apolitical.

SCHEDULE 1

Terms of reference of the Basic Law Committee :

1. In respect of Paragraph 2 of Article 6 of Chapter 3 of the Basic Law :

"If the NPC Standing Committee, after consulting the Basic Law Committee of the HKSAR, considers that any law of the HKSAR is not in accordance with this Law or legal procedures, it may return it for reconsideration or revoke it, but it shall not make any amendment to it"
2. In respect of Paragraph 4 of Article 7 of Chapter 2 of the Basic Law :

"Except in emergencies, the State Council shall consult the HKSAR Basic Law Committee and the HKSAR Government before giving the above-mentioned directive [i.e. the directive by which Hong Kong is instructed to apply national laws by way of proclamation or legislation by the HKSAR Government]."
3. In respect of Paragraph 4 of Article 1 of Chapter 9 of the Basic Law :

"The NPC Standing Committee may consult the HKSAR Basic Law Committee before giving an interpretation of this Law."
4. In respect of Paragraph 3 of Article 2 of Chapter 9 of the Basic Law :

"Before a proposal for amendment to this Law is put on the agenda of the NPC, the HKSAR Basic Law Committee shall first study it and give advice on it."

Steve Ng

Appendix 2

BASIC LAW COMMITTEEGeneral Principles

1. Hong Kong courts must have the right of final adjudication in matters in which Hong Kong has autonomy.
2. The right of final adjudication includes the right of interpretation of all laws.
3. For the preservation of the existing legal system of law, it is imperative that judges interpret the law and not politicians or else members of the public because these people do not have judicial experience.

Suggested Provisions In Respect Of Basic Law Committee

1. Insofar as questions relate to matters within Hong Kong's autonomy, no questions or issues should be taken away from the powers of the court. This includes not only interpretation of the Basic Law but also the question of whether a law is ultra vires.
2. Insofar as any matters and this includes matters which are outside the jurisdiction of the Hong Kong courts, namely matters outside Hong Kong's autonomy, these must be dealt with by persons with judicial experience of the Common Law and, in that respect, at least 50% must be from Hong Kong. Again, there can be no question of non-judicial personnel being allowed to interpret or decide the validity of any law which is to be applied in Hong Kong otherwise the legal system as we know will be destroyed.
3. Insofar as there is a question of classification, i.e. whether a matter is within Hong Kong's jurisdiction, that matter must be dealt with according to the Common Law system, i.e. the Courts of Hong Kong decide the matter first. If they decide the matter is outside

Hong Kong's autonomy or if either party wishes to take the matter on appeal as to whether it is outside Hong Kong's autonomy, the matter can then be appealed to a committee of Judges 50% of which must be Judges of Hong Kong or eligible to sit in the Court of Final Appeal.

4. There should be no review of any legislation by any body, whether it be a committee or tribunal, without the adversarial system of the Common Law. Hence, legislation should not be reviewed by any body in vacuo and without adversarial representation.

Dated the 12th day of November, 1987.

ANTHONY ROGERS

Appendix 3

THE BASIC LAW COMMITTEE

In considering the establishment of the Basic Law Committee ("BLC") the following points must be kept firmly in mind.

A. General Principles

1. Hong Kong Courts must have right of final adjudication as stipulated in the Joint Declaration.
2. The right of final adjudication should not be watered down in any way.
3. "Adjudication" includes the judicial resolution of disputes which in turn involves the interpretation of law including the Basic Law. The Hong Kong Courts therefore shall have jurisdiction to interpret the Basic Law in the course of deciding cases and that jurisdiction will be final in relation to the case adjudicated upon. No decision of the NPC shall affect a decision previously made by the Hong Kong Courts so far as that case is concerned.

B. 1. The BLC as proposed has two functions.

- a) a Political Function
 - i) the application of National Laws;
 - ii) proposals to amend the Basic Law.
- b) a Legal Function
 - i) the validity of any SAR Law;
 - ii) the interpretation of the Basic Law in matters relating to foreign affairs and defence.

2. The concept of the BLC has been devised as a compromise between the Chinese desire that the NPC should have final authority over all matters relating to the Basic Law and the Hong Kong view point that as the Basic Law is Hong Kong's constitution, matters relating to the Basic Law should be dealt with in Hong Kong. If therefore we accept the concept of the BLC as a necessary compromise then the following points arise:

- a) Because of the two different functions stated above the full BLC will be a political body but there must be a legal sub-committee which will deal with the legal functions.

- b) The BLC and its legal sub-committee must be established, its terms of reference set out and the membership delineated in the Basic Law itself. To leave this to the unrestricted jurisdiction of the NPC would be unacceptable so far as Hong Kong people are concerned. The BLC will have an important role to play in the Basic Law and must therefore come within the framework of the Basic Law.

- c) The legal committee should be comprised so far as possible of judges (including retired judges) and if judges are not available then of lawyers. The Hong Kong judicial members will be appointed by the NPC on the recommendation of the Judicial Services Commission and the lawyer members will be appointed by the NPC on the recommendation of the legal professional organisations.

- d) To avoid conflict of interest the members of the legal sub-committee should not participate in the political deliberations of the BLC.

- e) Suggest the legal committee should have six members with equal numbers of Hong Kong and PRC members with decision by a majority vote.

- f) If there is a deadlock in the legal committee then the decision of the Hong Kong courts will stand.

- g) The legal committee will work out its own rules of procedure. Such rules should provide for:

- i) open public hearings

- ii) observance of the rules of natural justice

- iii) reasons to be given for every decision

3. a) The Hong Kong courts will have final jurisdiction over the interpretation of the Basic Law in matters not relating to foreign affairs and defence.

- b) If there is a conflict over whether the matter in dispute relates to matters other than foreign affairs and defence then the matter will be dealt with by the Hong Kong Final Courts of Appeal in the first instance.

- c) If the NPC disagrees with the decision of the Hong Kong Final Courts of Appeal, and it presumably would only disagree if the decision was that the matter was within Hong Kong's autonomy, then the NPC should have the right to require the decision of the Final Court of Appeal to be referred to the BLC.

ON THE "BASIC LAW COMMITTEE"

Zee Sze Yong, CCBL member

According to the Collection of Documents of the Fifth Plenary Session of the Drafting Committee, the questions relating to the following articles in the Basic Law should be resolved by a "Basic Law Committee":

Article 6 of Chapter 2: "If the NPC Standing Committee, after consulting the HKSAR Basic Law Committee, considers that any law of the HKSAR is not in accordance with this Law or legal procedures, it may return it for reconsideration or revoke it, but it shall not make any amendment to it."

Article 7 of Chapter 2: "Except in emergencies, the State Council shall consult the HKSAR Basic Law Committee and the HKSAR Government before giving the above-mentioned directive."

Article 1 of Chapter 9: "The NPC Standing Committee may consult the Basic Law Committee of the HKSAR before giving an interpretation of this Law."

Article 2 of Chapter 9: "Before a proposal for amendment to this Law is put on the agenda of the NPC, the HKSAR Basic Law Committee shall first study it and give advice on it."

The above-mentioned articles reveal that the questions in two areas should be resolved by consulting the Basic Law Committee: they are (1) questions of a political nature; and (2) questions of a legal nature. Consequently, the Basic Law Committee should include members who would be capable of resolving these questions, and the participation of people both from Hong Kong and the Central Government is also required. Members from Hong Kong should comprise a judge (elected by the judges from among themselves), a legislator (elected by the legislators from among themselves), two legal professionals (elected by the legal professionals from among themselves) and three Hong Kong delegates to the NPC (elected by the Hong Kong delegates from among themselves). The Central Government will appoint 7 corresponding members from the mainland. A special group on law should be set up under the Basic Law Committee. Its members should include another 6 legal professionals (3 members from Hong

Kong, who may all be judges, will be elected by the legal professionals in Hong Kong from among themselves; and 3 members from the Central Government will be appointed by the Central Government from the legal professionals in Mainland China). Normally any questions of a strictly legal nature will be dealt with by the special group on law. After being selected, members of the Basic Law Committee and its special group on law will be appointed by the NPC Standing Committee.

As the composition and the terms of reference of the Basic Law Committee will be decided by the NPC Standing Committee, the NPC Standing Committee should announce the composition, the terms of reference and the work procedure of the Basic Law Committee when the Basic Law is promulgated. Hence, the following provision in the Basic Law will be sufficient: "The terms of reference of the Basic Law Committee mentioned in Articles 6 and 7 of Chapter 2 and Articles 1 and 2 of Chapter 9 shall be stipulated by the NPC Standing Committee."

Perhaps the functions and powers of the Hong Kong delegates to the NPC should also be mentioned here. Other than those prescribed in the Basic Law, the Hong Kong delegates to the NPC in the Basic Law Committee should serve the function of a bridge and buffer between the Central Government and the SAR. To achieve the above-mentioned function, I hope Hong Kong delegates to the NPC should be increased in number during the transitional period. Through the Guangdong Province, more Hong Kong people who are politically neutral and with an unbiased attitude should be allowed to participate in the work of the NPC and in the monitoring of the Central Government. After 1997, Hong Kong delegates to the NPC should be nominated by members of the Hong Kong legislature and the grand electoral college who are of Chinese nationality, and be selected by election.

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

- d) By way of a directive principle the NPC will accept the advice of the BLC as given through its legal committee. The decision of the NPC will not have retrospective effect.
 - e) If the Hong Kong Court of Final Appeal decides that a case is not within the jurisdiction of the Hong Kong courts then a machinery must be established to enable such cases to be transferred into the Chinese judicial system.
4. a) A similar situation will apply with regard to SAR legislation. Initially the decision as to whether or not such legislation is in accordance with the Basic Law and legal procedure should be dealt with by the courts of Hong Kong.
- b) If the NPC disagrees that the legislation is valid then it should require the decision of the Final Court of Appeal to be referred to the legal committee.
 - c) If there is no challenge in the courts of Hong Kong to particular Hong Kong legislation the NPC should still have the right to refer that legislation directly to the legal committee for a decision on its validity.
 - d) Here again the NPC should by way of a directive principle accept the advice of the BLC through its legal committee but the decision of the NPC will not have retrospective effect.

(Submitted by Mr. I. MacCallum)

Note In cases raising questions which need to be dealt with urgently there should be some form of leapfrog procedure to enable such constitutional questions to be dealt with by the Final Court of Appeal without going through all the appeal stages.

對「香港特別行政區基本法委員會」的意見

(1987年12月5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
中央與香港特別行政區的關係專責小組

中央與香港特別行政區的關係專責小組 對「香港特別行政區基本法委員會」的意見

基本法委員會的職權

1. 根據現有的基本法條文(草稿)，基本法委員會將有以下四項職權：
 - (1) “全國人民代表大會常務委員會在諮詢「基本法委員會」後如果認為香港特別行政區的任何法律不符合基本法或法定程序，可將有關法律交回重議或撤銷，但不作修改。……”
(第二章的第六條的第二款)
 - (2) “除緊急情況外，國務院在發布上述指令（即指令香港特別行政區公布或立法實施凡須在香港實施的全國性法律）前，均事先征詢「基本法委員會」和香港特別行政區政府的意見。”
(第二章的第七條第四款)
 - (3) “全國人民代表大會常務委員會在對本法進行解釋前可徵詢「基本法委員會」的意見。”
(第九章第一條第四款)
 - (4) “本法的修政議案在列入全國人民代表大會的議程前，先由「基本法委員會」研究並提出意見。
(第九章第二條第三款)
2. 此外，起草委員會中港關係小組十月五日於廣州會議中提及香港原有法律審核程序的方案，其中亦牽涉基本法委員會的工作，建議如下：
在人大常委會下設立一基本法委員會，由香港及內地的法律專家組成，該委員會在九七年前成立，主要工作乃審核香港原有法律，就香港法律中與基本法有抵觸的條文，向全國人大常委會報告，由人大常委會在香港特別行政區成立之時宣佈廢除。
3. 有委員建議基本法委員會參與第一屆政府的產生工作，比如可作中央政府的協商對象或組成選舉第一屆行政長官的選舉團。委員認為根據魯平及李後的意見，將來第一屆行政長官可能由委員會協商選出，為免香港將有太多不同性質的委員會，故可將此項工作交予建議中的基本法委員會執行。
4. 有委員不同意上述的建議，他們認為根據起草委員會擬出有關基本法委員會的條文，其職權多牽涉法律及政治問題，與選舉第一屆政府並不相同。再者，處理上述不同工作需要不同的組織及工作人員，比如解決法律問題的組織應有更多法律界代表，而選舉第一屆政府的選舉團組成便不同，故不應由同一組織負責這些性質不同的工作。

5. 此外，亦有委員提出選舉第一屆政府乃短期的任務，而監察基本法執行乃經常性工作，性質極不同。就此點，有委員補充說他相信修憲或解釋基本法的情況不會經常發生，故上述工作亦不能算是常務性工作。

基本法委員會的成員

1. 有委員認為基本法委員會是一個負責協調中央與特區關係的架構，所涉及的範圍又多是複雜的法律問題。為使中港之間能達成相協調及相配合的關係，此委員會成員必須能充份代表中央政府與特區政府。如這委員會能充份反映中港雙方的意見，它的建議將更容易被全國人大常委全部接受。在此基礎，一個憲法慣例將能發展出來。

故該委員建議基本法委員會包括十二名成員：

- (1) 香港特別行政區代表六名：
 - a) 布政司或類似職務的特區主要官員；
 - b) 律政司或類似職務的特區主要官員；
 - c) 立法機關主席 (如立法機關主席由行政長官兼任，則由立法機關議員互選產生)；
 - d) 立法機關首席議員 (如立法機關不設首席議員，則由立法機關議員互選產生)；
 - e) 首席按察司或類似職務的特區法院法官；
 - f) 特區終審庭首席法官 (如首席按察司兼任終審庭首席法官，則由特區最資深的法官出任)。
- (2) 中央代表六名
 - a) 國務院港澳辦公室副主任級官員一名；
 - b) 國務院外交部副部長級官員一名；
 - c) 最高人民法院副院長級官員一名；
 - d) 最高人民檢察院副院長級官員一名；
 - e) 全國人民代表大會法律委員會主任；
 - f) 全國人民代表大會常務委員會法制工作委員會主任。

2. 就上述建議，有委員認為香港的司法人員因為身份特殊，不應參加任何政治組織，而行政人員的工作為依據法律推行政策，故亦不適宜加入基本法委員會，參與解釋基本法的工作。

3. 此外，亦有委員指出若基本法委員會下屬人大常務委員會，而當前半數成員為香港政府官員，即表示本地政府官員將下屬於人大常務委員會，這可能會引起誤會。但就此點，有委員補充說基本法委員會未必隸屬於人大常務委員會。

4. 有委員建議因為基本法委員會主要處理有關法律的問題，所以多數成員應為法律界人士。但另有委員指出此委員會不單要處理法律問題，亦要考慮政治問題，而且某些法律問題可能牽涉政治立場，不能截然劃分，故委員會成員應有各界代表，不應偏重於法律界。

5. 有委員建議基本法委員會的成員約為20—30人，但具體數目未明確定出。亦有委員指出只要成員具代表性，人數不用太多，以增加工作效率。

6. 有委員認為基本法委員會中香港代表的數目應多於內地代表，這樣可使此委員會作的決定更為香港人接受和信服。
7. 但有委員認為未必由大多數香港代表所作的決定就會為香港人接受，香港人會根據作決定的原因和理由考慮接受與否，故香港代表的數目不一定要多於內地代表。

基本法委員會的組成方法

1. 有委員認為國內委員由人大常務委員會委任，而香港委員則通過不同途徑產生（如類似現時基本法諮詢委員會的產生方法），再由人大常務委員會正式委任。

基本法委員會與人大常委會的隸屬關係

1. 有委員建議基本法委員會應隸屬於人大常委會，因為這樣可以提高此委員會的地位，將令它更受重視。
2. 但亦有委員認為此委員會不應隸屬於人大常委會，以免它的工作受到干預。

基本法委員會的運作方法

1. 有委員贊成基本法委員會可下設不同小組，就某些突發性、需要短期作出回應，或者只涉及技術的問題集中研究，但其他的重要問題，如修憲及全國法律在港的適用，便由全組決定。
2. 有委員建議這些小組可以就某些問題作最後決定，不用事事由全委員會審核，以提高工作效率，而且某些問題可能涉及複雜的專業知識，應可由專家組成的小組自行決定。但有委員不同意這方式，他們認為小組的工作是向委員會提供意見，最後的決定仍要由整個委員會作出，因為這些小組不是正式機構，不應有實權，而且若全委員會成員不超過20—30人，亦不會因為人數太多而影響工作效率。

基本法委員會的成立時間

1. 有委員建議此委員會在基本法公佈前半年成立，然後在過渡期開始監察基本法在港的施行。
2. 但有委員認為此委員會應在一九九七年七月一日後才開始工作，因為只有在香港回歸中國後，基本法才在香港實行。

其他

1. 有委員建議基本法委員會的工作應該是被動的，它不應主動監察法院的工作，只有在問題發生後，才會徵詢它的意見。
2. 有委員建議基本法委員會的組成、工作無等有詳細章程列出，使香港人能更清楚。
3. 有委員建議基本法委員會的成員應有固定任期。

OPINIONS ON "HKSAR BASIC LAW COMMITTEE"

(passed by the Executive Committee on 5 December 1987)

The Special Group on
the Relationship between the Central Government and the SAR

Terms of reference of the Basic Law Committee

1. According to the present draft provisions of the Basic Law, the Basic Law Committee will have the following functions:

1. "If the NPC Standing Committee, after consulting the HKSAR Basic Law, considers that any law of the HKSAR is not in accordance with this Law or legal procedures, it may return it for reconsideration or revoke it, but it shall not make any amendment to it....." (Paragraph 2 of Article 6 of Chapter 2)
2. "Except in emergencies, the State Council shall consult the HKSAR Basic Law Committee and the HKSAR Government before giving the above-mentioned directive [i.e. the directive by which Hong Kong is instructed to apply national laws by way of proclamation or legislation by the HKSAR Government]." (Paragraph 4 of Article 7 of Chapter 2)
3. "The NPC Standing Committee may consult the HKSAR Basic Law Committee before giving an interpretation of this Law." (Paragraph 4 of Article 1 of Chapter 9)
4. "Before a proposal for amendment to this Law is put on the agenda of the NPC, the HKSAR Basic Law Committee shall first study it and give advice on it." (Paragraph 3 of Article 2 of Chapter 9)

2. In addition, at its Guangzhou meeting on 5 October the Drafting Committee Subgroup on Central-SAR Relationship mentioned a proposal regarding the procedure of reviewing the laws previously in force in Hong Kong, which would involve the work of the Basic Law Committee. The proposal is as follows:

A Basic Law Committee comprising legal experts both from the mainland and Hong Kong should be set up under the NPC Standing Committee. The Basic Law Committee set up before 1997 would mainly be responsible for reviewing the laws previously in force in Hong Kong, and reporting to the NPC Standing Committee on the ones that contravened the Basic Law so that these laws would be declared void by the NPC Standing Committee upon the establishment of the HKSAR.

3. A member proposed that the Basic Law Committee should be involved in the formation of the first government of the SAR by, for instance, being consulted by the Central Government or forming the electoral college for the election of the first Chief Executive. A member noted that according to the opinions of Lu Ping and Li Hou, the future first Chief Executive might possibly be chosen by a committee through consultations. As it would not be desirable to have too many committees of different natures, the selection of the Chief Executive could be dealt with by the Basic Law Committee.

4. Some members objected to the above-mentioned proposal. They maintained that according to the provisions on the Basic Law Committee drafted by the Drafting Committee for the Basic Law, the terms of reference of the Basic Law were mainly concerned with legal and political issues, which would be irrelevant to the formation of the first government of the SAR. Moreover, if the Committee was to perform a different function, different composition and membership would be required. For example, the organisation for handling legal issues should be composed predominantly of representatives of the legal field whereas the composition of the electoral college for the election of the first government would be another matter. Hence, these functions of different natures should not be taken up by a single organisation.

5. In addition, a member noted that forming the first government would be a short-term duty whereas monitoring the enforcement of the Basic Law would be a routine duty: their natures were vastly different. Regarding this point, another member commented that as amendment and interpretation of the Basic Law would not occur frequently, the latter duty mentioned above could not be considered a routine one either.

Membership of the Basic Law Committee

1. The Basic Law Committee is an organisation responsible for co-ordination between the Central Government and the SAR. Its terms of reference mainly concern complicated legal matters. To make coordination and cooperation between China and the SAR possible, members of the Basic Law Committee must be able to fully represent the views of both governments. If the Committee can fully represent the views of both governments, its proposals will be more readily accepted by the NPC Standing Committee. On this basis, a constitutional convention can be developed.

It is proposed that the Basic Law Committee be composed of 12 members :

(1) 6 representatives of the HKSAR :

- a) The Chief Secretary or a principal official of the SAR with similar duties;
- b) The Attorney General or a principal official of the SAR with similar duties;
- c) The President of the legislature (If the Chief Executive is concurrently the president of the legislature, the representative should be elected from among members of the legislature);
- d) Senior member of the legislature (If there is no senior member of the legislature, the representative should be elected from among members of the legislature);
- e) The Chief Justice or a judge of the SAR with similar duties;
- f) The Chief Judge of the Court of Final Appeal of the SAR (If the Chief Justice is to be the Chief Judge concurrently, the representative should be the most senior judge of the SAR).

(2) 6 representatives of the Central Government :

- a) an official of the rank of deputy-director of the Hong Kong and Macau Affairs Office;
- b) an official of the rank of vice-minister of the Ministry of Foreign Affairs;
- c) an official of the rank of vice-president of the Supreme People's Court;
- d) an official of the rank of vice-president of the Supreme People's Procuratorate;
- e) Director of the Law Committee of the NPC;
- f) Director of the Committee of Legislative Affairs of the NPC Standing Committee.

2. Regarding the above-mentioned proposal, a member held that Hong Kong judicial officers should not join any political organisation because of their special status. Moreover, as the duty of administrators was to carry out policies in accordance with law, it would not be advisable for them to join the Basic Law Committee and be involved in the interpretation of the Basic Law.

3. Another member pointed out that if the Basic Law Committee with half of its membership being Hong Kong Government officials was subordinate to the NPC Standing Committee, it would indicate that local government officials would be subordinate to the NPC Standing Committee. This might cause misunderstanding. But another member added that the Basic Law Committee would not necessarily be subordinate to the NPC Standing Committee.

4. A member proposed that since the Basic Law Committee would mainly deal with legal issues, the majority of its members should be legal professionals. Another member pointed out that the Committee would not only deal with legal issues, it would also consider political issues. And some legal issues might involve the question of political stand. It would not be possible to draw a clear dividing line. Hence, the membership of the Committee should include representatives of various sectors. Preference should not be given to the legal sector.

5. A member suggested that the membership of the Basic Law Committee should range from 20 to 30 but the definite number had yet to be fixed. Another member pointed out that as long as the members were sufficiently representative, a small membership might enable the Committee to work more efficiently.

6. A member held that in the Basic Law Committee, the number of Hong Kong representatives should exceed that of mainland representatives so that the decisions of the Committee would be more acceptable and convincing to Hong Kong people.

7. But a member maintained that the decision made by the Basic Law Committee might not necessarily be accepted to Hong Kong people even if Hong Kong representatives were the majority in the Committee. Hong Kong people would judge whether the decisions were acceptable by considering the reasons for the decisions. Hence, it would not be necessary for Hong Kong representatives to exceed mainland representatives in number.

Method of formation of the Basic Law Committee

1. A member suggested that mainland members be appointed by the NPC Standing Committee whereas Hong Kong members be selected by different means (similar to the selection of members of the present Consultative Committee for the Basic Law) and appointed officially by the NPC Standing Committee.

Relationship between the Basic Law Committee and the NPC Standing Committee

1. Some members proposed that the Basic Law Committee be subordinate to the NPC Standing Committee so that the status of the Basic Law Committee would be raised and more importance would be attached to it.
2. Some members however held that the Basic Law Committee should not be subordinate to the NPC Standing Committee lest its work should be subject to interference.

Operation of the Basic Law Committee

1. A member agreed that various subcommittees could be formed under the Basic Law Committee. They were to deal with some unexpected issues which required prompt response or those issues which were purely technical. Other important issues such as amendment of the Basic Law and application of national laws to Hong Kong should be decided by the full Committee.
2. A member proposed that for efficiency's sake, these subcommittees should be allowed to make final decisions on their own: the full Committee would not review each and every issue. The issues which involved complicated professional knowledge could be decided by a subcommittee of experts on its own. But some members objected to such arrangement. They held that the function of subcommittees was to give advice to the Committee but the final decision would still be made by the full Committee. As these subcommittees were not official organisations, they should not enjoy any real power. Moreover, if the membership of the full Committee did not exceed 20-30, efficiency would not be adversely affected by too large a membership.

Time of establishment of the Basic Law Committee

1. A member proposed that the Basic Law Committee should be set up six months prior to the promulgation of the Basic Law and would start monitoring the enforcement of the Basic Law at the transitional period.
2. But another member pointed out that since the Basic Law would be enforced in Hong Kong only after the reversion of Hong Kong to China, the Basic Committee should be in operation after 1 July 1997.

Others

1. A member proposed that the Basic Law Committee should play a passive role: it should not take any initiative to monitor the work of the courts. Only when issues arose would it be consulted.
2. A member proposed that the formation and work of the Basic Law Committee be laid down in detail in a constitution so that Hong Kong people will have a clear picture.
3. A member suggested that members of the Basic Law Committee should have a definite term of office.

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

Chapter III : The Basic Rights and Obligations
of the Hong Kong SAR Residents

Article 23

Hong Kong residents include permanent residents and non-permanent residents.

Hong Kong SAR permanent residents are :

- (1) Chinese nationals born in Hong-Kong before or after the establishment of the Hong Kong SAR;
- (2) Chinese nationals who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong SAR for a continuous period of seven years or more;
- (3) persons of Chinese nationality born outside Hong Kong of those persons listed in categories (1) and (2);
- (4) non-Chinese nationals who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong SAR for seven years or more, and who have taken Hong Kong as their place of permanent residence;
- (5) persons under 21 years of age who were born of those residents listed in category (4) in Hong Kong before or after the establishment of the Hong Kong SAR;
- (6) other than those residents listed in categories (1) to (5), persons who had the right of abode only in Hong Kong before the establishment of the Hong Kong SAR.

The above residents have the right of abode in the Hong Kong SAR and, in accordance with the law of the Hong Kong SAR, are qualified to obtain permanent identity cards which state their right of abode.

Non-permanent Hong Kong SAR residents are those who, in accordance with the law of the Hong Kong SAR, are qualified to obtain Hong Kong identity cards, but do not have the right of abode.

Article 24

All Hong Kong residents, regardless of their nationality, race, ethnic nationality, language, sex, occupation, religious belief, political belief, educational level and financial situation, shall be equal before the law.

[Explanatory Note] A member suggested redrafting this article to read : "Hong Kong residents shall be equal before the law. No person shall be discriminated against on grounds of nationality, race, ethnic nationality, language, sex, occupation, religious belief, political belief, educational level and financial situation."

Article 25

All Hong Kong SAR permanent residents who have reached the age of 21 shall have the right to vote and to stand for election in accordance with the law.

[Explanatory note] Some members suggested recasting this article as follows : "Hong Kong SAR permanent residents shall have the right to vote and to stand for election in accordance with the law."

Article 26

Hong Kong residents shall have:

- (1) freedom of speech, of the press and of publication;
- (2) freedom of association, to form and join trade unions, and of strike;
- (3) freedom of assembly and of demonstration.

[Explanatory note] Some members still advocated retaining the following expression : "Hong Kong residents shall, in accordance with the law, have ..."

Article 27

Freedom of the person of Hong Kong residents shall be inviolable.

No Hong Kong resident may be unlawfully arrested, detained or imprisoned. Unlawful deprivation or restriction by any means of the freedom of the person of any resident shall be prohibited. Unlawful body search shall be prohibited.

Article 28

The homes and other premises of Hong Kong residents shall be inviolable. Unlawful search of or entry into any resident's homes or their other premises shall be prohibited.

[Explanatory Note] The unanimous view of the Group was that it would be inappropriate to add the words "arbitrarily and"/"arbitrary and" in front of the word "unlawfully"/"unlawful" in Articles 27 and 28. The Group also objected to replacing "unlawfully"/"unlawful" by "arbitrarily"/"arbitrary".

Article 29

The freedom and confidentiality of communication of Hong Kong residents shall be protected by law. Except for the purpose of public safety and for the purpose of investigating criminal cases, whereby the authorities concerned may, in accordance with procedures established by law, inspect communication [of all kinds], no department or individual shall, for any reason, violate the freedom and confidentiality of communication of any resident.

[Explanatory Note] A member suggested deleting the sentence which reads : "Except for the purpose of public safety and for the purpose of investigating criminal cases ... confidentiality of communication of any resident." As a result of deliberation by the Group, the sentence was retained.

Article 30

Hong Kong residents shall have the freedom of movement within the territory of the Hong Kong SAR, and the freedom to migrate to other countries and regions. Hong Kong residents holding valid travel documents shall have the freedom to travel and the freedom to enter and leave the territory. Unless restrained by law, [holders of valid travel documents] shall be free to leave the Hong Kong SAR without special authorisation.

Article 31

Hong Kong residents shall have the freedom of belief.

Hong Kong residents shall have the freedom of religious belief, the freedom to preach, and the freedom to organise religious activities in public and to participate in such activities.

[Explanatory Note]

1. Some member suggested that a third clause should be added to this Article as follows : "No person shall be discriminated against, or has his civic rights diminished, on grounds of religious beliefs."
2. Some members suggested that this Article should be recast as follows : "Hong Kong SAR residents shall have the freedom of thought, belief and religion. Such rights include the freedom to retain or follow a religion or belief of one's own choice, and the freedom to express one's religion or belief through religious services, religious discipline, practices or teaching carried out either individually or collectively, openly or in private."

Article 32

Hong Kong residents shall have the freedom of choice of occupation.

Article 33

Hong Kong residents shall have the freedom of academic research, of literary and artistic creation, and of other cultural activities.

Article 34

Hong Kong residents shall have the right to confidential legal advice, access to the courts, choice of their own legal representatives for timely protection of their legitimate rights and interests or to represent them in the courts, and to obtain judicial remedies.

Hong Kong residents shall have the right to challenge in the courts the actions taken by the executive or its personnel.

[Explanatory note]

1. Some members suggested deleting the term "legitimate" from the expression "legitimate rights and interests".
2. This Group suggested that the relevant Special Group should, in the context of the jurisdiction [of the SAR courts], make provisions for the question over whether Hong Kong residents could take legal proceedings in a Hong Kong court against the action taken by the organs of the Central Government established in Hong Kong and their staff.

Article 35

Hong Kong residents shall have the right to enjoy social welfare. The welfare benefits of the labour sector shall be protected by law.

Article 36

The freedom of Hong Kong residents to marry and their right to raise a family freely shall be protected by law.

Article 37

Hong Kong residents shall enjoy other rights and freedoms as safeguarded by the laws of the Hong Kong SAR.

Article 38

The provisions of the "International Covenant on Civil and Political Rights" and the "International Covenant on Economic, Social and Cultural Rights" as applied to Hong Kong shall be implemented through the law of the Hong Kong SAR.

Article 39

The rights and freedoms enjoyed by the Hong Kong residents may be subject only to such limitations as are prescribed by law and are necessary to protect national security, public order, public safety, health or morals, or to safeguard the rights and freedoms of others.

Article 40

The legitimate traditional rights and interests of the indigenous "New Territories" residents shall be protected by the Hong Kong SAR.

Article 41

Persons in the Hong Kong SAR other than Hong Kong residents shall, in accordance with the law, enjoy the rights and freedoms of Hong Kong residents provided for in this Chapter.

[Explanatory Note] It has been suggested that this Article should be revised as follows : "Persons other than Hong Kong residents shall, in accordance with the law, enjoy the rights and freedoms of Hong Kong residents provided for in this Chapter (save for the right to vote and to stand for election)." After deliberation, the Group found that apart from the right to vote and to stand for election, there are other rights such as the right to enter Hong Kong freely which "other persons" do not enjoy. The article therefore remains unchanged.

Article 42

Hong Kong residents and other persons in the Hong Kong SAR shall have the obligation to abide by the laws of the Hong Kong SAR.

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