

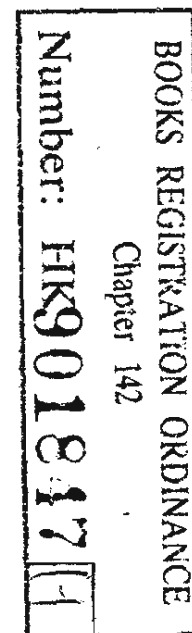
CONSULTATIVE THE DRAFT BASIC
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OVERALL COMMENTS ON
THE DRAFT BASIC LAW FOR SOLICITATION OF OPINIONS

1. Views

1.1 Accepting the Basic Law

- Have confidence in the Basic Law.
- It is satisfactory.
- It is acceptable.
- The HKSAR will enjoy a high degree of autonomy, which would make the public feel secure.
- Some of the articles afford great protection to the Hong Kong public in the executive, legislative, judicial and administrative aspects, inspiring a certain degree of confidence in the Hong Kong people.
- It gives expression to the principle of "one country two systems".
- All in all it is in accordance with the Sino-British Joint Declaration and favourable to the implementation of "one country two systems", and can maintain Hong Kong's stability and prosperity.
- It sketches a preliminary blueprint for "one country two systems" to be practised in Hong Kong after 1997 and people are given the impression that China is determined to practise "one country two systems".
- Most of the articles are laid down according to the following objectives: maintenance of the status quo, conscientious execution of "one country two systems", and the prosperity and stability of Hong Kong.
- It has reflected the spirit of the Joint Declaration, specifying that the socialist system will not be practised and that Hong Kong's present capitalist system and lifestyle will remain unchanged for 50 years. The existing laws and judicial system will also be retained; government organs and the civil service will remain unchanged; such fields as finance and trade will be allowed to remain free and open without being subject to intervention from the Central Authorities. The rights and freedoms of the residents are all listed out in detail. Different quarters and strata are taken care of thoughtfully. People should be able to rest assured and accept the Basic Law.
- Though it is not perfect, it has vested in Hong Kong much

freedom and autonomy.

- In general, it can be regarded as democratic and open.
- It does not bother about triviality but focuses on the main objectives. It recognizes Hong Kong's status as an international financial centre on the one hand and further develops Hong Kong's international qualities on the other. This is its most prominent and successful feature.
- If reasonable principles can be laid down in different areas and the relevant international law and internationally recognized covenants and declarations can be observed, the Basic Law will be quite complete and the interests of the various strata of the Hong Kong community will be safeguarded.
- Though it covers many areas, it is still not sufficiently comprehensive. But as long as the people of Hong Kong have confidence and a positive attitude, problems will ultimately be resolved.

1.2 Not accepting the Basic Law

- The Basic Law is untrustworthy and unreliable because there is no rule of law in China.
- It is disappointing: it lacks foresight regarding the development of Hong Kong; it only stresses mechanically the maintenance of the status quo.
- China has not respected the opinions of the Hong Kong people as far as its resumption of sovereignty is concerned.
- It fails to fully inspire the Hong Kong people with confidence in the future.
- Many of its provisions deprive the SAR residents of freedom.
- It fails to give full expression to the spirit of a high degree of autonomy.

Reasons: - It claims to give a high degree of autonomy to Hong Kong. But in fact many rights and final decisions have to go through the Central Authorities.

- It fails to put the principle of "Hong Kong people administering Hong Kong" fully into practice.

- It fails to put the principle of "one country

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two systems" into practice.

- It is unacceptable because the Communist Party may exercise control through an executive-led structure.
- No characteristics of a "capitalist society" can be found. The Chinese Communist Party would not like to see the "separation of powers" in Hong Kong. People in Hong Kong will not have any "autonomous power" nor enjoy the "high degree of autonomy" stated in the Joint Declaration.
- It indicates that the Chinese Communist Party will have decisive power over the appointment and removal of the executive officials of Hong Kong, and absolute power of interpretation of the legal provisions of Hong Kong. This makes the Hong Kong people all the more apprehensive about the "high degree of autonomy" and "one country two systems" that the Chinese Communist Party promised to the people of Hong Kong. This Chinese Communist characteristic of "tight control" would inevitably give rise to disappointment and confidence crisis.

1.3 Reservations

- It is doubted whether China could make good its promises towards Hong Kong.
- It is doubted whether the Basic Law could be practised in Hong Kong because China does not thoroughly understand the actual conditions in Hong Kong. Some of the articles are not practicable.
- The Basic Law only gives Hong Kong guarantee for fifty years.
- The spirit of formulating the Basic Law is positive but concern is expressed that the Chinese Communist Party might make unpredictable changes in policy.
- "One country two systems", "a high degree of autonomy" and "Hong Kong people administering Hong Kong" are abstract concepts. Whether they can be put into practice effectively causes much anxiety.
- The Basic Law is written in accordance with the spirit of the Joint Declaration or at least related to the Joint Declaration in a certain way. This may give people the impression that Mainland China at least shows respect for international treaties and agreements. But traditionally the Chinese have little respect for the law and Mainland China does not have a long history of practising the rule of law. This has caused anxiety among the Hong Kong people.
- With more and more intellectuals emigrating to foreign

countries, Hong Kong's import and export trade will not be as prosperous as it is. One may wonder if "one country two systems" is really feasible.

- Once the leader of the Chinese Communist Party retires or dies, there is bound to be another set of methods for administering Hong Kong. At that time the Hong Kong people will be at a loss as to what to do.

1.4 Views on the objectives

- Continue to maintain the current worldwide status of Hong Kong as a commercial centre.
- Continue to maintain the current world status and position of China.
- Make the results of modernization, technology, and creativity available to the people.
- Improve the economy of the country and standard of living of the people.
- With social stability, Hong Kong will further develop and continue to prosper on the basis of its economic achievements attained in the past.
- To safeguard the freedoms and rights of the Hong Kong people. Under whatever circumstances, executive measures or laws which deprive the people of their freedoms or rights will be duly sanctioned.
- Neither the Hong Kong government nor the Chinese government should be complacent and conservative. They should strive to reform those unreasonable systems existing in society in order to make China's resumption of sovereignty over Hong Kong more meaningful. The objective should be to build up a society which is free, just, ruled by law, democratic and without sexual discrimination.
- Should concisely list out the articles which provide for the high degree of autonomy enjoyed by the SAR.
- Should adhere to the principles and spirit of the Joint Declaration.
- Should only include those principles concerning the functioning of the future SAR and the SAR government.
- Should include the principles regarding the relationship between the SAR government and the Central People's Government.
- Executive provisions which concern the implementation of

policies and social policies should not be included in the Basic Law as they may not be able to meet the changing needs of society. Administrative law and social policy bills should be formulated separately in accordance with the Joint Declaration by the Hong Kong legislature, and be revised or amended by the legislature of Hong Kong when necessary.

- The Basic Law must be flexibly designed to allow executive decisions to be made in future based on situations prevailing at the time.
- Should safeguard national unity and territorial integrity, and give full expression to state sovereignty.
- The way to give expression to state sovereignty in Hong Kong is to establish a democratic political structure so that Hong Kong may continue to practise capitalism under "one country two systems" and genuinely achieve the objective of "Hong Kong people administering Hong Kong".
- The political structure of the HKSAR should adhere to the principles of "separation of powers" and "checks and balances". Everyone should enjoy equal political rights.
- Should have a fair and independent judicial system to safeguard the fundamental rights and freedoms of the people.
- When studying the Basic Law, attention should be paid to whether the Basic Law has achieved the following objectives: 1. Democracy; 2. Nationalism; and 3. the People's Livelihood.

1.5 The Basic Law must cover the following:

- The system of government - it should give the government appropriate powers to govern.
- The legal system.
- The applicable laws.
- The basic human rights.
- Define the terms of reference of and interrelations among the various authorities.
- Specify the fundamental rights and duties of the people and of individual authorities.
- The Basic Law is a new design among legal documents in the world. But this imaginative idea stems from reality. In order to enable the Basic Law to meet the actual needs, the objective conditions both in Hong Kong and in China

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should be studied and the constraints in reality should be understood through various types of interrelations. The greatest constraint is the Sino-British Joint Declaration. Proposals which violate the Joint Declaration, such as allowing foreigners to be principal officials of the SAR, are not feasible in practice.

- As far as Hong Kong is concerned, the Basic Law is a piece of fundamental and long-term legislation. To formulate a document which lays down stipulations for the future requires panoramic foresight. The spirit of the Basic Law should be pioneering and not defensive; it should look to the future and not be conservative. The Basic Law is formulated to cater for future development of Hong Kong and not to remedy the lack of confidence of some people.
- The Basic Law should clearly specify that Hong Kong is a special autonomous region and not a special economic zone.

1.6 Issues on sovereignty

- Hong Kong should be recognized as a part -- an integral part -- of China.
- China's resumption of sovereignty over Hong Kong in 1997 should be recognized and accepted. The unification of China should be welcomed.
- The autonomy and advantages enjoyed by Hong Kong in terms of the economy will be far greater than those it will enjoy in terms of politics. By laying too much emphasis on "giving expression to sovereignty", China will inevitably keep a tight rein on the political structure as well as the legislative power.
- The most important aspect of the Basic Law is to give expression to sovereignty and to implement internal democratic autonomy with gradual and orderly progress.
- Sovereignty should be given expression in all chapters and sections of the Basic Law and colonial policies should not be allowed to remain valid after 1997.
- Autonomy should be specifically defined in the Basic Law. Any changes which involve the power outside the specified autonomy should be approved by the Central People's Government.
- Power should not be centralized, but the delegation of power should primarily not affect the Central People's Government.
- The expression and recognition of China's territorial sovereignty should not undermine the autonomous rights of the Hong Kong people. In case the formulation,

interpretation or revision of legal provisions by the SAR government, or the appointment or removal of an official requires to be reported to the Central People's Government, the report should be for the record only and should not require approval before the reported actions could take effect. The army, navy and air force stationed in Hong Kong should be nominal in nature and reach the battalion rank and should be renamed the Hong Kong Defence Forces in order to avoid giving the impression that the Hong Kong people were conquered or liberated.

1.7 Issues on "one country two systems" and "a high degree of autonomy"

- Support has been expressed for the "one country two systems" model. It is deeply believed that, after the enactment of the Basic Law is completed, the model of "one country two systems" will demonstrate to the five-million Hong Kong population and the overseas Chinese the sincerity of China. The enactment of the Basic Law must therefore give expression to the spirit and principle of "one country two systems".
- Some of the major capitalist principles, such as to allow the rights of private ownership of property, to allocate resources according to market demand and supply, to uphold fair competition in society, to ensure the freedom of speech, and to safeguard various kinds of human rights through legislation, should be incorporated into the Basic Law. Most of these principles have been enjoyed by the Hong Kong people. Hong Kong should continue to have and further develop freedom and democracy. It is hoped that the Chinese government will let the Hong Kong people fulfil this aspiration.
- "One country two systems" should attach prime importance to state sovereignty. As for the "two systems", it should be a policy of the state. Laying special emphasis on one of the two systems or making reference to the system implemented in the U.S.A. is an unwise move.
- The implementation of "one country two systems" is new to the world. It is also a new subject and challenge under Marxism-Leninism. Its success relies on the self-control of the Chinese Communist Party. The Basic Law, therefore, is a test on the sincerity and self-control of the Communist Party. The Basic Law should therefore provide for more restraints on the privileges of the Communist Party. Furthermore, since the mainland has being ruled by the Communist Party for a long time, there should also be more restrictions on the mainlanders and mainland authorities. This does not mean that we have emphasized the "two systems" and forgotten about the "one country". The fact is that mistakes tend to be over-rectified.

- To grant absolute power to the HKSAR as wished by the Hong Kong people on the Basic Law is impossible. After 1997, the status of Hong Kong will be the same as that enjoyed by any other autonomous regions. It is impossible for Hong Kong to have absolute power. Even if Beijing gave its consent, it would be against the Constitution and would mean allowing Hong Kong to be independent. But if China hopes that Hong Kong's "one country two systems" will set an example for Taiwan, it should give Hong Kong more executive power, and even more autonomy.
- China is a vast country whilst Hong Kong is only a very small part of it and is easily subject to the influence and interference of China. It is therefore vital for Hong Kong to continue to practise capitalism which is essential to the maintenance of Hong Kong's position as an industrial, commercial and financial centre as well as to the continued prosperity and stability in Hong Kong. This is also the reason for practising "one country two systems".
- To realize the ideals of "one country two systems" and "a high degree of autonomy", attention must be paid to the following: (1) the setting up of a democratic political system; (2) the safeguarding of the human rights and freedoms of the Hong Kong people; (3) the establishment of an autonomous system and the exercise of independent judicial power including that of final adjudication; and (4) the upholding of a flexible economic system.
- To maintain Hong Kong's stability and prosperity, a high degree of autonomy is of prime importance. The Chinese government should have the confidence to allow Hong Kong people, whether elected or appointed, to govern Hong Kong. People of Hong Kong are in a more familiar position to rule the territory to its advantages.
- The system to be practised in the HKSAR should be different from the socialist system and the "four cardinal principles" currently implemented on the mainland.

1.8 Issues on enforcement

- It is believed that the majority of the people find the contents of the Basic Law acceptable. However, the key issue lies in whether it can be actually enforced in the fifty years after 1997.
- The articles of legal documents are usually attractively written. It follows that the articles themselves are not important. What is important is whether China has the sincerity to enforce them or whether there is any condition or incentive for the enforcement.
- In order to understand the Basic Law, apart from

considering the interests of Hong Kong, the standpoint of China should also be considered. Without China's support, Hong Kong will not prosper. If the political conditions in China are unfavourable, the Hong Kong society will not be stable either. The problems of the Basic Law do not lie in whether it has been written in detail but primarily in how to enforce it and in whether a social system is ruled by law or by people.

- No matter how specific or clear the Basic Law is formulated, it has no real function in ensuring the rights and interests of the Hong Kong people. Hong Kong's future is ensured and decided upon in two aspects: externally, through the upholding of the policies regarding Hong Kong by the Chinese Communist Party and the continued implementation of the open policy on the mainland; and internally, through Hong Kong's economic achievements and strength. It is hoped that if more favourable contributions can be made towards the mainland, China will, for the sake of such benefits, interfere less in Hong Kong.
- It is suggested that a supervisory organization should be established through direct election by the Hong Kong people. It should comprise representatives from all social strata and exercise supervision over the enforcement of the Basic Law.
- May request the United Nations to form an international supervisory organization to ensure that the Basic Law will be enforced completely, accurately and justly.
- It is suggested that a pressure group or supervisory organization should be set up to oversee the enforcement of the Basic Law and to conduct regular review. Its members should be from China, Britain and Hong Kong. An international witness should be called upon or an international body should be set up to ensure that the Basic Law will be enforced conscientiously and justly. Freedom of the press should also be conscientiously exercised so that there will be supervision by public opinion.

1.9 Issues on the wording

1.9.1 Diction and structure

- The terms used in some of the provisions are ambiguous and without clear definitions.
- The contents are complicated and difficult to understand; the terms used are obscure and difficult to fathom.
- The wording is cumbersome and there are too many unnecessary sentences.

- The structure is complicated and ambiguous.
- The contents are often repetitive and confusing.
- The arrangement of the sections and chapters is quite clear but some articles should be presented in several paragraphs.

1.9.2 Expression

- Some of the expressions are not legal expressions commonly used in Hong Kong.
- All articles have been written with the colonial political overtone common to all legal documents issued by the British Hong Kong government.
- Some of the Chinese terms used are anglicized Chinese.
- As a draft of law, it should be written in a style required of all legal documents. It should be simple, direct and forceful, otherwise it will give rise to interpretation problems in the future.
- Though the words are more carefully chosen than those in the Chinese Constitution, they are still not free from the slogan-like style which characterizes the laws of the PRC.

1.9.3 Degree of thoroughness

- Some of the contents lack flexibility.
- Some of the articles are too detailed.
- Some of the articles are over-simplified.
- Some of the articles are contradictory, for instance, on the one hand it provides that the system will not be changed but on the other it permits further development of policies.

1.9.4 Others

- The articles are not convincing.
- Some of the articles can be said to be opportunistic.

1.9.5 Issues on the usage of individual words

- The term "unlawful" is being abused.

Reason: - The definition of this term is unclear. Rights, such as the right of the person, may as a result be infringed upon.

- Should clearly explain that the term "law" used in the phrase "in accordance with law" refers to the ordinances of Hong Kong.
- It has already been clearly stipulated under Article 39 that "the rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless prescribed by law". So the phrase "prescribed by law" may be omitted in other articles, otherwise it will make the usage of the phrase inconsistent because some of the articles contain such a phrase and some do not.
- The definition of the term "government" should be standardized.

Reason: - If the definition of the term used in Article 59 applies, then the clause "shall be applied locally by the government of the Hong Kong Special Administrative Region by way of promulgation or legislation on the directives of the State Council" should be amended.

- The meaning of the phrase "on its own" is not clear. It may be interpreted as: (1) it is not necessary to ask the Central People's Government for instruction; or (2) it is not necessary to consult the residents of Hong Kong, nor the organizations or bodies concerned.
- The terms "Hong Kong Special Administrative Region", "government of the Hong Kong Special Administrative Region" and "Central People's Government" appear frequently. For such a cumbersome term as the "Hong Kong Special Administrative Region", it may be referred to in short as "Hong Kong".
- Rename the "Basic Law" as the "Hong Kong Law" followed by a parenthesis (the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China).

Reason: - This title can show that this legal document concerns people in Hong Kong and their descendants as well as the future of Hong Kong, and that it is a piece of major legislation formulated to ensure Hong Kong's stability and prosperity for 50 years.

- After 1997, the names of the streets in Hong Kong may be in both Chinese and English.
- Names of districts which are reminiscent of national humiliation should be changed. For instance, the "New Territories" should be renamed "Xin'an".
- Before the Basic Law is finalized, each article should be written in a careful and serious manner. Special attention

should be paid to certain words and expressions. For instance, the words "all", "safety", "practise" and "no". If the meaning of such a word is found to be restrictive upon studies, it may be used after careful consideration in order to avoid subsequent disputes. If its meaning is found to be non-restrictive (i.e. in a general sense) upon studies, such a word should be avoided.

- [Translator's note: This view is on the Chinese version and has no relevance to the English version.]
- [Translator's note: This view is on the Chinese version and has no relevance to the English version.]
- It is proposed that the word "relevant" should be deleted from the draft Basic Law.
- In the Draft Basic Law for Solicitation of Opinions, the definitions given to certain important principles, such as "a high degree of autonomy", "shall not be changed for 50 years" and "Hong Kong residents", are vague.
- Should avoid using ambiguous words. For instance, the expression "a high degree of" has no substantive meaning and will easily give rise to disputes.

1.10 Other views

- Hong Kong and the People's Republic of China find themselves in a historically unique situation: Being able to construct and implement an arrangement that allows people of different beliefs, races, religions, and philosophies to live peacefully and freely together. If we succeed, it will not only benefit Hong Kong and China, but demonstrate to the entire world that different systems can coexist.
- China must first succeed in its reforms before it is able to take over Hong Kong and maintain its prosperity.
- The Draft does not carry any provisions which give expression to nationalism or the spirit of the country.
- The major flaw of the Draft is that it lacks foresight to anticipate the development of the Hong Kong society. It fails to evaluate social evolution from an objective historical point of view. It reflects a kind of parochialism and a free "political dinner" mentality.
- What the Basic Law to date has patently ignored is a reckoning with the cultural vigour of Hong Kong that Beijing perhaps wrongly believes is only economically apart from China.
- Everything which would not be affected by growth or change

should be stated clearly and explicitly. The provisions which allow for growth/change should not conflict with the major principles and allotted rights of Hong Kong.

- The provision that Hong Kong shall maintain its present capitalist system and way of life after 1997 is against the ideal of freedom, equality, justice and universal love upheld by social workers.
- How to make members of the public and the officials of the HKSAR continue to respect the legal system is a more important question than the formulation of the Basic Law itself.
- In any country, its law should be applicable throughout its territory. So long as the Chinese respect the human rights and freedoms of the Hong Kong people, Hong Kong's prosperity will be maintained even without the formulation of the Basic Law.

2. Suggestions

2.1 Deletions

- Some of the provisions of the Draft which are ambiguous in meaning or which suppress democratic freedom must be amended or deleted to show that the Central People's Government is determined to grant a high degree of autonomy to the HKSAR.
- Articles 40, 73, 99, 102, 105, 107, 118 and 128 should be deleted.

Reason: - The drafting of the Basic Law should take into consideration the flexibility in the development of the HKSAR.

2.2 Amendments

- Chapters III and VI are relatively complicated. They may be combined into one chapter, entitled: "On the Rights and Obligations of the Residents and the Social System and Social Services".

The articles on labour in Chapter VI may form a new chapter entitled: "On Labour Welfare and Public Servants" with new provisions added to it. (Section 6 of Chapter IV should be deleted.)

Chapters II and VII may be combined into one chapter entitled: "On the Relationship between the Central Authorities and the Hong Kong Special Administrative Region, and External Affairs".

Chapters IV and X may be combined into one chapter

entitled: "On the Political Structure of the Hong Kong Special Administrative Region", whose Section 1 may be entitled: "The Chief Executive, the First Government and their Selection/Formation", and should include Annex I and those provisions on the formation of the first government in Annexe III. Sections 2 and 4 of the Chapter should be retained. Section 3, Annex II and the provisions on the "Method for the Formation of the Legislative Council" in Annex III should be combined to form one section.

2.3 Additions

- It appears that other than Articles 6, 8, 86, 92, 99, 126, and 172, no specific provisions are made for the continuance in effect of contracts between the Hong Kong government and private individuals or companies. This matter was to be addressed in the Basic Law, perhaps by expansion of Article 172 or be included in Article 8.
- Labour rights should take up an entire section which should include the provisions of Articles 32, 35, 155 and 157 and other supplementary provisions.

Reason: - It is only fair and reasonable to put labour rights in a separate section as "industries, commerce and other trades" are covered by an entire section in the Draft.

- A separate chapter should be dedicated to labour-related issues. If it is impossible to do so, such issues should be provided for in a separate annex.

Reason: - There is no specific chapter for labour provisions in the Draft. The provisions on labour found in Chapter VI are listed at the end of the Chapter. Such a manner of presentation can hardly persuade the workers that the Basic Law has taken into consideration the rights and interests of more than two million wage earners.

- There are only four articles in the Draft which provide for the rights of the labour force. This is too lop-sided and limited. Furthermore, the provisions lack professional exposition of labour policies and labour relations.
- The following provision should be added: "All the policies implemented by the government of the Hong Kong Special Administrative Region must not be against the policies stipulated in the Sino-British Joint Declaration, or the policies of 'one country two systems', 'a high degree of autonomy' and 'Hong Kong people administering Hong Kong', or violate this Law."

2.4 Suggestions on the wording

- As it is already provided for in Article 10 that the policies and systems practised in the HKSAR should be based on the provisions of the Basic Law and no law enacted should contravene the Basic Law, the restrictive phrase "in accordance with law" could be deleted from subsequent articles.
- Sensitive expressions which may easily give rise to disputes should be amended.
- It is proposed that definitions should be added in the Basic Law to specifically define the meaning of some of the special terms, and it should be clearly stated that such definitions are integral parts of the Law in order to avoid misunderstanding and dubious interpretation.
- It is proposed that explanatory notes should be given to the basic terms frequently encountered in the Basic Law, either following the General Principles or preceding individual articles.

2.5 Other suggestions

- As differences exist between Hong Kong and the mainland, interpretations of those provisions on principles in the Basic Law by people in Hong Kong are bound to differ from those by people on the mainland. The National People's Congress, when adopting and promulgating the Basic Law, should make authoritative explanation of those provisions which would otherwise be open to interpretation.
- In order to boost the confidence of people in Hong Kong, it should be clearly stated that the "four cardinal principles", class struggle and socialist remoulding of private enterprises and agriculture (i.e. by restriction, remoulding and elimination) will not be practised in Hong Kong after 1997.
- The date on which the Basic Law comes into force is crucial to the promise "shall not be changed for 50 years" and should therefore be clearly specified.
- The boundaries of the HKSAR should be clearly stated in an appendix.
- The aims of the Basic Law should be made clear from the beginning in the Law so that the Chief Executive may use them as a basis for administering the HKSAR, practising a high degree of autonomy, and maintaining the existing capitalist system.

PREAMBLE

1. Original text

Hong Kong has been part of China's territory since ancient times, but it was occupied by Britain after the Opium War in 1840. On 19 December 1984, the Chinese and British governments signed the Joint Declaration on the Question of Hong Kong, affirming that the Government of the People's Republic of China will resume the exercise of sovereignty over Hong Kong on 1 July 1997, thus fulfilling the long-cherished common aspiration of the entire Chinese people for the recovery of Hong Kong.

In order to uphold national unity and territorial integrity and to maintain Hong Kong's prosperity and stability, and taking account of the history of Hong Kong and its realities, the People's Republic of China has decided that upon China's resumption of the exercise of sovereignty over Hong Kong, a Hong Kong Special Administrative Region will be established in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China and that under the principle of "one country two systems", socialist system and policies will not be practised in Hong Kong. The basic policies of the People's Republic of China regarding Hong Kong have been elaborated by our government in the Sino-British Joint Declaration.

In accordance with the Constitution of the People's Republic of China, the National People's Congress hereby enacts the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, prescribing the systems to be practised in the Hong Kong Special Administrative Region, in order to ensure the implementation of the basic policies of the People's Republic of China regarding Hong Kong.

2. Views

2.1 Legal status

- Whether the Preamble will be legally binding needs to be clarified.
- The form is quite good. Since the Preamble will only serve to explain the background and spirit of the Basic Law and will have nothing to do with implementation, there is no need to turn it into an article.
- The Preamble should not be incorporated into the chapter on General Principles. The Preamble, which explains and sums up the Hong Kong Question and gives an account for the origin of the Basic Law, should be distinguished from

other chapters. Besides, some of the contents have nothing to do with law. It will be inappropriate to incorporate these into the articles.

- The Preamble may expound on the spirit of the various chapters of the Basic Law and may set out the guidelines for the various chapters, but there should be a clear distinction, in terms of legal status, between the Preamble and the text.
- The Preamble should be deemed a part of the Basic Law and its legal status should be recognized.

Reasons: - This will provide legal status to and a legal basis for the establishment of the HKSAR mentioned in the Preamble.

- The policies elaborated are premises for the subsequent chapters.
- As changes in our everyday life know no limit, it is impossible to provide for all of them in any law. In legislation, the important thing is to set out the spirit. Since the Preamble states the spirit of the entire Basic Law, it must be legally binding.
- The legal status of the "basic policies" referred to in Paragraph 3 is unclear. For example, how does this provision stand in relation to Article 31 of the Constitution.

2.2 The Preamble in relation to the Sino-British Joint Declaration

- In Paragraph 1, the most crucial and historically significant sentence of the Joint Declaration, that is, "[t]he Government of the United Kingdom declares that it will restore Hong Kong to the People's Republic of China with effect from 1 July 1997", should not be omitted in favour of the present clause, "affirming that the Government of the People's Republic of China will resume the exercise of sovereignty over Hong Kong on 1 July 1997".

Reasons: - The exercise of sovereign rights by a sovereign state over its territory should not be affirmed by a foreign country.

- The historical fact that Britain will restore Hong Kong to China should be clearly stated.
- The problem of Hong Kong which was left over by history and which subsequently led to the signing of the Sino-British Joint Declaration should be mentioned, and such

should be placed at the beginning of the second paragraph rather than at the end of it. This will show that China is sincere in honouring the provisions of the Joint Declaration, and this point should not be easily dismissed.

- The Preamble has left out an important historical fact in explaining the origin of the Basic Law, and that is, that the Sino-British Joint Declaration officially entered into force on 27 May 1985. Hong Kong began its run-up to 1997 only after the entering into force of the Joint Declaration.

It has been suggested that the clause "and this Declaration entered into force on 27 May 1985" be added after the clause "[o]n 19 December 1984, the Chinese and British governments signed the Joint Declaration on the Question of Hong Kong".

Reason: - The addition of this clause not only serves to supply an omitted historical fact, but more importantly, serves to make the meaning of Article 127 more clear. The said article makes reference to leases of land granted "during the period from 27 May 1985 to 30 June 1997". Hong Kong people might fail to see the significance of this date if it is not stated that 27 May 1985 was the date the Joint Declaration entered into force.

- No provision in the Basic Law mentions Hong Kong's transition from a British Colony to a place under Chinese sovereignty. It is very important that either in a Preamble or in an Appendix this point is adequately covered.

2.3 Map of the HKSAR

- A map delineating the boundaries of the HKSAR should be promulgated at the time of promulgation of the Basic Law.

Reason: - With the help of a map, the boundaries of the territory can be clearly delineated.

- The map of the HKSAR will be an important document. It will be of great help to the HKSAR in its operations and administrative activities relating to neighbouring countries.

2.4 Other views

- The Preamble has ingeniously expressed the aspirations of the people of the whole country in a few short sentences.
- On the surface, the wording of Paragraph 2 seems to

suggest that the establishment of the HKSAR will be in accordance with law. However, Article 31 of the Chinese Constitution only states that "[t]he state may establish special administrative regions when necessary". The specific measures of implementation are stipulated in Article 62 of the Constitution. The Preamble only states that "the People's Republic of China has decided" without saying whether or not the NPC will exercise its functions and powers accordingly.

- The brief reference to the history of Hong Kong is not an accurate account, especially in respect of the treaties signed by the then Chinese and British governments' authorized representatives. It is an historical fact that such treaties were signed; whether they are recognized or not is another issue. It is submitted that they should be mentioned for the sake of completeness.
- That the capitalist system will continue to be practised in Hong Kong after 1997 is not a favour bestowed on us by the Central People's Government but a basic right to be enjoyed by Hong Kong people. It is thus suggested that in the Preamble it be clearly stated that as there have been no public expressions endorsing the implementation of socialism in Hong Kong, the rewards for the work of Hong Kong people and their private properties which have been accumulated over the years should be respected and protected, and the state has thus decided that subsequent to 1997 Hong Kong's capitalist system shall be maintained.

3. Suggestions

3.1 Deletions

- Delete "thus fulfilling the long-cherished common aspirations of the entire Chinese people for the recovery of Hong Kong".

Reason: - The use of such a modal clause is unscientific and it is inappropriate to use such an expression in a legal document.

- Delete the words "Article 31 of" from Paragraph 2.
- Suggested amendment for the last paragraph. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the translation.]

3.2 Amendments

- The first sentence of Paragraph 1 should be amended to read: "Hong Kong has been part of China's territory since ancient times. After the Opium War in 1840 Hong Kong was occupied by Britain."

The second sentence of Paragraph 1 should be amended to read: "On 19 December 1984, ... thus fulfilling the common aspirations long cherished by the Chinese people for the recovery of Hong Kong."

The first sentence of Paragraph 2 should read: "In order to ... and to maintain Hong Kong's social stability and economic prosperity,...."

In Paragraph 2, the clause "and that under the principle of 'one country two systems', socialist system and policies will not be practised in Hong Kong" should read: "and that the policy of 'one country two systems' will be practised".

In Paragraph 3, "basic policies" should read "basic principles and policies".

- The following two points should either be amended or deleted: (1) That Hong Kong has been part of China's territory since ancient times; and (2) that Hong Kong was occupied by Britain after the Opium War.

Reasons: - Whether Hong Kong has been part of China's territory since ancient times has nothing to do with the practice of the policy of "one country two systems".

Even if Hong Kong has been part of China's territory, it does not necessarily lead to the conclusion that Hong Kong must be restored to Chinese sovereignty. Vietnam has also been China's territory, but one cannot thus conclude that Vietnam should be restored to Chinese sovereignty.

- If the people so desire, it is possible for a place to become a part of a certain country even if it has never been part of the territory of that country.
- A conclusive remark suggesting that "any place which has been the territory of a certain country since ancient times must be restored to the sovereignty of that country" is bound to cause a great controversy.
- The part on Opium War must be amended because it completely ignores the historic role played by the people of Hong Kong.
- The Preamble should be amended to read: "In accordance with the Constitution of the People's Republic of China and in accordance with the letter, as well as the spirit, of the Sino-British Joint Declaration, the National

People's Congress hereby enacts the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China".

- Reasons: - It allows the greatest flexibility for future changes and interpretations by China as well as the SAR.
- It avoids having to mention a piece of Chinese history which only concerns the relationship between Imperial China and Imperial Britain.
 - It avoids having to mention a sensitive issue with respect to the current aspirations of the people of Hong Kong and even those of China.
 - It avoids having to clarify what "one country two systems" really means.
- Paragraph 2 should read: "In order to ... (1) and taking into account the history of Hong Kong and its realities, as well as the wishes of the people of Hong Kong, the People's Republic of China has decided ..., the socialist system and socialist policies will not be practised in Hong Kong. (2) Instead, the existing Hong Kong version of the capitalist system shall be maintained and developed. The People's Republic of China shall, as before, continue to support and promote Hong Kong's prosperity and stability, and strive to turn Hong Kong into a capitalist free port which is more developed, modern and efficient and has a higher per-capita income than before 1997."

- Reasons: - Suggested amendment (1) is necessary because the present consultation exercise would have been pointless if the wishes of the people of Hong Kong have not been taken into account in the formulation of the Basic Law.
- Suggested amendment (2) is necessary because Hong Kong must be forward-looking in its continued practice of the capitalist system. The entire Draft Basic Law is conservative in outlook, with words like "maintain" and "remain unchanged" used more frequently than necessary. With suggested amendment (2), it sounds more purposeful, lively and enterprising and shows national spirit.

3.3 Additions

- The clause "Hong Kong shall be granted a high degree of autonomy and" should be added before "socialist system and policies will not be practised in Hong Kong".
- The following should be added as Paragraph 4: "The Basic

Law of the HKSAR shall be a basic statute of the People's Republic of China. It will stipulate in legal form that the basic policies elaborated by the Chinese government in the Sino-British Joint Declaration will have supreme legal force within the limits of the high degree of autonomy enjoyed by the HKSAR."

Reason: - The legal status of the Basic Law should be stated in the Preamble.

- The Preamble should be rewritten and the following sentence should be added: "The people of Hong Kong shall have the right to repudiate the Basic Law should China interfere in Hong Kong's practice of democracy."
- The last part of the second sentence in Paragraph 1 should be amended to read: "... will resume the exercise of sovereignty over Hong Kong, including the walled city of Kowloon, on 1 July 1997."
- The last part of the first sentence in Paragraph 2 should be amended to read: "... Hong Kong shall be granted a high degree of autonomy and the socialist system and socialist policies will not be practised in Hong Kong."
- Paragraph 3 should be amended to read: "In accordance with ... in order to ensure the implementation of the basic policies of the People's Republic of China regarding Hong Kong and to build Hong Kong into a place which enjoys freedom, democracy and equality."

3.4 Other suggestion

- The phrase "since ancient times" in the opening sentence is a pointless remark without any relevance to the time and it is not proper to begin a serious document like the Basic Law with such an introduction.

4. Issue to be clarified

- Are the words "in order to ensure" in the last sentence intended to ensure that the state will truly implement its basic policies regarding Hong Kong?

OVERALL COMMENTS ON CHAPTER I

香港基本法
諮詢委員會
秘書處

1. Views

1.1 Supporting views

- Support is expressed for the General Principles.
- Support is expressed for Articles 1 to 9.
- Some people are in favour of placing the General Principles before the various chapters of the Basic Law because they set out some of the basic principles for the Basic Law.
- In order that the Sino-British Joint Declaration can be legally implemented, the General Principles should be made part of the Basic Law.

1.2 Reservations

- The General Principles cannot fully reflect the basic policies detailed in Annex I to the Joint Declaration.
- Most provisions in Chapter I seem to be impossible to enforce in court.

1.3 Other views

- The General Principles should reflect the distinctive features of the executive, legislative, judicial, economic and social systems of the HKSAR and ensure the implementation of the important principles of "one country two systems" and "Hong Kong people administering Hong Kong" promised in the Joint Declaration.
- The provisions under the General Principles may be considered additional rights granted to the people of Hong Kong by reason of special historical factors, and these rights will not be enjoyed by people on the mainland. However, a highly democratic political structure will be required if these rights are to be exercised and preserved and not to be taken away in future.
- Article 1 of the General Principles stipulates that "the HKSAR is an inalienable part of the People's Republic of China". This provision alone should be sufficient and the people of Hong Kong should be allowed to draw up their own capitalist Basic Law. Only in this way will it be possible to produce a Basic Law that will give expression to the high degree of autonomy.
- Greater emphasis should be put on the protection of natural resources of the HKSAR, including its forests,

land, wild animals, rivers and waters.

2. Suggestions

2.1 Amendments

- Articles 1 to 4 should be merged into a single article.

Reasons: - The meaning will be more complete.

- It will prevent quoting out of context.

- Article 11 in Chapter II is more suitable as a provision under the General Principles than is Article 2. It is thus suggested that the order of Articles 2 and 11 be transposed and that the words "The NPC authorizes" be deleted from the former.
- The clause "[i]n accordance with Article 31 of the Constitution of the People's Republic of China" should be deleted from Article 10 which should be moved forward to become Article 3. The existing Article 3 should then become Article 5, and the present Articles 5 to 9 will be renumbered as Articles 6 to 10. It is suggested that when promulgating the Basic Law, the NPC should issue a decree declaring that the contents of the Basic Law do not contravene the national constitution.
- Paragraph 1 of Article 10 should become Article 4 and be amended to read: "In accordance with the Constitution of the People's Republic of China and the basic policies of the Chinese government regarding Hong Kong as stated in the Joint Declaration, the policies and systems practised in the HKSAR, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents and the executive, legislative and judicial systems, shall be based on the provisions in this Law and shall not be changed for 50 years."

2.2 Additions

- The clause "this Law shall take effect on 1 July 1997" should be added.
- Provisions should be made in the General Principles for the protection of natural resources. With the environmental problem as serious as it is, there must be legislation to ensure the rational use of natural resources. The relevant provisions in the Chinese Constitution may be used as reference.
- The following provision should be added: "The HKSAR shall guarantee the rational use of natural resources and protect rare animals and plants. The government shall protect and improve the living and ecological environment

and prevent pollution and other public hazards.

- The following provision should be added as a guiding principle for the government of the HKSAR in formulating policies for the well-being of the working class: "The government of the HKSAR shall gradually improve the well-being of the working class while promoting economic development."
- The following provision should be added: "The HKSAR shall establish a sound and healthy system for the welfare of the aged. Any person who has reached 65 years of age shall be eligible to receive an old age pension no less than half the monthly salary of a civil servant of the lowest rank, and such pension shall be revised along with the upward salary readjustment of civil servants."

Reason: - Hong Kong does not have a good system for the welfare of the aged. The establishment of a good system for the welfare of the aged could help prevent the brain drain and put the minds of the people at ease. There will thus be less bickering over salary increases for the civil servants and the rights of factory workers, and together the people of Hong Kong will work for the prosperity of the territory.

- The following provision should be added: "If the People's Republic of China declares war against another country, Hong Kong will be in a state of war with that country, and it will be up to the Standing Committee of the NPC to determine whether existing governmental and non-governmental exchanges and trade activities with that country shall be terminated or continued."
- The following provision should be added: "The NPC of the People's Republic of China shall, in accordance with the Constitution of the People's Republic of China, formulate and promulgate the Basic Law of the HKSAR of the People's Republic of China, which will ensure a high degree of autonomy and will conform to the spirit of Hong Kong people administering Hong Kong."
- The following two articles should be added before the present Article 1 which should then be renumbered as Article 3, with subsequent articles being appropriately renumbered.

Article 1: "This Basic Law is formulated in accordance with Article 31 of the Constitution of the People's Republic of China and shall apply in the HKSAR. This Law shall be a necessary supplement to the Constitution of the People's Republic of China and shall be equally sacred."

Article 2: "The HKSAR, which shall be referred to in brief as 'China, Hong Kong' to the outside world and 'Hong Kong' internally, shall include Hong Kong Island, the Kowloon Peninsula and the New Territories south of the Shenzhen River."

Reason: - With these two provisions, the legal status of the Basic Law will become much clearer and the name and scope of the territory will be defined. The English name will follow the international practice rather than Pinyin romanization.

- The following provision should be inserted between Articles 6 and 7: "As well as protecting private property rights and without jeopardizing the enthusiasm of individuals and enterprises for production, the government shall, on the basis of existing social policies, gradually improve the standard of living of the low-income public."

Reason: - There is no mention of the principle of social justice in the entire chapter on economy, and not even the limited social insurance and public housing policy as they now exist have been mentioned. The major developed countries all adopt economic policies aimed at the equal distribution of wealth as a principal means of maintaining social stability.

- The following provision in the Preamble should be incorporated into the General Principles: "In accordance with the provisions of Article 31 of the Constitution of the People's Republic of China and under the principle of 'one country two systems', socialist system and policies will not be practised in Hong Kong when the People's Republic of China resumes the exercise of sovereignty over Hong Kong."

Reason: - The Preamble will not have any legal force. Article 31 of the Constitution of the People's Republic of China, while providing for the establishment of special administrative regions, says nothing about the principle of "one country two systems".

- The following provision should be added: "The HKSAR shall not engage in party politics. All Hong Kong residents (including permanent residents and non-permanent residents) shall have to register with the Hong Kong government if they have become members of political parties (including the Communist Party of China) within or outside of China and need to carry out activities in Hong Kong. They shall then be subject to the supervision of the Hong Kong government and engage in activities only as the local laws permit. The government of Hong Kong shall have the power to ban any political organization or

activity which contravenes the laws of Hong Kong."

Reasons: - Some restrictions are in order because political activities are bound to be more open in the future and non-permanent residents have overseas connections.

- It can be seen from the history of the past few decades that the "party" has dominated the "state" in China. Some restrictions are thus required to prevent history from repeating itself.

- The main points of China's basic policies regarding Hong Kong subsequent to 1997 as detailed in sub-paragraphs (1) to (11) of Paragraph 3 of the Joint Declaration should be incorporated into Chapter I of the Basic Law. This will be of great importance to the interpretation of the Basic Law in accordance with the spirit and letter of the Joint Declaration.

- In order to ensure that the future HKSAR shall be administered in accordance with the Joint Declaration, the following provisions of the Joint Declaration should be incorporated into the General Principles of the Basic Law:

(1) The HKSAR will be directly under the authority of the Central People's Government of the People's Republic of China. The HKSAR will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government. [Paragraph 3 (2) of the Joint Declaration]

(2) The chief executive will be appointed by the Central People's Government on the basis of the results of elections or consultations to be held locally. [Paragraph 3 (4) of the Joint Declaration]

(3) The legislature of the HKSAR shall be constituted by elections. [Annex I to the Joint Declaration]

(4) The executive authorities shall abide by the law and shall be accountable to the legislature. [Annex I to the Joint Declaration] (Note General-1)

- Articles 1 to 10 in the Draft Basic Law should be replaced by the following twelve articles:

Article 1: In order to safeguard national unity and territorial integrity, and taking account of the history of Hong Kong and its realities, the People's Republic of China has, upon China's resumption of the exercise of sovereignty over Hong Kong on 1 July 1997,

established a HKSAR in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China. The HKSAR is an inalienable part of the People's Republic of China.

Article 2: The HKSAR comes directly under the authority of the Central People's Government of the People's Republic of China. The HKSAR shall enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government.*

[* It is suggested that when promulgating the Basic Law, the NPC issue a decree declaring that there is no contradiction between the contents of the Basic Law and those of the national constitution.]

Article 3: The HKSAR is vested with executive, legislative and independent judicial powers, including that of final adjudication. 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 the Basic Law and subject to any amendment by the HKSAR legislature.

Article 4: The executive authorities and legislature of the HKSAR shall be composed of permanent residents of Hong Kong. The Chief Executive shall be selected by election or through consultations held locally and be appointed by the Central People's Government. Principal officials shall be nominated by the Chief Executive of the HKSAR and appointed by the Central People's Government. Chinese and foreign nationals previously working in the public and police services in the government departments of Hong Kong may remain in employment. Foreign nationals may also be employed to serve as advisers or to fill certain public posts in government departments of the HKSAR.

Article 5: The socialist system and socialist policies shall not be practised in the HKSAR and the existing capitalist system and way of life shall be maintained. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, to strike, of choice of occupation, of academic research and of religious belief shall be

ensured by law in the HKSAR. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment shall be protected by law.

Article 6: The HKSAR shall retain the status of a free port and a separate customs territory.

Article 7: The HKSAR shall retain the status of an international financial centre, and its markets for foreign exchange, gold, securities and futures shall continue. There shall be free flow of capital. The Hong Kong dollar shall continue to circulate freely and remain freely convertible.

Article 8: The HKSAR shall have independent finances. The Central People's Government shall not levy taxes on the HKSAR.

Article 9: The HKSAR may establish mutually beneficial economic relations with other countries. The economic interests of other countries in Hong Kong shall be given due regard.

Article 10: Using the name of "Hong Kong, China", the HKSAR may on its own maintain and develop economic and cultural relations and conclude relevant agreements with states, regions and relevant international organizations.

The government of the HKSAR may on its own issue travel documents for entry into and exit from Hong Kong.

Article 11: The maintenance of public order in the HKSAR shall be the responsibility of the government of the HKSAR.

Article 12: The foregoing policies shall be practised in the HKSAR and shall not be changed for 50 years.

No law enacted by the legislature of the HKSAR may contravene this Law.

Reasons: - The General Principles fail to give full expression to the twelve basic policies of the Chinese government regarding Hong Kong.

- The General Principles should include the important principles and programme of "one country two systems" and "Hong Kong people administering Hong Kong". The twelve basic policies of the Chinese government regarding

Hong Kong detailed in the Joint Declaration can best reflect this principle and programme.

- The twelve policies were written in the form of an international agreement and need to be revised before being incorporated into the Basic Law. It is thus suggested that the twelve basic policies of the Chinese government regarding Hong Kong as prescribed in the Joint Declaration be written into the Basic Law as the General Principles after "appropriate" amendments have been made.

3. Issue to be clarified

- The clause "shall not be changed for 50 years" only appears under Article 4. How does this clause relate to the other provisions under the General Principles?

Article 1

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1. Original text

The Hong Kong Special Administrative Region is an inalienable part of the People's Republic of China.

2. Views

- This article should be retained.
- Article 1 is unnecessary because it repeats what has been said in the first sentence of the Preamble.
- The word "inalienable" is both undesirable and unnecessary as sovereignty over Hong Kong will have already reverted to China.
- Article 1 should state the origin and basis of this legislation.
- As sovereignty is already set down here, there is no need to give expression to sovereignty elsewhere in the Basic Law.

3. Suggestions

3.1 Amendments

- The phrase "an inalienable part" should read "an inalienable territory".

Reasons: - The word "territory" is much clearer and more positive than the word "part" and has its own historical implications. The meaning of the word "part" is ambiguous and may be interpreted in different ways.

- The meaning of the word "part" is ambiguous and cannot reflect the policies of "one country two systems" and "maintaining the capitalist system of Hong Kong and not changing it for 50 years". Since the HKSAR will be an inalienable part of China and the socialist system is and will be practised on the mainland, does it not follow that Hong Kong will also have to practise the socialist system too? Will this "part" be a political part, or an economic part?
- This article should read: "The HKSAR is a part of the People's Republic of China."
- This article should read: "The HKSAR forms part of the territory of the People's Republic of China."

Reason: - This article is intended to give expression to sovereignty. All territories are inalienable. Calling Hong Kong an "inalienable part" suggests that there is an "alienable part" somewhere.

- This article should read: "The HKSAR is an inalienable part of the territory of the People's Republic of China."

3.2 Additions

- The phrase "and has been China's territory since ancient times" should be added at the end of this article.
- The following sentence should be added: "The previous territorial limits of the HKSAR shall remain intact."

3.3 Rearrangement

- Article 1 should be renumbered as Article 3.

3.4 Other suggestions

- In order to make the definition of the HKSAR clearer, the map of present-day Hong Kong (including Hong Kong Island, Kowloon and the New Territories) should be made an annex to the Basic Law.

Article 2

1. Original text

The National People's Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy in accordance with the provisions of this Law and to enjoy executive, legislative and independent judicial power, including that of final adjudication.

2. Views

2.1 Supporting views

- This article should be retained.
- The administration of Hong Kong by Hong Kong people is a good idea because it means Hong Kong will not have to accept the malpractices coming from China. ✓
- Support is expressed for this article because it sets out the basic policies of a high degree of autonomy and the administration of Hong Kong by Hong Kong people.
- Support is expressed for the provision of "a high degree of autonomy" suggested in this article.
- The provision that the HKSAR shall have independent judicial power, including that of final adjudication, is an important prerequisite if Hong Kong is to exercise a high degree of autonomy.

2.2 Reservations

- This article cannot fully reflect the basic policies set down in the Joint Declaration and the "scope of a high degree of autonomy" already prescribed.
- A high degree of autonomy and "one country two systems" will not work because China does not have faith in Hong Kong.
- Although this article provides that the HKSAR shall have executive, legislative and independent judicial power, including that of final adjudication, it is still unacceptable because it will render the courts inactive if implemented together with Article 169.
- This article states that Hong Kong shall exercise a high degree of autonomy and that Hong Kong shall have independent judicial power, including that of final adjudication. This means that all cases relating to Hong Kong shall be handled by the independent judicial organs of Hong Kong, thus realizing the ideal of a high degree of

autonomy. However, Article 18 states that courts of the HKSAR shall have no jurisdiction over cases relating to defence and foreign affairs which are the responsibilities of the Central People's Government. Such cases will ultimately be handled by the NPC, which means that Hong Kong will not have complete jurisdiction over all cases. Thus, how can it be said that Hong Kong will have independent judicial power, including that of final adjudication?

- This article states that the HKSAR shall exercise a high degree of autonomy in accordance with the Basic Law. Judging from the contents of the Draft Basic Law, however, there will be autonomy, but not a high degree of autonomy, because restrictions have been imposed on this high degree of autonomy in many articles.
- The Joint Declaration provides: "The HKSAR will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government." However, this article circumscribes this high degree of autonomy as being only "in accordance with the provisions of this Law".

2.3 Other views

- The Standing Committee of the NPC should confer on the courts of the HKSAR the power of constitutional review, independent judicial power and power of final adjudication.
- Executive, legislative and independent judicial power, including that of final adjudication, should be exercised and enjoyed by the courts of the HKSAR. In this way, the principles of "Hong Kong people administering Hong Kong" and "a high degree of autonomy" can be realized.
- Defendants will be deprived of their right to final appeal if the Court of Final Appeal of Hong Kong is not in a position to properly apply the law.
- A "high degree of autonomy" is a relative concept. The degree of autonomy promised by this article might be higher than that enjoyed in other parts of the mainland, but it is lower than that prescribed in the Joint Declaration. A "high degree of autonomy" really should mean that except for defence and foreign affairs which will be the responsibilities of the Central People's Government, the HKSAR shall enjoy all powers. In this way, the sovereign rights of the Central Authorities can be assured, and the people will have confidence in the post-1997 Hong Kong government.
- This article states that Hong Kong shall exercise a high degree of autonomy, but does not specify how such autonomy

is to be exercised.

- Since the Basic Law will form the basis of Hong Kong's future legal system, it must be very precise in its legal concepts and wording. In this article, the meaning of the term "a high degree of autonomy" is confined to executive, legislative and independent judicial power, including that of final adjudication.
- Objection is expressed to the suggestion that the article be amended to read: "The HKSAR shall enjoy a high degree of autonomy; except in defence and foreign affairs which are the responsibilities of the Central People's Government."

Reason: - It has already been clearly stated in Article 12, Chapter II, on the relationship between the Central Authorities and the HKSAR, that the Central People's Government will be responsible for foreign affairs relating to the HKSAR. Article 13 also states that the Central People's Government will be responsible for the defence of the HKSAR. There is no need to repeat these provisions in the General Principles.

3. Suggestions

3.1 Amendments

- This article should be amended to read: "The NPC authorizes the HKSAR to exercise a high degree of autonomy in accordance with the provisions of this Law. Except in defence and foreign affairs which are the responsibilities of the Central People's Government, the HKSAR shall enjoy a high degree of autonomy and executive, legislative and independent judicial power, including that of final adjudication. The power of supervision over the implementation of this Law shall be vested in the Standing Committee of the NPC. Any executive, legislative or judicial act which exceeds the limits of the powers authorized by this Law may be declared null and void by the Standing Committee of the NPC. No law enacted by the legislature of the HKSAR shall contravene this Law."
- This article should be amended to read: "The NPC authorizes the HKSAR to exercise a high degree of autonomy in accordance with the provisions of this Law. The power of supervision over the implementation of this Law shall be vested in the Standing Committee of the NPC. Any executive, legislative or judicial act which exceeds the limits of the powers authorized by this Law may be declared null and void by the Standing Committee of the NPC."

"Except in defence and foreign affairs which are the

responsibilities of the Central People's Government, the HKSAR shall enjoy a high degree of autonomy."

- This article should be amended to read: "The Standing Committee of the NPC authorizes the HKSAR to exercise a high degree of autonomy and to enjoy executive, legislative and independent judicial power, including that of final adjudication, except in defence and foreign affairs which, in accordance with the provisions of this Law, are the responsibilities of the Central People's Government."

Reasons: - Since it is stated in Article 16 in Chapter II that all laws enacted must be reported to the Standing Committee of the NPC for the record, the Standing Committee of the NPC must be the governing and authorizing organ.

- It is prescribed in the Joint Declaration that defence and foreign affairs are the responsibilities of the Central People's Government.

- This article should be amended to read: "The NPC authorizes the HKSAR to exercise a high degree of autonomy in accordance with the provisions of this Law. Except in defence and foreign affairs which are the responsibilities of the Central People's Government, the government of the HKSAR shall enjoy executive, legislative and independent judicial power, including that of final adjudication."

- This article should be amended to read: "The NPC authorizes the HKSAR to exercise a high degree of autonomy in accordance with the provisions of this Law, except in defence and foreign affairs which are the responsibilities of the Central People's Government, and to enjoy executive, legislative and independent judicial power, including that of final adjudication."

- This article should be amended to read: "The NPC authorizes the HKSAR to exercise a high degree of autonomy, including executive, legislative and independent judicial power and the power of final adjudication, except in defence and foreign affairs which, in accordance with the provisions of this Law, are the responsibilities of the Central People's Government."

- This article should be amended to read: "The NPC authorizes the HKSAR to exercise a high degree of autonomy, except in defence and foreign affairs which, in accordance with the provisions of this Law, are the responsibilities of the Central People's Government. The HKSAR shall enjoy executive, legislative and judicial power, including that of final adjudication." (Note 2-1)

- This article should be amended to read: "The NPC authorizes the HKSAR to practise a system in which there is separation of powers, to exercise a high degree of autonomy and to enjoy independent executive, legislative and judicial power, including that of final adjudication, in accordance with the provisions of this Law."
- This article should be amended to read: "The NPC authorizes the HKSAR to exercise a high degree of autonomy in accordance with the provisions of this Law in the democratic administration of Hong Kong by Hong Kong people."
- This article should be amended to read: "The autonomy conferred on the HKSAR by the NPC shall include the enjoyment of executive, legislative and independent judicial power, including that of final adjudication."

Reason: - The use of the term "a high degree of autonomy" is inappropriate.

- This article should be amended to read: "The NPC authorizes the HKSAR to exercise a high degree of autonomy in accordance with the provisions of this Law. The power of supervision over the implementation of this Law shall be vested in the Standing Committee of the NPC. Any executive, legislative or judicial act which exceeds the powers authorized by this Law may be declared null and void by the Standing Committee of the NPC. Any such declaration shall have retroactive effect."
- This article should be amended to read: "Except in defence and foreign affairs which are the responsibilities of the Central People's Government, the HKSAR shall enjoy a high degree of democratic autonomy. The HKSAR shall enjoy executive, legislative and independent judicial power, including that of final adjudication."

Reason: - In this way, the limits of a high degree of autonomy will be set.

- This article should be amended to read: "Except in defence and foreign affairs which are the responsibilities of the Central People's Government, the HKSAR shall exercise autonomy in accordance with law."
- This article should be amended to read: "The HKSAR shall be directly under the authority of the Central People's Government of the People's Republic of China. Except in defence and foreign affairs which are the responsibilities of the Central People's Government, the HKSAR shall enjoy a high degree of autonomy."

"The HKSAR shall enjoy executive, legislative and independent judicial power, including that of final

adjudication. Laws currently in force shall remain basically unchanged."

- This article should be amended to read: "The HKSAR shall be directly under the authority of the Central People's Government of the People's Republic of China. Except in defence and foreign affairs which are the responsibilities of the Central People's Government, the HKSAR shall enjoy a high degree of autonomy."
- This article should be amended to read: "Hong Kong shall enjoy a high degree of autonomy, except in defence and foreign affairs which are the responsibilities of the Central People's Government."

Reason: - This article intends to state that Hong Kong shall exercise a high degree of autonomy and shall enjoy executive, legislative and independent judicial power, including that of final adjudication. Omission is possible if areas of autonomy are individually listed. Thus it would be better to simply state what Hong Kong will not be allowed to handle.

- This article should be amended to read: "The HKSAR shall enjoy executive, legislative and independent judicial power, including that of final adjudication."
- This article should be amended to read: "Except in defence and foreign affairs which are the responsibilities of the Central People's Government, the HKSAR shall enjoy a high degree of autonomy. The HKSAR shall enjoy executive, legislative and independent judicial power, including that of final adjudication." (Note 2-2)

Reason: - This will ensure the implementation of the principles stated in Paragraph 3 (2) of the Joint Declaration.

- In accordance with the principle of a high degree of autonomy prescribed in the Joint Declaration, it should be stated that "except in defence and foreign affairs which are the responsibilities of the Central People's Government, the HKSAR shall enjoy a high degree of autonomy". (Note 2-3)

Reasons: - This will ensure that the Central People's Government will be able to exercise China's sovereign rights fully and will also define the scope of the high degree of autonomy to be enjoyed by the HKSAR.

- This will help people understand the meaning of "a high degree of autonomy".

- The clause "to exercise a high degree of autonomy" should read "to exercise autonomy".

Reason: - The abstract term will be replaced by the contents of autonomy.

- As an entity, the "NPC" may authorize another entity. Since the "HKSAR" is not an entity, it would be more logical to replace it with the "HKSAR government" or rephrase the provision as "the Central Authorities authorize the Region".

3.2 Additions

- "The NPC authorizes" should read "The NPC hereby authorizes".

Reason: - This will indicate that authorization will be effected through the promulgation of the Basic Law, and there will not be any specific act of authorization other than that.

- The clause "and this provision shall not be changed for 50 years" should be added at the end of this article.
- The following clause should be added after "... this Law": "and the bilateral and international legal obligations assumed by or imposed on the HKSAR, including those under the Sino-British Joint Declaration signed in 1984".
- The following should be added as Paragraph 2: "The Standing Committee of the NPC shall be responsible for the implementation of the Basic Law. A Committee for the Basic Law of the HKSAR shall be established under the Standing Committee of the NPC to advise on the affairs of the HKSAR."

Reason: - Nothing has been said in the Draft Basic Law about the power of supervision. Since the Basic Law shall be enacted by the NPC, its implementation ought to be supervised by the NPC or its Standing Committee. It cannot be supervised by the legislative or judicial organs of Hong Kong.

3.3 Other suggestions

- The first suggestion detailed in "A Collection of Opinions" should be adopted.
- The suggestion(s) for this article detailed in "A Collection of Opinions" should be adopted.

Reason: - The wording is more precise.

- The article should be amended in the light of the second suggestion in "A Collection of Opinions".

Reason: - That version can more effectively give expression to the autonomy of the HKSAR.

- The word "authorizes" may be explained by referring to the "functions and powers of the NPC" prescribed in the Chinese Constitution.
- Apart from stating the source of power of the HKSAR, this article should also state that the Standing Committee of the NPC shall be responsible for supervising the implementation of the Basic Law. This will make the provision more comprehensive.
- The contents of "a high degree of autonomy" should be listed.

Reason: - This will dispel the misgivings of the people of Hong Kong.

- It should be clearly specified that the Central People's Government will only be responsible for defence and foreign affairs and that all other affairs will come within the limits of autonomy of the HKSAR.
- "A high degree of autonomy" is not an objective description. This article should state specifically which affairs will be handled by Hong Kong and which will be handled by the Central People's Government.

4. Issues to be clarified

- What does "a high degree of autonomy" really mean?
- What are the criteria for "a high degree of autonomy"?
- Does the word "authorizes" in the article mean that the NPC will authorize Hong Kong to exercise a high degree of autonomy through the Basic Law, or the NPC will authorize Hong Kong to exercise a high degree of autonomy through some other means after the Basic Law has been adopted?

Article 3

1. Original text

The executive authorities and legislature of the Hong Kong Special Administrative Region shall be composed of permanent residents of Hong Kong in accordance with the relevant provisions of this Law.

2. Views

- This article only lays down stipulations in terms of the executive authorities and legislature. It makes no provision in terms of the composition of the judicial organs.
- This article suggests that non-permanent residents of Hong Kong will not have the same rights as those of permanent residents. Such a provision is contradictory to Article 24 which states that all Hong Kong residents shall be equal before the law, regardless of their nationality or social background.
- Considering Hong Kong's special circumstances, the identification documents and nationality of "permanent residents" should be specified.
- Holders of "dual nationality" are, in a sense, "sitting on the fence", as they have, to a greater or lesser extent, mental attachments abroad and yet are seeking advantages from within the country. After 1997, these people should therefore not be allowed to serve in the executive authorities or legislature or hold offices that may influence the future policies of Hong Kong.

3. Suggestions

- This article should be amended to read: "The offices of the executive authorities, Chief Executive and legislature of the HKSAR shall be filled by permanent residents of Hong Kong in accordance with the relevant provisions of this Law."
- Suggested amendment for the word "permanent". [Translator's Note: A suggested change in the wording of the Chinese version which will not affect the translation.]

Article 4

1. Original text

Socialist system and policies shall not be practised in the Hong Kong Special Administrative Region and the existing capitalist system and way of life shall not be changed for 50 years.

2. Views

2.1 Supporting views

- Support is expressed for this article.
- The stipulation in Article 4 is conducive to the future prosperity and stability of Hong Kong.
- Hong Kong's capitalist system and way of life should be preserved permanently in order to set people's mind at rest.

2.2 Reservations

- It is difficult to draw a distinct line between the "socialist system" and the "capitalist system", and the socialist system currently practised in China has tints of capitalism. Thus the stipulation in this article will be very difficult to implement and difficult to guarantee.
- There is no way of guaranteeing that things "shall not be changed for 50 years". Some people have expressed the fear that Hong Kong will be converted to communism in 50 years.
- The stipulation that the capitalist system and way of life shall not be changed for 50 year cannot adequately sustain the confidence of Hong Kong people and foreign investors.
- There is the fear that promises made by Chinese leaders might be affected by changes in the leadership.

2.3 Other views

- While the stipulation that things "shall not be changed for 50 years" is a good policy, efforts should be directed mainly towards the preservation of the socio-economic structure and the democratic spirit of the legal system. There should be flexibility in terms of specific measures. For example, some of the rules and regulations enacted by the British government are not altogether suited to Hong Kong. Such legislation, and the structure of government for that matter, should be reviewed from time to time to

meet the needs of the objective situation.

- Although it has been stipulated that in the HKSAR the capitalist system and way of life shall not be changed for 50 years, this does not mean that things should not be changed. Unreasonable systems left by the present Hong Kong government, for instance, should be modified and altered.
- Although the term "capitalist system" has not been clearly defined and no authoritative definition can be supplied in the case of disputes, one can quite safely turn to the Chinese Constitution for reference on the meaning of the term "socialist system and policies".
- The difference between socialism and capitalism lies in "property ownership" and the running of the economy as a whole. These political and economic jargons which are not clearly defined should not be used in the General Principles in order to avoid unnecessary disputes over interpretation.
- "Socialism" and "capitalism" are academic terms. It is very difficult to define in our everyday life which systems and ways of life are absolutely "socialist" and which are "capitalist". It is quite enough to spell out in the Joint Declaration alone the promise that things shall not be changed for 50 years. For the idea of "shall not be changed" is too indefinite a concept and its repeated citing should be avoided.
- This article stipulates that "socialist system and policies shall not be practised" in Hong Kong is beyond reproach. However, one must not interpret this stipulation as not permitting any change or development, still less see it as a kind of freeze or stagnation.
- Article 4 of the Draft Basic Law may be interpreted in either one of the following ways:
 - (1) The socialist system and socialist policies shall not be practised in the HKSAR in the next 50 years. Neither shall any changes be made to the existing capitalist system and way of life during this period.
 - (2) China will not impose its present socialist system and policies on Hong Kong for 50 years after resuming the exercise of sovereignty over Hong Kong lest the latter's efforts in continuing to develop the capitalist economic system and way of life should be affected.

The second interpretation should prevail.

- From the wording of this article, "...shall not be changed

for 50 years", it may be inferred that the terms "existing" and "previously" as used in the Basic Law refer to things which are already in existence prior to 1 July 1997.

- Since the Basic Law shall be applied for several decades subsequent to 1997, it is inappropriate to use words like "existing" or "previously" in the Basic Law when referring to the situation prior to the establishment of the HKSAR.
- Despite the Basic Law provision that socialism shall not be practised, the capitalist system may change its nature if the future HKSAR imposes heavy taxes on its people.
- Communism is undesirable. If everyone gets the same benefits whether or not he does any work, there will hardly be any social progress.
- People want a high degree of autonomy, not just some temporary appeasement.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reason: - Article 10 will adequately serve the purpose.

- Expressions like "shall not be changed for 50 years" and "existing" should be deleted.

Reasons: - Hong Kong's existing capitalist system is by no means perfect and there is still room for development.

- The NPC shall have the power to amend the Basic Law. If the NPC deems it necessary to change or repeal the Basic Law, it may do so by legislation at any time. The expression "shall not be changed for 50 years" only serves to show that the Basic Law will be an expedient measure with a time limit.

- The expression "shall not be changed for 50 years" has too wide a meaning. Many Western countries are practising socialist policies while maintaining an essentially capitalist system. Hong Kong may wish to provide more benefits for its people when it is in a position to do so. The words "and policies" should therefore be deleted.

3.2 Amendments

- The expression "shall not be changed for 50 years" is unscientific and should be appropriately amended.
- Article 4 stipulates that the existing capitalist system and way of life "shall not be changed for 50 years". The intention of this stipulation is of course beyond reproach. However, everything, be it a way of life or a system, is subject to change. Time changes everything. Actually, what Hong Kong people desire is that their social system and way of life will not be changed into the socialist mode. Thus, Article 4 should be amended to read: "Socialist system and policies shall not be practised in the HKSAR, and for 50 years from 1 July 1997, there shall be no interference which will result in the capitalist system and way of life being changed into a socialist system and way of life."
- Stating that Hong Kong will not be allowed to practise socialism and will have to adhere to the existing capitalist system and way of life for 50 years is not only a violation of Article 1 of the Chinese Constitution in that it deprives Hong Kong people of the right to establish a socialist society (or reform the existing capitalist system), but is also a policy which ignores the inevitable historical developments that will take place in Hong Kong in the future. Thus this article should either be deleted or amended in such a way as to convey the idea that "it will be up to the people of Hong Kong to decide whether the social system should be preserved".
- This article should be amended to read: "The socialist system and socialist policies shall not be practised in the HKSAR and the existing capitalist system and way of life shall not be changed for 50 years. The social system and way of life in the 50 years subsequent to that shall be decided by permanent residents of Hong Kong through a ballot on a one-person-one-vote basis in the year 2038."
- This article should be amended to read: "The HKSAR shall not practise the socialist system and socialist policies for 50 years from 1997. Instead, the capitalist system shall be practised and the capitalist way of life maintained. Further decision will be made after 50 years in accordance with the wishes of residents of Hong Kong. The Central People's Government recognizes that Hong Kong's capitalist system has made contribution to the socialist system practised on the mainland."

Reason: - Since the capitalist system is still developing, the use of the word "existing" will render any improvements impossible. It is also impossible to implement such a stipulation. The time of commencement and termination should also be clearly stated. As the two systems are essentially contradictory, the contribution of

the capitalist system should be affirmed in the form of a legal provision.

- This article should be amended to read: "The socialist system and socialist policies shall not be practised in the HKSAR and the capitalist way of life shall be maintained for a period of no less than 50 years from 1 July 1997. During this period, the People's Republic of China shall guarantee positive support to the government of the HKSAR in its continuous effort to develop the positive factors of capitalism and build Hong Kong as a free port more developed, modern and civilized and with a higher per-capita income than in 1997."
- This article should be amended to read: "The social system and policies to be practised in the HKSAR shall be decided democratically by the people of Hong Kong in accordance with the wishes of the majority."
- This article should be amended to read: "No socialist system or policies of any form shall be practised in the HKSAR and the capitalist system and way of life which encompass private property ownership and free trade shall not be changed for 50 years."
- The expression "... the existing capitalist system and way of life shall not be changed for 50 years" should be amended to read: "... the existing social system, way of life and ideology shall not be changed for 50 years".

Reason: - The expression "the existing social system" is more flexible than the term "capitalist" which is a Marxist-Leninist jargon. The term "ideology" is added because Hong Kong people are afraid of "brain-washing" and "ideological remoulding", and solely mentioning the system and way of life is inadequate.

- This article should be amended to read: "Socialist system and policies shall not be practised in the HKSAR. Its capitalist system and way of life shall continue and this policy shall not be changed for 50 years."

Reason: - The expression "shall continue" allows development and is less rigid.

- Terms like "socialist" and "capitalist" should be deleted and this article should be amended to read: "Systems and policies practised in China shall not be practised in the HKSAR, and the existing system and way of life in Hong Kong shall not be changed for 50 years."

Reason: - The expression "shall not be changed for 50 years" should only preclude the introduction of a socialist system but not all changes.

- The capitalist system should not remain stagnant; it should see development.
- This article should be amended to read: "The HKSAR shall not practise a socialist system and socialist policies in the next 50 years and shall continue to develop its existing capitalist system and way of life."
- This article should be amended to read: "[The HKSAR] shall continue to develop capitalism and shall not practise the socialist system in the next 50 years."
- This article should be amended to read: "The HKSAR shall forever continue to develop in the direction it deems to be correct."
- This article should be amended to read: "The system and policies of Mainland China shall not be practised in the HKSAR and the system and way of life which encompass human rights, freedom and democracy shall not be changed for 50 years."
- This article should be amended to read: "The existing system and way of life in Hong Kong shall not be changed for 50 years."

Reason: - Expressions like "socialist" and "capitalist" should not be used in a constitution.

- In order to ensure that the capitalist system will be the only system to be practised in Hong Kong, this article should be amended to read: "Any other political systems, including the communist system and policies, in whatever manner or form, shall not be practised in the HKSAR."
- This article should be amended to read: "The capitalist economic system shall be practised in the HKSAR. Changes in the social and economic systems shall be decided by the people of Hong Kong themselves. The Central People's Government shall not impose any particular social or economic system on the HKSAR."
- Since expressions like "shall not be changed for 50 years" and "existing" may easily be misinterpreted, this article should be amended to read: "The socialist system and socialist policies shall not be practised in the HKSAR and the HKSAR shall maintain and develop the existing capitalist system and way of life for 50 years."
- This article should be amended to read: "The socialist system and socialist policies shall not be practised and the existing capitalist system and way of life shall not be changed for 50 years from 1 July 1997 to 1 July 2047."

- The expression "shall not be changed for 50 years" should read "shall continue for 50 years".

Reason: - Any good system (even the socialist system) must change.

- The expression "existing capitalist system and way of life" should be replaced by "the capitalist system and way of life existing prior to the establishment of the HKSAR" or "before 19 December 1984".

Reason: - The expression "before 19 December 1984" can precisely indicate the time of the signing of the Joint Declaration.

- The clause "the existing capitalist system and way of life" should read "the existing capitalist system together with free trade and the way of life which are part of it".

Reason: - Free trade is the basis of a capitalist society.

- The expression "shall not be changed for 50 years" should read "shall never be changed".

- The use of the second "and" in this article suggests that the socialist system and socialist policies will not be practised in the HKSAR for 50 years. However, the popular interpretation is that the socialist system and socialist policies will never be practised in Hong Kong. Thus, the second "and" should be replaced by a semi-colon.

3.3 Additions

- The clause "from 1 July 1997" should be added after "for 50 years". The amended version will be more precise and will give people greater confidence.

- The clause "from the date this Law entered into force" should be added after "for 50 years".

- The expression "shall not be changed for 50 years" should read "shall not be changed for at least 50 years".

- The clause "[i]n accordance with the principle of 'one country two systems'" should be added at the beginning of this article.

- The following provision should be added: "People of the HKSAR shall have the freedom to embrace a capitalist ideology."

- The clause "the existing capitalist system and way of life" should read "that part of the existing capitalist system and way of life which conforms to the wishes of the local population".

3.4 Other suggestions

- Article 4 only stipulates that the capitalist system and way of life shall not be changed. It should further state that the social system will also remain basically unchanged.
- The article should also note that the communist system and communist policies will not be practised.
- Something should be said about whether or not this provision will remain in force after the 50-year period. At least the article should indicate that when the time comes the Central People's Government or the NPC shall decide, after consulting the people of Hong Kong, whether the period of validity of this Law should be extended.
- It should be clearly stipulated that the Basic Law shall continue to be in force until 2047.

Reason: - This will avoid the misunderstanding that the Basic Law will be in force indefinitely after 1997.

- The dates of the beginning and end of the 50-year period should be given.
- It may be stated in an appendix that constitutional amendments will be allowed. This is necessary because an expression like "shall not be changed for 50 years" is too subjective a remark and times will change.
- The principle of "one country two systems" and the provision that this principle "shall not be changed for 50 years" must be clearly stated in the Constitution.
- This article should be incorporated in its entirety into Article 31 of the Chinese Constitution.
- This article is a policy provision and should therefore be written into the Preamble.
- Twenty years before the Basic Law is due to expire, the Central People's Government must announce the relevant policies after the expiration of this Law.
- From the legal point of view, expressions like "the socialist system and policies" and "the existing capitalist system and way of life" lack clear definition. It is thus suggested that terms like "the private ownership of the means of production" and "free competition" be used to highlight the features of capitalism.

- The "system" and the "policies" should be addressed separately and only the "system" should be addressed in this article.

Reason: - Political, economic and social systems designed to protect people's freedoms and rights should be based on the provisions of this Law, but policies should be allowed to be constantly perfected in the course of the 50 years.

4. Issues to be clarified

- How will this article be put into practice and by whom?
- Will the Basic Law remain in force after the 50-year period?
- Is it appropriate to limit the period to 50 years?
- Why just provide a 50-year guarantee and not a permanent guarantee?
- How can it be guaranteed that the capitalist way of life will remain unchanged for 50 years?
- Will all laws and ordinances aimed at maintaining "capitalism" remain unchanged for 50 years?
- Will the stipulation that the capitalist system and way of life shall not be changed for 50 years guarantee the continued prosperity and progress of society?
- Will there be any guarantee that things will definitely remain unchanged within the 50-year period? What about after the 50-year period?
- Does the expression "shall not be changed for 50 years" suggest that there will definitely be changes after 50 years?
- The Basic Law will last for 50 years at most. Does this mean that after 50 years the policies of the HKSAR will become one with those practised on the mainland, and the HKSAR will practise the socialist system and socialist policies?
- China has as yet made no indication as to whether socialism or capitalism will be practised in Hong Kong after the 50-year period. Is it because it is not in a position to decide?
- Will 50 years be enough for the people of Hong Kong to get used to the Chinese way of life?
- Is there any guarantee that changes in the Chinese

leadership will not affect China's policies regarding Hong Kong?

- Under the policy of keeping the capitalist system and way of life unchanged for 50 years, will Hong Kong be able to make changes if inadequacies are found? For example, will Hong Kong be able to restore capital punishment to halt crime or to introduce severe punishment to deal with such evils as pornography, drug-trafficking and gambling?
- What does "capitalism" mean?
- There are differences between "socialism" and "communism". It is hoped that explanation will be given.
- What does the phrase "socialist system and policies" mean? Does it refer to the provisions in Articles 6 to 12 of the Constitution?
- Article 24 of the Constitution stipulates that the state "combats capitalist ... decadent ideas" while the present article states that "the existing capitalist system ... shall not be changed". Does this not sound contradictory?
- Can the contradiction between Article 24 of the Constitution and the present article be resolved by means of Article 31 of the Constitution?
- Will the statutory holidays remain unchanged after 1997?

Article 5

1. Original text

The Hong Kong Special Administrative Region safeguards the rights and freedoms of the residents and other persons in the Region in accordance with law.

2. Views

- "Rights" and "freedoms" are inherent, not something bestowed by the HKSAR.
- This provision is ambiguous and difficult to understand.
- The term "in accordance with law" is worrying.

Reason: - This would mean our rights and freedoms will be subject to the whims of the legislature in the following respects:

- (1) The protection of existing rights and the degree to which they are enjoyed; and
- (2) The introduction of new legislation to give effect to rights which at present are not enjoyed or are not fully enjoyed in Hong Kong but, which ought to be.

3. Suggestions

3.1 Deletion

- Delete the words "in accordance with law".

3.2 Amendments

- In the English version, "other persons" refer to other persons in the HKSAR, while the Chinese version could be interpreted as "residents of the HKSAR and other persons". It is suggested that the necessary amendments be made in the Chinese wording to indicate that the provision applies to both "residents" and "other persons" in the HKSAR.
- The meaning of "other persons" in the Chinese version is not clear. It might be amended to read "other persons in Hong Kong" as in Article 42.
- The clause "in accordance with law" should read "in accordance with local laws".
- This article should be amended to read: "In accordance with law, the HKSAR safeguards the rights and freedoms of law-abiding residents of the HKSAR and other persons

legally residing in Hong Kong."

- This article should be amended to read: "The existing social and economic systems of Hong Kong, as well as its way of life, shall not be changed. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, to strike, of choice of occupation, of academic research and of religious belief, shall be safeguarded by law in the HKSAR. Private ownership, ownership of enterprises, legitimate right of inheritance and foreign investment shall be protected by law."
- This article should be amended to read: "Residents and other persons in the HKSAR shall enjoy rights and freedoms. The HKSAR must safeguard these rights and freedoms."

Reason: - Fundamental rights and freedoms are inherent. This is a point of primary importance and should be clearly stated and emphasized.

- This article should be amended to read: "The rights and freedoms to be enjoyed by residents and other persons in Hong Kong are inherent rights and freedoms which the HKSAR should safeguard."

3.3 Additions

- The words "[t]he government of" should be added at the beginning of this article.
- The following provision should be added: "The legislature or executive authorities of the HKSAR shall not issue decrees or enact laws for deprivation of the freedoms of speech, of the press and of publication."

Reasons: - Freedom of the press is of utmost importance to the prosperity and stability of Hong Kong. Businessmen and political leaders of Hong Kong rely on the free circulation of information to make rational policy decisions on economic and political matters.

- The mass media offer an avenue for the public to air their grievances. It can help check the abuse of power and is an effective means of gauging public sentiments on major issues.
- The following provision should be added: "The legislature and executive authorities of the HKSAR shall not enact any laws to deprive residents or other persons of their rights and freedoms."
- The following clause should be added at the end of this

article: "... and in accordance with the bilateral and international legal obligations assumed by or imposed on the HKSAR, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights."

3.4 Other suggestions

- Under the system of "one country two systems", the rights and freedoms to be enjoyed by the residents of Hong Kong should be protected. Hence the fundamental human rights and freedoms stipulated in the United Nations Declaration on Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights should be enshrined in the Basic Law in order that they can be effectively enforced.
- The clauses "safeguards in accordance with law" and "in accordance with law" should refer to the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

4. Issue to be clarified

- Who are the "other persons" referred to in this article? Do they include illegal immigrants and refugees of other nationalities?

Article 6

1. Original text

Rights of property ownership, including those relating to acquisition, use, disposal, inheritance and compensation for lawful takeover shall be protected by law. The compensation for lawful takeover shall be corresponding to the real value of the property concerned, freely convertible and paid without undue delay.

2. Views

- Support is expressed for Article 6 as it will provide greater assurance for life and property.
- This article covers too wide a scope.
- A provision on rights of property ownership seems out of place in a chapter which is supposed to set out the general principles.
- Objection is expressed to the government's mandatory takeover of private property. Transactions between individuals should be free from government intervention provided that they are legal and voluntary.
- This stipulation is too specific. For instance, the clause "the compensation for lawful takeover shall be corresponding to the real value of the property concerned" will result in endless lawsuits. At present, many of the lawsuits over the buying and selling of land revolve around the question of "real value".
- The phrase "shall be protected by law" fails to convey the idea that private property deserves more stringent guarantees.
- Doubt has been raised as to whether or not Article 6 can be enforced.
- Article 6 appears to suffer from several deficiencies. Firstly, it does not guarantee the right to possess property. Secondly, it approves of "lawful takeovers". Thirdly, by ensuring that compensation shall correspond to the "real value" of the property, it may, in fact, be providing an opportunity for the authorities concerned to avoid compensating to the full extent of the actual market value. Lastly, it overlooks the need to regulate the use of property in the light of public interests (e.g., rent restrictions, closing hours for shops, etc.) or to secure the payment of taxes.

These deficiencies may be remedied if Article 6 is revised

in such a way as to provide guarantee for the following:

- (1) Every natural or legal person will have the right to acquire, use and dispose of property.
- (2) No one shall be deprived of his property except when necessary in public interest and subject to the conditions provided for by law and by the general principles of international law, including the prompt payment of fair compensation.

The preceding provisions shall not in any way impair the right of the HKSAR government to enforce laws as it deems necessary, to regulate the use of property in the light of public interests, or to secure the payment of taxes or other contributions or penalties.

- Article 6, in dealing with private property rights (without mentioning the word "private"), leaves out (or at least is silent on) two important concepts:

- (1) That "property" should include not only tangible property such as land and buildings but also intangible property such as intellectual property and human resources.
- (2) That the rights should include not only those of (but not relating only to) ownership, acquisition, use, (voluntary) disposal and inheritance, but also the right to derive income therefrom, the right to voluntarily exchange at whatever consideration the transferor and transferee happen to agree on, and the right to exclude any other persons from all the above rights with regard to a property one possesses without consent. "Intermediary" rights, such as rights under leases, trust, which feature some but not all of the above rights, should be similarly enshrined.

- The spirit of the law as reflected by this article indicates that the acquisition of property and the compensation for such acquisition should both be protected by law. However, the particulars regarding compensation, such as "the compensation ... shall be corresponding to the real value of the property concerned", "freely convertible" and "paid without undue delay", need not be detailed in the Basic Law.

- If the aim of this provision is to preserve the essential features of the capitalist system, provided that the policy measures of the future HKSAR government do not go against this provision, debates as to whether the policies concerned are socialist or capitalist will be unlikely.

- "Real value" is a term and concept that simply cannot be

used in the Basic Law.

Reason: - This is because such compensation will not have any objective criteria and will be at the discretion of the government. Such a provision cannot adequately provide a guarantee for private property.

- The use of the term "without undue delay" is only suitable in the administrative rules of the future government.
- It must be specified that the acquisition of property is through lawful means. Otherwise this provision will contravene the impending bill on the confiscation of property belonging to drug traffickers.

3. Suggestions

3.1 Deletions

- The word "real" should be deleted.

Reason: - The term "the real value of the property" used in this article is likely to cause unnecessary disputes.

- The clause "without undue delay" should be deleted.

Reason: - Since the law provides that property taken over will be compensated and that such compensation shall be freely convertible, it is unlikely that there will be any undue delay in payment.

- The provision on compensation is too detailed.

3.2 Amendments

- The term "rights of property ownership" should read "rights of private ownership".

- The provision that "rights of property ownership ... shall be protected by law", albeit good, could be improved on by stating that this refers to property owners who are "residents of Hong Kong". It is thus suggested that this article be amended to read: "Hong Kong residents' rights of property ownership, including those relating to acquisition, use, disposal, inheritance and compensation for lawful takeover shall be protected by law. The compensation for lawful takeover shall be corresponding to the real value of the property concerned, freely convertible and paid without undue delay."

- At present, it is not unusual for the Hong Kong government, upon lawful takeover of property, to grant compensation which exceeds the real value of the property

concerned and which is not freely convertible. If Article 6 as presently worded were adopted, such practice might be rendered unlawful. If the future SAR government continues with this practice, it will risk being accused of being more liberal with public money than it should be under the Basic Law. It is thus suggested that the second sentence of this article should be amended to read: "The compensation for lawful takeover shall not be less than the real value of the property concerned and unless agreed by the owner divested of such property, shall be freely convertible and paid without undue delay."

- The term "rights of property ownership" should read "rights of private ownership".

Reason: - To show that they are different from ownership of state property.

- The clause "and compensation for lawful takeover" should be amended to read "and the right of people whose property has been lawfully taken over to receive compensation".
- The term "real value" should read "the market value at the time" because the latter makes better sense and is easier to estimate.
- The term "real value" should read "market value".

Reason: - Real value includes obscure factors.

- This article should be amended to read: "Private ownership, ownership of enterprises, legitimate right of inheritance and foreign investment in the HKSAR shall be protected by law."
- It is suggested that the term "takeover" be replaced by "expropriation".
- This article should be amended to read: "Rights of property ownership which have been enjoyed in the HKSAR, including the acquisition, use, transaction, transfer, leasing and disposal of property, both movable and immovable, rights of inheritance, and rights to compensation for lawful takeover by the government, shall be protected by law. The compensation for lawful takeover shall be corresponding to the real value of the property concerned, freely convertible and paid without undue delay or embezzlement."
- The last sentence should be amended to read: "The compensation for lawful takeover shall be based on a market price agreed upon by the two parties concerned, freely convertible and paid without undue delay."

3.3 Additions

- The following provision should be added: "The HKSAR shall retain the status of a free and independent customs territory."
- The following provision should be added at the end of the article: "The government shall have the right and responsibility to confiscate and investigate property swindled from residents through illegal means."
- The following provision should be added: "Private property is sacred."

Reason: - A system under which private property is not protected cannot be called a capitalist system.

- The first part of this article should be amended to read: "Private ownership, the rights of the capitalist class and rights of private ownership, including those relating to acquisition, use, disposal,"

Reason: - The wording should be more precise since this article is designed to protect the existing capitalist system.

3.4 Rearrangement

- Article 6 should be moved to Chapter III.

Reasons: - The rights of legal persons have not been taken care of in Chapter III and the provisions of this article can fill this gap.

- This chapter should only include general principles.

3.5 Other suggestions

- The circumstances under which the government may take over private property should be specified. For example, the government may take over property in times of war or when the interests of the majority are at stake.
- The Basic Law should clearly state that the courts shall not have the right to take away the management rights of any flat owner.
- In order to be more objective, the "real value" should be assessed by an independent and non-governmental body.
- This article should be included in Section 5 of Chapter V because it is taken from Annex I to the Joint Declaration.

4. Issues to be clarified

Article 7

1. Original text

The land and natural resources within the Hong Kong Special Administrative Region are the state property of the People's Republic of China. The government of the Hong Kong Special Administrative Region shall be responsible for their management, use and development and for their lease or grant to individuals or legal persons for use or development. The revenue derived shall be entirely at the disposal of the government of the Hong Kong Special Administrative Region.

2. Views

- The clause "are the state property of the People's Republic of China" is necessary to show that China is the sovereign state. Hong Kong is an inalienable part of China's territory. After resuming the exercise of sovereignty over Hong Kong, China shall allow the HKSAR government to use its financial revenue exclusively for its own purpose and shall not take any money from Hong Kong. There should not be any objection to this clause.
- The provision that "land and natural resources" are "the state property of the People's Republic of China" totally denies that under the capitalist system land and natural resources may be privately-owned. Although at present land is auctioned to individuals for development in the form of long- and short-term leases, there is a possibility that the future government will sell land to private developers.
- If land resources are the property of the state, returns from land sales should be equally used by the people of the whole country. China needs funds to finance its full-scale reconstruction, and the HKSAR government should not have exclusive use of its financial revenue.
- This article has said nothing about the rights of residents to possess property.

3. Suggestions

3.1 Amendments

- This article should be amended to read: "The government of the HKSAR shall be responsible for the management, use and development, and for the lease or grant to individuals or legal persons for use or development of the land and natural resources. The revenue derived therefrom shall be entirely at the disposal of the government of the HKSAR."

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Reason: - It is not necessary to emphasize that land and natural resources within the HKSAR are the state property of the People's Republic of China.

- The first sentence of this article should read: "The land, waters and natural resources as well as relics not yet unearthed within the HKSAR are the state property of the People's Republic of China."

Reason: - Under the provision of this article, land and natural resources are the state property of the People's Republic of China. Territorial waters are not included. The implication of the original provision is that if people take possession of relics and wrecks found in the territorial waters or of substances extracted from those waters, they cannot be charged with violation of the property of the state.

- The Chinese version of the phrase "at the disposal of" should be replaced by a better expression.

3.2 Additions

- A clause on environmental protection should be added.

Reason: - Environmental protection is of utmost importance to any society. Only when there is a desirable environment will there be a desirable society.

- Drawing reference from the Chinese Constitution, the following provision should be added: "The HKSAR shall, in accordance with law, guarantee the rational use of natural resources, protect rare animals and plants, protect the ecological environment, improve the living environment, and prevent and remedy pollution and other public hazards."
- The following provision should be added at the end of this article: "The aforementioned measures shall be based on the principle that they shall not infringe upon the enjoyment of a healthy environment by residents and their descendants."
- The provision "on the condition that the rights of residents to enjoy a safe and healthy environment shall not be infringed upon" should be added after "... to individuals or legal persons for use or development".

Reason: - Unplanned and uncontrolled land development would cause residents and their descendants to suffer needlessly.

3.3 Other suggestions

- The HKSAR should hand over more than 30% of its total revenue to the Central People's Government for use in the dredging and harnessing of rivers.
- Private property rights should also be specified.
- The word "or" is used three times in the clause "for their lease or grant to individuals or legal persons for use or development". This is stylistically undesirable. Further, the word for "grant" in the Chinese version is a Cantonese expression which is not readily understood by people who do not speak the dialect.

4. Issue to be clarified

- What is meant by "legal persons"? Does it mean "corporate bodies", "non-corporate bodies" or "legal corporate bodies"?

Article 8

1. Original text

The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for those that contravene this Law or have been amended by the legislature of the Hong Kong Special Administrative Region.

2. Views

- Support is expressed for this article.
- Laws previously in force should be maintained.
- If Hong Kong is to maintain the status quo, no law should contravene this Law to a serious extent.
- This article stipulates that the following two types of laws shall not be maintained in the future HKSAR: (1) Laws that contravene the Basic Law; and (2) Laws that have been amended by the legislature of the HKSAR. The problem lies in the second type of laws. If these laws shall not be maintained, there will be no need to "have them amended". The fact that they have been amended shows that they are worth keeping. These two conditions are thus contradictory.
- Ordinances that provide for the rights and privileges of male descendants of the indigenous inhabitants of the New Territories discriminate against women. Under the provisions of this article, however, such discrimination will continue.

3. Suggestions

3.1 Amendments

- This article should be amended to read: "The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation, existing precedents and customary law, shall be maintained except for those that contravene this Law or have been amended by the legislature of the HKSAR and submitted to the Court of Final Appeal for final verdict."

Reasons: - In Hong Kong courts, sentences may be handed down in accordance with existing precedents.

- Apart from those amended by the legislature, laws previously in force in Hong Kong which are contentious should be submitted to the Court of

Final Appeal of Hong Kong rather than to the Central People's Government for decision.

- This article should be amended to read: "The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law, shall be maintained, except for those that contravene this Law. If, in the laws previously in force in Hong Kong and which are to be maintained, there are provisions which contravene this Law, the provisions in question must be amended by the legislature of the HKSAR."
- This article should be amended to read: "The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances and subordinate legislation, shall be amended by the legislature of the HKSAR, and those which have been amended and maintained shall not contravene this Law."

Reason: - After its establishment, the legislature of the HKSAR shall have the primary task of amending the laws of Hong Kong. This is essential because the colonial laws of Hong Kong are mostly copied from Britain, and the situations of the two places are different.

- This article should be amended to read: "The legislature of the HKSAR shall abolish the practice of keeping criminal records and shall restore the civil rights of ex-convicts from 1 July 1997. Other legislation should also be amended accordingly."
- This article should be amended to read: "The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law, shall be maintained, except for those which have been declared, in accordance with the procedures prescribed in this Law, to be in contravention of this Law, or which have been amended by the legislature of the HKSAR."
- This article should be amended to read: "The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law, shall be maintained, except for those that contravene this Law."

Reason: - Laws amended by the legislature of the HKSAR may not necessarily contravene the Basic Law.

- This article should be amended to read: "The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law, shall be maintained, except for those that contravene this Law, have colonialist undertones, involve

unreasonable privileges for foreign nationals, involve discrimination against Chinese nationals, or have been amended by the legislature of the HKSAR."

Reason: - This will give expression to state sovereignty and the principle that everyone is equal before the law.

- [Translator's note: This amendment applies only to the Chinese wording and has no relevance to the English version.]
- The term "the common law" should read "the written law".

3.2 Additions

- The following sentence should be added at the end of this article: "An environmental law, which is not among the laws previously in force, shall be added."
- The following provision should be added: "and shall be added, deleted or amended by the legislature in accordance with the actual situation".

Reason: - This provision will be necessary to allow the HKSAR to gradually reduce and eliminate illegal activities and phenomena which affect the safety and peace of residents.

- The words "and Hong Kong's international legal obligations" should be added after "this Law".

3.3 Other suggestions

- The fundamental spirit of the provision "[t]he laws previously in force in Hong Kong ... shall be maintained, except for those that contravene this Law" is to maintain the laws currently in force as far as possible. Nonetheless, laws should be reformed with a view to making them more democratic and liberal. Ordinances which have colonialist undertones should therefore be deleted.
- It should be specifically pointed out that "previously in force" means prior to 1 July 1997.
- The Consumer Council was set up under Chapter 216 of the Law of Hong Kong to protect the rights and interests of consumers. After the establishment of the HKSAR in 1997, the objectives and policies of the Consumer Council are unlikely to contravene the Basic Law. Thus the Consumer Council should be able to keep its status after 1997.
- If "customary law" refers to the mainland practice, the term should be amended to read "China's customary law".

4. Issues to be clarified

- The meaning of the Chinese version of "that contravene" is not clear.
- On what basis will a law be judged to be one "that contravenes this Law"?
- The meaning of the word "contravene" should be specified.
- What is the meaning of "customary law"?
- Most people do not understand the meaning of the legal term "rules of equity". A footnote should be added.
- Do "common law" and "rules of equity" refer to the common law and rules of equity of Hong Kong, of the United Kingdom or of all the common law jurisdictions in the world? Clarification is needed.
- Which organ will be responsible for examining whether the laws previously in force in Hong Kong contravene the Basic Law and for promulgating the detailed procedures?
- Do "the laws previously in force in Hong Kong" refer to laws before (1) the initialling of the Joint Declaration in 1984, (2) laws before the adoption of the Basic Law by the NPC in December 1988, or (3) laws before the establishment of the HKSAR in July 1997?
- What is the definition of the phrase "previously in force"?

Article 9

1. Original text

In addition to the Chinese language, the English language may also be used by the executive authorities, legislature and judicial organs of the Hong Kong Special Administrative Region.

2. Views

2.1 Support is expressed for this article.

2.2 Objection is expressed to the use of the English language in addition to the Chinese language by the judicial organs of the HKSAR.

Reasons: - People who cannot read or speak Chinese only make up a very small proportion of the local population.

- Foreign businessmen may hire local lawyers to represent them in legal disputes.

- Although the laws currently in force are in English, there will be six years for translating the ordinances into Chinese after the release of the Basic Law.

- Although judicial officers are accustomed to working with English, after the release of the Basic Law, they will have six years to get used to having Chinese as their working language.

2.3 An official status for the English language

- To maintain the status quo in Hong Kong, it is essential to stipulate in the Basic Law that the English language will continue to be an official language.

Reasons: - It will be impossible to maintain the status quo in Hong Kong if the official status of the English language is renounced or prejudiced.

- It will be unfair to Hong Kong belongers whose first language is not Chinese if the official status of the English language is renounced or prejudiced.

- It would be best if the official status of the English language could be further affirmed, and that the Chinese interpretation would prevail only in the event of disputes over court cases.

- To maintain the status of Hong Kong as an international commercial centre, the English language should be accorded an official status in certain respects (e.g. commercial contracts).

2.4 English and Chinese equally as important

- The Chinese language and the English language shall both be official and shall be equally important.

Reasons: - To maintain the status of Hong Kong as an international city.

- The business language of Hong Kong is English. English is also the language of law.

- For Hong Kong to continue to be a developed economic community, a high standard of English must be maintained not only in the commercial field but also in the judicial and executive fields.

- The common law is written in English. Article 8 also stipulates that the laws previously in force shall be maintained except for those that contravene the Basic Law. To facilitate court procedures, English should be accepted as an official language in court.

2.5 Chinese as the principal language, supplemented by English

- The Chinese language should be the principal language used by the future government, to be supplemented by the English language.

Reasons: - To give expression to sovereignty.

- To reflect Hong Kong's characteristics as an international city.

- To show adherence to the provisions of the Joint Declaration.

2.6 Chinese as the official language

- The official language must be Chinese.

2.7 Other views

- The wording of this article is not clear or specific enough. One is liable to interpret it as meaning that the executive authorities, legislature and judicial organs may use either language, or even just the English language.

- Whether or not it is a rational arrangement that English

alone should be used in the courts of the HKSAR at various levels (the higher courts in particular) depends on the language users in the future courts. It is felt that the majority of language users in the courts of the HKSAR will be Chinese who are not conversant with the English language or at least who are more fluent in the Chinese language.

- Since the common law is written in English, the question of translation will have to be resolved.
- Although judicial officers have English as their working language, the use of the Chinese language may be introduced step by step into the courts. The use of the Chinese language as a language of law is feasible under the common law system.
- This provision will completely reverse the policy of "English reigning supreme" which has been practised in Hong Kong for over a century.
- The fact that Hong Kong people speak a mixture of English and Chinese, the gap between the local vernacular and standard Chinese and the sluggish progress in the Putonghua training programme will make convergence difficult.

3. Suggestions

3.1 Amendments

- This article should be amended to read: "The Chinese language shall be used by the executive authorities, legislature and judicial organs of the HKSAR. In accordance with the characteristics of Hong Kong as an international city, both the Chinese and the English languages may be used."
- This article should be amended to read: "The executive authorities, legislature and judicial organs of the HKSAR may use either the Chinese language or the English language."
- This article should be amended to read: "The HKSAR shall have Chinese and English as official languages."
- This article should be amended to read: "In addition to the Chinese language, the English language shall also be used in the HKSAR."
- This article should be amended to read: "The Chinese language and the English language shall enjoy the same status. The executive authorities, legislature and judicial organs of the HKSAR may use either the Chinese language or the English language."

- This article should be amended to read: "The language(s) used in the HKSAR shall be based on local needs."
- This article should be amended to read: "Hong Kong shall have the language spoken in the capital of the motherland as its first official language and the Cantonese dialect as its second official language, to be used in the legal, political and diplomatic fields, and English shall be a supplementary language for the convenience of foreign governments and businessmen. The full-form characters commonly used in Hong Kong shall be the official written language."
- This article should be amended to read: "The executive authorities, legislature and judicial organs of the HKSAR must use the Chinese language and consider the Chinese language as standard, with the English language as a supplement."
- This article should be amended to read: "Chinese and English shall be the official languages of the HKSAR. The Cantonese dialect shall also be an official language. The executive authorities, legislature and judicial organs shall attach equal importance to the Chinese language and the English language."

Reason: - This will emphasize the importance of the Chinese and English languages and respect the special status of the Cantonese dialect.

- This article should be amended to read: "In addition to the Chinese language, the English and Japanese languages may also be used by the executive authorities, legislature and judicial organs of the HKSAR. However, the Chinese language shall be the principal language, and the English and Japanese languages shall be secondary."

Reasons: - The Japanese language should be used because
o Chinese characters make up half of the Japanese language and because Hong Kong had been occupied by the Japanese for three years and eight months during the war.

- The English language should be used because there has been a British presence here for over a century.

- This article should be amended to read: "The HKSAR shall formulate a clear and definite language policy which shall include a provision that the existing social functions of the Cantonese dialect and the English language shall not be changed for 50 years. The Chinese language shall be the official language, but the English language shall also have an official status in Hong Kong. In addition to the

Chinese language, the English language may also be used by the executive authorities, legislature and judicial organs of the HKSAR."

- This article should be amended to read: "The Chinese language and the English language shall both be official in Hong Kong. All official documents shall be published in both languages and both versions shall be equally authentic."
- This article should be amended to read: "In addition to ... the English language may also be used ... as a second language."
- This article should be amended to read: "The executive authorities, legislature and judicial organs of the HKSAR may use both the Chinese language and the English language, and both shall enjoy the same status."
- This article should be amended to read: "The Chinese language shall be primary and the English language secondary. The mother tongue shall be the principal language of instruction, supplemented by the English language."
- This article should be amended to read: "In addition to the Chinese language, which shall be the official language, the English language may also be used by the executive authorities, legislature and judicial organs of the HKSAR, but the Chinese language shall prevail." (Note 9-1)
- This article should be amended to read: "In future the majority of statutes, contracts and official correspondence shall be written in the Chinese language, but the English language shall be used as a supplement." (In other words, all official correspondence between government departments and the public shall be written in the Chinese language, while correspondence with foreign countries shall be bilingual.)
- This article should be amended to read: "The executive authorities, legislature and judicial organs of the HKSAR shall mainly use the Chinese language--the language of the sovereign state and of the majority of residents, as the principal language, but the English language may be used as a supplement."
- This article should be amended to read: "The Chinese language shall be the language of the HKSAR and its schools, and the English language shall be secondary."

3.3 Additions

- The following provision should be added at the end of this

article: "However, the Chinese language shall be the principal language."

- The following provision should be added at the end of this article: "However, the Chinese language shall be the official language."
- The following provision should be added at the end of this article: "The Chinese version shall prevail in the case of serious discrepancy between the Chinese version and the English version of the Basic Law. However, if the wording of the Chinese version is ambiguous, the English translation shall be valid."
- The following provision should be added at the end of this article: "The Chinese language shall be the first language of the HKSAR while the English language shall be the second language". Alternatively, the following should be added: "The Chinese language shall be the official language of the HKSAR, while the English language shall be a supplementary language."
- The following provision should be added at the end of this article: "The Chinese version shall prevail in the case of disputes."
- The following provision should be added at the end of this article: "In the case of discrepancy between the Chinese and the English versions, the Chinese version shall prevail."

4. Issues to be clarified

- Clarification should be made to indicate whether both English and Chinese shall be official languages, or whether the Chinese language alone shall be the official language.

Reasons: - Hong Kong is an international business and financial centre and its inhabitants are educated in both languages. This fact should be taken into account.

- This would avoid conflicts with the provisions of Article 8.
- Does this imply that the English language may be used "by anyone else who wants to use English"?

Article 10

1. Original text

In accordance with Article 31 of the Constitution of the People's Republic of China, the policies and systems practised in the Hong Kong Special Administrative Region, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents and the executive, legislative and judicial systems, shall be based on the provisions in this Law.

No law enacted by the legislature of the Hong Kong Special Administrative Region shall contravene this Law.

2. Views

2.1 Supporting views

- Support is expressed for this article.
- The interpretation of this provision should be that Article 31 of the Chinese Constitution allows the HKSAR full autonomy.

2.2 Reservations

- The policies and systems laid down in accordance with the provisions of the Basic Law will tie the hands of the HKSAR and prevent the introduction of new policies to meet new circumstances.
- The stipulation that the policies and systems to be practised in the HKSAR "shall be based on the provisions in this Law" suggests that China does not really want to practise "one country two systems".
- To some extent, this article contravenes the promise made in the Joint Declaration that the HKSAR shall be free to decide its own policies.
- In accordance with the Chinese Constitution, the Standing Committee of the NPC shall be able to interpret the Basic Law. It will be very worrying if this committee is also able to interpret the laws currently in force in Hong Kong and decide which are the ones that contravene the Basic Law.

2.3 Other views

- Although this article states that Article 31 of the Chinese Constitution shall be the constitutional basis of the Basic Law, it does not clearly indicate whether the other provisions of the Chinese Constitution shall apply

in Hong Kong or the circumstances under which these other provisions shall apply. This may lead to legal disputes and affect the integrity of the Basic Law.

- At least Articles 24, 25, 36, 49 and 51 of the Chinese Constitution should not be applied in Hong Kong.
- This provision is not sufficiently precise.
- The wording is not clear.
- The meaning of the clause "shall be based on the provisions in this Law" is unclear.

Reasons: - This will create constant problems of interpretation.

- This will lead to differences of opinion between the Central People's Government and the HKSAR government.

- If Hong Kong is to maintain the status quo, no laws will contravene this Law to any serious extent.

3. Suggestions

3.1 Deletions

- Paragraph 2 should be deleted.
- This article should be deleted.

Reason: - The Basic Law and the Chinese Constitution contravene each other.

3.2 Amendments

- Paragraph 1 should be amended to read: "In accordance with Article 31 of the Constitution ... the policies and systems practised in the HKSAR ... shall ultimately be based on the provisions in this Law even if they contravene the other provisions in the Constitution of the People's Republic of China." At the same time, Paragraph 2 should be deleted.
- Based on the above suggestion, the following provision should be added: "Except for those listed in the Annex to this Law (to be drafted), the provisions in the Constitution of the People's Republic of China shall not apply in the HKSAR." At the same time, Paragraph 2 should be deleted. (Note 10-1)

Reason: - The fact that the HKSAR owes its establishment to Article 31 of the Constitution of the People's Republic of China means that the

autonomy of the future HKSAR will be subject to the Chinese Constitution. Have arrangements been made in respect of those provisions of the Chinese Constitution that shall not apply in the HKSAR? This article should therefore state the applicability of the Chinese Constitution in Hong Kong. Alternatively, those articles which apply may be announced in the form of a resolution at the time of the promulgation of the Basic Law.

- As the second suggestion detailed above, but keeping Paragraph 2. (Note 10-2)
- The last clause of Paragraph 1 should read: "... shall ultimately be based on the provisions in this Law."
- The last clause of Paragraph 1 should read: "... shall ultimately be based on the provisions in this Law should they differ from the other provisions of the Constitution of the People's Republic of China."
- This article should be amended to read: "All affairs of the HKSAR shall ultimately be based on the provisions in this Law."

Reason: - In this way the people of Hong Kong will have a better idea of the status of the Basic Law.

- A suggested change in the wording of the phrase "shall contravene this law". [Translator's Note: A change in the wording of the Chinese version which will not affect the translation.]

3.3 Additions

- The following provision should be added: "All policies practised in the HKSAR shall be in conformity with the principles of 'one country two systems', 'a high degree of autonomy' and 'Hong Kong people administering Hong Kong' stipulated in the Sino-British Joint Declaration, and shall not contravene this Law."

Reason: - This will clearly spell out the principles on which the future policies shall be based. (Note 10-3)

3.4 Other suggestions

- The provisions of the Chinese Constitution which shall apply in Hong Kong should be specified, and their legal force should be clearly stated.
- The Committee for the Basic Law must come up with a solution to the question of the applicability of the

Chinese Constitution in Hong Kong. The Standing Committee of the NPC should be asked to clearly indicate which provisions of the Chinese Constitution shall apply in Hong Kong. These provisions should be written into the Basic Law and announced in the form of a resolution at the time of promulgation of the Basic Law.

- At the time of promulgation of the Basic Law, it should be specified that except for those detailed in the Basic Law, the provisions of the Constitution of the People's Republic of China shall not apply in the HKSAR.
- The Basic Law must be drawn up in accordance with the Chinese Constitution and the views of the people of Hong Kong.
- Laws enacted by the HKSAR should not have to conform to the provisions in the Chinese Constitution.
- The HKSAR may adhere to the Chinese Constitution, but the General Principles must be accorded legal force in order to dispel the misgivings of the public as regards the Chinese Constitution.
- The Basic Law should prevail should there be contradictions between the Hong Kong constitution and the Chinese Constitution.
- Policies and systems should be addressed separately. It is suggested that this article only deal with "systems". (Note 10-4)
- Paragraph 2 should stand as a separate article.

Reason: - It declares the primacy and importance of the Basic Law.

- It should be amended and supplemented as suggested in "A Collection of Opinions".

Reason: - The suggested amendment is better considered and more precise in wording.

- "Non-residents" (such as tourists) should also be protected in the same way.

4. Issues to be clarified

- Will the provisions of the Chinese Constitution other than Article 31 also apply in Hong Kong?
- Article 10 only stipulates that the fundamental rights and freedoms of Hong Kong residents shall be protected. Nothing has been said about other persons. This does not tally with the provisions in Articles 5 and 41 and

requires clarification.

- The supremacy clause in Article 10 does not cover national laws which apply to Hong Kong by virtue of Article 17. Will these laws be subject to judicial review by the local courts?

OVERALL COMMENTS ON CHAPTER II

1. Views

1.1 Supporting views

- Support is expressed for all the provisions in this chapter.

1.2 Reservations

- There are the following three drawbacks as regards the provisions on the relationship between the Central Authorities and the HKSAR:

(1) They provide at best for "joint administration", not "a high degree of autonomy".

(2) They will completely break down the authority of the government of the HKSAR.

(3) They are against the stipulations of the Joint Declaration.

These three drawbacks will render it impossible to achieve "a high degree of autonomy". The concept of "one country two systems", too, will become a fantasy.

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1.3 On a high degree of autonomy

It is possible that many of the provisions may contravene the principle of a high degree of autonomy. Too much stress on sovereignty will only frighten away the people of Hong Kong.

The provisions in Articles 16, 17, 18, 22, 158, 169 and 170 show that the Central People's Government is preoccupied with efforts to give expression to sovereignty, and is trying to gain means by which to influence the administration of the HKSAR outside of defence and foreign affairs. Such intervention in the legal and political affairs of the HKSAR will mean that "a high degree of autonomy" will be sacrificed.

- The division of power between the Central Authorities and the HKSAR must be in accordance with the goal of "one country two systems". While ensuring that the Central Authorities will be able to exercise China's sovereign rights, it is necessary to ensure that the HKSAR will be able to fully enjoy a high degree of autonomy.

- On no account must a high degree of autonomy be sacrificed in order to give expression to sovereignty.

1.4

Conclusion

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- No definition or explanation whatsoever has been given to the scope of "a high degree of autonomy". Articles 12 and 13 both stipulate that the Central People's Government shall be responsible for the defence and foreign affairs of the HKSAR. Article 15 outlines the limits of the executive power to be exercised by the HKSAR and gives a list of the affairs which the government of the HKSAR shall be allowed to manage on its own. It would thus appear that matters not listed will not be managed by the government of the HKSAR. Thus, "residual power" will be in the hands of the Central Authorities.

However, there is apparently no restriction on the legislative power under the provisions of Article 16. Therefore it can be assumed that the legislature is vested with the "residual power" outside of defence and foreign affairs. If this is so, it will not only result in the legislature having more power than the executive authorities, but will be in conflict with the principle that the HKSAR should not enjoy "residual power". Article 18 confers on the judicial organs of the HKSAR independent judicial power and the power of final adjudication. The judicial organs shall have jurisdiction over all cases, except cases relating to defence and foreign affairs and cases relating to the executive acts of the Central People's Government. Thus their authorization also comes in the form of "residual power". Based on the above analysis, the jurisdiction of the executive authorities, legislature and judicial organs will vary. This will pose serious problems in the workings of the government. For instance, will it not be absurd for the legislature to have the power to enact certain laws which the executive authorities will not have the power to enforce? The fact that the jurisdiction of the three branches will not be the same shows that the Central Authorities do not have a clearcut and unified standard for authorizing the use of power.

1.4 Other views

inclusion

- The future success of Hong Kong depends to a great extent on whether or not there are unnecessary restraints on the power of the HKSAR and whether or not the power of the Central Authorities is so great as to jeopardize the exercise of a high degree of autonomy by the HKSAR. Further, the delineation of power between the Central Authorities and the HKSAR must be clearcut.
- Hong Kong is a democratic society while China is a communist society. The legal system and legislative structure of the two places are not only different but are diametrically opposed to each other.
- The Basic Law must be based on the mutual trust of the Central People's Government and the HKSAR and must serve

the dual purpose of promoting the modernization of the motherland as well as the stability and prosperity of Hong Kong.

- It is hoped that Beijing will show great foresight, open-mindedness and reason in the handling of the relationship between the Central Authorities and the HKSAR and reduce, wherever possible, unnecessary controls and restraints based on suspicion.
- While sovereignty must be kept intact, the Central Authorities must develop a democratic political structure in order to exercise equitable sovereignty. Otherwise it will be very difficult to bring about harmony in the relationship between the Central Authorities and the HKSAR.
- The Basic Law only needs to be very simple. All that is required is a stipulation that except for defence and foreign affairs and the political structure, everything shall remain unchanged.

2. Suggestions

2.1 Deletions

- Articles 17 and 18 should be deleted and the following provision should be added under Article 1 in the chapter on General Principles: "The government of the HKSAR is a local government which comes directly under the authority of the People's Republic of China."

Reasons: - The contents have already been covered by Articles 12 and 13.

- The two systems naturally have different administrative structures. There is no need to make special reference to "defence and foreign affairs" and the "executive affairs of the Central People's Government".

2.2 Amendments

- The heading of this chapter should read: "Relationship between the Central People's Government and the HKSAR".
- Articles 11, 12 and 15 should be simplified and merged into one article as follows: "Except in defence and foreign affairs, Hong Kong shall have independent executive, legislative and judicial power. The Central People's Government authorizes the Hong Kong Government to deal with relevant external affairs on its own in accordance with this Law."

Reason: - The repetition of the provision in Article 1

under Chapter I can thus be avoided.

- Terms and expressions which are unclear in meaning or concept should not be used. For example, the term "other administrative affairs" in Article 15, and expressions like "other" and "a high degree of autonomy" in Paragraph 3 of Article 17 should be amended.

2.3 Other suggestions

- Details should be given on the procedures for the selection of members of the National Committee of the Chinese People's Political Consultative Conference, their duties and powers and how they will stand in relation to the government of the HKSAR.
- After 1997 the government of the HKSAR should set up a "legal-aid department or ombudsman". Composed of persons appointed by the Central Authorities and representatives from the legal profession and police force in Hong Kong, this body would come directly under the jurisdiction of the Central Authorities. Its functions and powers would include: (1) Investigation of suspicious cases; (2) Monitoring the work of the judiciary; (3) Lodging appeals. Revenue would come from the defeated parties and from fines paid for obstruction of justice.

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✓ - All powers not explicitly assigned to the Central People's Government by the Joint Declaration should be vested in the HKSAR.

- Except for the military forces and offices entitled to diplomatic immunities, no representative office or establishment set up in the HKSAR, districts or neighbourhoods should be allowed to set up party organizations.

- Mainland cadres who commit crimes in Hong Kong should be subject to the laws of Hong Kong.

✓ - The relationship between the Central People's Government and the government of the HKSAR must be clearly defined in order to avoid conflict or infringement of power.

✓ - Intervention by the Central People's Government should be reduced to the minimum. The Central People's Government should only be allowed to intervene in the affairs of Hong Kong under given circumstances and in accordance with given procedures.

- Except for the following, the HKSAR should be vested with all powers:

- (1) Power over affairs concerning defence;

- (2) Power over affairs concerning foreign affairs;
- (3) Supreme power of interpretation of the provisions of the Basic Law concerning the relationship between the Central Authorities and Hong Kong; and
- (4) The final power of amendment of the provisions of the Basic Law concerning the relationship between the Central Authorities and Hong Kong.

In order to implement this principle, Articles 15 to 18 should be rewritten. An article should be devoted to defining the scope of "a high degree of autonomy". In another article, it should be stipulated that the government of the HKSAR shall be vested with full executive, legislative and judicial power, with a specific clause stating that the Central Authorities and departments and local governments under the Central Authorities may not interfere in the exercise of these powers. The specific provisions should be as follows:

- (1) Except for defence and foreign affairs and powers which, in accordance with the provisions of this Law, shall be dealt with or exercised by the Central People's Government, the HKSAR shall have full powers to deal with, on its own, affairs which come within the scope of a high degree of autonomy, as well as all internal affairs relating to the HKSAR, including public finance, monetary matters, the economy, industry and commerce, trade, taxation, the postal service, civil aviation, maritime matters, traffic and transport, fisheries, agriculture, personnel administration, civil affairs, labour, education, medical and health services, social welfare, culture and recreation, municipal facilities, urban planning, housing, real estate, public order, entry and exit controls, meteorology, communications, science and technology, sports and other internal affairs.
 - (2) The HKSAR shall enjoy full executive, legislative and independent judicial powers, including that of final adjudication, within the scope of a high degree of autonomy.
 - (3) The Standing Committee of the NPC and the Central People's Government, and departments under them, as well as provinces, autonomous regions and municipalities directly under the Central People's Government, shall not interfere in affairs which come within the scope of a high degree of autonomy and which the HKSAR administers on its own.
- The Chinese Constitution stipulates that the NPC is the country's supreme organ of power, but the Draft Basic Law has failed to fully take into account that the Standing

Committee of the NPC is but a subordinate organ of the NPC. Most provisions have conferred on the Standing Committee of the NPC full powers of execution. It should be stated that the HKSAR may exercise its power to reverse decisions made by the Standing Committee of the NPC.

- The Basic Law should not go overboard about the expression to state sovereignty while neglecting the need to give expression to the "two systems".
- The Basic Law should state, in the form of law, that the HKSAR shall enjoy a high degree of autonomy, maintain the capitalist system and not practise China's socialist system.
- It should be stipulated that the HKSAR shall be free from, or shall be allowed to resist, the influence of political or economic "movements" or "slogans" initiated by the Central People's Government. At least it should be stipulated that such movements shall only be carried out under the laws of the HKSAR.

3. Issues to be clarified

- After 1997, will the people of Hong Kong be subject to extradition to China and trial under mainland legal procedures for violation of mainland law? If so, how can they be sure that they will get the assistance and protection they need in the course of the trial?
- Will Chinese laws which have a political tint and which are aimed at promoting socialism be applied in Hong Kong?
- China and Hong Kong have different standards as to what constitutes a crime. For example, information which is regarded on the mainland as "state secrets" might be considered as quite ordinary in Hong Kong. On what standards will decisions be based in future?
- Will the Chinese government have the power to take away the freedom or property of any Hong Kong person in the name of the government or for a political purpose?
- After 1997, under which department of the Central Authorities will Hong Kong come? This must be clarified, otherwise every department will claim that they represent the Central Authorities.
- Will Chinese cadres who came to Hong Kong on business or for pleasure after 1997 be tried in accordance with local legal procedures if they violate the laws of Hong Kong? Will the Hong Kong police have the power to charge them?

1. Original text

The Hong Kongs Special Administrative Region is a local administrative region of the People's Republic of China, enjoying a high degree of autonomy, and comes directly under the Central People's Government.

2. Views

2.1 Supporting view

- Support is expressed for this article which points out that the HKSAR shall be a local administrative region enjoying a high degree of autonomy.

2.2 Reservation

- While it is noted that the HKSAR is to enjoy a high degree of autonomy, the HKSAR will come directly under the Central People's Government. This is extremely contradictory and confusing.

2.3 On the expression "comes directly under"

- Since the HKSAR shall come directly under the Central Authorities, it should accept the leadership of the Central People's Government.
- The fact that the article says that the HKSAR "comes directly under the Central People's Government" shows that the position of the HKSAR will at least be equal to that of a province or a municipality directly under the Central Authorities. Further, the use of the modifier "special" suggests that it will be accorded special treatment.
- The expression suggests that the HKSAR shall be directly responsible to the Central People's Government. This will mean greater freedom than coming directly under the Guangdong Provincial Government.
- Objection is raised to this expression.

Reason: - It suggests that the HKSAR shall be at the beck and call of the Central People's Government.

- Doubt is expressed as to whether, given the provisions of the other articles, a situation where the HKSAR "comes directly under the Central People's Government" can be achieved.
- The high degree of autonomy should come from Article 31 of the Chinese Constitution and the NPC, not the State

Council.

Reason: - China's supreme organ of power is the NPC. Since the HKSAR shall be established by the NPC, it shall be accountable to the NPC. The State Council is the executive authority on the mainland, but Hong Kong will have its own executive authority. The Basic Law may stipulate that the State Council shall have the power to deal with certain affairs concerning Hong Kong, but this power should come from the NPC and should only be within the limits stipulated by the NPC. One cannot say that there are "two systems" if Hong Kong "comes directly under" the State Council.

3. Suggestions

3.1 Deletions

- The expression "comes directly under the Central People's Government" should be deleted.

Reasons: - "Comes directly under" and "a high degree of autonomy" are conflicting ideas. The use of this expression will result in the HKSAR becoming something no different from any other autonomous regions in China.

- Since Hong Kong will be a "special administrative region" it should not come directly under the Central People's Government. Its authority should come from the NPC.

3.2 Amendments

- The term "Central People's Government" should be replaced by "State Council".
- This article should be amended to read: "The HKSAR is a local special administrative region of the People's Republic of China which enjoys a high degree of autonomy. It comes directly under and consults with the Standing Committee of the NPC."

Reason: - Expressions like "the Central People's Government" are too general. If the HKSAR is to come under many organs of power (such as the Standing Committee of the NPC, the State Council, and the Chairman of the Central Advisory Commission), then the HKSAR will not know whose orders to take.

- The word "enjoying" should read "shall enjoy" as in the Joint Declaration. Otherwise the article will not have the necessary legal force.

- This article should be amended to read: "The HKSAR is a local administrative region of the People's Republic of China, enjoying a high degree of autonomy, and comes directly under the Central People's Government. The scope of direct jurisdiction [of the Central People's Government] shall include:

- (1) Defence and foreign affairs;
- (2) The power to appoint the Chief Executive;
- (3) The power to confer nationality on qualified persons;
- (4) The power to amend laws regarding the relationship between the Central Authorities and the HKSAR; and
- (5) The power to try cases relating to the Central Authorities and the HKSAR."

- This article should be amended to read: "The HKSAR enjoys a high degree of autonomy in accordance with the Basic Law and comes directly under the Central People's Government."

Reasons: - A "local administrative region" is not the same as a "special administrative region". This would give rise to problems of interpretation.

- The meaning of the term "local administrative region" is imprecise and the Chinese wording of this term may easily be confused with another term which means "Hong Kong local administration".

- This will show that Hong Kong shall come directly under the NPC.

3.3 Additions

- The following provision should be added at the end of this article: "Except in defence and foreign affairs, the HKSAR shall not be administered by relevant departments of the Central People's Government."

Reason: - Usually the expression "comes directly under" suggests that the unit in question is administered by the relevant departments of the Central Authorities. Since Hong Kong shall not be administered by these departments, this fact should be specified.

3.4 Rearrangement

- The provision that "the HKSAR shall enjoy a high degree of autonomy" should be moved to the very beginning of Chapter

II to serve as a provision laying down the guideline or guiding principle.

3.5 Other suggestions

- The HKSAR shall be established in accordance with Articles 31 and 62 of the Chinese Constitution under the "one country two systems" concept. The autonomy of the HKSAR will be affected if the Central People's Government directly issues administrative orders to the government of the HKSAR. Thus a "Committee for the Basic Law" should be set up by the NPC to handle and serve as a mediator between the two administrations and should draw up a set of administrative laws so that the Central People's Government will have guidelines to go by.
- Except for the Standing Committee of the NPC and designated organs, organs of the Central Authorities shall not have the right to concern themselves with the affairs of the government of the HKSAR.

4. Issues to be clarified

- Since the HKSAR shall enjoy a high degree of autonomy, why is it necessary to state that it shall come directly under the Central People's Government? It should be noted that the use of the term is associated with certain responsibilities and jurisdiction which go beyond the provisions prescribed (in Article 12). How should this contradiction be resolved?
- Does the term "Central People's Government" refer to the State Council or the Standing Committee of the NPC, or both?
- What is meant by "a high degree of autonomy"?
- Terms and expressions like "comes directly under" and "Central People's Government" used in this article ought to be defined.
- To avoid problems in the relationship between the Central Authorities and the HKSAR, clarification should be made as to whether a high degree of autonomy or sovereignty is of primary importance.
- What is meant by "local administrative region"?

Article 12

1. Original text

The Central People's Government is responsible for the foreign affairs relating to the Hong Kong Special Administrative Region.

The Central People's Government authorizes the Hong Kong Special Administrative Region to deal with relevant external affairs on its own in accordance with this Law.

The Ministry of Foreign Affairs of the People's Republic of China will establish an office in Hong Kong to deal with foreign affairs.

2. Views

- The rights of residents might be infringed upon and residents might suffer if the Central Authorities are able to control the defence and foreign affairs of Hong Kong.

3. Suggestions

3.1 Amendments

- This article should be amended to read: "The HKSAR shall deal with relevant external affairs on its own in accordance with this Law."
- This article should be amended to read: "Besides dealing with relevant external affairs on its own in accordance with this Law, the HKSAR may also engage in and deal with external affairs approved by the Central People's Government."

Reason: - This will provide flexibility in the handling of external affairs in future.

- This article should be amended to read: "The Central People's Government shall set up an office in Hong Kong to assist the HKSAR in handling diplomatic affairs relating to the Region."

3.2 Addition

- The following provision should be added: "The above-mentioned policies shall be implemented in the HKSAR and shall not be changed for 50 years. No law enacted by the legislature of the HKSAR shall contravene this Law."

3.3 Rearrangement

- The last paragraph should be moved forward to become Paragraph 2.

香港
基本法
附件
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3.4 Other suggestions

- The Central People's Government should be responsible for negotiations between the government of the HKSAR and foreign governments.
- Hong Kong should have a say in foreign affairs decisions relating to the HKSAR.

Reason: - A trading port like Hong Kong will certainly be involved in foreign affairs of one sort or another.

- The Ministry of Foreign Affairs of the People's Republic of China should establish an office in Hong Kong to deal with foreign affairs. However, the duties of this office should be clearly defined and it should be stipulated that the office will not have anything to do with the internal or external affairs of the HKSAR.

4. Issues to be clarified

- Why does the Ministry of Foreign Affairs need to establish an office in Hong Kong? Surely all foreign affairs of the HKSAR will be referred to Beijing by the Chief Executive.
- What will the relationship between the Ministry of Foreign Affairs and the Chief Executive be? Will the Chief Executive be accountable to the Ministry of Foreign Affairs?
- Through what channel will the Central People's Government authorize the HKSAR to deal with relevant external affairs?
- What is the meaning of the word "relevant" in Paragraph 2?
- What is the difference between "foreign affairs" and "external affairs"?
- It is stipulated that China shall be responsible for Hong Kong's foreign affairs. If, in its foreign policies there is a clash of interests between China and Hong Kong, will China sacrifice the interests of Hong Kong?
- What do "foreign affairs" and "external affairs" refer to? Do they refer to cultural, political, economic and all other exchanges with foreign countries? Which matters will the government of the HKSAR be able to deal with on its own?
- How will the Central People's Government and the Chief Executive of the HKSAR cooperate in the handling of foreign affairs?

Article 13

香港基本法
第13條

1. Original text

The Central People's Government is responsible for the defence of the Hong Kong Special Administrative Region.

Military forces sent by the Central People's Government to be stationed in the Hong Kong Special Administrative Region for defence shall not interfere in the local affairs of the Region. The government of the Hong Kong Special Administrative Region may, in times of need, request the Central People's Government for assistance from the garrison in the maintenance of public order and disaster relief.

Apart from abiding by nation-wide laws, members of the garrison shall also abide by the laws of the Hong Kong Special Administrative Region.

All expenses for the garrison shall be borne by the Central People's Government.

2. Views

2.1 Supporting views

- Support is expressed for this article

Reasons: - Hong Kong will not have to bear any military expenses.

- The military forces shall not interfere in local affairs of the Region.

- This will set people's mind at rest, for with the forces present, no one will be so reckless as to attempt to destroy Hong Kong's peaceful environment.

2.2 Other views

- On the question of whether members of the garrison should abide by nation-wide laws or the laws of the HKSAR, the provision in this article fails to take into account the fact that there might be conflicts between the nation-wide laws and local laws.

- This article is incomplete as it has not incorporated the principle mentioned twice in the Joint Declaration that the government of the HKSAR shall be responsible for the maintenance of public order. (Note 13-1)

- The stationing of PLA troops to guard the borders will

result in inconvenience in many respects.

- The stationing of military forces symbolizes the concept of "one country" while the fact that the HKSAR shall not be obliged to bear any military expenses is an expression of "two systems".

3. Suggestions

- This article should be kept intact.

3.1 Deletions

- The clause "apart from abiding by nation-wide laws" should be deleted.

Reasons: - Article 42 stipulates that "Hong Kong residents and other persons in Hong Kong shall have the obligation to abide by the laws of the HKSAR". Since every one shall be equal before the law, there is no need to include such a clause here.

- This will avoid possible conflicts between Chinese and Hong Kong laws.

- Suggested deletion of a phrase in the Chinese version which means "the management of". [Translator's Note: A suggested change in the wording of the Chinese version which will not affect the English translation.]

3.2 Amendments

- The term "members of the garrison" should read "military personnel stationed in Hong Kong" or "servicemen stationed in Hong Kong".

- The term "local affairs" in Paragraph 2 should read "internal affairs". (Note 13-2)

Reason: - The term "local affairs" includes both internal and external affairs. Further, it is necessary to clearly define the scope of affairs in which military forces sent by the Central Authorities to be stationed in Hong Kong shall not be allowed to interfere.

- The first sentence of Paragraph 2 should be amended to read: "Hong Kong shall establish its own army of volunteers for defence, maintenance of public order and disaster relief. Expenses shall be borne by the government of the HKSAR."

Reasons: - Under "one country two systems", there should be both communist and capitalist military forces.

- An army of volunteers formed by ethnic Chinese in Hong Kong is also a way of expressing the unity of the Chinese national army and territorial integrity.
- This will help avoid an economic disaster in Hong Kong and the emigration of capitalists, scientists, technologists and professionals.
- This will reduce the military expenses to be borne by the Central People's Government.
- This will increase Hong Kong's defence capability.
- This will facilitate the import of advanced military and technological products.
- Should the mainland be invaded, Hong Kong will be able to serve as a military supplies centre.
- This will set the minds of Hong Kong people at rest.

The second sentence of Paragraph 2 should be amended to read: "The government of the HKSAR shall, on its own, be responsible for public order in Hong Kong.... In times of need, however, the HKSAR may"

- Paragraph 3 should be amended to read: "Members of the garrison shall abide by the laws of the HKSAR."
- [Translator's note: The suggested amendment to the Chinese word for "shall" in Paragraph 3 has no relevance to the English version.]
- The word "shall" should read "must".
- The word "shall" should read "must". [Translator's note: A suggested change in the Chinese wording which differs from the preceding suggestion but which, when rendered into English, also reads "must".]
- Paragraph 3 should be amended to read: "Members of the garrison must abide by nation-wide laws and the laws of the HKSAR."

Reason: - This will show that the two sets of laws are equally important.

- Paragraph 2 should be amended to read: "In times of need, the government of the HKSAR may command the military forces (garrison) or request the Central People's Government"

- The last paragraph should be amended to read: "In order to show the administrative relationship between the Central People's Government and the government of the HKSAR and to give expression to the concept of 'one country two systems', a method which is different from the mainland practice and which does not involve the direct sharing of military expenses shall be adopted, whereby the government of the HKSAR shall hand over 3% of its total revenue to the Central People's Government. When the government of the HKSAR runs into financial difficulties, the amount to be handed over may be reduced by mutual agreement."

Reason: - Hong Kong is not a poor region and this is a fair practice in the long run.

- Paragraph 3 should be amended to read: "Apart from abiding by army discipline, members of the garrison shall also abide by the laws of the HKSAR."

Reason: - This will avoid possible conflicts between nation-wide laws and the laws of the HKSAR.

- Paragraph 3 should be amended to read: "While in the HKSAR, members of the garrison shall fully abide by the laws of the HKSAR."

- Paragraph 3 should be amended to read: "Members of the garrison shall abide by the laws of the HKSAR."

- Paragraph 3 should be amended to read: "Members of the garrison shall abide by nation-wide laws and the laws of the HKSAR."

- Paragraph 3 should be amended to read: "Provisions regarding the handling of offences committed by members of the garrison shall be laid down in a separate law."

- Paragraph 2 should be amended to read: "Military forces ... shall not interfere in the legislation and executive affairs of the Region...."

Reason: - The provision that the military forces "shall not interfere in the local affairs of the Region" but shall assist "in the maintenance of public order and disaster relief" sounds contradictory.

- This article should be amended to read: "Military forces sent by the Central People's Government to be stationed in the HKSAR for defence shall not interfere in the local affairs and administration of Hong Kong. Violations of the laws of Hong Kong by heads of garrison units and individual soldiers shall be tried and sentenced by the

courts of Hong Kong. However, such cases shall be reported to the Standing Committee of the NPC for the record. In times of need, the government of the HKSAR may request the garrison to provide assistance in the maintenance of public order or disaster relief. The government of the HKSAR shall report to the Standing Committee of the NPC when the garrison accepts the advice of the government of the HKSAR in the discharge of duties or in negotiations on coordination or job assignments. All expenses for the garrison shall be borne by the Central People's Government. Apart from abiding by nation-wide laws, members of the garrison shall also abide by the laws of Hong Kong."

- This article should be amended to read: "The Central People's Government is responsible for the defence of the HKSAR.

"The maintenance of public order in the HKSAR shall be the responsibility of the government of the HKSAR. Military forces sent by the Central People's Government to be stationed in the HKSAR may not interfere in the internal affairs of the Region. In times of need, the government of the HKSAR may request that the Central People's Government provide assistance from the garrison for the maintenance of public order or disaster relief." (Note 13-3)

- This article should be amended to read: "The Central People's Government is responsible for the defence of the HKSAR.

"The maintenance of public order in the HKSAR shall be the responsibility of the government of the HKSAR. Military forces sent by the Central People's Government to be stationed in the HKSAR for defence shall not interfere in the internal affairs of the Region. In times of need, the government of the HKSAR may request that the Central People's Government provide assistance from the garrison for the maintenance of public order or disaster relief.

"Apart from abiding by the laws of the HKSAR, members of the garrison shall also abide by nation-wide laws.

"All expenses for the garrison shall be borne by the Central People's Government." (Note 13-4)

- This article should be amended as suggested above, with the following additional provision: "Members of the garrison who have committed crimes shall be tried and sentenced in accordance with the laws of the HKSAR."
- This article should be amended to read: "The government of the HKSAR shall be responsible for the maintenance of public order in the HKSAR. Military forces sent by the

Central People's Government to be stationed in the HKSAR shall not interfere in the internal affairs of the Region. In times of need, the government of the HKSAR may request that the Central People's Government provide support from the garrison to assist the supreme commander of the public security forces of the HKSAR in the maintenance of public order or disaster relief. Apart from abiding by the laws of the HKSAR, members of the garrison shall also abide by nation-wide laws. All expenses for the garrison shall be borne by the Central People's Government."

3.3 Additions

- The following provision should be added: "The scope of defence and the functions and powers of the garrison shall be the same as that of the British garrison before 1997."
- The following provision should be added: "If the People's Republic of China is invaded, the HKSAR shall have the obligation to support the motherland."
- The following provision should be added: "The government of the HKSAR is responsible for public order. Members of the garrison shall abide by the laws of the HKSAR."
- The following provision should be added at the end of Paragraph 1: "Residents of Hong Kong shall not be required to perform military service."
- The following provision should be added: "Officers and soldiers of the garrison who have violated the law shall be tried and sentenced by the judicial organs of Hong Kong."

Reason: - This will preclude a situation where, on the excuse that the garrison is not under the jurisdiction of the HKSAR, law-breakers among members of the garrison are transferred back to China, thus avoiding trial in accordance with the laws of Hong Kong.

- The following provision should be added: "Violations of the laws of the HKSAR should be tried by the courts of the HKSAR."
- The following provision should be added: "Public order in the HKSAR shall be maintained by the government of the HKSAR."

Reason: - "Public order" is different from "defence". Under the Joint Declaration, the government of the HKSAR shall be responsible for the maintenance of public order. The Central People's Government, on the other hand, shall be responsible for defence and shall not interfere

in the internal affairs of the HKSAR.

- The following provision should be added: "Citizens and officials of the People's Republic of China resident in the HKSAR or members of the garrison who violate the laws of the HKSAR shall be subject to detention by the police force of the Region and be prohibited from leaving the territory. They shall be required to stand trial in the courts of the HKSAR and, if found guilty, shall be sentenced and punished." (Note 13-5)
- The provision: "The HKSAR shall have the right to take action against those who violate the laws." should be added after "abide by the laws of the HKSAR".
- The following provision should be added to Paragraph 3: "Members of the garrison who violate the laws of the HKSAR will be subject to court proceedings in the HKSAR."

3.4 Other suggestions

3.4.1 On the duties of the garrison

- Military forces sent by the Central People's Government should be responsible for defence, while the police force of the HKSAR shall be responsible for the maintenance of public order.

Reasons: - This will prevent the garrison from interfering in the workings of the government.

- This will enhance the spirit of a high degree of autonomy.

- Unless special duties require their presence, Chinese military forces should not appear in the urban areas.
- The People's Republic of China should station troops in Hong Kong to protect the Hong Kong people. And no unwarranted arrest by the military forces of members of the public should be permitted. In the event of people organizing armed forces in an insurrection, the military should inform the government of the HKSAR and action should be taken jointly.

3.4.2 On laws which members of the garrison should abide by

- Servicemen and personnel stationed in Hong Kong must abide by the laws of the HKSAR as well as the nation-wide laws.
- When Hong Kong laws are inconsistent with the laws of the Central Authorities, members of the garrison should abide by the laws of Hong Kong.
- Members of the garrison who violate the laws of Hong Kong

should be subject to the law in the same way as ordinary residents.

Reason: - If this is not the case, army-civilian relationship will be adversely affected.

- Violations of the laws by members of the garrison (excluding cases involving defence, foreign affairs or sovereignty) should be handled in accordance with local laws.

Reason: - If this is not the case, it will be impossible to demonstrate that everyone is equal before the law, and such a situation will also lead to a breakdown of social harmony.

- Law-enforcement organs of the HKSAR should have the power to arrest, try and punish members of the garrison or personnel of mainland organs based in the HKSAR who break the laws in the HKSAR.

3.4.3 On "military expenses"

- Military expenses should be borne by the Central Authorities.

Reason: - Having the Central Authorities bear responsibility for the defence of the HKSAR will affirm China's sovereignty over Hong Kong.

- It should be stipulated that Hong Kong will share the burden of military expenses with China in accordance with its financial situation.

Reasons: - There is no conflict between contributing towards the upkeep of the military forces and the implementation of the policies of "a high degree of autonomy" and "one country two systems" in Hong Kong.

- The People's Liberation Army will be stationed in Hong Kong for the protection of the local population.
- Even by the year 1997 the living standards for most people on the mainland will still be below those in Hong Kong. It will be unfair to ask them to bear our military expenses.
- This will give the legislature of the HKSAR a say in the general activities of the garrison.
- The Hong Kong Government should be responsible for the well-being of the garrison and the upkeep of the barracks, while the Central Authorities should be responsible for

military installations, equipment and new military supplies.

- From 1997 onwards, Hong Kong people should pay tax to the Central People's Government. The tax revenue should be used to cover the costs of stationing People's Liberation Army troops in Hong Kong.

3.4.4 On how the HKSAR is to request assistance from the garrison

- When the stability and prosperity of Hong Kong are jeopardized and the Chief Executive requests assistance, the head of the garrison should give assistance promptly in accordance with the principles laid down. If in doubt, he should seek instructions from the Central People's Government.
- There should be representatives of the Central People's Government in the garrison. Thus, in times of emergency, it will be possible to contact them quickly and assistance will not be delayed. There is no need to include this arrangement in the Basic Law. This should be a matter to be negotiated between the government of the HKSAR and the Central People's Government.
- Requests for assistance should be made in accordance with given procedures, for example, through endorsement by the executive authorities and legislature of the HKSAR and approval by the Chief Executive.
- Before requesting assistance, the executive authorities should analyze and consider the matter carefully. The request should be made by the Chief Executive in writing. All members of the garrison sent by the Central Authorities should be subject to the jurisdiction of the Chief Executive of Hong Kong.
- If a request has to be made to the Central People's Government each time assistance is needed for disaster relief or other purposes, situations may deteriorate before a response is received. It is thus suggested that the HKSAR be allowed to directly contact the responsible person of the military forces or the Hong Kong and Macau Affairs Office of the State Council in such eventualities.

3.4.5 On other issues

- The Central People's Government should not station troops in the HKSAR. In times of need, the HKSAR should make a request to the Central People's Government that it send troops to assist in the maintenance of public order or disaster relief.
- The police force should be expanded so as to take over the

functions of the British forces in the maintenance of public order when the latter pull out in 1997.

- Military forces for the defence of the HKSAR should only be sent by the Central People's Government. Troops from other localities should not be allowed to enter the HKSAR for whatever reason.
- The following restrictions on the military forces should be written into the Basic Law:
 - (1) The size of the garrison;
 - (2) That members of the garrison shall not be eligible for permanent residence in the HKSAR;
 - (3) That members of the garrison shall only be posted in Hong Kong for a maximum period of five years and shall be replaced at the end of that period;
 - (4) That special identification papers shall be issued to members of the garrison;
 - (5) Limitations on the scope of activities of members of the garrison; and
 - (6) Details of the functions and powers of members of the garrison.
- The number of military personnel stationed in Hong Kong by the Central People's Government should be controlled. It should be no more than the number of British military personnel currently stationed in Hong Kong.

Reasons: - Considering the deployment of British forces during the past years, the current number seems to be adequate.

- The stationing of military forces in an unrestricted manner would pose a threat to the image of Hong Kong as a financial centre.
- Military forces stationed in Hong Kong by the Central People's Government should be subordinate to the Chief Executive of the HKSAR.
- Chinese military forces stationed in the HKSAR should have the right to live with the people of Hong Kong as equals. Their clothing, food and housing should be taken care of by the HKSAR.
- The functions, powers and legal responsibility of members of the garrison, the power of commanding members of the garrison, as well as the coordination between the garrison and the public security forces of the HKSAR

should be specified.

- Regulations on matters such as the extradition of criminals should be incorporated into the Basic Law.

4. Issues to be clarified

4.1 On laws which members of the garrison must abide by

- Under what circumstances must members of the garrison abide by nation-wide laws and under what circumstances must they abide by the laws of Hong Kong?
- Should there be a conflict between "nation-wide laws" and "the laws of the HKSAR", which set of laws should the garrison troops abide by? A case in point is that under Article 28 of the Chinese Constitution, members of the garrison must "penalize" actions that disrupt the socialist economy.
- If the courts of the HKSAR have jurisdiction over members of the garrison stationed in Hong Kong by the Central Authorities, what laws should the courts apply?
- If members of the garrison have violated the laws of Hong Kong, will they stand trial in local courts or military tribunals?
- How will criminal offences committed by members of the garrison be handled?

4.2 On "military expenses"

- Do the "expenses" referred to in Paragraph 4 include expenses incurred by the HKSAR when it requests the Central People's Government to provide "assistance from the garrison in the maintenance of public order and disaster relief"?
- Will the government of the HKSAR charge the garrison for land taken over and supplies needed by the garrison?
- Will the land for the barracks be supplied by the Hong Kong Government?

4.3 On "military service"

- If residents of the HKSAR wish to join in the defence of the HKSAR, will the Central Authorities allow them?
- Will Hong Kong people be required to perform military service?
- Article 55 of the Chinese Constitution states that "[i]t is the honourable duty of citizens of the People's

Republic of China to perform military service and join the militia in accordance with the law". However, nothing has been said about military service in this article. Does this mean that Article 55 of the Chinese Constitution shall not apply in Hong Kong?

- Military service is required in many countries of the world. It is by no means only characteristic of China's socialist system. Why should citizens of the People's Republic of China in Hong Kong be exempt from military service?

4.4 On other issues

- What is the defence against?
- To what degree will the garrison be required not to "interfere"? For instance, to what degree may it "interfere" if there is a demonstration outside the garrison gates?
- The expression "in times of need" is not clearly defined. Under what circumstances may requests be made? What will be the procedures?

Article 14

1. Original text

The Central People's Government appoints the Chief Executive and principal executive officials of the Hong Kong Special Administrative Region in accordance with the provisions of Chapter IV of this Law.

2. Views

- It is hoped that the Central People's Government will appoint a Chief Executive chosen by the people of Hong Kong. Otherwise it will be impossible to achieve a high degree of autonomy.
- According to this article, the power to appoint the Chief Executive and all other powers are vested in the NPC. In other words, everything will be controlled by the Chinese Communist Party. This will make it pointless to talk about the administration of Hong Kong by Hong Kong people, for most probably Hong Kong will be administered by Communist Party officials.

3. Suggestions

3.1 Amendments

- This article should be amended to read: "In accordance with the provisions of Chapter IV of this Law, the Standing Committee of the NPC will unconditionally appoint the Chief Executive of the HKSAR selected by the permanent residents of Hong Kong through election or consultations and the principal executive officials appointed by the Chief Executive."

Reasons: - The Hong Kong Government should only be accountable to the Standing Committee of the NPC.

- The Central People's Government should not be allowed to attach conditions to, delay or overrule the appointment of a candidate for the post of Chief Executive chosen by the people of Hong Kong, as this will reduce Hong Kong to a state of anarchy.

3.2 Other suggestions

- The Chief Executive and principal executive officials of the HKSAR should be chosen by the government of the HKSAR and appointed by the Central People's Government.
- The appointment of the Chief Executive and principal

executive officials of the HKSAR by the Central People's Government should just be "a formality" and should not materially affect the choice of candidates.

Reasons: - This will make it impossible for the Central People's Government to impose its influence on the HKSAR.

- It has been stated in both the Joint Declaration and the Draft Basic Law that the Chief Executive shall be selected by the people of Hong Kong by election or through consultations. Since these political rights have been granted to the people of Hong Kong, they should be respected.

- The Chief Executive should have the power to appoint principal officials.

Reason: - This will help achieve the goals of "Hong Kong people administering Hong Kong" and "a high degree of autonomy".

4. Issues to be clarified

- How will the Central People's Government appoint the Chief Executive, principal executive officials and advisers? Will there be any criteria other than those contained in the Basic Law? Will the process of nomination of the Chief Executive and his appointment by the Central People's Government be an open process? Will the residents of the HKSAR be informed if their proposals are refused or considered inappropriate?

- What will happen if the Central People's Government rejects the candidate nominated for the office of Chief Executive?

1. Original text

The Hong Kong Special Administrative Region is vested with executive power. In accordance with the relevant provisions of this Law it shall, on its own, manage public finance, monetary matters, economy, industry and commerce, trade, taxation, postal service, civil aviation, maritime matters, traffic and transport, fishery, agriculture, personnel administration, civil affairs, labour, education, medical and health services, social welfare, culture and recreation, municipal facilities, urban planning, housing, real estate, public order, entry and exit controls, meteorology, communications, science and technology, sports and other administrative affairs.

2. Views

2.1 Supporting view

- The executive powers contained in the provisions of this article are quite sufficient and they will allow the maintenance of the existing way of life and free image of Hong Kong.

2.2 Reservations

- This article infringes upon the scope of "a high degree of autonomy".

Reason: - It stipulates that the HKSAR shall on its own manage a range of activities in a specified manner, that is, "in accordance with the relevant provisions of this Law".

- Unless amendments are made to the Basic Law, especially to some of the provisions in Chapter V, it will be very difficult for the HKSAR to perform the tasks prescribed in this article.

2.3 On the wording of this article

- This article attempts to list all those areas over which the HKSAR may exercise executive power. Such a list is not really required as it can never be exhaustive. A few other areas such as pollution and youth affairs could easily be added to the list.
- As the HKSAR will enjoy a high degree of autonomy, it would be easier to list those areas where the HKSAR is not to be vested with executive power rather than to list those areas where it is. Otherwise there is a danger of omitting items which should fall within the HKSAR's

executive power.

- This article lists a number of areas, presumably detailed in order to define the limits of the executive power of the HKSAR. However, no limit has been set upon executive power by the Joint Declaration other than in relation to defence and foreign affairs.

3. Suggestions

3.1 Deletions

- The clause "in accordance with the relevant provisions of this Law" should be deleted.
- The clause "and other administrative affairs" should be deleted.

3.2 Amendments

- This article should be amended to read: "The HKSAR shall be vested with executive power and shall, in accordance with the provisions of this Law, manage all administrative affairs on its own."

Reasons: - The provisions of the present article are too detailed.

- It is impossible to prepare an exhaustive list of relevant administrative affairs.

- This article should be amended to read: "In accordance with the provisions of this Law, the government of the HKSAR is vested with full executive power, except in defence and foreign affairs."

Reason: - This will make the provision in the Basic Law conform with that contained in the Joint Declaration.

- This article should be amended to read: "The HKSAR is vested with executive power. In accordance with the relevant provisions of this Law it shall, on its own, manage all administrative affairs, including public finance, ... sports and other affairs."

- This article should be amended to read: "The HKSAR is vested with executive power."

Reasons: - The present provision sounds cumbersome. Besides, it is impossible to produce an exhaustive list. (For instance, the present article has left out local administration, environmental protection and fire services.)

- The 29 items listed in this article have already been covered by other chapters.

- This article should be amended to read: "The HKSAR is vested with executive power and shall on its own manage administrative affairs in all areas."

- The term "executive power" should read "executive autonomy".

Reason: - This will be more in conformity with the principle of "a high degree of autonomy".

- The clause "is vested with executive power" should read "shall enjoy executive power".

Reason: - The present wording is in the present tense and may be interpreted as simply referring to the status of the HKSAR at the time the Basic Law is promulgated. This is very confusing.

- The term "urban planning" should read "urban and rural planning".

3.3 Additions

- The term "mining" should be added.

Reasons: - Mining is of great importance to Hong Kong.

- The items listed in this article, such as the economy, industry, trade and science and technology, cannot fully reflect the importance of mining.

- The term "currency" should be added.

- The term "environmental protection" should be added.

- The term "environmental and landscape planning" should be added.

- The terms "publication and mass communications" should be added after "education".

- The term "broadcasting" should be added.

- The term "tourism" should be added.

- The clause "and other administrative affairs which do not come within the sphere of defence and foreign affairs" should be added.

- The terms "broadcasting and journalism" should be added.

- The term "broadcasting administration" should be added.
- The terms "art, performing arts and publication" should be added.

3.4 Other suggestions

- Under the principle of "a high degree of autonomy", the interpretation and source of executive powers other than those prescribed in the provisions of this article (that is, the so-called residual powers) shall, depending on its nature, be determined by the Central Authorities and the HKSAR through consultation.
- The clause "and other administrative affairs" should never be deleted from the Basic Law as it may serve as a safeguard.

4. Issues to be clarified

- Should "licensing" be included? Does the article preclude complete or partial privatization of any of the functions listed?
- What does the word "relevant" mean in this article?
- Does this article imply that the HKSAR will not be able to manage those areas not mentioned? Is the listing exhaustive? Are there any omissions?
- What does the clause "and other administrative affairs" specifically mean?
- The meaning of the term "personnel administration" is unclear and should be explained.

1. Original text

The Hong Kong Special Administrative Region is vested with legislative power.

Laws enacted by the legislature of the Hong Kong Special Administrative Region shall be reported to the Standing Committee of the National People's Congress for the record. The reporting for record shall not affect the entry into force of such laws.

If the Standing Committee of the National People's Congress, after consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region, considers that any law of the Region is not in conformity with this Law or legal procedures, it may return the law in question for reconsideration or revoke it, but it shall not amend it. Any law returned for reconsideration or revoked by the Standing Committee of the National People's Congress shall immediately cease to have force. This cessation shall not have retroactive effect.

2. Views

2.1 Supporting view

- Support is expressed for this article.

Reasons: - Laws enacted by the legislature of the HKSAR should take effect immediately. This will effectively ensure the legislative power to be enjoyed by Hong Kong.

- Since the Basic Law shall be enacted by the NPC, only the NPC and its Standing Committee should have the power to judge whether the laws enacted by the legislature of the HKSAR are in conformity with the Basic Law and legal procedures. The stipulation that the Standing Committee of the NPC shall exercise the power of review is an expression of sovereignty.

- The stipulation that laws which are returned for reconsideration or which are to be revoked shall cease to have force and that this cessation shall not have retroactive effect will in turn ensure the validity of the laws enacted by the legislature of the HKSAR.

2.2 Reservations

- This article is not acceptable.

Reasons: - This will deprive the HKSAR of the power of final adjudication.

- It will violate the legislative power of the HKSAR.

- This article violates the principle of "a high degree of autonomy". (Note 16-1)

Reasons: - The HKSAR will not be able to decide whether a particular piece of legislation is in conformity with the Basic Law and legal procedures.

- The Standing Committee of the NPC will be able to return the law for reconsideration or will be able to revoke it. (Note 16-2)

- Laws enacted by the HKSAR will have to be reported to the Standing Committee of the NPC for the record.

- After a piece of legislation has been revoked, the HKSAR will not have any power of or procedure for appeal.

- This article violates the Joint Declaration.

Reasons: - The Joint Declaration stipulates that the HKSAR shall have the power to enact laws other than those relating to defence and foreign affairs.

- Although the HKSAR is vested with legislative power, the power of revocation is assigned to the NPC. This will take away the power of review now exercised by the courts.

- The Joint Declaration has not said anything about the establishment of a Committee for the Basic Law under the Standing Committee of the NPC, which is to have substantial influence.

- Paragraph 3 will infringe upon the legislative power of the HKSAR.

- The meaning of the clause "not in conformity with this Law or legal procedures" is vague.

2.3 On the provision that the Standing Committee of the NPC may return Hong Kong laws for reconsideration or revoke them

- Full support is expressed for this provision.

- Support is expressed for this provision.

Reasons: - The Standing Committee of the NPC, as the highest policy-making organ, should have absolute power of veto.

- Hong Kong is a part of China.

- The Chinese government should be respected.

- Objection is expressed to this provision.

Reasons: - In accordance with the Joint Declaration, Hong Kong should enjoy a high degree of autonomy.

- The Chinese legislature is not familiar with the situation in Hong Kong.

- This will result in excessive interference by the Standing Committee of the NPC or some of its members in the legal system of Hong Kong.

- The Chinese political system is one without democracy or the rule of law and the Standing Committee of the NPC is but a rubber stamp.

- It is necessary to prevent China from attempting to change Hong Kong's legal system in future.

- The concept of law in China is very different from that in Hong Kong.

- Determining whether or not laws enacted by Hong Kong have violated the Basic Law will require a thorough understanding of the legal systems of the two places. The Standing Committee of the NPC will not be more familiar with Hong Kong laws than will the courts of Hong Kong.

- The power of control should be in the hands of the independent legislature of the HKSAR.

- The present provision will reduce the function and independence of the legislature.

- Under the present provision, the HKSAR will not have any power to make suggestions whatsoever.

- The present provision will render Hong Kong legislation meaningless.

- The rights of Hong Kong people will be left unprotected.

- The present provision will affect the confidence of Hong Kong people and undermine stability and prosperity.
- If amendment will not be allowed in the case of a law returned for reconsideration or revoked, it means that manpower will have to be spent on formulating a new law.
- The present provision is too complicated.
- The provision that the Standing Committee of the NPC may return a law for reconsideration or revoke it but shall not amend it will give rise to problems.

Reasons: - If the Central Authorities should decide to revoke Articles 19 and 20 of the Basic Law after it is passed and Hong Kong may not amend the provisions in question, Hong Kong people will be left with very little power.

- If no amendments shall be made and no explanations given, the HKSAR will not know where the problems lie.
- If no amendments shall be made, it will be a waste of time to reconsider the law in question.
- If the Standing Committee of the NPC may revoke a law but shall not amend it, it will be pointless for the HKSAR to reconsider the law in question.
- The provision "[t]his cessation shall not have retroactive effect" is a violation of both democracy and human rights.
- While the provision that any law returned for reconsideration shall cease to have force and that this cessation shall not have retroactive effect may be unfair and indeed cruel for some people, it is worth retaining as it will safeguard the spirit of the rule of law and avoid major changes.
- The Standing Committee of the NPC should avoid revoking any law of Hong Kong.

Reasons: - Any revocation will affect the confidence of Hong Kong people in "one country two systems".

- The Standing Committee of the NPC is not familiar with the common law system practised in Hong Kong.
- Any revocation will increase the work load of

the Standing Committee of the NPC.

- Revocation will undermine the normal running of the courts of Hong Kong.
- Giving the NPC the power to review Hong Kong laws is a violation of the principle of common law.
- Any revocation will create conflicts in the relationship between China and Hong Kong.
- The procedure by which the Standing Committee of the NPC will be able to revoke Hong Kong laws is completely unilateral. It is too simplistic a practice to allow revocation of a law after only one consultation exercise. It also shows a lack of respect for the legislature of Hong Kong. The Standing Committee of the NPC will have too much power under the Basic Law if it not only has the power to interpret the Basic Law but also the power of revocation.
- Under the present provision, the Standing Committee of the NPC not only will be able to veto new legislation passed by the legislature of Hong Kong but will also be able to veto the existing laws of Hong Kong. This infinite and absolute power of veto will render the legislative power of Hong Kong meaningless.
- The Standing Committee of the NPC is not a judicial organ and it is impossible to surmise what yardstick it will use to review the laws of the HKSAR.
- As the HKSAR will be a part of China, the Central People's Government must reserve the right to exercise sovereignty.
- Although the HKSAR will be vested with legislative power, the laws enacted will still form part of Chinese law. Since the NPC is the supreme organ of power in China, laws enacted by the HKSAR should be reported to this organ for the record.

2.4 On other issues

- The power of a sovereign state to veto laws enacted by its dependent territory and the power of constitutional review should not be confused.
- On the question of constitutional review, it is necessary to take into consideration not only the independence and integrity of the judicial system but also its political implications. It is true that vesting the courts with the power of constitutional review will strengthen the authority of the courts against prejudice by legislative power and will prevent the infringement of civil rights by

the legislature. However, the move will also give the courts supreme authority. They will have the final say in any law already passed by the Council or Chief Executive. Besides, while the Chief Executive and members of the Council will have to seek re-election, judges will have life-long tenure and will wield absolute power of veto. If the power of constitutional review is vested in the Standing Committee of the NPC, the situation where executive and legislative powers are exceeded by judicial power will be avoided. However, this will render the courts unable to exercise supervision over the legislature. This will also mean that the Standing Committee of the NPC may have to play a regular role in the affairs of Hong Kong, a move which will affect the confidence of Hong Kong people and increase the work load of the Standing Committee of the NPC.

- Support is expressed for the first suggestion for Paragraph 3 contained in "A Collection of Opinions".

Reason: - This will reduce the influence of the Standing Committee of the NPC in Hong Kong's legislative process.

- As the suggestion above, but with the following addition: "The Committee for the Basic Law of the HKSAR and its members shall be representatives of the HKSAR."

Reason: - The members need not be Hong Kong persons but shall be "representatives" of the HKSAR.

- The second suggestion for Paragraph 3 contained in "A Collection of Opinions" is not very suitable.

Reason: - There is no universally recognized definition which distinguishes criminal matters from constitutional matters.

3. Suggestions

3.1 Deletions

- This article should be deleted and the power of constitutional review should be vested in the courts of the HKSAR.

Reasons: - This will ensure that the legal system of the future HKSAR may continue its smooth operation.

- This will ensure "a high degree of autonomy".

- The word "revoke" which appears twice in the article should be deleted in order to guarantee the administration of Hong Kong by Hong Kong people.

- Paragraph 3 should be deleted.

Reason: - Provisions regarding the power of interpretation should be in accordance with Section II of Annex I to the Joint Declaration.

- The words "or revoke it" in Paragraph 3 should be deleted.
- The words "or revoke it" should be replaced by "with the necessary explanation".
- The words "or revoked" should be deleted.

Reason: - The words "returned for reconsideration" suggest that there is still room for amendment, but once a law is "revoked", there will be no such possibility.

- The following provision should be deleted: "If the Standing Committee of the NPC ... considers that any law of the Region is not in conformity with this Law or legal procedures, it may return the law in question for reconsideration or revoke it, but it shall not amend it." This will give the HKSAR sufficient power of interpretation and power of constitutional review.
- Paragraph 3 should be deleted and replaced by the following paragraphs:

"If the Standing Committee of the NPC, after consulting its Committee for the Basic Law of the HKSAR, considers that any law of the Region is not in conformity with the provisions contained in Annex IV to this Law, it may return the law in question for reconsideration or revoke it, but it shall not amend it. Any law returned for reconsideration or revoked by the Standing Committee of the NPC shall immediately cease to have force. This cessation shall not have retroactive effect except in criminal cases where the crime has been proven.

"If the Court of Appeal or Court of Final Appeal of the HKSAR, in handling cases or interpreting this Law in accordance with the procedures of this Law, considers that any law of the Region is not in conformity with this Law or legal procedures, it may declare the law in question to be in violation of the Constitution. Any law declared by the Court of Appeal or Court of Final Appeal of the HKSAR to be in violation of the Constitution shall immediately cease to have force. This cessation shall not have retroactive effect except in criminal cases where the crime has been proven. If, in any legal proceedings, the other courts of the HKSAR consider that any law of the Region is not in conformity with this Law or legal procedures, they must request the Court of Appeal to make a judgment on whether the law in question is in violation

of the Constitution before making their final judgment.

"At the request of any of the following organizations or person(s), the Court of Appeal of the HKSAR may review laws of the Region to determine whether they are in conformity with this Law or legal procedures:

- (1) The Chief Executive of the HKSAR;
- (2) The Bar Association of the HKSAR;
- (3) The Law Society of the HKSAR;
- (4) The majority of the district organizations established under the provisions of Article 96 of this Law;
- (5) Organizations or persons empowered to make such requests by the laws enacted by the legislature of the HKSAR."

Legislative limitations on the HKSAR should be set down in the form of Annex IV.

3.2 Amendments

- Paragraph 1 should be amended to read: "The legislative power of the HKSAR is vested in the legislature of the HKSAR." (Note 16-3)

Reason: - The present wording may be interpreted to mean that "other organs are also vested with legislative power".

- The suggested amendment is in conformity with Section II of Annex I to the Joint Declaration.

- Paragraph 1 should be amended to read: "Legislative power is vested in the legislature of the HKSAR, but the laws enacted shall be considered local laws and shall accord with the principle that they neither contravene nor exceed the limits of the Basic Law."

- The phrase "for the record" in Paragraph 2 should read "for recognition".

- Paragraph 3 should be amended to read: "If the Standing Committee of the NPC, after consulting its Committee for the Basic Law of Hong Kong, considers that any law of the Region is not in conformity with this Law or legal procedures, it may return the law in question for reconsideration, but the decision whether to revoke the law shall be made by the legislature of the HKSAR. Any law returned for reconsideration shall immediately cease to have force, but such cessation shall not have retroactive effect."

- Paragraph 3 should be amended to read: "The Standing Committee of the NPC shall have the power to return for reconsideration or revoke any law enacted by the legislature of the HKSAR which is not in conformity with this Law or legal procedures."
- Paragraph 3 should be amended to read: "... This cessation shall not have retroactive effect except in criminal or constitutional cases."
- Paragraph 3 should be amended to read: "If the Standing Committee ... considers that any law of the Region is not in conformity with this Law or legal procedures, it may return the law in question to the courts of the HKSAR for reconsideration, or amend or revoke it."
- The words "any law" in Paragraph 3 should read "any new laws". The rest of the paragraph should be amended to read: "... it may return the law in question with a notification pointing out where the problem lies so that the legislature of the Region may reconsider or revoke the law in question on its own in accordance with the notification, but shall not amend it."

Reasons: - As the laws enacted before 1997 were enacted under the colonial policies, not in the spirit of the Basic Law, the legislature of the HKSAR should have the duty to reconsider or revoke those laws that are not in conformity with the Basic Law or legal procedures.

- As the new laws of the HKSAR will be enacted by the legislature of the Region, the task of reconsidering or revoking laws should be performed by the legislature of the Region.
- Paragraph 3 should be amended to read: "If the Standing Committee of the NPC, after consulting its Committee for the Basic Law of the HKSAR, considers that any law of the Region is not in conformity with this Law or legal procedures, it may return the law in question for reconsideration, but it shall not amend it. The Standing Committee of the NPC shall have the power to revoke that law if, after amendment by the HKSAR, it still finds the law in question unacceptable. However, the HKSAR shall have the right to appeal, and during the period of appeal the law in question shall temporarily cease to have force."
- Paragraph 3 should be amended to read: "If the Standing Committee of the NPC, after consulting its Committee for the Basic Law of the HKSAR, considers that any law of the Region is possibly not in conformity with this Law or legal procedures, it may refer the law in question to the

Court of Final Appeal of the HKSAR for review. If the Court of Final Appeal considers that a part or the whole of the law in question is not in conformity with this Law or legal procedures, it may declare as invalid the relevant part or the whole of that law. However, the cessation of force shall not have retroactive effect." (Note 16-4)

- Reasons: - The power of constitutional review being vested in the Standing Committee of the NPC is likely to be interpreted as an attempt by the Central Authorities to interfere in the legislative affairs of the HKSAR. Moreover, no justification for this can be found in the Joint Declaration. (Note 16-5)
- Under the provisions of this article, the power of constitutional review is vested in the Standing Committee of the NPC. This is different from customary practice under the existing common law.
 - In order to ensure the smooth running of the legal system of the future HKSAR and the realization of "one country two systems", the Basic Law should authorize the judicial organs of Hong Kong to perform the task of constitutional review as is the practice under the existing system. (Note 16-6)
 - The stability and prosperity of Hong Kong depends on a sound legal system. Hence, the courts must be independent and have full power to act on their own.
 - In order to safeguard judicial independence and ensure that the freedom of citizens is not infringed upon, the courts of Hong Kong should be able to carry out judicial review with authorization from the Standing Committee of the NPC.
- Paragraph 3 should be amended to read: "If the courts of the HKSAR consider that any law comes within the scope of defence and foreign affairs, they may report the law in question to the NPC. If the Standing Committee of the NPC, after consulting its Committee for the Basic Law of the HKSAR, considers that the law in question is not in conformity with legal procedures nor concerns defence and foreign affairs, it may return the relevant law for reconsideration or revoke it."
- Paragraph 3 should be amended to read: "If the Standing Committee of the NPC considers that any law of the Region is not in conformity with this Law or legal procedures, it

may return the law in question for reconsideration or revoke it only after consulting its Committee for the Basic Law, and the legislature and Chief Executive of the HKSAR, but it shall not amend it...."

- This article should be amended to read: "... Laws enacted by the legislature which are in conformity with the Basic Law and legal procedures shall be valid."
- This article should be amended to read: "The HKSAR is vested with legislative power."

"Laws enacted by the legislature of the HKSAR shall be ratified by the Standing Committee of the NPC. Laws will only enter into force in the HKSAR after such ratification."

"If the Standing Committee of the NPC, after consulting its Committee for the Basic Law of the HKSAR, considers that any law of the Region is not in conformity with this Law or legal procedures, it may return the law in question for reconsideration."

Reason: - This will ensure mutual communication and will also improve mutual trust between the Central People's Government and the HKSAR.

- Paragraph 3 should be amended to read: "If the Standing Committee of the NPC, after consulting its Committee for the Basic Law of the HKSAR, considers that any law of the Region is not in conformity with any provision of this Law concerning defence, foreign affairs or other affairs which are the responsibilities of the Central People's Government, it may return the law in question for reconsideration or revoke it, but it shall not amend it. If the law in question was enacted after 1 July 1997, the aforesaid power to return the law for reconsideration or to revoke it shall be exercised within three months of the enactment of that law. The Standing Committee of the NPC shall publicly state its reasons for returning the law in question for reconsideration or for revoking it. Any law returned for reconsideration or revoked by the Standing Committee of the NPC shall immediately cease to have force. If the law in question provides for the establishment of new criminal offences or for an increase in penalties for existing criminal offences, or restricts the freedom of the person in other forms, this cessation shall have retroactive effect; the cessation of all other laws shall not have retroactive effect. If the courts of the HKSAR, in adjudicating cases before them, consider that any law of the HKSAR is not in conformity with this Law, they may refuse to recognize or enforce the law in question."

Reason: - Under the present legal system, the Hong Kong

legislature (unlike the British Parliament) only has limited legislative power. If this legislature goes beyond its terms of reference in any of its legislation, the courts of Hong Kong may find the law in question ultra vires and invalid. In this sense, the courts of Hong Kong have the power of constitutional review. For example, if a piece of Hong Kong legislation contravenes the "Royal Instructions" (Hong Kong's principal constitutional instrument) or laws enacted by the British Parliament applicable to Hong Kong, they have the right and the obligation to refuse to recognize and enforce this piece of Hong Kong legislation.

- This article should be amended to read: "The HKSAR is vested with legislative power, but laws enacted by the legislature shall be reported to the Standing Committee of the NPC for the record. The reporting of laws for the record shall not affect the entry into force of such laws. If the Standing Committee of the NPC, after consulting its Committee for the Basic Law of the HKSAR, considers that any law of Hong Kong is not in conformity with this Law or legal procedures, it may return the law in question to the legislature of Hong Kong for reconsideration, revoke it, or refer it to the Court of Final Appeal of Hong Kong so that a final judgment may be made as to whether the law in question should be retained or repealed."

Reasons: - The repeated usage of the term "HKSAR" should be avoided.

- Nothing has been said in the present provision about the HKSAR being able to retain the law when the law in question is returned for reconsideration. It should be stipulated that amendment may be made after reconsideration. Of course this will not be necessary in cases where laws are revoked.
- It should be stipulated that it will be the legislature of Hong Kong and not the Committee for the Basic Law which will reconsider or amend the laws. Points of obscurity in laws returned to the legislature of Hong Kong for reconsideration may be referred to the Court of Final Appeal of Hong Kong for final judgment. The cessation of force of laws relating to criminal and constitutional cases should have retroactive effect. In this way the cessation of force will not produce too great a repercussion.

- Paragraph 3 should be amended to read: "If the Standing Committee of the NPC considers that any law of the HKSAR

is not in conformity with this Law or legal procedures, it may return the law in question to the legislature of the HKSAR for reconsideration. Any law returned for reconsideration shall temporarily cease to have force, but this cessation shall not have retroactive effect and shall not affect on-going legal proceedings. The courts of the HKSAR may, when adjudicating cases before them, declare laws which are not in conformity with this Law or legal procedures invalid. When necessary, the courts of the HKSAR may seek an interpretation from the Standing Committee of the NPC on the relevant provisions of the Basic Law. If the legislature of the HKSAR again passes a law returned for reconsideration by a two-thirds majority, or if the Standing Committee of the NPC objects to the judgment passed by the HKSAR as to whether the law in question is valid or otherwise, the Standing Committee of the NPC shall refer the case to its Committee for the Basic Law, which will study the case and submit a report with suggestions, and the Standing Committee of the NPC shall make the final judgment. If the final judgment passed down by the Standing Committee of the NPC goes against the original judgment of the courts of the HKSAR, the judgment made by the Standing Committee of the NPC shall be binding on the courts of the HKSAR, but this shall not affect judgments already made by the courts of the HKSAR."

Reasons: - The Committee for the Basic Law should be consulted after the law in question has been returned for reconsideration rather than before as stipulated in the present provision. The reason for this is that the normal function of the Committee for the Basic Law should be to handle problems arising from the Basic Law which the two sides cannot resolve through normal procedures, but "return for reconsideration" does not necessarily mean that there are unresolved problems. Besides, consulting the Committee for the Basic Law beforehand will be as good as attaching a "do not query" label on the decision made by the Standing Committee of the NPC, making it impossible for the legislature to suggest anything different.

- The courts of Hong Kong should be vested with the power of constitutional review in the adjudication of cases, but the Standing Committee of the NPC should be vested with the ultimate power to veto judgments passed down by the courts of Hong Kong. This will ensure that the ultimate power of the Standing Committee of the NPC will not exist in name only, and that its judgments will be binding on future judicial acts. However, in order to safeguard

the judicial independence of the courts and prevent the undermining of the authority of the judicial system, it is also suggested that judgments made by the Standing Committee of the NPC should not affect cases in which judgment has already been handed down.

- This article should be amended to read: "The legislature of the HKSAR is vested with legislative power.

"Laws enacted by the legislature of the HKSAR shall be reported to the Standing Committee of the NPC for the record. The reporting of laws for the record shall not affect the entry into force of such laws. The HKSAR shall have the power of final adjudication except in defence and foreign affairs. If the courts of the HKSAR consider that any law is not in conformity with this Law or legal procedures, they may return the law in question for reconsideration. If the courts of the HKSAR consider that any legislation involves defence or foreign affairs, they may refer the case to the Standing Committee of the NPC for review. If the Standing Committee of the NPC, after consulting the Committee for the Basic Law of the HKSAR, considers that the law in question indeed involves defence or foreign affairs, it may declare the law invalid or otherwise."

Reasons: - The present provision will greatly reduce the power of the supreme court of the HKSAR.

- At present, the courts of Hong Kong have the power of judicial review over laws enacted by the legislature, and this system is operating well.

- This article should be amended to read: "The legislature of the HKSAR is vested with legislative power.

"Laws enacted by the legislature of the HKSAR shall be reported to the Standing Committee of the NPC for the record. The reporting of laws for the record shall not affect the entry into force of such laws.

"If the Standing Committee of the NPC, after consulting its Committee for the Basic Law of the HKSAR, considers that any law enacted by the legislature of the HKSAR is not in conformity with the provisions contained in Chapter III of this Law, it may return the law in question for reconsideration or revoke it, but it shall not amend it. Any law returned for reconsideration or revoked by the Standing Committee of the NPC shall immediately cease to have force. This cessation shall not have retroactive effect.

"If a case involves any law enacted by the legislature of

the HKSAR which is not in conformity with this Law or legal procedures, the courts of the Region may refuse to apply the law in question or declare it invalid, but this cessation shall not have retroactive effect."

- This article should be amended to read: "The legislature of the HKSAR is vested with legislative power, except in matters involving defence and foreign affairs. Laws enacted by the legislature of the Region shall be reported to the Standing Committee of the NPC for the record. The reporting of laws for the record shall not affect the entry into force of such laws. If the Standing Committee of the NPC, after consulting the Committee for the Basic Law of the HKSAR, considers that any law of the Region is possibly not in conformity with this Law or legal procedures, it may return the law in question to the Court of Final Appeal of the Region for reconsideration. If the Court of Final Appeal considers that the law in question is, partially or entirely, not in conformity with this Law or legal procedures, it may declare the relevant part or the whole of the said law to be invalid, but this cessation shall not have retroactive effect."

3.3 Additions

- The following provision should be added after Paragraph 1: "However, all laws and the ordinances of all various departments which jeopardize residents' rights and undermine stability and prosperity shall be repealed or amended."
- The clause "within one year of its entry into force" should be added after the words "revoke it" in Paragraph 3.
- The following provision should be added as Paragraph 4: "Apart from the Standing Committee of the NPC, the Secretary of Justice of the HKSAR shall also have the power, if he or she considers that any law of the Region is not in conformity with this Law or legal procedures, to refer the law in question to the Court of Final Appeal of the HKSAR for review."

Reason: - In order to strengthen the internal ties between the legislature and the executive authorities, the Secretary of Justice of the HKSAR should also have the power to refer cases to the courts for constitutional review.

- The following provision should be added: "If the HKSAR upholds a law returned for reconsideration, the Standing Committee of the NPC shall re-examine the law in question."

Reason: - The present article has not made any provision

for the right of the HKSAR to request that a law be re-examined.

3.4 On whether a law under review is in conformity with the Basic Law or legal procedures

- The power of constitutional review over Hong Kong laws that are within the limits of the high degree of autonomy should be vested in the judicial organs of the HKSAR.

Reasons: - In this way the existing judicial system will be preserved.

- This will avoid the situation where laws concerning purely domestic affairs are revoked or returned for reconsideration by the Standing Committee of the NPC, a step which will affect the enjoyment of a high degree of autonomy.
- The power to review laws should be enjoyed exclusively by the courts of the HKSAR.
- Since most requests for constitutional review will arise from legal proceedings, it is more reasonable and convenient to put the courts in charge of such review.
- The courts of the HKSAR are more familiar with Hong Kong law.
- The power of constitutional review over Hong Kong laws that are outside the limits of the high degree of autonomy should be vested in the Standing Committee of the NPC.
- If the Standing Committee of the NPC, after consulting the Committee for the Basic Law, considers that a law which concerns matters outside the limits of the high degree of autonomy of the HKSAR contravenes the Basic Law, it may return the law in question for reconsideration or revoke it if its judgment is different from that made by the courts, but it shall not amend it. Judgments handed down previously should not be affected. Provisions that are within or outside the limits of the high degree of autonomy of the HKSAR should be listed in an annex to the Basic Law. This form of definition may be revised through amendment to the annex. The legislature of the HKSAR should be consulted before any amendment is made to the annex.
- For provisions which concern defence and foreign affairs, that is, outside the internal affairs of the government of the HKSAR, the Court of Final Appeal should be required to follow the interpretation given by the Standing Committee of the NPC.

- The Court of Final Appeal of the HKSAR should be responsible for reviewing whether laws enacted by the legislature of the Region are in conformity with the Basic Law and legal procedures. (Note 16-7)

Reasons: - This will give Hong Kong people greater faith and confidence in laws enacted by the Hong Kong legislature.

- It will deviate from the present common law practice if the Standing Committee of the NPC can exercise the power of constitutional review over the laws of Hong Kong.
- This will ensure the smooth running of the legal system of the future HKSAR.
- This will ensure the realization of "a high degree of autonomy".
- The power of constitutional review is best vested in the HKSAR as it involves the interpretation of laws.
- China's legal system is very much different from that of Hong Kong, and it will not be beneficial to the legal system of the future HKSAR if the two systems are merged.
- If it is suspected that a new law enacted by the legislature of the HKSAR is not in conformity with the Basic Law or legal procedures, the law in question should be referred to the Court of Final Appeal of the Region for decision. If the Standing Committee of the NPC does not accept the view of the Court of Final Appeal, it may assign an ad hoc committee to study the law. The committee should be constituted by legal experts from both China and Hong Kong, with Hong Kong representative comprising the majority. The NPC should be required to listen to the advice of the ad hoc committee after the latter has examined the case.
- The courts of Hong Kong should have the power to examine whether any law of the HKSAR is in violation of the Basic Law or legal procedures. However, they should not have such power if the law in question concerns defence or foreign affairs, or gives expression to national unity and territorial integrity. Thus, laws of the HKSAR will be reported to the Standing Committee of the NPC for the record, but the Standing Committee of the NPC will not examine whether the law in question is in conformity with the Basic Law or legal procedures.

Reasons: - Under the present judicial system, Hong Kong has the power to examine whether laws enacted

are in violation of legal procedures.

- If Hong Kong is to keep the high degree of autonomy unchanged for 50 years, an independent judicial system must be preserved intact.
- Since the legal system of Hong Kong is different from that of China, it should be up to Hong Kong to review provisions concerning internal affairs.
- The legislature of the HKSAR should be vested with the power of constitutional review. If the Standing Committee of the NPC finds any legal provision in contravention of Article 31 of the Chinese Constitution, it should notify the legislature of the HKSAR and the provision should be amended in accordance with needs.
- An independent organ (such as a Court of Final Appeal) should be established to review laws enacted by the legislature of the HKSAR. This will avoid having to leave all the decisions to the Standing Committee of the NPC.
- If the Standing Committee of the NPC considers that any law of the HKSAR government is not in conformity with the Basic Law or legal procedures, it should have the law in question reviewed by a special tribunal constituted by judges of Hong Kong. If that tribunal finds the law (or provision) to be within the scope of autonomy, the courts of Hong Kong may declare it valid. If the law is found to be outside the limits of autonomy, the Standing Committee of the NPC should decide whether or not the law is valid after consulting the Committee for the Basic Law.
- The Standing Committee of the NPC and the courts of Hong Kong should jointly exercise the power of constitutional review. The former should have the power to review laws other than in relation to a particular case, but the latter may only do so in relation to a particular case. The Standing Committee of the NPC may also act as supervisor in the exercise of judicial power.
- As a sovereign state, China should have the power to reject laws enacted by the legislature of the HKSAR. However, it should be up to the Court of Final Appeal of Hong Kong to decide whether any legislation is in violation of the Basic Law.

3.5 On returning a law for reconsideration or revoking it

- When a particular law is returned for reconsideration or is awaiting judicial review, it should temporarily lose its legal force rather than immediately cease to have force.

- If a law is not in conformity with this Law or legal procedures, it should be amended wherever possible after reconsideration or revocation, but it should not cease to have force immediately.
- The Standing Committee of the NPC may return a law that is not in conformity with the Basic Law for reconsideration but shall not revoke it.
- If the Standing Committee of the NPC considers that any law of the HKSAR is not in conformity with this Law or legal procedures, it may return the law in question for reconsideration or revoke it. At the same time, it should state its reasons for revoking the said law. If a law ceases to have force, the original law and relevant matters should be set aside until a new law enters into force.
- If a bill of the HKSAR is returned or revoked by the Standing Committee of the NPC, the HKSAR should have the right to lodge appeals and complaints, after which the bill in question will be returned to the Central People's Government for reconsideration.

3.6 On the Committee for the Basic Law

- The Committee for the Basic Law should be composed mainly of HKSAR representatives to ensure that the needs and interests of the HKSAR will be fully reflected.
- It should be stated that the Committee for the Basic Law shall be composed of representatives selected by representative organizations in the HKSAR.
- Members of the Committee for the Basic Law should be chosen from among residents of Hong Kong.

Reason: - Hong Kong residents are more familiar with the situation and needs of Hong Kong.

- The committee should be composed of some of the members of the CCBL, members of the Drafting Committee and legal experts from China and Hong Kong.
- It should be up to the Committee for the Basic Law to decide which laws are within the scope of autonomy and which are not.
- The terms of reference and membership of the Committee for the Basic Law should be stipulated in the Basic Law. (Note 16-8)
- The terms of reference and composition of the Committee for the Basic Law should be decided on after consulting the people of Hong Kong and should be written into the

Basic Law. As the Committee will only be an advisory body, it should not have the power to influence decisions already made by the Standing Committee of the NPC.

- No less than half of the membership of the Committee for the Basic Law should be constituted by Hong Kong people from the judicial, legal and professional circles.

Reasons: - This will ensure fuller and more effective reflection of the needs and interests of Hong Kong.

- This Committee will be able to resolve disputes between China and Hong Kong over legal issues arising from the Basic Law.
- Mutual supervision will thereby be exercised, thus ensuring that laws being enacted are in conformity with the Basic Law and legal procedures.
- The functions of the Committee for the Basic Law should be to exercise supervision and give advice on whether or not laws enacted by the HKSAR are in conformity with the Basic Law, while the Court of Final Appeal of Hong Kong should be vested with the power of review, reconsideration and revocation.

3.7 On other issues

- The Standing Committee of the NPC should confer on the courts of the HKSAR the power of constitutional review and independent judicial power, including that of final adjudication.
- For each statute or ordinance being reported for the record, a definite period should be stipulated, on the expiry of which the said statute or ordinance will enter into force. This will safeguard the legislative power of Hong Kong.
- If the Standing Committee of the NPC, after consulting the Committee for the Basic Law, does not accept the suggestion offered, it should be required to explain its decisions to the Hong Kong people and state its reasons.

4. Issues to be clarified.

- If Hong Kong is to enjoy autonomy, why should laws enacted by Hong Kong be examined and approved by the Standing Committee of the NPC?
- Who will decide whether a particular law contravenes the Basic Law and legal procedures?

- Does "report for the record" mean registration? Or is it intended to be an examination process?
- The provision "[t]he reporting for record shall not affect the entry into force of such laws" needs further clarification.
- Does the provision "[t]his cessation shall not have retroactive effect" mean that when a particular law of the HKSAR is considered to be not in conformity with the Basic Law or legal procedures and is returned for reconsideration or revoked, previous verdicts based on this law may not be reversed or that such cases may not be re-opened?
- Does the term "legal procedures" mentioned in Paragraph 2 refer to a particular ordinance or law?
- Details of the process and implications of "consultation" should be provided.
- It should be clearly stated under what circumstances the Standing Committee of the NPC may return a law for reconsideration or revoke it.
- When a law is considered to be not in conformity with the Basic Law, will it be possible to simply return it for reconsideration rather than revoking it?
- Since Hong Kong will have its own Court of Final Appeal, perhaps the Court of Final Appeal could be allowed to look into the questionable laws first before submitting them to the Standing Committee of the NPC.
- The Committee for the Basic Law of the HKSAR will only be a subordinate organ of the Standing Committee of the NPC. Since it is two grades below the NPC, will its status be higher than that of the legislature of the HKSAR with authorization from the NPC itself?
- The present provision does not state why local laws which relate to defence or foreign affairs will cease to have force. Clarification is necessary.

1. Original text

The laws of the Hong Kong Special Administrative Region shall be this Law, the laws previously in force in Hong Kong as stipulated in Article 8 of this Law, and the laws enacted by the legislature of the Hong Kong Special Administrative Region.

Laws enacted by the National People's Congress or its Standing Committee will not be applied in the Hong Kong Special Administrative Region except for those stipulated in Paragraph 3 of this Article.

Laws, enacted by the National People's Congress or its Standing Committee, which relate to defence and foreign affairs as well as other laws which give expression to national unity and territorial integrity and which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the Hong Kong Special Administrative Region, shall be applied locally by the government of the Hong Kong Special Administrative Region by way of promulgation or legislation on the directives of the State Council, whenever there is the need to apply any of such laws in the Region.

Except in cases of emergency, the State Council shall consult the Committee for the Basic Law of the Hong Kong Special Administrative Region and the government of the Hong Kong Special Administrative Region before issuing the above-mentioned directives.

If the government of the Hong Kong Special Administrative Region fails to act in compliance with the directives given by the State Council, the State Council may decree the application of the above-mentioned law in the Hong Kong Special Administrative Region.

2. Views

2.1 Supporting views

- Some of the nation-wide laws should be applied in the HKSAR.

Reason: - This will give expression to national sovereignty and territorial integrity.

- Nothing in this article contravenes the Joint Declaration.

Reasons: - The clause "give expression to national unity and territorial integrity" is an embodiment of the concept that "the HKSAR comes directly

under the Central People's Government of the People's Republic of China". It does not restrict the high degree of autonomy to be enjoyed by Hong Kong. If this provision is not worded in this way, it will mean that Hong Kong will be "highly independent", which is not only against the Joint Declaration but will be unacceptable to the Chinese government.

- The Joint Declaration states that Hong Kong's defence and foreign affairs shall be the responsibilities of the Central People's Government. Accordingly, some of the nationwide laws which relate to defence or foreign affairs and which are applicable in Hong Kong should be enforced by the Central Authorities. Further, when cases involving nationality, air space, territorial waters and similar issues are encountered, the HKSAR will not be able to handle these on its own and will be required to seek the assistance of the Central People's Government.

2.2 Reservations

- This article goes against the Joint Declaration.

Reasons: - The Joint Declaration only states that laws relating to defence or foreign affairs will not fall within the jurisdiction of the HKSAR. Under the provisions of this article, however, "other laws which give expression to national unity and territorial integrity and which are outside the limits of a high degree of autonomy of the HKSAR" may be applied in the Region by the State Council through the issuing of an instruction or decree.

- This article goes against the principle of "a high degree of autonomy".

Reasons: - The NPC will be able to instruct Hong Kong to pass legislation on the grounds of "giving expression to national unity and territorial integrity".

- The meaning of "laws which relate to defence and foreign affairs as well as other laws which give expression to national unity and territorial integrity" is vague.
- This article gives the State Council extra legislative power. By virtue of this article, the State Council will be able to promulgate and apply laws which will threaten Hong Kong's

high degree of autonomy and Hong Kong will have no recourse. (Note 17-1)

- Mainland laws may not be suitable to Hong Kong.
- This provision will cause panic and Hong Kong's stability and prosperity will be affected.
- China's legal system is primitive and often politically-inclined. The provisions are simple, unlike the detailed ordinances used in Hong Kong. The future courts will have great difficulty in interpreting the nation-wide laws.
- If the NPC will be able to instruct Hong Kong to pass legislation, even laws which fall within the scope of autonomy of the HKSAR, it will be a serious threat to the legislative power enjoyed by Hong Kong.
- Under the provision of this article, the HKSAR will not take any part in the legislative decision-making process except for being consulted.

2.2.1 On "national unity and territorial integrity"

- Since Hong Kong is not a country but a part of China's territory, it will of course be necessary to safeguard national unity and prevent acts designed to subvert the government.
- Some of the words used are too vague in meaning. It is necessary to specify the details in the spirit of common law.
- Nationality laws and laws on territory and territorial waters should be enacted by the NPC, not by Hong Kong. If a list of these laws is not given and Hong Kong is allowed to enact its own legislation on nationality, territory and territorial waters, uniting the country will be difficult.
- This article is vague and open to interpretation, a quality not found in common law or any other laws.
- This article opens the door for the introduction into Hong Kong of nation-wide laws that are totally unrelated to defence or foreign affairs.

2.2.2 On "defence and foreign affairs"

- In principle, it is acceptable that the legislative power of the HKSAR will only extend to matters within the scope of its autonomy and will not include defence and foreign

affairs which will be the responsibilities of the Central Authorities. The latter are within the legislative power of the Central Authorities, and if such laws are to be applied in the HKSAR, they should be applied through the procedure prescribed in the Basic Law.

- In cases relating to defence, foreign affairs or the executive acts of the Central Authorities, the Central People's Government will naturally be a litigating party. It will therefore be unreasonable for the Central People's Government to decide whether such cases come within the scope of the above-mentioned cases over which the Hong Kong courts will not have jurisdiction. A principle of common law is that judicial and executive authorities should be separated, for unless they are separated, judicial independence is out of the question.

2.2.3 On "the directives of the State Council"

- Support is expressed for the provision that the State Council will have the power to instruct Hong Kong to immediately put into effect laws "which give expression to national unity and territorial integrity".

Reasons: - Hong Kong is China's territory.

- Such laws will be outside the scope of the high degree of autonomy to be enjoyed by the HKSAR.
- This provision will lay the foundation for laws which stipulate that the territory of the HKSAR will be defended by the state.

- Objection is expressed to the provision that the State Council will have the power to instruct Hong Kong to immediately put into effect laws "which give expression to national unity and territorial integrity".

Reasons: - This provision will jeopardize Hong Kong's stability and prosperity.

- A list of laws "which give expression to national unity and territorial integrity" has not been given.
- Hong Kong should enjoy a high degree of autonomy.
- This provision will completely deprive Hong Kong of the freedom of speech which it now enjoys.
- There are differences between Hong Kong and China in terms of their political structure.

- This provision will give the State Council too much power over Hong Kong.
 - This will result in undemocratic practices and the neglect of public opinion.
 - Hong Kong should have the right to decide whether or not to accept such directives.
 - This may result in a large number of Chinese residents coming to live in Hong Kong, which will affect the stability and prosperity of the territory.
 - The concept of "one country, two systems" and the idea of "national unity" are basically contradictory.
 - According to the Chinese Constitution, the State Council does not have legislative power.
 - This will result in the State Council directly interfering in the administration of Hong Kong and will put the Central Authorities and the government of the HKSAR in opposing positions.
- According to the Preamble, the NPC will not only enact the Basic Law and prescribe the systems to be practised in Hong Kong, but will also ensure the implementation of the basic policies of the People's Republic of China regarding Hong Kong. Hence, if the NPC or its Standing Committee decides that laws relating to defence and foreign affairs as well as other laws should be applied in Hong Kong, they will not have to go through the State Council. The functions and powers of the State Council as stipulated by the Constitution do not include the power to legislate, and it may only "adopt administrative measures" in accordance with law.

If the government of the HKSAR fails to act in compliance with the instructions of the NPC, the State Council should "issue decisions and orders" and "adopt administrative measures" so that the laws in question will be implemented seriously in the HKSAR. However, the wording of the last paragraph (which says that the State Council may "decree" the application of such laws if the "directives" given earlier are not carried out) leaves much to be desired.

- According to the Chinese Constitution, the NPC is vested with the power to interpret the Constitution, and the Basic Law will be enacted under the provisions of Article 31 of the Constitution after taking account of the special circumstances of Hong Kong. Thus, if it is up to the State Council to decide what laws shall apply in Hong

Kong, there is likely to be confusion as the State Council and the Standing Committee of the NPC will not necessarily see things in the same light.

2.2.4 On "damage to legislative/judicial power"

- Under the provisions of this article, it will be possible to promulgate and apply nation-wide laws in the HKSAR by means of directives. This will be a blow to the judicial and legislative power of the HKSAR.
- Juridical persons see the flexible wording used in Paragraphs 3, 4 and 5 as a possible excuse for the Central Authorities to interfere with the legislative power of the HKSAR in the future.
- The provision that the Standing Committee of the NPC may return laws for reconsideration or revoke them gives expression to the stipulation that "Hong Kong comes directly under the Central People's Government".

Reason: - Since Hong Kong will come under the Central People's Government, all Hong Kong laws will be local laws and naturally such laws will have to be endorsed by the Central People's Government before they can take effect. If the Central Authorities do not have the final say, Hong Kong will have become as good as a political entity.

2.2.5 On the relationship between the Basic Law and nation-wide laws

- It will be in conformity with legal principles for the NPC to stipulate, at the time of the promulgation of the Basic Law, that laws previously enacted for implementation on the mainland shall not apply in Hong Kong. However, if the Basic Law were to stipulate that none of the nation-wide laws to be enacted in future shall apply in Hong Kong, it will not only impose restrictions on the applicability of laws, but will limit the legislative power of the NPC.
- It is impossible to list the relevant nation-wide laws one by one, as the number may be quite large.

2.3 Other views

- An important point which merits attention is the detailing of how the interests of Hong Kong and the wishes of Hong Kong people will be taken into account and taken care of while ensuring the applicability of nation-wide laws.
- Article 6 of China's Marriage Law prohibits marriage between people who are closely related in the last three generations. If this legislation were to be introduced

into the HKSAR after 1997, the love and marriage prospects of young people in the territory would be affected.

3. Suggestions

- The present article should be retained intact.
- The suggestion contained in "A Collection of Opinions" should be adopted.

3.1 Deletions

- This article should be deleted. (Note 17-2)

Reason: - It is against the Joint Declaration and goes back on the promise of "a high degree of autonomy".

- Paragraph 1 alone should be retained. The rest of the article should be deleted.
- The limits specified in Paragraph 3 should either be deleted or further clarified.

Reason: - If they are not, the Central Authorities will have carte blanche to interfere in the affairs of Hong Kong.

- Paragraph 4 should be deleted.

Reasons: - The stipulation that the Central People's Government may issue "directives" in order to apply laws in Hong Kong violates the Joint Declaration.

- Although the Central People's Government shall have total jurisdiction over defence and foreign affairs, when laws relating to such matters need to be applied in Hong Kong, they should be applied by way of legislation enacted by the legislature of the HKSAR.

- The meaning of the clause "give expression to national unity and territorial integrity" is unclear and it is feared that the Central People's Government might seize on the "loopholes" and interfere in the internal affairs of the HKSAR.

- Paragraph 5 should be deleted.
- The clause "as well as other laws which give expression to national unity and territorial integrity" should be deleted.

Reasons: - Laws which "give expression to national unity and territorial integrity" are naturally "outside the limits of the high degree of autonomy of the HKSAR". With the latter already specified, there is no need to include this clause.

- The meaning of this clause is too vague and will erode the confidence of Hong Kong people.
- As far as the residents of the HKSAR are concerned, there will be no doubt about "national unity" and "territorial integrity" once Hong Kong has reverted to Chinese rule.
- The clause "as well as other laws which give expression to national unity and territorial integrity and which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the HKSAR" should be deleted.

Reasons: - This provision has already been stipulated in the chapter on General Principles.

- As stipulated in Article 22, "[t]he HKSAR shall prohibit by law any act designed to undermine national integrity or subvert the Central People's Government". These laws should be able to control any act designed to undermine national integrity or territorial integrity.
- The words "except in cases of emergency" should be deleted.

Reason: - In cases of emergency, the legislature of Hong Kong will be able to call meetings at any time and pass emergency legislation by giving the bill all three readings at one sitting.

- The clause "shall be applied locally by the government of the HKSAR by promulgation or legislation" should read "shall be applied by the government of the HKSAR by legislation".
- The words "national unity" should be deleted.

Reasons: - The word "unity" is an abstract and sweeping term that invites abuse. For example, the establishment of political parties in Hong Kong may be seen as an act designed to undermine national unity.

- The enactment of laws which relate to defence or foreign affairs or which give expression to territorial integrity should be quite

sufficient to demonstrate the sovereignty of the People's Republic of China over the HKSAR.

- The provision requiring that the HKSAR government "act in compliance with the directives given by the State Council" should be deleted.

3.2 Amendments

- The words "the State Council" should read "the Central People's Government".
- Paragraph 1 should be amended to read: "The laws of the HKSAR shall be this Law, including the General Principles, the laws previously in force"
- Suggested amendment for the word "Paragraph" in Paragraph 2. [Translator's Note: A suggested change in the wording of the Chinese version which does not affect the translation.]
- Paragraph 3 should be amended to read: "Laws enacted by the NPC ..., if there is the need to apply any of such laws in the Region."

Reason: - The word "whenever" carries the meaning that whatever has been suggested is always applicable. However, the provisions of this article will only apply under certain conditions.

- Paragraph 3 should be amended to read: "..., whenever such laws do not contravene this Law."
- Paragraph 3 should be amended to read: "..., whenever there is a reasonable need to apply any of such laws in the Region."
- Paragraph 3 should be amended to read: "... high degree of autonomy of the HKSAR, shall be endorsed and put into effect through relevant procedures by the HKSAR on the notification of the State Council after bills have been presented to the Legislative Council of the Region, whenever"
- Paragraph 3 should be amended to read: "... as well as other nation-wide laws which give expression to national unity and territorial integrity"
- Paragraph 3 should be amended to read: "... the limits of the high degree of autonomy of the HKSAR, shall be applied by way of legislation by the legislature of the HKSAR except in cases of emergency."
- Paragraph 3 should be amended to read: "Nation-wide laws,

enacted by the NPC or its Standing Committee, which relate to defence or foreign affairs, the state capital, the calendar, the national anthem, the national emblem, the national boundary and national organizations, as well as laws which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the HKSAR, shall be promulgated at the discretion of or applied by way of legislation by the government of the HKSAR on the directives of the State Council, whenever there is the need to apply any of such laws in the Region."

Reasons: - The seven laws included in this suggested amendment goes well with the specific details given in Article 15.

- The provision "shall be promulgated at the discretion of" is intended to give expression to the spirit of "a high degree of autonomy".
- Paragraph 3 should be amended to read: "Laws enacted by the NPC or its Standing Committee which relate to defence or foreign affairs shall be applied locally by way of legislation by the legislature of the HKSAR whenever there is the need to apply any of such laws in the Region. Before carrying out the above-mentioned task on behalf of the NPC or its Standing Committee, the State Council shall first consult the Committee for the Basic Law of the HKSAR and the government of the Region."
- Paragraph 3 should be amended to read: "... shall be applied by way of legislation by the legislature of the HKSAR after the Standing Committee of the NPC has consulted the Committee for the Basic Law of the HKSAR and the government of the Region, ..."
- Paragraph 3 should be amended to read: "Laws enacted by the NPC or its Standing Committee, save those which relate to defence or foreign affairs and which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy, shall not apply in the HKSAR."
- Paragraph 3 should be amended to read: "Laws enacted by the NPC or its Standing Committee which relate to defence or foreign affairs as well as other nation-wide laws specified in the Annex which need to be applied in the HKSAR, shall be applied locally by the government of the Region by way of legislation."
- Paragraph 3 should be amended to read: "All matters relating to defence or foreign affairs and territorial integrity shall be handled by the State Council or the HKSAR in conjunction with the State Council."

- Paragraph 4 should be amended to read: "... shall seek the approval of the Committee for the Basic Law"
- Paragraph 4 should be amended to read: "Under all circumstances,"
- Paragraph 5 should be amended to read: "If the government of the HKSAR fails to act in compliance with the directives given by the State Council, and the above-mentioned laws are opposed by two-thirds of the members of the Legislative Council of the HKSAR, the State Council may decree the application of the laws in question in the HKSAR only after a two-year deferment."

Reason: - This situation is bound to have a profound and far-reaching impact on the HKSAR. If the law in question is opposed by two-thirds of the members of the Legislative Council after careful deliberation, there should be a two-year deferment to alleviate the conflict.

- The clause "shall be applied locally by the government of the HKSAR by way of promulgation or legislation on the directives of the State Council" should read "shall be applied by the State Council locally by way of promulgation or legislation by the government of the HKSAR".
- Paragraphs 3 to 5 should be merged and amended to read: "Laws enacted by the NPC or its Standing Committee which relate to defence or foreign affairs as well as other laws which give expression to national unity or territorial integrity and which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the HKSAR shall, on the notification of the State Council after consulting the Committee for the Basic Law of the HKSAR and the government of the HKSAR, be applied locally by the Chief Executive of the HKSAR through the process of legislation whenever there is the need to apply any of such laws in the Region. However, in cases of emergency involving defence or foreign affairs and the expression of national unity or territorial integrity, the State Council may decree the application of the above-mentioned laws in the HKSAR."
- Paragraphs 3 to 5 should be amended to read: "Laws enacted by the NPC or its Standing Committee which relate to defence or foreign affairs as well as other laws which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the HKSAR, shall be applied in the HKSAR by the State Council on the instruction of the Standing Committee of the NPC after consulting the Committee for the Basic Law of the HKSAR and the legislature and Chief Executive of the HKSAR, whenever there is the need to apply any of such laws in

the Region. In accordance with the above-mentioned laws, the legislature of the HKSAR may adopt administrative measures, enact administrative legislation and issue directives and decrees on its own."

- Paragraph 3 should be amended to read: "Laws enacted by the NPC or its Standing Committee which relate to defence or foreign affairs shall be applied locally by way of promulgation or legislation in the light of reality after consultation between the State Council and the government of the HKSAR, whenever there is the need to apply any of such laws in the Region."

- Paragraph 3 should be amended to read: "Laws enacted by the NPC or its Standing Committee, which relate to defence or foreign affairs as well as other laws by which the HKSAR, coming directly under the Central People's Government, must abide, shall be applied locally by way of legislation on the directives of the State Council, whenever there is the need to apply any of such laws in the Region."

- Paragraph 3 should be amended to read: "Laws which relate to defence or foreign affairs shall be applied by way of legislation by the legislature of the HKSAR after the Standing Committee of the NPC has consulted the government of the HKSAR, whenever there is the need to apply any of such laws in the Region. In addition to laws which relate to defence or foreign affairs, if the few nation-wide laws which give expression to national unity or territorial integrity need to be applied in Hong Kong, such laws shall be listed in the Basic Law in the form of an annex, which may be amended in accordance with the procedures prescribed in Article 170 of this Law if additions or deletions need to be made in future."

Reason: - The present provision, which enables the NPC or its Standing Committee to directly introduce legislation in the HKSAR through executive directives issued by the State Council, is against the provisions of the Joint Declaration. The compulsory introduction of Chinese laws into Hong Kong will threaten the rights enjoyed by the local population, create an even more serious crisis of confidence and undermine the high degree of autonomy. (Note 17-3)

- Paragraphs 2 to 5 should be amended to read: "Laws enacted by the NPC or its Standing Committee, except for those which relate to defence or foreign affairs which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the HKSAR, will not be applied in the HKSAR."

"The above-mentioned laws which relate to defence or foreign affairs shall be applied by way of legislation by the legislature of the HKSAR at the request of the Standing Committee of the NPC whenever there is the need to apply any of such laws in the Region.

"Except in cases of emergency, the Standing Committee of the NPC shall consult the Committee for the Basic Law of the HKSAR and the HKSAR itself before making any such request for legislation.

"In addition to the above-mentioned laws which relate to defence or foreign affairs, the few nation-wide laws which give expression to national unity or territorial integrity, as detailed in an annex to this Law, shall also be applied in the HKSAR."

- This article should be amended to read: "The laws of the HKSAR shall be this Law, the laws previously in force in Hong Kong as stipulated in Article 8 of this Law, and the laws enacted by the legislature of the HKSAR. Laws enacted by the NPC or its Standing Committee, except for those stipulated in Paragraph 3 of this Article, shall not be applied in the HKSAR. Laws enacted by the NPC or its Standing Committee which relate to defence or foreign affairs shall be applied locally by way of promulgation or legislation by the government of the HKSAR on the directives of the State Council, whenever there is the need to apply any of such laws in the Region."
- This article should be amended to read: "The laws of the HKSAR shall be this Law, the laws previously in force in Hong Kong as stipulated in Article 8 of this Law, and the laws enacted by the legislature of the HKSAR.

"Laws enacted by the NPC or its Standing Committee will not be applied in the HKSAR, except for those which relate to defence or foreign affairs and those stipulated in Paragraph 3 of this Article.

"Some of the nation-wide laws enacted by the NPC or its Standing Committee which give expression to national unity and territorial integrity and which, in accordance with the provisions of this Law, do not contravene the high degree of autonomy of the HKSAR, and which are listed in Annex IV, shall be applied in the Region."

A fourth annex should be added to the Basic Law for presenting in detail the nation-wide laws other than those relating to defence or foreign affairs, which give expression to national unity and territorial integrity and shall be applied in Hong Kong. Any amendment to the above-mentioned Annex IV will have to be made in accordance with the procedures for the amendment of the Basic Law as stipulated in Chapter IX.

- This article should be amended to read: "The laws of the HKSAR shall be this Law, the laws previously in force in Hong Kong as stipulated in Article 8 under the General Principles of this Law, and the laws enacted by the legislature of the HKSAR.

"Laws enacted by the NPC or its Standing Committee will not be applied in the HKSAR, except for those which relate to defence or foreign affairs and those which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the HKSAR.

"The above-mentioned laws which relate to defence or foreign affairs shall be applied by way of legislation by the legislature of the HKSAR on the directives of the Standing Committee of the NPC whenever there is the need to apply any of such laws in the Region.

"Except in cases of emergency, the Standing Committee of the NPC shall consult the Committee for the Basic Law of the HKSAR and the government of the HKSAR before issuing the above-mentioned directives.

"In addition to the above-mentioned laws which relate to defence or foreign affairs, the few nation-wide laws which give expression to national unity or territorial integrity, as detailed in an annex to this Law, shall apply in the HKSAR." (Note 17-4)

- This article should be amended as suggested above, with the following additional provision: "If the legislature of the HKSAR fails to act in compliance with the directives given by the Standing Committee of the NPC, the Standing Committee of the NPC may, through the Chief Executive of the HKSAR, apply the above-mentioned laws in the Region by way of promulgation."

- This article should be amended to read: "The laws of the HKSAR shall be this Law, the laws listed in Annex IV which give expression to national unity and territorial integrity and which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the HKSAR, the laws as stipulated in Paragraph 3 of this Article which shall be applied in the HKSAR, as well as the laws previously in force in Hong Kong as stipulated in Article 8 of this Law and the laws enacted by the legislature of the HKSAR.

"Laws enacted by the NPC or its Standing Committee which relate to defence or foreign affairs shall be applied in the HKSAR by way of legislation as directed by the Statutory Council on the authorization of the Standing Committee of the NPC, whenever there is the need to apply any of such laws in the Region. If the HKSAR fails to act in

compliance with the directives given by the State Council, the State Council may decree the application of the above-mentioned laws in the HKSAR.

"Except in cases of emergency announced by the Standing Committee of the NPC, the NPC or its Standing Committee shall consult the Committee for the Basic Law of the HKSAR and the government of the HKSAR before enacting those laws, as stipulated in Paragraph 3, which are to be applied in the HKSAR or before the State Council issues the above-mentioned directives.

"Laws stipulated in Paragraph 3 of this Article which are not implemented as stipulated in Paragraphs 3 and 4 of this Article shall not be considered to be laws applicable in Hong Kong.

"Any amendment to Annex IV shall require the endorsement of two-thirds of the members of the legislature of the HKSAR, the consent of the Chief Executive and the approval of the Standing Committee of the NPC. Proposals to amend Annex IV may be made by the State Council or the Standing Committee of the NPC."

- As the suggestion above, but with the the following addition: "Laws enacted by the NPC or its Standing Committee, except for those listed in Annex V which give expression to national unity or territorial integrity and which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the HKSAR, and except for those stipulated in Paragraph 3 of this Law, shall not apply in the HKSAR.

"Amendments to Annex V shall only be proposed by the State Council."

- Paragraph 3 should be amended to read: "Laws enacted by the NPC or its Standing Committee which relate to defence or foreign affairs shall not apply in the HKSAR if they infringe on human rights and freedoms in the HKSAR. Laws which give expression to national unity or territorial integrity shall not be promulgated locally by the government of the HKSAR on the directives of the State Council. The HKSAR shall enact laws prohibiting the use of violence which affects national unity or territorial integrity."
- This article should be amended to read: "The laws of the HKSAR shall be this Law, the laws previously in force in Hong Kong as stipulated in Article 8 of this Law and the laws enacted by the legislature of the HKSAR. Laws enacted by the NPC or its Standing Committee which relate to defence and foreign affairs as well as other laws which give expression to national unity or territorial integrity and which, in accordance with the provisions of this Law,

are outside the limits of the high degree of autonomy of the HKSAR, shall be applied by way of legislation by the legislature of the HKSAR whenever there is any need to apply any of such laws in the HKSAR."

- This article should be amended to read: "The laws of the HKSAR shall be this Law, the laws previously in force in Hong Kong as stipulated in Article 8 under the General Principles of this Law, and the laws enacted by the legislature of the HKSAR, except that laws which relate to defence or foreign affairs and which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the HKSAR, shall not apply in the HKSAR.

"Except in cases of emergency, the Standing Committee of the NPC shall consult the Committee for the Basic Law of the HKSAR and the government of the HKSAR before making the above-mentioned request.

"In addition to the above-mentioned laws which relate to defence or foreign affairs, a few nation-wide laws which give expression to national unity or territorial integrity, that is, those listed in an annex to this Law, shall apply in the HKSAR."

- This article should be amended to read: "The laws of the HKSAR shall be this Law, the laws listed in Annexes V and VI to this Law, the laws previously in force in Hong Kong as stipulated in Article 8 of this Law, the laws enacted by the legislature of the HKSAR, and subordinate legislation enacted by other organs in accordance with the laws enacted by the legislature.

"Laws enacted by the NPC or its Standing Committee, except for those listed in Annex V which relate to defence or foreign affairs and those listed in Annex VI which give expression to national unity or territorial integrity and which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the HKSAR, shall not apply in the HKSAR.

"Any amendment to Annex V shall have to be passed by the Standing Committee of the NPC. Except in cases of emergency announced by the Standing Committee of the NPC the Committee for the Basic Law of the HKSAR and the government of the HKSAR shall be consulted before an amendment is made to Annex V. Any amendment to Annex V shall require the endorsement of two-thirds of the members of the legislature of the HKSAR, the consent of the Chief Executive and the approval of the Standing Committee of the NPC."

Annexes V and VI have yet to be drafted.

- This article should be amended to read: "The laws of the HKSAR shall be this law, the laws previously in force in Hong Kong as stipulated in this Law, and the laws enacted by the legislature of Hong Kong. Laws enacted by the NPC or its Standing Committee, except for those which relate to defence or foreign affairs and which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the HKSAR, shall not apply in Hong Kong. The above-mentioned laws which relate to defence and foreign affairs shall be applied through legislation by the legislature of Hong Kong on the directives of the Standing Committee of the NPC. Except in cases of emergency, the Committee for the Basic Law of Hong Kong and the Hong Kong Government shall be consulted before the above-mentioned directives are issued. If the legislature of Hong Kong fails to act in compliance with the directives given by the Standing Committee of the NPC, the Standing Committee of the NPC may dissolve the legislature through the Chief Executive of the Hong Kong Government and a new legislature may be established to pass the legislation. The provisions of the laws listed in the annexes to this Law which give expression to national unity or territorial integrity shall apply in the HKSAR."

Reasons: - The excessive repetition of the term "HKSAR" should be avoided.

- Hong Kong should be directly subordinate to the Standing Committee of the NPC, not the State Council, the director of a national advisory committee nor the like. Otherwise, Hong Kong will be unsure as to which authority it should take orders from.
- The Standing Committee of the NPC should instruct the legislature rather than the government of Hong Kong to enact laws and approve the application of laws to avoid being too domineering and turning the process into an administrative exercise.
- The suggested amendment is well-considered because the Standing Committee of the NPC shall have to apply laws which relate to defence or foreign affairs through the legislature and government of Hong Kong.

3.3 Additions

- The words "including the Preamble" should be added at the end of Paragraph 1.

Reason: - An addition as suggested in proposed amendments to the Preamble.

- The following addition and amendment should be made to Paragraph 3: "... shall be applied by the government of the HKSAR through legislation on the directives of the State Council after consulting the Committee for the Basic Law of the HKSAR and the Chief Executive of the HKSAR, whenever there is a need to apply any of such laws in the Region. However, in cases of emergency concerning laws which relate to defence or foreign affairs and which give expression to national unity or territorial integrity, the State Council may decree the application of the above-mentioned laws."
- The phrase "national unity" should read "national unity outside the limits of autonomy of the HKSAR".
- The clause "and subsequently recognized by the Legislative Council" should be added at the end of Paragraph 4.
- The following provision should be added: "In addition to the above-mentioned laws which relate to defence and foreign affairs, a few of the nation-wide laws which give expression to national unity or territorial integrity, that is, those listed in an annex to this Law, shall apply in the HKSAR." (Note 17-5)

3.4 On "national unity and territorial integrity"

- The meaning of "national unity and territorial integrity" should be specified in the Basic Law. (Note 17-6)
- The phrase "undermine national unity" is vague in meaning and difficult to define. At a time when China is not completely united and the Hong Kong people have yet to reach a consensus on the unification of China, it may not be appropriate to include this provision in the Basic Law. It is perhaps feasible to include a specific stipulation in the criminal legislation of Hong Kong in the spirit of this principle.
- If the laws which give expression to national unity or territorial integrity are against the Joint Declaration, they should not be applied in Hong Kong.
- Laws which give expression to national unity or territorial integrity shall apply throughout the country and not just in Hong Kong if they are nation-wide laws.

3.5 On "defence and foreign affairs"

- Except for laws which relate to defence or foreign affairs, no nation-wide laws should apply in the HKSAR. Chinese nationals residing in the HKSAR shall not be required to abide by mainland laws.

- Except for laws which relate to defence or foreign affairs, the power of interpretation and judicial jurisdiction in respect of other laws should be vested in Hong Kong. Save for laws which relate to defence or foreign affairs, every effort should be made not to apply nation-wide laws in Hong Kong. This will prevent a situation where Hong Kong will have to look to the Central Authorities for interpretation and judgment in every matter. It will also be more practical as the Central Authorities are not familiar with the actual operation of the courts of Hong Kong and will not be able to spare too much time in dealing with the affairs of Hong Kong.
- The departments of the Central People's Government which will be responsible for laws which relate to defence or foreign affairs and which give expression to national unity or territorial integrity should be clearly stipulated.

Reason: - This will prevent confusion over duties and powers.

3.6 Suggestions that nation-wide laws should be listed in an annex

- The six Chinese laws which give expression to national unity or territorial integrity and which shall apply to Hong Kong should be listed in an annex to the Basic Law. If in future there are new Chinese laws which should apply in Hong Kong, they could be added to the Basic Law through an amendment of the said annex. As regards the procedures for the amendment of the annex, the provision stipulated in Articles 45 and 67 may be adhered to, that is, the suggested amendment shall be "approved by the Standing Committee of the NPC and endorsed by a two-thirds majority of the legislature and the Chief Executive of the HKSAR". Subsequently, the legislature of the HKSAR could apply these laws stipulated in the annex by way of legislation.

Reasons: - In this way the people of Hong Kong will know which nation-wide laws will have legal force in the HKSAR.

- These Chinese laws will apply in Hong Kong, and the fact that they will be appended to the Basic Law will make them part of Hong Kong law.
- Since the annex may be amended, there is ample leeway to take future needs into consideration.
- As these Chinese laws will be appended to the Basic Law, even though they are not directly legislated in Hong Kong, they will still command sufficient authority and credibility.

- This will allow the HKSAR to play a part in the application of those Chinese laws which are to be applied in Hong Kong, and will thus dispel the misgivings of the public about the Chinese communists.
- As regards laws which have to be enacted in the name of the sovereign state or with the authority of the Central People's Government, such as the Nationality Law and laws regarding diplomatic immunity and privileges, the Central People's Government will be able, after the enactment, apply the laws in question in the HKSAR through amending the annex to the Basic Law.
- The provision that the NPC or its Standing Committee may directly enact laws for Hong Kong through directives given by the State Council is against the stipulations of the Joint Declaration. The compulsory introduction of laws will result in resistance and a confidence crisis and undermine the high degree of autonomy of the HKSAR.
- Nation-wide laws which are currently in force and shall be applied in Hong Kong should be incorporated into the Basic Law in the form of an annex so that they can be better understood and discussed by the public during the second round of consultations. Nation-wide laws enacted after the Basic Law has been finalized should be applied only after they have been understood and debated by the public and Legislative Councillors of Hong Kong.

3.7 Suggestions on ways to apply nation-wide laws in Hong Kong

- The Standing Committee of the NPC should be able to ask the legislature of the HKSAR to implement, by way of legislation, laws relating to "defence or foreign affairs" and which are "outside the limits of the high degree of autonomy of the HKSAR" after consulting the "Committee for the Basic Law" and the government of the HKSAR. However, any member of the legislature of the HKSAR or any resident of Hong Kong who might be affected by the laws in question should be allowed to bring the said laws to the attention of a special tribunal. The latter would then decide whether or not the laws in question fall within the scope of "autonomy". If they do, the tribunal may declare that such laws will not take effect in the HKSAR.
- Before decreeing the application of any nation-wide laws, the State Council should first refer them to the Chief Executive and legislature of Hong Kong to be studied. If

the Chief Executive or legislature of Hong Kong does not approve of the application of the law in question in Hong Kong, or if the amendments suggested by them are not accepted by the State Council, the matter should be referred to the Committee for the Basic Law, which would submit its report and suggestions to the Standing Committee of the NPC, which would then make the final decision. The Standing Committee of the NPC should accept the suggestions put forward by the Committee for the Basic Law unless it has strong reasons not to do so. Should it decide against accepting such suggestions, it should give its reasons to the government of the HKSAR.

- If "cases of emergency" occur in Hong Kong, emergency decrees should be promulgated by the Chief Executive of the HKSAR so that contingency measures can be taken with the least delay. If such cases occur in other places in China, emergency decrees should be promulgated by the State Council.
- The process and meaning of "consultation" referred to in this Article should be explained in detail in an annex.
- When promulgating laws, the state should give an indication as to whether they "shall apply in the whole country (including Hong Kong and Macau)" or "shall apply in the whole country (excluding Hong Kong and Macau)". If they are to apply in Hong Kong, the government of the HKSAR should be required to abide by and enforce them. There should be no need to apply them by way of legislation.

Reasons: - China is a unified country. For the overall interests of the state, there will naturally be nation-wide laws or decrees which should apply in Hong Kong.

- The legislative power vested in the HKSAR by the Basic Law should only apply to the internal affairs of Hong Kong. Nation-wide laws will not come within the jurisdiction of the legislature.

3.8 On "the directives of the Central Authorities"

- Nation-wide laws which are to apply in Hong Kong should be enforced by way of legislation by the legislature of the HKSAR on the directives of the Central People's Government. In cases of emergency which cannot be anticipated, it will be permissible to promulgate such laws first with the legislative formalities completed by the legislature afterwards.
- If the Committee for the Basic Law of the HKSAR or the government of the HKSAR objects to the directives given by

the State Council, the Standing Committee of the NPC should explain and state to the people of Hong Kong the reasons for such objection.

- The Basic Law needs to have a system, structure or framework with which to examine the directives given by the State Council. This will guarantee that these directives truly relate to defence or foreign affairs which are outside the limits of autonomy of Hong Kong, will not exceed the needs of defence or foreign affairs, and will be in conformity with the interests and wishes of the people of Hong Kong.
- Nation-wide laws should not be directly introduced into Hong Kong in the form of administrative directives by the Central Authorities. (Note 17-7)
- The Standing Committee of the NPC shall be able to direct the legislature to pass legislation. If the government of the HKSAR fails to abide by the directives, the Standing Committee of the NPC should authorize the Chief Executive of the HKSAR to promulgate the application of the laws in question. However, except in cases of emergency, the Standing Committee of the NPC should first consult the Committee for the Basic Law and the government of the HKSAR.
- The Central Authorities should not have the power to issue directives in respect of laws which relate to matters falling within the scope of autonomy of the HKSAR.
- In the case of nation-wide laws or some of their provisions which do not contravene the Basic Law and which are considered applicable to Hong Kong, the legislature of the HKSAR may be directed to enact corresponding laws of the HKSAR through its own legislative procedures.

Reasons: - This will solve the problem of the applicability of the Chinese Constitution in Hong Kong.


- This will avoid confusion in judicial matters.

- Nation-wide laws should require the endorsement of a three-quarter majority of the Legislative Council of the HKSAR before they can be applied in Hong Kong.
- The Standing Committee of the NPC should propose bills in accordance with the legislative procedures of the legislature of Hong Kong and should not directly decree the application of laws. The bills in question should only be passed or rejected, but not amended. If the bills are rejected, the legislature of Hong Kong will be required to report the reasons to the Standing Committee of the NPC for the record. After the rejected bills have

been amended by the Standing Committee of the NPC, they should again be submitted to the legislature of Hong Kong.

- Laws relating to defence or foreign affairs should be enacted by the NPC or its Standing Committee and applied in the HKSAR by means of local legislation enacted on the directive of the State Council. If the HKSAR fails to act in compliance with the said directive, the State Council may decree the application of the above-mentioned laws in the HKSAR.
- When promulgating laws such as those which give expression to national unity or territorial integrity, the State Council should obtain the endorsement and consent of the Court of Final Appeal and the majority of the members of the legislature of Hong Kong before applying them in Hong Kong by way of promulgation or legislation.
- Laws which shall apply in Hong Kong should be applied by way of legislation in accordance with prescribed procedures, not by promulgation.
- If the laws enacted by the NPC or its Standing Committee are to apply in Hong Kong, Hong Kong should be able to decide the legislative procedures on the directive of the State Council. The application of the laws in question should not be decreed by the State Council.
- It would be more appropriate if it is the Committee for the Basic Law rather than the State Council that decrees the application of nation-wide laws in Hong Kong.
- The laws which shall apply in Hong Kong should be designated by the Standing Committee of the NPC rather than the State Council because the latter is only an executive organ. This point should be incorporated into the Basic Law.
- The situation referred to in the last paragraph of the present article, that is, "fails to act in compliance with the directives given by the State Council" should be resolved by political means because it is not a legal issue.

3.9 Other suggestions

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- It should be stated in the Basic Law that the legislature of the HKSAR shall have the power to enact, on the request of the State Council, new laws that accord with the policies and objectives of the People's Republic of China.

Reason: - This will give the legislature of the HKSAR specific power to enact new laws that accord with the nation-wide laws.

- It should be stated that no nation-wide law shall change the legislative power and other autonomous powers prescribed in the Basic Law.
- The Basic Law should not be in a position to stipulate which provisions of the Chinese Constitution and which Chinese laws will apply in Hong Kong, as "subsidiary laws" cannot dictate to "parent laws". If required, it may be stated that the NPC or the State Council shall stipulate which laws shall apply in Hong Kong.
- A special department should be set up under the Standing Committee of the NPC to study which nation-wide laws should apply in the HKSAR.
- Since the Committee for the Basic Law is to be consulted by the Standing Committee of the NPC and the State Council on matters relating to the Basic Law, the status and terms of reference of this Committee should be above those of special committees or working committees under the NPC.
- According to Article 37 of the Organic Law of the NPC, the Committee for the Basic Law should have the power to "present" and "review" bills.
- The use of terms like "directives" and "decree" should be avoided.
- The scope of "decreed legislation" should be clearly specified.
- Details regarding "cases of emergency" should be given in an annex.
- Since no numerals have been given, what is meant by "except for those stipulated in Paragraph 3 of this Article" ? Numerals should be given for all paragraphs.

4. Issues to be clarified

- 4.1 On "laws which relate to defence and foreign affairs and which give expression to national unity and territorial integrity"
 - What is meant by "laws which relate to defence and foreign affairs and other laws which give expression to national unity or territorial integrity"? What is meant by the executive acts of the Central People's Government? (Note 17-8)
 - What is meant by "give expression to national unity and territorial integrity"? What is meant by "are outside the limits of the high degree of autonomy of the HKSAR" in accordance with the provisions of the Basic Law? These expressions are sweeping and vague and cannot guarantee

the suitability of the directives of the State Council.

- What is meant by "cases of emergency"? Does it refer to emergency situations in terms of public order, financial matters, foreign invasion or other areas?
- Do "laws outside the Basic Law" and "laws which give expression to national unity or territorial integrity and which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the HKSAR" refer to the same thing?
- Do "laws of the Central People's Government" and "laws which give expression to national unity and territorial integrity and which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the HKSAR" refer to the same thing? In what way will they apply in Hong Kong?
- Who is to determine what "undermines national unity and territorial integrity"?
- How will the scope of laws which relate to defence or foreign affairs and which give expression to national unity or territorial integrity be defined? Will it be easy to delineate the scope of the high degree of autonomy? Will, for instance, the military service law be considered a law which relates to defence?
- In addition to "laws which relate to defence and foreign affairs and which give expression to national unity and territorial integrity", there may be other nation-wide laws, such as the Nationality Law, which will have a lot to do with the HKSAR. How will such laws be dealt with?

4.2 On "the application of nation-wide laws in Hong Kong"

- If Hong Kong is given "a high degree of autonomy", should it be Chinese laws or Hong Kong laws which shall apply in Hong Kong?
- This provision says nothing about which nation-wide laws shall apply in the HKSAR.
- Should there be conflict or disharmony between nation-wide laws and the laws previously in force in Hong Kong or the laws enacted by the legislature of the HKSAR, what is to be done?
- Will all nation-wide laws apply in Hong Kong?
- Does this article mean that nation-wide laws will have to be applied in toto or will it be possible for them to be modified to suit the circumstances of the HKSAR for a limited period?

- Will the Legislative Council of the HKSAR be able to decide which laws should or should not apply in Hong Kong, and which laws should or should not apply in China?

4.3 On "the directives of the State Council"

- What is meant by "on the directives of the State Council"?
- Why should the government of the HKSAR act in compliance with the directives of the State Council?
- Will all "directives" have to be implemented? If so, there will not be any need to include the last paragraph of this article. If it is possible to ignore these directives, then it will also be possible to ignore the decrees issued by the State Council. In either case, the constitutional setup will be seriously endangered. It is therefore essential that this question be clarified in the provisions of this Law.
- Is it proper for the State Council to issue such directives? As stipulated in Article 80 of the Chinese Constitution, "[t]he President of the People's Republic of China, in pursuance of decisions of the NPC and its Standing Committee, promulgates statutes; appoints and removes the Premier ... of the State Council...." According to Article 89, the State Council has the function and power "to adopt administrative measures, enact administrative rules and regulations and issue decisions and orders in accordance with the Constitution and the statutes".
- The present article states that "the State Council shall consult the Committee for the Basic Law of the HKSAR and the government of the HKSAR before issuing the above-mentioned directives". Does this mean that the State Council will not issue the directives if the Committee for the Basic Law and the government of the HKSAR are against the move? Will the State Council be subject to any constraints in this regard? What is to be done if the Committee for the Basic Law and the government of the HKSAR do not agree with each other?
- If the State Council has not consulted the Committee for the Basic Law and the government of the HKSAR beforehand, will the directives issued automatically be invalidated?
- If the government of the HKSAR fails to act in compliance with the directives given by the State Council, how will the directives be implemented?
- Since the HKSAR will have to act in compliance with all directives given by the State Council, what is the point of consultation?

4.4 On "the limits of the high degree of autonomy"

- Which laws will be outside the limits of the high degree of autonomy of the HKSAR?
- What is meant by "are outside the limits of the high degree of autonomy"? To what extent is Paragraph 3 of Article 17 at variance with Clause 3(2) of the Joint Declaration and what is the justification for such variance? Is it not sufficient that Article 22 requires the HKSAR to take such action on its own?
- The meaning of the provision "and which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the HKSAR" is too vague, as the Basic Law has not specified which laws are outside the scope of the high degree of autonomy of the HKSAR.

4.5 On other issues

- What sort of organs are the "NPC" and the "Standing Committee of the NPC"? What are their functions?
- If a person is arrested in Hong Kong under a Chinese law, will the Hong Kong courts have jurisdiction to hear the case? Who will interpret the law in question? Will the Hong Kong courts have the power to interpret the law, or will they need to ask the Standing Committee of the NPC for an authoritative opinion?

1. Original text

The Hong Kong Special Administrative Region is vested with independent judicial power, including that of final adjudication.

Courts of the Hong Kong Special Administrative Region shall have jurisdiction over all cases in the Region, except that the restrictions of their jurisdiction imposed by Hong Kong's previous legal system shall be maintained.

Courts of the Hong Kong Special Administrative Region shall have no jurisdiction over cases relating to defence and foreign affairs, which are the responsibility of the Central People's Government, and cases relating to the executive acts of the Central People's Government. Courts of the Hong Kong Special Administrative Region shall seek the advice of the Chief Executive whenever questions concerning defence, foreign affairs or the executive acts of the Central People's Government arise in any legal proceeding. A statement issued by the Chief Executive regarding such questions shall be binding on the courts.

Before issuing such a statement, the Chief Executive shall obtain a certificate from the Standing Committee of the National People's Congress or the State Council.

2. Views

2.1 Supporting views

- Support is expressed for this article.
- Support is expressed for Alternative 1 in "A Collection of Opinions".
- Support is expressed for Alternative 2 in "A Collection of Opinions".
- The provisions of Paragraphs 3 and 4 are formulated in accordance with the principles of common law.
- There is nothing in this article which is against the Joint Declaration.

Reason: - Executive acts include "acts of state" and "facts of state". Under common law, all "facts" concerning "acts of state" have to be confirmed by the executive authorities and the courts may not object to such decisions.

- This article states that the HKSAR shall have the power of

final adjudication. Since the courts shall handle legal proceedings independently free from any interference, the question of executive acts interfering with final adjudication will not arise.

2.2 Reservations

- This article shall pose a threat to the people of Hong Kong as it will adversely affect their rights and freedoms.

Reason: - Under the provisions of this article, the courts will have no jurisdiction over cases relating to defence or foreign affairs or the executive acts of the Central People's Government.

- The provisions of this article will undermine the authority of the courts of the HKSAR.

Reasons: - With this article, the Central Authorities could declare the judgments passed by the courts of the HKSAR to be in contravention of the Basic Law.

- Since the courts of the HKSAR shall have no jurisdiction over cases relating to the executive acts of the Central People's Government, they will also lack jurisdiction over cases involving intervention in the internal affairs of Hong Kong by the Central Authorities, as intervention can be considered as an executive act of the government.

- This article is a violation of the stipulation that cases relating to government acts may also be heard in the courts.

- The provision requiring the courts to obtain a certificate through the Chief Executive in cases relating to defence, foreign affairs or the executive acts of the Central People's Government will slow down the rate at which cases are heard by the courts.

- Under the existing principle of the rule of law, it is the courts and not the executive authorities that decide whether or not they have judicial power or jurisdiction over a case or question.

- There is no general principle in the laws currently in force in Hong Kong which prescribes that the courts shall have no jurisdiction over defence, foreign affairs or the executive acts of the Central People's

Government.

- The provisions of this article go against the Joint Declaration.

Reasons: - The restrictions imposed by this article on jurisdiction are much wider than those imposed by the laws of Hong Kong on the jurisdiction of the courts.

- The "executive acts of the Central People's Government" are obviously outside the existing limits of the laws of Hong Kong.

- The Joint Declaration states that the courts of the HKSAR shall have independent judicial power, but under the provisions of this article, the courts of the HKSAR shall have no jurisdiction over personnel stationed in the HKSAR by the Central People's Government or members of the garrison. This restricts the jurisdiction of the HKSAR courts.

- This article will pose a serious threat to the independence and power of final adjudication of the Hong Kong courts.

2.3 On "defence, foreign affairs or the executive acts of the Central People's Government"

- The Draft Basic Law has not specified the scope and range of the "executive acts of the Central People's Government". (Note 18-1)

- The concept of the term "executive acts of the Central People's Government" is confusing and is liable to be abused or misunderstood. (Note 18-2)

- The executive acts of the Central People's Government must be effectively monitored to ensure that they do not infringe upon the principles of "Hong Kong people administering Hong Kong" and "a high degree of autonomy".

- The courts of Hong Kong have no power to handle, and have not handled, cases relating to Britain's defence or foreign affairs, or the acts of the British cabinet. The present provision is but a precautionary clause.

- Under the present judicial system, the courts of Hong Kong do not handle cases relating to defence or foreign affairs or cases relating to the executive acts of the central government, which are purely political in nature. Since it is already stipulated in this article that "the restrictions of [the courts'] jurisdiction imposed by Hong Kong's previous legal system shall be maintained", it will

be repetitious to state that "[c]ourts of the HKSAR shall have no jurisdiction over cases relating to defence or foreign affairs, which are the responsibility of the Central People's Government, or cases relating to the executive acts of the Central People's Government".

- The Joint Declaration states that the HKSAR shall have no jurisdiction over the executive acts of the Central People's Government. In order to expand the scope of jurisdiction of the Court of Final Appeal, it should be possible for a certificate to be obtained from the Standing Committee of the NPC, on the basis of which the Court could handle and decide cases relating to defence, foreign affairs or the executive acts of the Central People's Government. If the certificate from the Standing Committee of the NPC objects to a specific trial, the Court of Final Appeal should be relieved of its handling of that case.
- Since "executive acts of the Central People's Government" will be subject to interpretation by the Standing Committee of the NPC, the courts of Hong Kong will not have sufficient power to protect the freedom of the local population.
- The provision that the HKSAR shall have no jurisdiction over cases relating to defence or foreign affairs is sufficient to ensure that important external policies of the Central People's Government will be implemented in Hong Kong and that China's sovereignty over Hong Kong will be given expression.
- Support is expressed for the provision that, subsequent to 1997, Hong Kong will not have the power to independently handle cases relating to defence, foreign affairs or the executive affairs of the Central People's Government.

Reasons: - These cases involve the interests of the state and should therefore be handled by the Central Authorities.

- China should have power over defence and such affairs after Hong Kong reverts to Chinese rule.
- Although Hong Kong will not be able to handle the cases in question independently, it will have a part to play in the hearing of such cases.
- Objection is expressed to the provision that, subsequent to 1997, Hong Kong will not have the power to independently handle cases relating to defence, foreign affairs or the executive acts of the Central People's Government.

Reasons: - Hong Kong must fight for a high degree of autonomy.

- The HKSAR should have the power to protect itself.
- The HKSAR should have the power to hear such cases in conjunction with the Chinese government.
- If the present provision is retained, it will allow offenders to escape the net of justice under the protection of Central officials.
- The provision imposes restrictions on the authority of Hong Kong.
- If retained, this provision will lead to a situation where the HKSAR can do nothing to people who act in defiance of the law or public opinion.
- Hong Kong people should have the power to manage Hong Kong affairs.
- Mainland officials do not understand Hong Kong people deeply and therefore cannot represent them.

2.4 On the Chief Executive intervening in the judicial process

- The provision that the courts shall seek the advice of the Chief Executive whenever questions concerning defence or foreign affairs and so on arise will result in intervention by the executive authorities in judicial affairs and will undermine the principle of judicial independence and the spirit of common law.
- Complete judicial power should include jurisdiction and the power of interpretation. The provision that the courts shall have to obtain a certificate from the NPC through the Chief Executive in cases relating to defence, foreign affairs or the executive acts of the Central People's Government will not only slow down the rate at which cases are heard in the courts but will also weaken judicial independence. (Note 18-3)
- The provision that the Chief Executive shall have to obtain a certificate from the Standing Committee of the NPC or the State Council before issuing a statement in connection with legal proceedings will indirectly result in the infringement of the judicial independence of Hong Kong by the State Council.
- The provision that the Chief Executive shall have to

obtain a certificate from the Standing Committee of the NPC or the State Council before issuing the above-mentioned statement implies that the Chief Executive will not have the power to issue certificates on his own and will only be able to pass on the advice of the Standing Committee of the NPC or the State Council.

3. Suggestions

- This article should be kept intact.

3.1 Deletions

- This article should be deleted.

Reason: - It goes against the stipulation of the Joint Declaration that the courts of Hong Kong shall have jurisdiction over all cases.

- The clause "and cases relating to the executive acts of the Central People's Government" should be deleted.

Reasons: - This goes against the Joint Declaration.

- With this provision, the Central People's Government might act in a way that will undermine the concept of "one country two systems" or the capitalist system.
 - The clause is ambiguous.
 - The Central People's Government might abuse this provision and ignore the constraints imposed by the courts of Hong Kong.
 - The clause is unnecessary as the existing judicial system has no jurisdiction over "acts of state" and "facts of state".
 - The deletion of this clause will prevent the imposing of further restrictions on the jurisdiction of the courts.
 - The phrase "restrictions of their jurisdiction imposed by Hong Kong's previous legal system" in fact prevents the courts from hearing cases relating to acts of state.
 - This clause will affect Hong Kong's judicial independence.
- Paragraph 3 should be deleted.

Reasons: - Paragraph 2 already indicates that the existing judicial system has no jurisdiction over

certain acts of the Central Authorities.

- If the paragraph is retained, judicial independence will be violated.
- The following provision should be deleted from Paragraph 3: "A statement issued by the Chief Executive regarding such questions shall be binding on the courts."
- Paragraph 4 should be deleted.
- Paragraphs 3 and 4 should be deleted.

Reasons: - Whether a case involves Central or regional affairs should be determined by the courts of Hong Kong and should not be specified by the Basic Law.

- The provision in Paragraph 2 on "the restrictions of their jurisdiction imposed by Hong Kong's previous legal system" will be sufficient for restricting the jurisdiction of Hong Kong courts over cases relating to defence and foreign affairs.
- The "executive acts of the Central People's Government" cover a wide range of matters. Since the power of interpretation of constitutional provisions on national issues, defence and foreign affairs is vested in the Standing Committee of the NPC, and the scope of "confidential documents" and "military secrets" as defined by the Central People's Government differs significantly from the way the courts and the public of Hong Kong see them, misuse and abuse of this article are likely to occur.
- The present system is not concerned with the acts of state of Britain and thus these provisions will seriously undermine the present judicial system and adversely affect the authority, impartiality and efficiency of the courts.
- The deletion of these paragraphs will guarantee that the people will have the power to take action against the local government or the Central People's Government in a range of matters, including defence and foreign affairs.
- Hong Kong should insist on having independent judicial power, including that of final adjudication.
- These provisions go against the Joint

Declaration.

- Paragraphs 3 and 4 should be deleted and replaced by the following provision: "Courts of the HKSAR shall consult the Standing Committee of the NPC whenever they encounter questions relating to defence, foreign affairs or the executive acts of the Central People's Government in any legal proceedings."

Reason: - This will be more in keeping with the spirit of "one country two systems".

3.2 Amendments

- The words "is vested" in Paragraph 1 should read "shall be vested".
- The word "cases" in Paragraph 3 should read "issues".
- The phrase "the executive acts of the Central People's Government" in Paragraph 3 should read "acts of state".

Reason: - The wording of the former is not as logical and precise as that of the latter.

- The first sentence of Paragraph 3 should be amended to read: "Courts of the HKSAR shall have the power to lodge impeachments and handle cases relating to the executive acts of the Central People's Government."
- Paragraph 3 should be amended to read: "Courts of the HKSAR shall seek the advice of the Chief Executive and act in accordance with the provisions of Article 17 whenever questions concerning defence, foreign affairs or the executive acts of the Central People's Government arise in any legal proceedings."
- The clause "shall seek the advice of the Chief Executive" in Paragraph 3 should read "shall seek the advice of the Supreme People's Court of China".

Reason: - It will be a violation of the "judicial independence" of the HKSAR if the advice of the Chief Executive has to be sought.

- Paragraphs 3 and 4 should be amended to read: "Courts of the HKSAR shall, through the Chief Executive, obtain a statement from the Standing Committee of the NPC or the State Council whenever questions concerning defence, foreign affairs or the executive acts of the Central People's Government arise in any legal proceedings. Such a statement shall be binding on the courts."

Reasons: - The original text is too cumbersome.

- The Chief Executive should only be responsible for passing on the document and should not be called on to repeat the instruction.
- Paragraphs 2, 3 and 4 should be amended to read: "Courts of the HKSAR shall have jurisdiction over all cases in the Region."
- Paragraphs 3 and 4 should be amended to read: "Courts of the HKSAR shall have no jurisdiction over cases relating to defence or foreign affairs, which are the responsibility of the Central People's Government."
- The clause "the Standing Committee of the NPC or the State Council" in Paragraph 4 should read "the Central People's Government."
- Paragraph 3 should be amended to read: "Courts of the HKSAR shall have no jurisdiction over cases relating to defence or foreign affairs, which are the responsibility of the Central People's Government. Courts of the HKSAR shall seek the advice of the Chief Executive whenever questions concerning defence or foreign affairs arise in any legal proceedings. A statement issued by the Chief Executive on such questions shall be binding on the courts."
- Paragraph 3 should be amended to read: "The Supreme People's Court shall have the power to adjudicate cases relating to defence or foreign affairs, when the relevant events occurred in Hong Kong."
- This article should be amended to read: "The HKSAR is vested with independent judicial power, including that of final adjudication. Courts of the HKSAR shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by Hong Kong's previous legal system and principles shall be maintained."
(Note 18-4)

Reasons: - It is obvious that the provisions of Paragraph 3 will lead to a change in Hong Kong's present judicial system, as they will restrict the jurisdiction of HKSAR courts over all cases relating to defence, foreign affairs or the acts of the Central People's Government. The term "the executive acts of the Central People's Government" is also liable to be abused or misinterpreted. The slashing of the jurisdiction of Hong Kong courts will also render the future judicial organs not fully capable of enforcing the provisions of the Basic Law regarding the protection of human rights and freedoms. Actually, the existing legal system already includes restrictions on

judicial power over matters relating to defence and foreign affairs (such as "acts of state" and "facts of state"). In order to ensure the effective operation of the courts, no further restrictions should be imposed on top of those already prescribed in the existing laws. (Note 18-5)

- Paragraph 3 should be amended to read: "Courts of the HKSAR shall have no jurisdiction over cases relating to defence or foreign affairs, which are the responsibility of the Central People's Government. Courts of the HKSAR may judge whether the matter under adjudication is within the scope of defence or foreign affairs in any legal proceedings."
- This article should be amended to read: "The HKSAR is vested with independent judicial power, including that of final adjudication.

"Courts of the HKSAR shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by Hong Kong's previous legal system and principles shall be maintained. Provisions in respect of the handling by the courts of the HKSAR of cases relating to offices or organs of state power of the People's Republic of China, or their staff, as well as compensation payments in respect of such offices, organs of state power or their staff, shall be stipulated by the courts of the HKSAR."

- This article should be amended to read: "The HKSAR is vested with independent judicial power, including that of final adjudication. Courts of the HKSAR shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by Hong Kong's previous legal system and principles shall be maintained. Courts of the HKSAR shall, in accordance with common law principles and precedents, seek the advice of the Chief Executive whenever questions concerning defence or foreign affairs arise in any legal proceedings. A statement issued by the Chief Executive on such questions shall be binding on the courts.

"Before issuing such a statement, the Chief Executive shall obtain a certificate from the Standing Committee of the NPC or the State Council. Provisions in respect of the handling, by the courts of the HKSAR, of cases relating to offices or organs of state power of the People's Republic of China, or their staff (including those mentioned in Articles 13 and 21 of Chapter II), as well as compensation payments in respect of the said offices and organs of state power, shall be stipulated by the courts of the HKSAR."

- This article should be amended to read: "The HKSAR is vested with independent judicial power, including that of final adjudication. Courts of the HKSAR shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by Hong Kong's previous legal system and principles shall be maintained. In particular, defendants standing trial shall be assumed to be innocent."

- This article should be amended to read: "The HKSAR is vested with independent judicial power, including that of final adjudication. Courts of the HKSAR shall maintain Hong Kong's previous legal principles, have jurisdiction over all cases, and have the power to decide whether cases under adjudication should be referred to the Central People's Government. The Chinese Government may appeal to the courts of Hong Kong that certain cases be referred to the Central Authorities for handling, but decisions on such appeals shall rest with the courts of Hong Kong."

- This article should be amended to read: "The HKSAR is vested with independent judicial power, including that of final adjudication.

"Courts of the HKSAR shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by Hong Kong's previous legal system and principles shall be maintained. Courts of the HKSAR shall have the power of final adjudication over all cases in the Region, except those stipulated in Paragraph 3.

"The power of final adjudication over cases relating to defence or foreign affairs and laws listed in Annex IV shall be vested in the Central judicial departments."

- This article should be amended to read: "The HKSAR is vested with independent judicial power, including that of final adjudication."

- This article should be amended to read: "Courts of the HKSAR shall continue to have jurisdiction over cases originally under the jurisdiction of courts in Hong Kong, except for those listed in Clauses (1) to (4) below:

(1) Cases relating to the relationship between the Central Authorities and the HKSAR;

(2) Cases relating to the validity of executive acts (including defence and foreign affairs) of the Central authorities;

(3) Cases relating to the validity of executive acts of the government of the HKSAR in implementing, in accordance with the provisions of this Law, the directives of the Central Authorities concerning

defence or foreign affairs;

- (4) Cases relating to the validity of those executive acts of the government of the HKSAR in dealing with external affairs on its own as authorized by the Central Authorities and in accordance with the provisions of this Law, which are deemed to be "acts of state" under the laws previously in force in Hong Kong, and cases relating to the executive acts which were deemed to be "facts of state" under the laws previously in force in Hong Kong.

"Courts of the HKSAR shall seek the advice of the Chief Executive whenever matters mentioned in Clauses (1) to (4) arise in any legal proceedings. A statement issued by the Chief Executive on such matters shall be binding on the courts.

"Before issuing such a statement, the Chief Executive shall obtain a certificate from the Standing Committee of the NPC or the State Council."

Reason: - Cases mentioned in Clauses (1) to (4) above should not be handled by the courts of a local government, even one which is vested with the power of final adjudication.

- This article should be amended to read: "The HKSAR is vested with independent judicial power, including that of final adjudication. Courts of the HKSAR shall have jurisdiction over all cases in Hong Kong, except that the restrictions on their jurisdiction imposed by Hong Kong's previous legal system and principles shall be maintained. Courts of the HKSAR shall, in accordance with common law principles and precedents, seek the advice of the Chief Executive whenever questions concerning defence or foreign affairs, which are the responsibility of the Central People's Government, arise in any legal proceedings, as well as in cases relating to the executive acts of the Central People's Government, such as cases relating to the relationship between the Central Authorities and Hong Kong, cases relating to the implementation, by the government of Hong Kong and in accordance with this Law, of directives of the Central Authorities concerning defence or foreign affairs, and cases relating to acts of the government of Hong Kong in dealing with external affairs on its own as authorized by the Central Authorities and in accordance with the provisions of this Law, which would have been deemed to be "acts of state" or "facts of state" under the laws previously in force in Hong Kong. A statement from the legislature issued by the Chief Executive shall be binding on the courts. Before issuing such a statement to the Chief Executive, the legislature shall obtain a certificate from the Standing Committee of the NPC. Provisions in respect of

the handling of cases relating to organs of state power and all offices of the Central People's Government, or their staff (including those mentioned in Articles 13 and 21 of Chapter II), as well as compensation payments in respect of these organs of state power, offices or their staff, shall be stipulated in the laws of Hong Kong."

Reasons: - In handling cases relating to defence, foreign affairs or the executive acts of the Central People's Government, the courts should seek advice from the Chief Executive and obtain from the legislature a certificate issued by the Standing Committee of the NPC, rather than obtain from the Chief Executive a certificate issued by the State Council, for the latter procedure would subject the Chief Executive to the manipulation and control of the Central People's Government.

- In order to be fair and democratic, organs of state power and offices of the Central People's Government, or their staff, should be required to stand trial under the laws of Hong Kong if they violate the laws in Hong Kong. Similarly, there should be specific provisions for compensation to the victims. If this is not so, Hong Kong could not be said to be enjoying a high degree of autonomy.

- This article should be amended to read: "The HKSAR is vested with independent judicial power, including that of final adjudication.

"Courts of the HKSAR shall have jurisdiction over all cases (including those relating to the Central People's Government and other local administrative organs), except that the restrictions on their jurisdiction imposed by Hong Kong's previous legal system shall be maintained.

"Courts of the HKSAR shall seek the advice of the Chief Executive whenever questions concerning defence, foreign affairs or the executive acts of the Central People's Government arise in any legal proceedings. A statement issued by the Chief Executive on such questions shall be binding on the courts.

"Before issuing such a statement, the Chief Executive shall obtain a certificate from the Standing Committee of the NPC or the State Council."

3.3 Additions

- The clause "except that such jurisdiction shall exclude cases of subversion and treason" should be added at the end of Paragraph 2.

- The clause "including cases relating to the Central People's Government, offices of the Central People's Government, provinces, autonomous regions, municipalities directly under the Central Government and other local administrative organs" should be added after "over all cases" in Paragraph 2.
- The clause "except that cases relating to the HKSAR shall be handled by courts of the HKSAR" should be added after "and cases relating to the executive acts of the Central People's Government" in Paragraph 3.
- The following provision should be added: "Courts of the HKSAR shall have jurisdiction over all cases in the Region, including those relating to persons from outside who are in Hong Kong in transit, for tour purposes or on business."
- The clause "before making the final judgment on the case" should be added after "Courts of the HKSAR shall" in the second sentence of Paragraph 3.

3.4 On the "executive acts of the Central People's Government"

- The "executive acts of the Central People's Government" should be specified in the form of an annex.

Reasons: - If this is not specified, the provision will greatly affect the judicial independence of the HKSAR.

- A good legal system should protect the government as well as individuals.
- This term is liable to be misinterpreted or abused.

- The term "executive acts of the Central People's Government" should either be defined or deleted.

Reason: - This term is liable to be misinterpreted or abused.

- The specific meaning of terms like "defence", "foreign affairs" and "executive acts of the Central People's Government" should be laid down.

Reason: - Officials of the Central People's Government are becoming more active in Hong Kong and it is necessary to know what activities are covered by the above terms.

- Provision should be made for the handling of cases relating to the executive acts of the Central People's

Government.

- Legal provisions should be made in respect of conflicts between the rights of individuals and the rights of the Central People's Government in defence and foreign affairs.

Reason: - This will protect the independence and dignity of the judicial organs.

- In cases relating to the executive acts of the Central People's Government, the Central Authorities should have complete faith in the courts of Hong Kong and leave them to make judgments on their own.
- Courts of the HKSAR should have complete jurisdiction over cases arising in Hong Kong which relate to the executive acts of the the Central People's Government.

Reasons: - This is in line with the principle of a high degree of autonomy.

- This will prevent the spread of bureaucracy in Hong Kong.
- In the handling of cases which relate to defence, foreign affairs or the executive acts of the Central People's Government, the courts should seek the advice of the Chief Executive and obtain from the legislature a certificate issued by the Standing Committee of the NPC.

Reasons: - To avoid a situation whereby the Chief Executive is manipulated and controlled by the Central People's Government, it should not be required that the certificate be obtained from him.

- In order to preserve judicial independence, the Chief Executive should not be allowed to interfere in the judgments of the courts.
- All cases relating to the executive acts of the Central People's Government should first be handled by the Central Authorities and then be announced by the courts of Hong Kong.
- The Court of Final Appeal should decide whether cases relating to defence, foreign affairs or the executive affairs of the Central People's Government should be referred to the NPC.
- Courts of the HKSAR should be able to determine, in any legal proceedings, which questions relate to defence, foreign affairs or executive acts of the Central People's Government and directly refer such cases to the Central

Authorities without having to seek the advice of the Chief Executive.

- The future Committee for the Basic Law should be responsible for determining which acts are executive acts of the Central People's Government and for putting forward to the Central People's Government and the Standing Committee of the NPC suggestions on cases which involve such acts. Decisions on such cases should be made by the Standing Committee of the NPC.
- In normal circumstances, commercial acts of financial and monetary organs should not be considered as executive acts of the Central People's Government.
- Acts of China-based companies should not be considered as executive acts of the Central People's Government.

Reason: - If such acts are so considered, these companies will become "local despots" and will not be bound by the laws of the HKSAR.

- Executive acts of the Central People's Government should include the appointment of the Chief Executive and principal officials of Hong Kong as stipulated in the Joint Declaration, the handling of defence and foreign affairs, as well as the handling of those matters considered facts of state and acts of state under common law.
- Executive acts of the Central People's Government should be defined as follows:

"The executive acts of the Central People's Government refer to administrative decisions made, administrative decrees promulgated, or administrative rules and regulations enacted by the State Council, or measures of legal effect taken by the State Council in the implementation of law."

- "Executive acts" should be confined to those acts within the "English Act of State Doctrine", such as the acquisition of foreign territories and the declaration of war. In such cases, a statement issued by the Chief Executive, after obtaining the certificate from the Standing Committee of the NPC, should be binding on the Hong Kong courts.
- "Executive acts of the Central People's Government" should be confined to "executive acts relating to defence and foreign affairs".

3.5 On "jurisdiction" and "power of final adjudication"

- The power of final adjudication for Hong Kong courts

should be vested in the Chinese government.

Reasons: - At present, all judges are British-trained and 90% of them are white. It will prove very harmful to Hong Kong if they have final adjudication in legal proceedings.

- There is no precedent in international practice for a local administration like the HKSAR to be vested with the power of final adjudication.
- Hong Kong courts should have jurisdiction over all cases in the Region.

Reason: - The common law system is practised in Hong Kong.

- As a means of protecting independent jurisdiction, the additional restrictions on the jurisdiction of the courts should be done away with. (Note 18-6)
- Except for cases relating to defence or foreign affairs, Hong Kong should have the power of final adjudication over all cases.
- Courts of the HKSAR should have jurisdiction over offices under the Central People's Government, units subordinate to them, as well as their staff.
- If personnel sent by the Central Authorities violate the laws of Hong Kong, the courts of Hong Kong should have the power to handle the case after the Chief Executive has obtained the approval of the Central Authorities.
- Leaders at or above the level of vice-premier should not be under the jurisdiction of Hong Kong courts. However, Hong Kong courts should reserve the right to take legal action against them.
- There should be clear stipulations in the laws of Hong Kong regarding the trial of cases involving offices and personnel of the People's Republic of China, as well as compensation payments in respect of cases involving these offices and personnel.
- The Chief Executive should not have the power to interfere with the judgments handed down by the courts.

Reason: - This will keep judicial independence intact.

- Under the present judicial procedures, the procuratorial departments of the executive authorities have the power to decide, before referring a case to court, whether or not it comes within the scope of "jurisdiction" as stated in this article. Thus, once a case has already been submitted to the courts, the executive authorities should

not be allowed to interfere.

- In determining whether or not a case relates to defence, foreign affairs or the executive acts of the Central People's Government, courts of the HKSAR should have preliminary jurisdiction. If it is determined that the case in question relates to any of these three areas, courts of the HKSAR should not have further jurisdiction over it, and the case should be referred to the Central People's Government. The latter should have the power of final adjudication.
- The Standing Committee of the NPC should vest the courts of the HKSAR with the power of constitutional review and independent judicial power, including that of final adjudication.
- The Basic Law should specify the scope and restrictions of the independent "judicial power" and "power of final adjudication" to be enjoyed by the HKSAR.

3.6 Other suggestions

- The Central People's Government should set up an office to deal with applications for re-trials on the grounds of mishandling in the judicial process.

4. Issued to be clarified

4.1 On "defence, foreign affairs or the executive acts of the Central People's Government"

- The meaning of the terms is unclear and needs to be clarified.
- What does "the Central People's Government" refer to? Does it mean the NPC or its Standing Committee? Does it refer to the State Council? Or could it refer to any particular official of the Central People's Government? (Note 18-7)
- If a resident of the HKSAR is suspected of having committed in other parts of China a crime which may or may not relate to defence or foreign affairs, and has returned to Hong Kong, what will the Central People's Government or the Hong Kong Government do? Will the suspect stand trial in the HKSAR, or in the place where his alleged crime was committed? If a resident of China is suspected of having committed in the HKSAR a crime which may or may not relate to defence or foreign affairs, and has returned to his original domicile, what will the Central People's Government do? Will the suspect stand trial in his original domicile, or in Hong Kong?
- If an official of the Central People's Government commits

a crime in the HKSAR and is arrested by officers of the Hong Kong government, will it be possible to file a suit against the Central People's Government?

- If a party to legal proceedings alleges that the case under adjudication relates to defence, foreign affairs or the executive acts of the Central People's Government, what is to be done?
- In cases relating to defence, foreign affairs or the executive acts of the Central People's Government, will citizens have the right of appeal?
- If the Central Authorities interfere in Hong Kong affairs or even exercise control over Hong Kong, will such acts be deemed executive?
- According to the Chinese Constitution, the Central People's Government means the State Council. It exercises its functions and powers in eighteen areas, and any reasonable action taken by the State Council is an "executive act". "Executive acts" cover a wide range of matters, because in addition to defence and foreign affairs listed under Clauses (9) and (10) of the Chinese Constitution, the economy, education, science and technology, culture, public health and sports all come within the eighteen areas mentioned above. If these functions and powers are in conflict with the executive acts which the HKSAR may carry out on its own, thus resulting in a court case, will the courts of the HKSAR have jurisdiction over it?
- Is there any contradictin between the provision of this article, which stipulates that "[c]ourts of the HKSAR shall have no jurisdiction over cases relating to defence or foreign affairs", and the provision of Article 13, which states that "(members of the garrison) shall also abide by the laws of the HKSAR"? Under what circumstances will the garrison not be involved with defence? Does this article not authorize the garrison to defy the laws of the HKSAR?
- Under what circumstances will it be possible to obtain a certificate from the Standing Committee of the NBC or the State Council?

4.2 On "jurisdiction" and "power of final adjudication"

- The term "previous legal system" in "except that the restrictions on their jurisdiction imposed by Hong Kong's previous legal system shall be maintained" should be clarified to avoid possible disputes.
- Should the phrase in Paragraph 1 read "independent judicial power, including that of final adjudication", or

"independent judicial power and independent power of final adjudication"? Whether or not the power of final adjudication is independent will have direct bearing on the expression of the principle of a high degree of autonomy and must therefore be clarified.

- It should be laid down in detail how the Central People's Government will exercise and define judicial power and the power of final adjudication, and the severity of the punishment to be administered after cases are ruled.

1. Original text

The Hong Kong Special Administrative Region may enjoy other powers granted to it by the National People's Congress, the Standing Committee of the National People's Congress or the State Council.

2. Views

2.1 Reservations

- There is no need to include this article.
- The State Council is an executive organ of the whole nation. It should not exercise control over the HKSAR.
- This article goes against the Joint Declaration.

Reason: - This article states that the HKSAR may enjoy other powers granted to it by the NPC, the Standing Committee of the NPC or the State Council. In other words, the HKSAR government, save for the powers conferred upon it by the Basic Law and the additional powers granted to it under this article, will have no residual power, be it executive, legislative or judicial. However, the Joint Declaration states, without specifying whether such powers are residual or otherwise, that the HKSAR "shall enjoy a high degree of autonomy" and "shall be vested with executive, legislative and independent judicial power" except in relation to defence and foreign affairs.

2.2 Other views

- In relevant mainland laws, the principles guiding the functions and powers of a local administration are usually followed by this supplementary provision: "To handle other matters handed down by the state administrative organ at the next higher level." However, the HKSAR "may enjoy other powers granted to it by the NPC, the Standing Committee of the NPC or the State Council." This shows that the HKSAR will have a special status.

3. Suggestions

3.1 Amendments

- The clause "the NPC, the Standing Committee of the NPC or the State Council" should read "the Central People's Government".

Reason: - The HKSAR will come directly under the Central People's Government. (see Article 11)

- This article should be amended to read: "Except for the powers which, in accordance with the provisions of this Law, the NPC, the Standing Committee of the NPC or the State Council may exercise in Hong Kong, all powers shall be granted to the HKSAR."
- This article should be amended to read: "The government of the HKSAR may enjoy other powers granted to it by the NPC, the Standing Committee of the NPC or the State Council."
- This article should be amended to read: "The HKSAR may enjoy other powers granted by the NPC, the Standing Committee of the NPC or the State Council, except in areas of defence and foreign affairs."
- This article should be amended to read: "The government of the HKSAR shall be vested with other powers not mentioned in this Law."

Reason: - The government of the HKSAR should have residual power.

- This article should be amended to read: "Unless otherwise stipulated in (the relevant provisions of) this Law, the HKSAR may enjoy all powers."

Reason: - The wording of the present provision violates the principle of "residual power".

3.2 Other suggestions

- Hong Kong should not be under the jurisdiction of more than one Central organ of state power, otherwise it will be at a loss as to what to do.

4. Issues to be clarified

- What is meant by "other powers"?

Article 20

1. Original text

Residents of the Hong Kong Special Administrative Region who are Chinese nationals are entitled to participate in state affairs as prescribed by law.

In accordance with the assigned number of seats and the election procedures specified by the Standing Committee of the National People's Congress, the Chinese nationals among the Hong Kong residents shall locally elect deputies of the Hong Kong Special Administrative Region to the National People's Congress to participate in the work of the highest organ of state power.

2. Views

2.1 Supporting views

- The HKSAR should have its own deputies to the NPC to participate in state affairs.

Reasons: - This will facilitate negotiations and dialogues so that matters involving both China and Hong Kong can be handled more efficiently.

- This will facilitate better communication between China and Hong Kong and prevent dual legislation which will be detrimental to national unity.

- As a special administrative region of China, Hong Kong should naturally have this right.

2.2 On the background of deputies to the NPC

- Hong Kong deputies to the NPC need not be permanent residents of the HKSAR (who have resided in Hong Kong for more than 7 years).

Reasons: - Hong Kong is a part of China.

- The only requirement should be that the candidates are Hong Kong people.

- Hong Kong deputies to the NPC should be permanent residents of the HKSAR (who have resided in Hong Kong for more than 7 years).

Reasons: - Hong Kong must strive for a high degree of autonomy.

- Deputies without such qualifications will not

be able to represent Hong Kong.

- Non-permanent residents will not have a deep understanding of Hong Kong.
- If Hong Kong is not represented at the NPC, no one will speak on Hong Kong's behalf.
- If such a stipulation is not made, the Central Authorities will send their own people to rule the HKSAR.
- The Chief Executive, members of the legislature, members of the executive authorities and all principal officials have to be "permanent residents of Hong Kong".

2.3 On the election of deputies to the NPC

- Hong Kong will not have autonomous power to elect its own deputies to the NPC.

Reason: - Hong Kong deputies to the NPC will be selected in accordance with the assigned number of seats and the election procedures specified by the Standing Committee of the NPC.

- There should be restrictions on the right of mainlanders resident in Hong Kong to vote and to stand for election.

Reasons: - Only Chinese nationals among Hong Kong residents should be eligible to participate in elections. Permanent representatives of various mainland departments or offices should not be eligible.

- Mainlanders who have settled in Hong Kong after 1997 should not be eligible to participate in elections before they have obtained permanent identity cards. However, when they leave China, they will lose their household registration and the right to vote.

2.4 On the relationship between deputies to the NPC and the political structure of the HKSAR

- Deputies to the NPC will become the second core of power in Hong Kong.

Reason: - Deputies to the NPC and members of the political structure of the HKSAR will belong to two separate systems. Should their opinions differ, deputies to the NPC may put forward their views on Hong Kong affairs to the Central Authorities, but members of the political structure of the

- Hong Kong deputies to the NPC will not form a "secondary core of power".

Reasons: - The method of electing Hong Kong deputies to the NPC and the method of electing members of the legislature of the HKSAR are different and will not interfere with each other.

- The fact that the representation of Hong Kong deputies to the NPC and that of the SAR legislature will be parallel but will not interfere with each other is not conducive to the political stability of Hong Kong.

3. Suggestions

- The present provision should be retained and the qualifications for Chinese nationals among Hong Kong residents should be specified in the form of an annex.

3.1 Deletions

- This article should be deleted.

Reasons: - This article provides for a separate system within the "one country two systems" guideline.

- Since Hong Kong will become a part of China's territory after 1997, Chinese nationals in Hong Kong should be entitled to participate in political affairs in accordance with the provisions of the Constitution.

3.2 Amendments

- The term "residents" should read "permanent residents".
- The term "as prescribed by law" should read "as prescribed by the laws of the state".
- The term "state affairs" should read "national affairs".

Reason: - This will show that residents of the HKSAR will be entitled to participate in the affairs of the Central People's Government.

- The clause "[r]esidents of the HKSAR who are Chinese nationals" in Paragraph 1 and the clause "the Chinese nationals among the Hong Kong residents" in Paragraph 2 should read "Chinese nationals who hold permanent identity cards of the HKSAR".
- Paragraph 1 should be amended to read: "Permanent residents of the HKSAR who are Chinese nationals are

entitled to participate in state affairs as prescribed by law."

- The clause "the assigned number of seats and the election procedures" in Paragraph 2 should read "the terms of reference, number of seats and electoral procedures separately prescribed, that is, as listed in Annex V to this Law". The suggested contents of Annex V are as follows:

(1) The electoral procedures and terms of office of deputies of the HKSAR to the NPC: Deputies of the HKSAR to the NPC shall be directly elected by districts in Hong Kong. Their terms of office shall be the same as those of NPC deputies in other parts of China.

(2) The terms of reference of deputies of the HKSAR to the NPC: Deputies of the HKSAR to the NPC shall be entitled to participate in state affairs, but shall neither interfere in the administration of Hong Kong nor set up their office in Hong Kong.

- This article should be amended to read: "Permanent residents of the HKSAR who are Chinese nationals are entitled to participate in state affairs through procedures by which Hong Kong deputies are elected to the NPC."

Reason: - This will prevent fresh immigrants from participating.

- This article should be amended to read: "Chinese nationals who hold a permanent identity card of the HKSAR are entitled to participate in state affairs as prescribed by law. In accordance with the assigned number of seats and electoral procedures specified by the Standing Committee of the NPC, Chinese nationals who are permanent residents of the HKSAR shall elect fellow Chinese nationals as deputies of the HKSAR to the NPC. Deputies of the HKSAR to the NPC shall not interfere in the affairs administered by the HKSAR on its own in accordance with this Law." (Note 20-1)

- This article should be amended to read: "Chinese nationals who are permanent residents of the HKSAR are entitled to participate in state affairs as prescribed by law. In accordance with the assigned number of seats and the electoral procedures specified by the Standing Committee of the NPC, Chinese nationals who are permanent residents of the HKSAR shall elect fellow Chinese nationals as deputies of the HKSAR to the NPC."

- Paragraph 2 should be amended to read: "In accordance with the assigned number of seats and electoral procedures

prescribed by the Standing Committee of the NPC, Chinese nationals who are permanent residents of the HKSAR shall elect in Hong Kong deputies of the HKSAR to the NPC from among the permanent residents of the HKSAR to participate in the work of the highest organ of state power."

Reason: - There will be problems if Chinese nationals from the mainland were to have the right to vote and the right to stand for election [as deputies to the NPC] firstly because they will not have lived in Hong Kong long enough and therefore will not understand the situation in Hong Kong, and secondly because this would cause Hong Kong people to suspect China of attempting to interfere in the affairs of Hong Kong.

3.3 Additions

- The following provision should be added: "Members of the legislature of the HKSAR are eligible for election as deputies to the NPC."
- The following provision should be added: "Deputies of the HKSAR to the NPC shall not interfere in the affairs administered by the HKSAR on its own in accordance with this Law."

Reason: - This will ensure the high degree of autonomy of the HKSAR.

- The clause "and to participate in voluntary military service and voluntary service in defending the country" should be added at the end of Paragraph 1.
- Details regarding the election and qualifications of deputies to the NPC should be given in Paragraph 2.
- The clause "and shall abide by nation-wide laws" should be added to this article.
- The following provision should be added: "Residents and officials of the People's Republic of China residing in the Region as well as members of the garrison in the HKSAR shall, if they violate the laws of the HKSAR, be detained and confined in the territory by the police of the Region and subject to trial and punishment by the courts of the HKSAR." Provisions similar to extradition arrangements between the two places should also be stipulated in the Basic Law.
- Since mainland laws and Hong Kong laws differ in the degree of leniency, the following supplementary provision should be added in an annex: "If a member of the garrison is charged with violation of criminal law and is found guilty, the HKSAR court shall refer to mainland precedents

before handing down its judgment and mete out punishment severely."

3.4 Rearrangement

- Since the provision on the participation in state affairs by Chinese nationals in Hong Kong has nothing to do with "the relationship between the Central Authorities and the HKSAR", it would be more appropriate to include it in the chapter on "The Fundamental Rights and Duties of Residents".

3.5 On the election of Hong Kong deputies to the NPC

- They should be elected.
- They should be elected by the people of Hong Kong.
- They should be directly elected wherever possible. Otherwise they should be elected by mixed elections.

Reason: - If this is not so, they will not be able to truly represent the people of Hong Kong.

- They should not be appointed.
- They should not be selected through the "automatic selection" method.

Reason: - This will be contrary to the principle of "election".

- They should come from among the members of the Legislative Council.

Reasons: - Legislative Council members are part of the political structure of the HKSAR.

- Legislative Council members are elected through the political structure of the HKSAR. Since their power comes from the people of Hong Kong, they will listen to the people of Hong Kong.

- This will avert the situation where deputies to the NPC become the second core of power in Hong Kong.

- This will prevent the possibility of dual legislation and the deteriorating of contradictions.

- Deputies to the NPC should not come from among the members of the Legislative Council.

Reasons: - Deputies to the NPC may thus be elected both

indirectly and directly.

- Should contradictions arise between the Central Authorities and the HKSAR, those playing a dual role would find themselves in an awkward position.
- It may be too demanding in terms of time and energy because deputies to the NPC will be expected to go north to pay visits and attend meetings regularly.
- The composition of deputies of the HKSAR to the NPC should be as follows: members of the Legislative Council, 30%; government representatives, 20%; members of the Committee for the Basic Law, 10%; District Boards, 15%; and representatives from various sectors, 25%. These deputies should be either elected from among their own ranks or directly elected.
- Nominations for deputies of Hong Kong to the NPC should require the support of at least one-tenth of the members of the legislature and such nominations will be submitted to the Central Authorities for decision.
- The method of electing Hong Kong deputies to the NPC should be stipulated in an annex.

Reason: - The method of electing deputies to the NPC currently practised in China has many grey areas. If this method is used in Hong Kong, it will definitely give rise to disputes.

- It should be stipulated that the number of seats and electoral procedures for deputies of the HKSAR to the NPC shall be prescribed by law.
- Since Hong Kong deputies to the NPC will have an important role to play in the political structure of the HKSAR, bills in respect of the number of seats and electoral procedures for these deputies should be promulgated together with the Draft Basic Law.
- The Basic Law should not lay down an electoral law for Hong Kong deputies to the NPC.

Reason: - This is outside the scope of the Basic Law, and it should be dealt with by the NPC.

3.6 Other suggestions

- No office of the NPC should be established in Hong Kong.

Reason: - Otherwise deputies to the NPC will become another core of power.

- The terms of reference of Hong Kong deputies to the NPC and Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference should be specified.

Reason: - This will prevent the formation of a second core of power.

- Where deputies to the NPC will stand in relation to the executive authorities and legislature of the HKSAR should be specified.

4. Issues to be clarified

- What is meant by "Chinese nationals"?
- How will Chinese nationals participate in state affairs?
- Who will be entitled to participate in state affairs, Hong Kong's permanent residents or non-permanent residents?
- How will deputies to the NPC be elected?
- What qualifications will be required of the candidates for deputies of the HKSAR to the NPC and what will be the electoral procedures? What functions and powers will they have? Where will they stand in relation to the legislative and executive authorities of the HKSAR?
- Will Hong Kong be able to draw up its own electoral procedures? Or will deputies be elected in accordance with the "Decision on the Amendment (of the Electoral Law of the NPC and Local People's Congresses of the People's Republic of China)" adopted at the time of the amendment of the Chinese Constitution in 1986?

Article 21

1. Original text

Departments under the Central People's Government as well as provinces, autonomous regions and municipalities directly under the Central Government shall not interfere in the affairs which the Hong Kong Special Administrative Region administers on its own in accordance with this Law.

If departments under the Central Government, provinces, autonomous regions and municipalities directly under the Central Government need to set up offices in the HKSAR, they must have the consent of the government thereof and the approval of the Central People's Government.

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

People from other parts of China must apply for approval for entry into the HKSAR.

The HKSAR may establish an office in Beijing.

2. Views

2.1 Supporting view

- Support is expressed for the provision that departments of the Central People's Government shall not interfere in the affairs which the HKSAR administers on its own in accordance with this Law.

2.2 Reservations

- This article implies that the governments of municipalities directly under the Central Government may interfere in the affairs of the HKSAR.
- This article stipulates that the HKSAR shall not be subject to intervention from the Central Authorities, provinces, autonomous regions or municipalities, but says nothing about interference from the Central People's Government.

2.3 Other views

- In addition to departments, there are all kinds of commissions under the Central Authorities, such as the Central Military Commission. There is no clear provision in this article which prohibits these commissions from

interfering in the affairs which the HKSAR administers on its own.

- Although the Basic Law stipulates that the HKSAR shall be free from the interference of military and administrative units, it cannot prevent Party organizations from intervening or interfering in or even manipulating the HKSAR.
- According to relevant mainland laws, departments under the Central People's Government have the power to interfere, to varying degrees or extents, in the affairs of any province, autonomous region or municipality directly under the Central Government. The provisions of this Law, however, have cut off all such ties between the leadership and the led.
- This article only lays down the principles, hence the provision "shall not interfere in the affairs which the HKSAR administers on its own in accordance with this Law". This flexible provision which leaves ample leeway has taken into consideration the need for certain departments under the Central Government, such as the Ministry of Defence and Ministry of Foreign Affairs, to administer relevant affairs in Hong Kong.
- The wording of this article is too vague. It should be clearly stipulated whether people from other parts of China shall have to apply for approval to enter Hong Kong from the government of the HKSAR or from the Central Authorities, and whether there will be any quotas of successful applicants. A more stringent provision will prevent an excessive resident population in Hong Kong.
- The provision that approval should be sought from the Central Authorities for the establishment of offices in Hong Kong is unreasonable.

3. Suggestions

3.1 Deletions

- This article should be deleted.
- There is not much significance in including in the Basic Law the provision that "[t]he HKSAR may establish an office in Beijing". This provision should therefore be deleted.
- The clause "in accordance with this Law" in Paragraph 1 should be deleted.

Reason: - This will make it much clearer that mainland departments, provinces and municipalities directly under the Central Government shall not

3.2 Amendments

- Paragraph 1 should be amended to read: "The Central People's Government and its subordinate departments, or the provinces and municipalities directly under the Central Government shall not interfere in the affairs which the HKSAR administers on its own in accordance with the Basic Law." (Note 21-1)

Reason: - Since the high degree of autonomy of the HKSAR shall be conferred by the Standing Committee of the NPC, the Central People's Government should abide by the Basic Law promulgated by the Committee in order to ensure the implementation of the principles of "one country two systems" and "a high degree of autonomy".

- Paragraph 1 should be amended to read: "No province, autonomous region nor municipality directly under the Central Government may interfere in the affairs of the HKSAR. The Central People's Government shall handle the affairs of the HKSAR in accordance with this Law."

Reason: - This will make the meaning much clearer.

- Paragraph 2 should be amended to read: "If departments under the Central Government, provinces, autonomous regions or municipalities directly under the Central Government need to set up offices in the HKSAR, they must have the approval of the HKSAR government and the consent of the Central People's Government."

- In Paragraph 2, the provision should be worded in such a way that the approval of the Central People's Government is required before the consent of the government of the HKSAR is sought. This will show the position of the state and give expression to sovereignty.

- The word "shall" in Paragraph 3 should read "must".

Reason: - The word "shall" is not binding, whereas "must" is.

- Paragraph 4 should be amended to read: "People from other parts of China must apply to the Central People's Government and the HKSAR for approval to enter the HKSAR."

- Paragraph 4 should be amended to read: "People from other parts of China must apply to the State Council or the HKSAR for approval to enter the HKSAR."

Reason: - This is the only way to keep legal entry under effective control.

- Paragraph 4 should be amended to read: "People from other parts of China must apply for approval from both governments and go through the relevant formalities if they wish to enter the HKSAR."
- Paragraph 4 should be amended to read: "People from other parts of China must apply to the government of the HKSAR for permission to enter the HKSAR."

Reason: - With the power to grant approval clearly spelt out, Hong Kong will have control over the number of people entering and residing in the territory.

- Paragraph 4 should be amended to read: "People from other parts of China must apply for approval to enter the HKSAR, and the government of the HKSAR shall first be consulted on the total number of people entering Hong Kong."

Reason: - This will preserve the existing system.

- Paragraph 5 should be amended to read: "The HKSAR may establish offices in Beijing and in the provinces, autonomous regions and municipalities directly under the Central Government."

3.3 Additions

- The following provision should be added: "Mainland offices and people in Hong Kong who have violated the laws of the HKSAR shall be tried by the judicial organs of Hong Kong. If these people flee from the territory, the Central Authorities shall have the duty to have them extradited to Hong Kong for trial as soon as possible and shall not shirk responsibility on the pretext that mainland laws are different."

Reasons: - The spirit of the rule of man has too much influence on the mainland, making it relatively easy for people to escape punishment by law.

- This will prevent mainlanders from taking advantage of the differences between the socialist and capitalist legal systems to further their interests. Also, in this way the goal of truly respecting the "one country two systems" concept can be attained.

- The following provision should be added: "Committees of the Chinese Communist Party at all levels shall not interfere in the affairs which the HKSAR administers on its own in accordance with this Law."

- The following clause should be added to the beginning of

Paragraph 1: "The Standing Committee of the NPC, the State Council, the Central People's Government itself and ...".

Reason: - This will guarantee that the Central People's Government itself (such as the State Council) will not interfere in the affairs of the HKSAR, and will thus ensure that "one country two systems" and "a high degree of autonomy" can be achieved.

- The phrase "and so on" should be added after "Central Government" in Paragraph 1.

Reason: - This will ensure that no unit shall interfere in the affairs of the HKSAR.

- The clause "provided that the interests and reputation of the People's Republic of China are not impaired" should be added at the end of Paragraph 1.
- The clause "and strict restrictions shall be imposed" should be added at the end of Paragraph 1.
- The following provision should be added to Paragraph 3: "Except for cases relating to defence, foreign affairs or acts of state, all cases shall be heard by the courts of Hong Kong."
- Suggested addition of the word "entry" in Paragraph 4. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the translation.]
- The following provision should be added to Paragraph 4: "The maximum number of people from other parts of China to be allowed to come and reside in the HKSAR each year shall be agreed upon by the Central Authorities and the HKSAR and shall not exceed the present level."
- The words "the government of" should be added before "the HKSAR" and the words "and other provinces and municipalities" should be added after "Beijing" in Paragraph 5.
- The clause "and may also set up commercial offices in the provinces, autonomous regions and municipalities directly under the Central Government with the consent of the governments thereof and the approval of the Central People's Government" should be added at the end of Paragraph 5.

Reasons: - Hong Kong should be able to handle relevant matters flexibly and on its own initiative in

order to avoid unnecessary trouble or interference.

- The HKSAR should be able to establish offices in the provinces whenever there is the need.
- This will result in better coordination between the Central People's Government and the local government, and is in keeping with the needs of commercial offices.

3.4 Other suggestions

- The Chinese government should authorize the relevant departments in Hong Kong to intervene should mainland offices in Hong Kong or their personnel violate the law. The relevant departments should provide all relevant information and the matter should be handled by the Chinese authorities.
- Provisions should be made in the laws of the HKSAR for cases involving offices or organs of state power of the People's Republic of China, or their personnel.
- It should be stated that if personnel of mainland offices in Hong Kong violate the law, they shall be handled by the government of the HKSAR in accordance with the laws of the HKSAR, just like any other person in the HKSAR.
- The number of staff members of mainland offices allowed to work in Hong Kong should be determined by Hong Kong. Otherwise it will become an extra burden for the HKSAR.
- The Chinese government should strictly control the entry of mainlanders into Hong Kong.
- The Basic Law should include a provision which will stop the steady influx of mainland "bureaucrat capital" into Hong Kong.
- The term "all offices" mentioned in this article is too general. The restrictions noted should only apply to business and trading organizations and should not include academic, cultural, religious and other institutions. If such institutions have to obtain the consent of the government of the HKSAR first, it will put the future Hong Kong government in a difficult position.
- Provinces and municipalities should not be allowed to set up business representative offices (such as trading companies) in Hong Kong, for they will monopolize trade between Hong Kong and these provinces and municipalities.

4. Issues to be clarified

- What is to be done if the personnel of the offices concerned fail to abide by the laws of the HKSAR?
- This article stipulates that departments under the Central People's Government "shall not interfere in the affairs which the HKSAR administers on its own in accordance with this Law". Does this mean that they may interfere in affairs which are "not in accordance with this Law" and which Hong Kong "shall not administer on its own"?
- Why does Paragraph 5 only stipulate that the HKSAR may establish an office in "Beijing"?
- What sort of offices may be established in Hong Kong? What will be the functions of these offices? What will be the criteria used by the Central People's Government in considering approval?
- What kind of office will be established in Beijing? Will this office come under the Central Government or the HKSAR? Will it be able to handle affairs on its own? To whom will it be accountable?
- Will it be necessary for mainland provinces and municipalities to establish offices of an administrative nature in Hong Kong? If so, it should be stipulated that they must obtain the approval of the Central People's Government. Should the Central People's Government refuse "approval" or should Hong Kong refuse to give its "consent", will this sow seeds of discord between the province or municipality concerned and the HKSAR?
- Where will the Chief Executive of the HKSAR stand in relation to the departments under the Central People's Government, the provinces, autonomous regions and municipalities directly under the Central Government?
- Which are the departments under the Central People's Government and which provinces, autonomous regions and municipalities are under the Central Government?
- Does "other parts of China" include Taiwan?
- Will China relax its policy in respect of Chinese nationals applying to go to Hong Kong (on business or to take up permanent residence) after it resumes sovereignty over the territory? What safeguards are there against an increase in the local population. Will China have laws dealing with overseas immigrants entering Hong Kong?
- Do the affairs which the HKSAR will administer on its own mentioned in this article refer to the same affairs as those mentioned in Article 15? It is noted that

"administers" is used in one article while "manages" is used in the other. Is there any difference?

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Article 22

1. Original text

The Hong Kong Special Administrative Region shall prohibit by law any act designed to undermine national unity or subvert the Central People's Government.

2. Views

2.1 - Support is expressed for this article and the provision is deemed to be acceptable.

- This article, which seeks to prevent all disturbances resulting from sabotage and subversion, will help maintain Hong Kong's stability and prosperity.

- Many harsh laws and regulations are only adopted when there is no other alternative. Laws which are as severe as the provision of Article 22 are also currently in force in Hong Kong, but they are only there to serve as a deterrent. Thus the present article is acceptable.

- The wording of this article may be amended, but its fundamental spirit should not be changed.

- The Central People's Government should have the power to prohibit any act designed to undermine national unity and subvert the Central People's Government.

- There is no need for additions or deletions. If changes are made, opportunists will be able to seize on loopholes to engage in splittist activities.

2.2 Freedom of Hong Kong people will be affected

- This provision will deprive Hong Kong people of their rights and freedoms.

- This provision will deprive Hong Kong people of protection under Hong Kong law.

- Acts prohibited by law should not affect freedom of the press and of speech in Hong Kong.

- This provision, which gives the Central People's Government infinite power, will seriously undermine the rights and freedoms of Hong Kong people.

- This provision will result in the introduction to Hong Kong of laws such as those governing the so-called "counterrevolutionary crimes". This will deprive Hong Kong people of their rights and freedoms.

- Article 26 specifies the freedoms to be enjoyed by residents of the HKSAR. They should not be restricted here.

2.3 Relationship with the Joint Declaration

- This provision is against the Joint Declaration.

Reasons: - The Joint Declaration stipulates that the HKSAR shall maintain the capitalist system and that the capitalist way of life shall be protected and shall not be changed for 50 years. However, it is generally held that the capitalist system is anti-communist and will undermine national unity and subvert the Central People's Government.

- The Joint Declaration says nothing about the prohibition of "any act designed to undermine national unity or subvert the Central People's Government". If the ordinances on insurrection enacted by the future government in accordance with the provisions of this article do not meet the requirements of the Central People's Government, Beijing may introduce the mainland practice into Hong Kong in accordance with the provisions of Article 17. This will go against the provision under the Joint Declaration that Hong Kong shall enjoy a high degree of autonomy and legislative power.

2.4 Reservations

- Reservations are expressed about this article.

Reason: - The expression "any act designed to undermine national unity or subvert the Central People's Government" is too vague and has too broad a meaning. (Note 22-1)

2.5 Other views

- Many of the terms used in this article are vague and, in their interpretation or enforcement, are likely to threaten the human rights and freedoms of Hong Kong people. Realistically, Hong Kong will not have the strength, nor the ability, to subvert the Central People's Government. Besides, certain reservation clauses have already been included in Articles 16, 17 and 169. (Note 22-2)
- This article is too vague in meaning and is thus susceptible to abuse. For example, those in power could brand their political opponents as guilty of crimes designed to "undermine national unity" or "subvert the

- This article makes no mention of who is going to enact the relevant laws, how the criminals will be dealt with, or the restrictions on journalists. The use of the clause "shall prohibit by law" instead of "may prohibit by law" is also unreasonable.
- This article fails to state whether mainland law or Hong Kong law will be taken as the basis when determining whether an act is intended to "undermine national unity" or "subvert the Central People's Government".
- This article states that the government of the HKSAR "shall prohibit by law any act designed to undermine national unity or subvert the Central People's Government". However, the laws in question have yet to be enacted. Who is to enact the relevant laws after 1997? This article will have far-reaching significance and its effects will be felt far and wide.
- This article was originally intended to guard against "counter-revolutionary" crimes. Now the target has been "upgraded" to "treason".
- The meaning of "subvert" is different from that of "treason". No democratic country has laws that prohibit acts designed to subvert the state.
- When a government can no longer represent the interests of the people, it is only fair and right that it should be overthrown by the people.
- This article shows that the Central People's Government is extremely distrustful of the HKSAR and the people of Hong Kong. It also shows that it has no confidence in itself. This article is a typical example of a government "always on its guard".
- The only function this article serves is to encourage Hong Kong people to emigrate.
- The only significance of this article is that it protects the ruler against opposition.
- This article will make the people of Taiwan apprehensive, for they are prone to "undermine unity".
- This article has strong political undertones and will be unacceptable to Hong Kong people who are very sensitive about such things.
- This article is too harsh and will give rise to worries.

3. Sugg.

3.1 Overall suggestions

- That which constitutes an "act designed to undermine national unity or subvert the Central People's Government" should be specified.

Reasons: - This will prevent the freedoms of the residents of the HKSAR, including the freedom of speech, from being subject to restrictions.

- Such a vague provision is liable to be abused by the future government.
- This article should be rewritten in a more positive tone with reference to Article 54 of the Chinese Constitution.
- This article should be rewritten in a more positive tone. For example, it could be specified that "Hong Kong people have the duty to safeguard national unity". This will not only help achieve the goal of protecting the country, but will dispel the fears of Hong Kong people in this regard.
- There must be an appropriate set of standards for determining what does not fall within the limits of autonomy as well as an organ which will divide powers in accordance with that set of standards.
- It should be specified that the Legislative Council of the HKSAR shall determine what constitutes an act designed to undermine national unity or territorial integrity.
- In order to save people from needless worries, it should be stated that cases relating to "acts designed to undermine national unity or subvert the Central People's Government" shall be heard in Hong Kong and that in hearing such cases the two international covenants will be adhered to.
- To prevent international criminals and terrorists from causing trouble, it will be necessary to maintain a strong special branch.
- It should be specified that free speech, assembly, protests and petitions will not be considered to be acts "designed to undermine national unity and subvert the Central People's Government".
- This article should be based on the laws of Hong Kong and should not incorporate socialist elements.

3.2 Deletions

- This article should be deleted.

Reasons: - If the people are satisfied with their government, no one will try to subvert the government.

- Since Hong Kong does not have the conditions for asserting independence, there is no way that it can subvert the Central People's Government. This article is totally unnecessary and it will only give cause to apprehension.
- The people should have the right to comment on the Central People's Government and discuss matters relating to national unity.
- This article covers too wide a scope and would best be replaced by a provision on "the disruption of public order". Since such a provision already exists in the ordinances currently in force, there is no need to specifically designate it.
- The meaning of this article is too broad and might be used by the future HKSAR government as a weapon with which to compel its people to pledge allegiance to the Central Authorities. (Note 22-4)
- The wording of this article is too vague and there is no guarantee that it will not jeopardize the rights and freedoms of Hong Kong people when it is being interpreted or enforced.
- According to Article 17, the Standing Committee of the NPC may enact laws concerning "national unity" and the State Council may decree the application of such a law in Hong Kong. Thus, this article is liable to be abused, thereby affecting the autonomy of the HKSAR and the rights of its residents.
- If the meaning of "undermine national unity and subvert the Central People's Government" is not spelled out, this article should be deleted.
- This article should be deleted if other laws offer safeguards.

3.3 Amendments

- This article should be amended to read: "Chinese nationals in Hong Kong shall have the duty to safeguard the security, honour and interests of the motherland and

shall not engage in acts designed to jeopardize the security, honour or interests of the motherland." Furthermore, the amended article should be incorporated into Article 42.

- This article should be amended to read: "The HKSAR shall prohibit by legal provisions any proven or legally certifiable act designed to undermine national unity or subvert the Central People's Government."

Reason: - Acts designed to undermine national unity or subvert the Central People's Government are counterrevolutionary crimes. In order to protect human rights and people's lives, there must be legal provisions requiring the presentation of facts and evidence. Otherwise innocent people might be framed.

- This article should be amended to read: "The HKSAR shall prohibit by law any act seeking the independence of Hong Kong."
- This article should be amended to read: "Unless otherwise prescribed by law, residents of the HKSAR shall enjoy the freedoms they used to enjoy."
- This article should be amended to read: "The HKSAR shall prohibit by law any act designed to subvert the Central People's Government".
- This article should be amended to read: "The HKSAR shall prohibit by law any act of treason."
- This article should be amended to read: "The HKSAR shall, by means of law, safeguard national unity and support the Central People's Government."
- This article should be amended to read: "The HKSAR shall prohibit by law any act designed to undermine national unity or subvert the Central People's Government by violent means." (Note 22-5)
- The clause "subvert the Central People's Government" should be replaced by the term "treason".
- The clause "subvert the Central People's Government" should read "subvert the People's Republic of China". (Note 22-6)
- The term "national unity" should be replaced by "national and territorial unity".

3.4 Additions

- The clause "jeopardize national security" should be added

between "undermine national unity" and "or subvert the Central People's Government".

Reason: - Some acts may jeopardize national security although they will not necessarily result in the subversion of the government.

- The following note should be added at the end of this article: "However, all well-intentioned and constructive comments and acts will be welcomed."

Reason: - The inclusion of this note will make this article sound more democratic to the people of Hong Kong and therefore enable them to develop a sense of belonging and responsibility toward Hong Kong.

- It should be stated that the provision of this article may not contravene the two international covenants mentioned in Article 38.

3.5 Rearrangements

- This article should be merged with Article 42. There is no need to have a separate provision, for this will cause resentment.
- This article should be merged with Article 17.

Reason: - The Central People's Government alone should be able to determine which are acts designed to "undermine national unity and subvert the Central People's Government".

4. Issues to be clarified

- What is meant by "an act designed to undermine national unity and subvert the Central People's Government"?
- Will demonstrations, strikes and so on be considered acts "designed to undermine national unity or subvert the Central People's Government"?
- Will critical remarks on the Central People's Government be considered to be acts designed to "subvert the Central People's Government"?
- Will "marriage with or divorce from people from Taiwan" be considered to be acts designed to "undermine national unity" or "subvert the Central People's Government"?
- What is meant by an act designed to "undermine" national unity? Criticizing the government does not necessarily mean inciting the people to overthrow the government. Does the present provision mean that not even healthy

criticism of the government will be allowed?

- Does this article authorize the HKSAR to judge what constitutes an act designed to undermine national unity or subvert the Central People's Government?
- Does the "law" mentioned in this article refer to the laws of the HKSAR or the laws of the Central People's Government?

OVERALL COMMENTS ON CHAPTER III

1. Views

1.1 Supporting views

- What the Basic Law sets out are in fact the rights currently being enjoyed by Hong Kong residents and the present social system. The provisions which Hong Kong people consider necessary are nearly all stipulated in the Basic Law. In addition, the implementation of the relevant provisions of the two international covenants is also spelt out. This can be considered highly accomodating.
- In the Basic Law, the rights of residents are spelt out in such a manner (similar to a bill of rights) that some rights may have been left out. Yet, Article 39 provides: "The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless prescribed by law." This is an embodiment of the residual principle. As the bill of rights and the residual principle are complementary to each other, the way of expression in this chapter is acceptable.
- The protection of human rights by constitutional provisions has already surpassed the present practice.
- This chapter has generally stated the various rights of residents, and the concerns of different sectors are quite well attended to.
- Among the freedoms which are safeguarded by law at present, the more important ones have been provided for in this chapter.
- Chapter III is the most satisfactory chapter.

1.2 Reservations

- The provisions on human rights are not detailed enough.
- Many of the rights enshrined in the two international covenants have not been included in this chapter.
- The provisions on human rights are unclear and vague, which seems to be intentional.
- Some of the articles are neither well-defined nor clearly principled. Things that should be specified have not been specified. Those which should not be rigidly laid down have been so. These imperfections will greatly hamper the rights and freedoms of Hong Kong people to the extent that their freedoms may not be given proper protection.

- This chapter has not taken into consideration how the rights and freedoms it provides for can actually be realized.
- This chapter does not specify whether other freedoms, such as those of fund-raising, broadcasting, the press, gambling, pornography, recreation and sports, will be restricted.
- This chapter does not distinguish the fundamental human rights from the rights and freedoms prescribed by law.
- In time of public emergency which threatens the life of people in the HKSAR and the existence of which is officially proclaimed, the government may take measures derogating from its obligation in respect of certain fundamental rights to the extent strictly required by the exigencies of the situation. The Draft Basic Law does not make provision for this eventuality. The absence of such provision may result in two possibilities: either the government may be unduly hampered in dealing effectively with the emergency situation, or it may act in callous disregard of the constitutional guarantees.
- The elaboration of the various freedoms in this chapter seems repetitive.

Reason: - Freedom should be defined as the enjoyment of the right to life, the freedom of speech and belief, and the right to strive for reasonable and legitimate rights and interests without jeopardizing the safety and freedom of others.

- The provisions on freedoms in this chapter are too lengthy and tedious and tend to cause suspicion and misunderstanding.
- The rights specified in this chapter are too trivial. If the provisions in Article 38 can be implemented, there will be sufficient protection for human rights.
- This chapter is modelled on the Chinese Constitution but China does not have a good reputation internationally as far as respect for human rights is concerned.
- The International Covenant on Civil and Political Rights has not been taken as the guidelines for drafting this chapter.
- The terms "freedom" and "right" are not used consistently.
- The phrases "have the freedom...", "enjoy the freedom..." and "enjoy the freedom...in accordance with law" are not used consistently in this chapter.

- Phrases such as "in accordance with law" and "according to law" are frequently encountered in this chapter. In effect, such phrases make it possible for the government to restrict human rights through legislation.
- The freedoms "enjoyed in accordance with law" by residents may be subject to restrictions which exceed the limits of the necessary conditions laid down in Article 39.
- Only when there is legislation will the freedoms of residents which should be "protected by law" be duly protected. If a certain freedom was previously not protected by law, according to the present draft, residents are not entitled to demand that the government should enact legislation to protect the freedom concerned.
- This chapter has not provided for the handling of cases of infringement of human rights by the government.
- Articles 17, 39, 169, 170 and 171 of the Basic Law are aimed at depriving the residents of their rights.

1.3 Other view

- It is in time of emergency that human rights are most in need of protection.

2. Suggestions

2.1 Deletions

- All articles other than Articles 23, 38, 40, 41 and 42 should be deleted.

Reason: - To avoid confusing the provisions in this chapter with those in the two international covenants.

- Articles 24, 26, 27, 28, 30, 31, 32, 33, 36, 37 and 41 should be merged to form one article presented in the same manner as that of the first paragraph of Section XIII in Annex I to the Sino-British Joint Declaration.
- If the two international covenants were incorporated into the Basic Law, Articles 26 and 39 could be deleted.

Reason: - The terms used in these articles are difficult to define within the context of law.

2.2 Amendments

- Should consider presenting the "Fundamental Rights and Duties of Residents" as Chapter II.

Reason: - It is the usual practice to present the fundamental rights and duties of residents immediately after the general principles in constitutions.

- The heading of this chapter should be amended to read: "Fundamental Rights and Duties of Citizens".

Reason: - By using the term "citizens", interpretation problems may be avoided.

- The term "freedoms" used in this chapter should be replaced by "rights".

Reason: - To afford greater protection to freedoms enjoyed by residents.

2.3 Additions

- The following provision should be inserted between Articles 24 and 25: "Hong Kong residents shall have the rights to enjoy a safe and healthy environment, and to put forward demands for the same right on behalf of their descendants. They shall enjoy the right to access to information on issues relating to engineering projects and policies affecting the environment."

Reason: - The inclusion of this provision in the Basic Law may prevent the legislature from passing laws after 1997 to hinder environmental protection.

- The following provision should be added at the end of this chapter: "The courts of the Hong Kong Special Administrative Region shall, through common law practice, oversee the implementation of provisions on the fundamental rights and duties of residents in the Basic Law. In the course of duties, the courts should have the power of interpretation over these provisions."

- The following provision should be added: "In criminal proceedings in the HKSAR, the principles and the rights of parties to the proceedings previously applied in Hong Kong shall be retained. All persons shall be presumed innocent before convicted by a fair and independent judicial organ."

- The following provision should be added: "The government of the Hong Kong Special Administrative Region should enact laws and develop appropriate devices to protect the rights of the disabled in such fields as employment, education and social welfare. The declarations, resolutions and covenants made by bodies of the United Nations on the rights of the disabled should be respected and recognized by the government of the Hong Kong Special Administrative Region."

- The general principles provided for in Article 6 should be reiterated in this chapter.

Reasons: - To ensure that the residents will enjoy the rights of private property.

- To make sure that the general principles are legally valid.

2.4 Other suggestions

2.4.1 Adding the following rights

- The right to life.
 - (1) It should be clearly provided for in the Basic Law that the present abolition of capital punishment shall continue after 1997. [Some opinions consider that capital punishment must be imposed in the HKSAR to protect the life of residents.]
 - (2) It should be clearly stipulated that no illegal organizations may execute capital punishment on murderers.
 - (3) People in Hong Kong have the freedom of life. Everyone has the right to commit suicide or to live.
- No one shall be subjected to torture or to cruel or inhuman punishment.
 - (1) The provisions of the United Nations anti-cruelty covenant should be incorporated into the Basic Law for reference.
 - (2) No one shall be forced to perform compulsory labour.
- In civil and criminal proceedings, all the rights currently enjoyed by parties to the proceedings shall continue to be granted, and they include:
 - (1) The right to a fair and public hearing without undue delay.
 - (2) When being prosecuted for criminal offence(s), the right to be presumed innocent before being convicted by a fair and independent judicial organ. [Some opinions consider that this right should not be amended under all circumstances.]
 - (3) The right to a public hearing or to be released promptly.
 - (4) The right to institute legal proceedings. Whether the

arrest or detention is lawful or not should be ruled by the court.

(5) The right to lodge a complaint and to defend oneself. [Some opinions consider that this right should not be amended under all circumstances.]

- The right to be exempt from retroactive criminal prosecutions.
- The right to recognition as a person before the law.
- The freedom to propagate ideas.
- The freedom of thought.
- The right to privacy.

(1) All persons in Hong Kong have the right to keep their personal life private, provided that it is not detrimental to others. Neither the HKSAR government nor the Chinese government should infringe upon this right.

(2) People in Hong Kong have the right to keep personal secrets. No media have the right to reveal such secrets to the public.

(3) No one, except medical staff, shall have access to the records of mental patients.

- The rights of minority groups.
- The rights of ethnic minorities.
- The rights of foreigners legally residing in Hong Kong.
- The right of residents not to be detained as prisoners of conscience shall be safeguarded.
- No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.
- The fundamental rights of prisoners. Records of released prisoners should be destroyed in order to help them to find jobs.
- The rights of the disabled.

(1) Formulate legislation to promote services for the disabled.

(2) Formulate legislation to protect the rights of the disabled.

be specified in detail.

(2) There should be a provision stipulating that residents shall have the right to transfer property ownership.

(3) It should be clearly specified that the right to freely buy and sell arable land is inviolable.

Reasons: - Hong Kong people are most anxious about their money.

- Hong Kong people are most anxious that their properties should not be confiscated by the Central People's Government.

- The right to an adequate standard of living.
- The right to a free life.
- The right to choose one's own lifestyle.
- The right to physical and mental health.
- The right to practise customs or traditions of any country or region of one's own choice.
- The right to keep one's own dialect.
- Residents of the HKSAR have the right to join the defence of the Region.
- Hong Kong residents have the right to join the armed forces of their own accord.

2.4.2. Suggestions on the safeguarding of human rights in a state of emergency

- It is necessary that the Basic Law should define the situations which justify the declaration of a state of emergency, and specify which rights should remain non-derogatable under all circumstances and which may be derogated from and when: a threat of civil disorder being clearly distinguishable from a natural disaster.
- It is also necessary that the regular courts should have jurisdiction not only to examine whether detention orders and other executive actions infringing on an individual's rights formally comply with the procedural requirements of an emergency regulation, but also to examine the adequacy of reasons offered for such action.

Reason: - Judicial review during a state of emergency is essential if such state of emergency is to be maintained as an exceptional state within the normal legal order.

2.4.3 Suggestions on the interpretation and enforcement of the provisions on human rights

- The courts of Hong Kong should have the power of interpretation. The Standing Committee of the NPC should not exercise its power of interpretation.

Reason: - On the mainland, socialism and the people's democratic dictatorship are practised. In Hong Kong, capitalism is practised. The interpretation of provisions on the same human right varies under these two entirely different systems.

- If the legislature of the HKSAR enacts certain laws which infringe upon human rights, thus violating the provisions in Chapter III of the Basic Law, the courts of Hong Kong should refuse to enforce these laws which contravene the Basic Law.

Reason: - If the human rights specified in the Basic Law could be arbitrarily taken away by the legislature, the Basic Law would be unable to afford any real protection for human rights.

- Anyone in Hong Kong who considers his rights, which are duly protected by Chapter III of the Basic Law, being infringed upon has the right to lodge a complaint with a court. The court should render appropriate judicial remedies and sanction those acts which have infringed upon his human rights.

Reason: - Judicial ruling seems to be the most effective method of ensuring minimum protection for human rights. The above assumption is made on the grounds that future judges of Hong Kong are trustworthy and determined to safeguard human rights and the rule of law.

- In the course of legislation and law enforcement, there should be proper supervision.

Reason: - To prohibit acts which infringe upon human rights.

2.4.4 Other suggestions

- This chapter should be incorporated into a bill of rights.
- The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights should be used as bases and standards for this chapter.

- This chapter should take the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as bases.

Reason: - The constitutions of other countries are all formulated on the basis of the Universal Declaration of Human Rights adopted in 1948 by the United Nations to safeguard human dignity.

- The entire Universal Declaration of Human Rights should be incorporated into the Basic Law.
- Follow the practice of other countries, and afford full protection through applying the United Nations International Covenant on Protection of the Person.
- Standard should be set or international standard should be adopted for protecting human rights, and such standard should be specified in the Basic Law. (Note 3 General-1)
- In the drafting of this chapter, the standard of protection for human rights in the HKSAR should be comparable with that of other developed, democratic and free capitalist countries or regions.
- The provisions on human rights under Section XIII of Annex I to the Sino-British Joint Declaration should be fully expressed in the Basic Law.
- It should be specified in detail how the stated rights and freedoms will be realized.

Reasons: - The fundamental rights and duties of residents covered in this chapter are principles which will not be changed in the light of the circumstances.

- To give expression to the rule of law, to define the rights of different parties through legislation and to prevent the abuse of power.
- Negative and positive provisions should both be included.

Reason: - On the one hand, the rights of citizens are affirmed, while on the other, it should be provided that the government shall not be allowed to restrict rights through certain means.

- The substance of this chapter should be evaluated in terms of overall interests and defined by local statutes. Such practice would be more readily supported than prescribing the rights in a constitutional instrument.

- With respect to human rights and social rights, the Draft Basic Law has not rendered full protection and still needs further amendment.
- It should be clearly stated that rights not provided for in the Basic Law shall also be enjoyed by Hong Kong residents unless otherwise prescribed by law.

Reason: - It is impossible to provide for all the rights in the Basic Law.

- A separate chapter should be drafted to provide for the rights of HKSAR residents. These rights should not be confused with fundamental human rights.
- The protection of human rights should be integrated with the HKSAR's judicial system.
- It should be clearly stipulated that the government of the HKSAR shall not be allowed to restrict or take away the rights and freedoms of residents through legislation.

Reason: - Rights and freedoms are inherent.

- The freedoms provided for should be limited so that they do not infringe upon the human rights of others.
- Many of the rights provided for in this chapter should also be enjoyed by legal persons.
- The rights and duties of Chinese citizens in Hong Kong should be clearly specified in the Basic Law.

Reason: - After 1997, China should restore the Chinese citizenship to people in Hong Kong.

- All provisions which are against the principle of safeguarding the equality of the sexes should be amended.
- The legitimate rights and interests and lawful acts of Hong Kong residents abroad (including those travelling, visiting relatives, on business trips,...) should be protected by the Basic Law of the Hong Kong Special Administrative Region.

Reasons: - At present, the legitimate rights and interests and lawful acts of Hong Kong residents abroad are being neglected by the laws of Hong Kong. After 1997, such a policy should be changed.

- To conform to the Constitution of the People's Republic of China.

- The relationship between the "government" and the "people" in terms of rights and duties should be specifically

restricted.

Reason: - So that individual freedoms will not be subject to any interference provided that they do not contravene the overall interests of society.

- It should be clearly specified that the agreements signed by Hong Kong with other countries should include provisions on "human rights", otherwise issues on human rights will be dealt with by China.
- Permanent residents, non-permanent residents and tourists should all be equal and protected by law.
- The rights of permanent residents should not be distinguished from those of non-permanent residents.

Reason: - Except for the right to vote, all rights mentioned in this chapter are fundamental human rights.

3. Issues to be clarified

- Are the terms "freedom" and "right" in this chapter different in meaning?
- Is there any difference between "have the freedom..." and "enjoy the freedom..."?
- What is the limit of "freedom"?
- Apart from the difference in their qualifications as voters or candidates in elections, are "citizens" and "residents" equal in status with respect to other fundamental rights and duties?
- What rights will be enjoyed and what duties will be imposed on permanent residents of Hong Kong as a result of their Chinese citizenship?
- Will permanent residents and non-permanent residents enjoy equal rights?

Article 23

1. Original text

Residents of the Hong Kong Special Administrative Region, or Hong Kong residents for short, include permanent residents and non-permanent residents.

Permanent residents of the Hong Kong Special Administrative Region are:

- (1) Chinese nationals born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
- (2) Chinese nationals who have ordinarily resided in Hong Kong for a continuous period of no less than seven years before or after the establishment of the Hong Kong Special Administrative Region;
- (3) Persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2);
- (4) Persons of non-Chinese nationality who have ordinarily resided in Hong Kong for a continuous period of no less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region;
- (5) Persons under 21 years of age born in Hong Kong of residents listed in category (4) before or after the establishment of the Hong Kong Special Administrative Region; and
- (6) Persons other than those residents listed in categories (1) to (5), who had the right of abode only in Hong Kong before the establishment of the Hong Kong Special Administrative Region.

The above-mentioned residents have the right of abode in the Hong Kong Special Administrative Region and are qualified to obtain, in accordance with its law, permanent identity cards which state their right of abode.

Non-permanent residents of the Hong Kong Special Administrative Region are persons, who, in accordance with the laws of the Hong Kong Special Administrative Region, are qualified to obtain Hong Kong identity cards but have no right of abode.

2. Views

2.1 Supporting Views

- This article has its merits in that it makes use of the place of birth or length of residence and other more objective and measurable standards to determine whether the person concerned is a permanent resident of Hong Kong. This article is acceptable as it will reduce the possibility of misinterpretation which causes confusion of status.
- Since the right of abode in Hong Kong can be retained without having to give up residence abroad, the Basic Law is providing favourable treatment to those Hong Kong people who wish to return to Hong Kong after they have emigrated to other countries.

2.2 Reservations

- This article does not explain what is meant by "Chinese nationals" and "persons of Chinese nationality". This would cause difficulty in the comprehension of the article. (Note 23-1)
- HKSAR residents are qualified to obtain, in accordance with its law, permanent identity cards which state their right of abode, but the article does not state whether they are also qualified to obtain valid travel documents.
- This article does not define clearly the rights of permanent residents.
- "No right of abode" can be assumed to mean that once the person concerned leaves Hong Kong for any reason, the HKSAR government may not permit him to re-enter the HKSAR. If this is the case, this would inconvenience those non-permanent residents who have to travel abroad (including mainland China) frequently for business or for other reasons, thereby affecting Hong Kong's position as an international finance and business centre.
- The meaning of the term "ordinarily" in the article is vague.
- Only "non-permanent residents" and persons who "have no right of abode" are mentioned; there is no stipulation on those who reside in the territory illegally.
- The distinction between permanent resident and non-permanent resident is not clear.
- This article contradicts with Article 24.

Reason: - Persons born outside Hong Kong of those residents of Chinese nationality may become permanent residents whereas persons of non-Chinese nationality born in Hong Kong and are

above 21 years of age may not become permanent residents.

2.3 Other views

- According to the provisions of this article, there are two ways to lose permanent residence: Chinese nationals who become naturalized in foreign countries or persons of foreign nationality who cease to take Hong Kong as their place of permanent residence.
- This article does not mention how persons of dual nationality should be handled.
- This article does not distinguish between the status of Chinese officials who have worked in Hong Kong for seven years before 1997 and that of other persons.

2.4 On category (1)

2.4.1 Reservations

- It may limit the rights of overseas compatriots.

2.5 On categories (1) and (2)

2.5.1 Supporting views

- The two categories are well defined.
- The provisions on the two categories are compatible with the existing provisions.

2.5.2 Reservations

- Since certain senior posts of the HKSAR government can only be filled by permanent residents of the HKSAR who are Chinese nationals, it is necessary to define the terms "Chinese nationals" and "persons of Chinese nationality".
- If overseas Chinese living in Hong Kong who are British citizens or who are stateless are not regarded as "Chinese nationals who are permanent residents", then many of the Chinese residents in Hong Kong will not be able to take up senior government posts in accordance with Article 20.
- If China applied the mainland definition of "Chinese nationals" in Hong Kong, then most of the Hong Kong people would not qualify as "Chinese nationals".

2.6 On category (3)

2.6.1 Supporting views

- Based on the principle of family reunion, persons listed

in category (3) may reside in Hong Kong.

- It has indirectly taken up the moral obligations of emigrant parents to their children by allowing children of Hong Kong emigrants to give up their foreign nationalities so that they may enjoy the rights as Hong Kong citizens.

2.6.2 Opposing views

- This provision is too lenient.

Reason: - A lot of Hong Kong residents have children on the mainland. According to the present provision, they may be allowed to reside in Hong Kong after 1997.

- Objection is expressed to the provision that Chinese children born outside Hong Kong shall be permanent residents of Hong Kong.
- This provision would cause an influx of Chinese after 1997, which Hong Kong could not accommodate.
- According to this provision, persons born on the mainland of Hong Kong residents and persons born outside Hong Kong whose parents have successfully applied for residence in Hong Kong may become permanent residents of the HKSAR after 1997. These persons will enter Hong Kong on 1 July 1997, causing a drastic increase in the population and problems in housing, employment and schooling.
- This provision is unreasonable, and would cause confusion if no amendment is made.
- This category contradicts the provision in Article 21 that "[p]eople from other parts of China must apply for approval for entry into the Hong Kong Special Administrative Region".
- This provision is unfair to people remaining in Hong Kong who have gone through difficult times with Hong Kong and who have worked hard for the future of Hong Kong.
- This category does not provide for spouses of Hong Kong residents who live outside Hong Kong. If their children born outside Hong Kong may become permanent residents or may reside in Hong Kong, whilst their spouses may not, families would as a result be broken up.

2.6.3 Other views

- Persons born outside Hong Kong before 1997 of those residents listed in category (2) who do not have the right of abode then, will have the right of abode after 1997.

- Persons born outside Hong Kong of those residents listed in category (2) who have resided in Hong Kong for a continuous period of less than 7 years will have the right of abode after their parents have become permanent residents.
- Many persons born outside Hong Kong of parents who are ethnic Chinese residents of Hong Kong already hold passports of other countries. Whilst all of these people would proudly admit that they are ethnic Chinese, they may not be willing to accept that they are Chinese nationals.
- The growing number of mixed marriages among Hong Kong residents makes the term "Chinese national" even more difficult to apply.
- Whether persons listed in category (3) (children born on the mainland) will still be subject to the restrictions of entry quota after 1997 remains an issue to be resolved.
- If persons listed in category (3) are not Hong Kong permanent residents, they will have to go through entry formalities every time they return to Hong Kong which is inconvenient.
- For persons listed in category (3), the term "permanent resident" only means that they have the right to reside in Hong Kong permanently but they do not have the history of having resided in Hong Kong. They are only residents, not "citizens".

2.7 On category (4)

2.7.1 Supporting views

- There is no similar provision in the existing law. However, it may be necessary to make this provision to take care of the situation in Hong Kong after 1997.

2.7.2 Reservations

- Most of the members of the Indian Community hold British Dependent Territories Citizen passports as well as Indian passports. They have been permanent residents for several generations. Their permanent residence and that of their children and descendants are guaranteed by the existing law of Hong Kong. The new arrangements proposed in the Basic Law do not define clearly who will be permanent residents.

2.7.3 Other views

- If making a declaration to "take Hong Kong as the place of permanent residence" is the only requirement, it will mean

that any person of non-Chinese nationality who has resided in Hong Kong for more than seven years can obtain the right of abode. This procedure is simplistic and this provision is more liberal than the existing law and can be easily abused thus making it impractical.

- If "taking Hong Kong as the place of permanent residence" implies that the person concerned must give up his foreign passport, it will be impractical.

Reason: - This will render the non-Chinese member of a multi-racial family to lose his right of abode and right to vote (even though he was born in Hong Kong).

2.8 On category (5)

2.8.1 Supporting view

- It is important to allow holders of foreign passports who reside in Hong Kong to become Hong Kong residents.

2.8.2 Other view

- Persons listed in category (5) will easily become permanent residents when they reach the age of 21 in accordance to the provisions of category (4).

2.9 On Paragraph (4)

2.9.1 Supporting view

- It is agreed that non-permanent residents should obtain Hong Kong identity cards in accordance to the laws of the HKSAR.

2.9.2 Opposing view

- It is beyond one's understanding how non-permanent residents will be eligible to obtain Hong Kong identity cards but not the right of abode.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reasons: - The definition of permanent and non-permanent resident should be laid down in the immigration law of Hong Kong.

- Immigration provisions will vary according to the changing conditions of society and thus should not be incorporated into the Basic Law.

- This article is drafted on the basis of the Sino-British Joint Declaration. However, there are many loopholes in the article. Drastic amendment may lead to conflicts with the Joint Declaration. Hence, it is best to make provisions in the laws of the HKSAR.

- The expression "in accordance with the laws of the HKSAR" should be deleted.

Reason: - Article 39 already admits that all freedoms will be restricted as prescribed by law. Hence, any restriction which cannot be proved to be legal under Article 39 will violate the Constitution and judicial remedy may be sought. This condition is therefore unnecessary.

3.2 Amendments

- "Chinese nationals" should be amended to read "Chinese persons".
- "Hong Kong permanent residents" should be amended to read "Chinese nationals (Hong Kong)".
- It should be stipulated in the article that "All residents who qualify as permanent residents of the Hong Kong Special Administrative Region shall automatically have the right to obtain permanent identity cards." It should also be stated in the provision "in accordance with its law" that it is only a "legal formality".

3.3 On Paragraph (1)

3.3.1 Rewriting

- It should be rewritten as: "Residents of the Hong Kong Special Administrative Region, hereinafter referred to as 'Hong Kong residents', unless otherwise specified, shall include permanent residents, non-permanent residents and all other persons legally residing in Hong Kong."

3.4 On category (1)

3.4.1 Rewriting

- It should be rewritten as: "Chinese born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region shall include overseas Chinese."

3.5 On category (2)

3.5.1 Rewriting

- It should be rewritten as: "Chinese nationals who have ordinarily resided in Hong Kong for a continuous period of no less than seven years before the establishment of the Hong Kong Special Administrative Region."

Reason: - It is necessary to control the growth of population to prevent an infinite population expansion in Hong Kong. According to Article 21 in Chapter II, people from China must apply for approval for entry into Hong Kong. Persons who obtain approval will become residents, so there is no need for the words "or after". If these persons cannot obtain approval, they will not be able to reside in Hong Kong for seven years.

3.5.2 Amendment

- The clause "who have ordinarily resided in Hong Kong for a continuous period of no less than seven years" should be amended to read "who have resided in Hong Kong for no less than seven years in any one period of seven years".

3.5.3 Additions

- After "Chinese nationals who have ordinarily resided in Hong Kong for a continuous period of no less than seven years before or after the establishment of the HKSAR", add "(but not including members of the military forces stationed by the Central People's Government)".
- The requirement "to take Hong Kong as their place of permanent residence" should be added.

Reason: - This will make it clear that Chinese nationals who have ordinarily resided in Hong Kong but have their roots elsewhere will not be regarded as "permanent residents".

3.6 On category (3)

3.6.1 Deletion

- Category (3) should be deleted.

Reason: - There is an increase in the number of inter-marriages between Hong Kong people and mainlanders, the growth of Hong Kong's population will be accelerated as a result.

3.6.2 Rewriting

- It should be rewritten as: "Persons of Chinese nationality born outside Hong Kong of couples who are both residents listed in categories (1) and (2)".

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- It should be rewritten as: "The right of abode of persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2) shall be processed and granted by the Hong Kong Special Administrative Region government."
- It should be rewritten as: "Persons of Chinese descent born outside Hong Kong of those residents listed in categories (1) and (2)".

3.6.3 Addition

- The following provision should be added: "If persons born outside Hong Kong of those residents listed in categories (1) and (2) have not resided in the Hong Kong Special Administrative Region for a period of no less than ten years, their permanent residence may only be inherited once but not from generation to generation".

3.7 On category (4)

3.7.1 Deletions

- The following should be deleted: "and have taken Hong Kong as their place of permanent residence".

Reason: - Any person who has resided in a certain place for a continuous period of seven years should be given the right of abode without requiring him to take the place as his place of permanent residence.

- The words "or after" should be deleted.

Reason: - After the establishment of the HKSAR, whether persons of non-Chinese nationality residing in Hong Kong may become permanent residents or not should be determined by the law of Hong Kong prevailing at the time.

3.7.2 Rewriting

- It should be rewritten as: "Persons of foreign nationality by birth who are willing to be naturalized as Chinese nationals and who have ordinarily resided in Hong Kong for a continuous period of no less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region."

Reason: - This is to emphasize that permanent residents must be naturalized as Chinese nationals and give up their foreign nationality.

- A permanent resident has the right to become the

Chief Executive. This amendment is not necessary if persons of non-Chinese nationality may not take up the post. To allow a person who is willing to be naturalized as a Chinese national to take up the post of Chief Executive will avoid the problem of dual nationality. There are precedents of foreign nationals being naturalized as Chinese nationals in mainland China. As for those persons who are not willing to be naturalized as Chinese nationals, they should be regarded as non-permanent residents only, subject to the restrictions of additional provisions. This way, there will be no discrimination against those persons who are naturalized as they will receive the same treatment. On the other hand, for those persons who are not willing to be naturalized, they may still move around freely, without involving the issue of pledging allegiance.

3.7.3 Additions

- The clause "during any period of time" should be added before "before or after the establishment".

Reason: - This proposal is identical to the provision of "having resided in Hong Kong for a continuous period of no less than seven years during any period of time" of the existing Immigration Ordinance.

- The following should be added: "with the exception of Vietnamese people residing in closed camps".
- The following should be added: "including nationals of countries which have no diplomatic relations [with China]."

3.8 On categories (1) to (4)

3.8.1 Rewriting

- They should be rewritten as:
 - (1) Chinese nationals born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
 - (2) Chinese nationals who have ordinarily resided in Hong Kong for a continuous period of no less than seven years or persons of non-Chinese nationality who have resided in Hong Kong for a continuous period of no less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special

Administrative Region;

- (3) Persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2);
- (4) Persons under the lawful age born in Hong Kong of persons of non-Chinese nationality who have taken Hong Kong as their place of permanent residence before or after the establishment of Hong Kong Special Administrative Region.

Reason: - The lawful age should not be specified as 21 years of age but should be set appropriately according to the prevailing social situation.

- They should be rewritten as:

- (1) Chinese or persons of Chinese descent born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
- (2) Chinese or persons of Chinese descent who have ordinarily resided in Hong Kong for a continuous period of no less than seven years before or after the establishment of the Hong Kong Special Administrative Region;
- (3) Persons born outside Hong Kong of those residents listed in categories (1) and (2); However, the right to inherit the qualification of Hong Kong permanent residence shall be limited to the second generation only, such right to inherit the qualification shall be lost automatically for the third generation;
- (4) Persons other than those listed in the above three categories who have the right of abode in Hong Kong only before the establishment of the Hong Kong Special Administrative Region.

Reason: - All Hong Kong residents, irrespective of their race and whether they are of Chinese or non-Chinese descent, should be treated equally and enjoy the right to become permanent residents of the HKSAR.

3.9 On category (5)

3.9.1 Deletions

- The clause "under 21 years of age" should be deleted.

Reason: - Persons under 21 years of age born in Hong Kong of permanent residents of foreign nationality are permanent residents. However, they will

become non-permanent residents once they reach 21 years of age. This change of status from "permanent" to "non-permanent" resident is contradictory.

- The phrases "or after" and "under 21 years of age" should be deleted.

Reason: - After the establishment of the HKSAR, the issue of whether persons of non-Chinese nationality residing in Hong Kong may become permanent residents or not, should be dealt with by the prevailing law of Hong Kong.

3.9.2 Addition

- The following should be added: "with the exception of persons born of Vietnamese people residing in closed camps".

3.10 On categories (4) and (5)

3.10.1 Rewriting

- They should be rewritten as:

(4) Persons of foreign nationality who have ordinarily resided in Hong Kong for a continuous period of no less than seven years before or after the establishment of the Hong Kong Special Administrative Region may become permanent residents of the Hong Kong Special Administrative Region without having to renounce their foreign nationality.

(5) Persons born outside Hong Kong of those residents listed in category (4) before or after the establishment of the Hong Kong Special Administrative Region may become residents of the Hong Kong Special Administrative Region without having to renounce their foreign nationality.

3.11 On category (6)

3.11.1 This category should be deleted.

Reason: - Every case should be handled in accordance with the future law.

3.11.2 Rewriting

- It should be rewritten as: "Non-permanent residents of the Hong Kong Special Administrative Region are persons who are holders of passports other than the passports of the People's Republic of China and who, in accordance with the laws of the HKSAR, are qualified to obtain Hong Kong identity cards but have no right of abode."

- Reasons: - To firmly defend the sovereignty of the People's Republic of China.
- To destroy the vain hopes of the politically ambitious people.

3.11.3 Additions

- The following category should be added: "(7) Hong Kong residents who have emigrated to other countries and who have been naturalized as nationals of those countries shall lose their status and rights as permanent residents of Hong Kong. At the same time, their identity cards, re-entry permits and passports issued by the Hong Kong government shall become void. If they travel to Hong Kong after 1 July 1997, they shall have to go through the same entry formalities as other holders of passports of their adopted countries. If they wish to reside in Hong Kong, they shall have to go through the same application procedure of the relevant department of the Hong Kong Special Administrative Region government as other foreign nationals. Upon approval, they shall have to reside in Hong Kong for a continuous period of no less than seven years before they may become permanent residents in Hong Kong again."

Reasons: - The loss of all rights as Hong Kong residents upon naturalization as foreign nationals will prompt Hong Kong residents to reconsider their decision to emigrate abroad.

- The future of Hong Kong lies in the hands of its residents. The advancement and prosperity of Hong Kong are the result of the collective efforts of those people who have confidence in the future of Hong Kong. Hence, people who have deserted Hong Kong should not be allowed to return any time to enjoy the success achieved by others.
- This category will not be in conflict with Article 30 which states that "Hong Kong residents shall have the freedom of emigration to other countries and regions" but will ensure fairness to those people who have chosen to remain in Hong Kong.

- The following two categories should be added:

"(7) Persons holding travel documents of the People's Republic of China who have come to Hong Kong for business, pleasure or visiting relatives and have resided in Hong Kong for a period of no less than seven years, shall not become permanent residents in

Hong Kong automatically. They shall have to go through normal application procedure and shall only become Hong Kong residents upon the approval of the Hong Kong government. Their children born in Hong Kong shall not be regarded as Hong Kong residents.

"(8) The Hong Kong Special Administrative Region shall implement population entry control. All persons outside Hong Kong who come to reside in Hong Kong (including the spouse and children outside Hong Kong of Hong Kong permanent residents) shall have to go through legal application procedure. They shall only become Hong Kong permanent residents upon the approval of the Hong Kong government."

Reason: - To prevent a sudden influx of children born on the mainland into Hong Kong after 1997. This problem must be solved with time and it is reasonable that Hong Kong should impose some restrictions, otherwise, the problem would snowball. On the other hand, amendment to the immigration laws should give priority to family reunion.

3.12 On Paragraph 3

3.12.1 Amendment

- The clause "are qualified to obtain, in accordance with its law" should be amended to read "are entitled to obtain, in accordance with its law".

Reason: - The present wording implies that the HKSAR government has the right not to issue Hong Kong permanent identity cards, which does not seem to be the initial intention of the article. The law referred to in this article should only involve the procedure and should not be principled restriction.

3.12.2 Addition

- The following should be added after Paragraph 3: "Those residents shall enjoy, at the same time, the right to obtain the Hong Kong Special Administrative Region (China) passports".

3.13 On Paragraph 4

3.13.1 Rewriting

- It should be rewritten as: "Non-permanent residents of the Hong Kong Special Administrative Region are:

(1) Persons who, in accordance with the laws of the Hong

Kong Special Administrative Region, are qualified to obtain Hong Kong identity cards but have no right of abode;

- (2) Persons of non-Chinese nationality who have resided in Hong Kong for a continuous period of no less than seven years and have taken Hong Kong as their place of permanent residence but who cannot renounce their original nationality before the establishment of the Hong Kong Special Administrative Region;
- (3) Overseas Chinese and immigrants (including political refugees) who have been given permission by the Hong Kong government to settle in Hong Kong after the establishment of the Hong Kong Special Administrative Region."

Reasons: - To solve the problem of dual nationality.

- To allow emigrants to return to Hong Kong so that they can contribute to the society of Hong Kong.
- It should be rewritten as: "Permanent residents of Hong Kong are entitled to obtain permanent identity cards in accordance with statutory procedure."

3.13.2 Amendment

- The clause "but have no right of abode" should be amended to read "but have no right of permanent residence".

Reason: - Persons with identity cards should have the right of abode but not the right of permanent residence.

3.13.3 Additions

- The following should be added: "In Chapter III of this Law, the term 'Hong Kong residents' shall, as permitted by the context of the provision concerned, include companies established in accordance with the laws of Hong Kong."
- The following should be added: "The period of stay in Hong Kong of military forces stationed by the Central People's Government in the Hong Kong Special Administrative Region for defence shall not be counted as a qualification for permanent residence in Hong Kong."

3.14 Other suggestions

3.14.1 Suggestions on the definition of "permanent resident"

- Persons of foreign nationality who have resided in Hong Kong for a period of no less than seven years and their

children born outside Hong Kong before or after the establishment of the HKSAR may become permanent residents of the HKSAR without having to give up their foreign nationality.

- Permanent residents of the HKSAR should be limited to those persons who have ordinarily resided in Hong Kong for a continuous period of no less than seven years. For those persons who have obtained other nationalities, their length of residence in Hong Kong should be counted from the date of return to Hong Kong. For persons of foreign nationality, their length of residence should be counted from the date of arrival at Hong Kong.

Reason: - This will ensure fairness to persons who have committed themselves to remaining in Hong Kong.

- Chinese nationals with registered permanent residence in mainland China may reside in Hong Kong permanently only if they have submitted formal application of immigration to Hong Kong and such application has been approved by the HKSAR government and the Central People's Government. Otherwise, they may not become permanent residents even if they have resided in Hong Kong for a continuous period of more than seven years.
- Persons listed in category (3) may become permanent residents in Hong Kong once they have renounced their foreign nationality to acquire Chinese nationality.
- Persons listed in category (5) who are above 21 years of age must meet other requirements of this article before they may become permanent residents.
- People born in Hong Kong should automatically have the right of permanent residence. Residents who have enjoyed the right of permanent residence should also continue to have it after 1997.
- Persons born in Hong Kong after 1997, irrespective of their ethnic origin, should automatically have the right to live there permanently.
- Permanent residents should include persons of foreign nationalities residing in Hong Kong and the right of abode should be given to them.
- Persons who have resided in Hong Kong for a continuous period of no less than seven years and have Hong Kong identity cards should become Hong Kong permanent residents irrespective of their nationality.
- Hong Kong people who are holders of foreign passports but were born in Hong Kong or have resided in Hong Kong for a continuous period of no less than seven years may not be

regarded as permanent residents as they are no longer Hong Kong citizens.

- Indigenous inhabitants of the New Territories who have been naturalized as British nationals but wish to obtain permanent residence in the HKSAR must also meet the two conditions, that is they must have resided in Hong Kong for a period of no less than seven years and have taken Hong Kong as their place of permanent residence.
- All persons of Chinese nationality above 21 years of age are qualified to become Hong Kong citizens.
- Persons with student visas who have resided in Hong Kong for a period of no less than seven years may not be regarded as permanent residents.
- Persons who have emigrated should be allowed to return to reside in Hong Kong permanently any time. Persons who have not yet emigrated should also be allowed to emigrate any time after 1997.

Reason: - To boost the confidence of the people who have emigrated so that they will return to Hong Kong to continue to contribute towards the prosperity of Hong Kong.

- "Illegal immigrant mothers" and "boat brides" from the mainland should be allowed to come to Hong Kong for family reunion. Leniency should be exercised.

3.14.2 Suggestions on the resident status of the children of permanent residents

- Age restriction should not be applied to the children of HKSAR permanent residents in order that they may become permanent residents.
- The second generation of the indigenous inhabitants of the New Territories should enjoy the status of permanent residents of Hong Kong irrespective of their nationality.
- Hong Kong should adopt a screening policy before or after 1997 so that persons of Chinese nationality born outside Hong Kong of Hong Kong residents may apply for permanent residence.
- Persons born in Hong Kong of those residents listed in categories (1) and (2) may become permanent residents and they may return to Hong Kong any time subject to entry formalities and restrictions.

Reason: - A great number of persons will be under this category. Imposing restrictions will help to alleviate the existing heavy burden on Hong

Kong.

- If persons born outside Hong Kong of those residents listed in categories (1) and (2) have not resided in the HKSAR for a period of more than ten years, their right of permanent residence can only be inherited for one generation but not from generation to generation.
- On the issue of persons of Chinese nationality born on the mainland of Hong Kong residents becoming permanent residents upon arrival at Hong Kong, entry formalities and the need for restrictions should be considered.
- On the issue of persons born on the mainland of Hong Kong residents becoming permanent residents of the HKSAR, they should be allowed to enter Hong Kong seven years before the establishment of the HKSAR through the co-ordination of the Sino-British Joint Liaison Group, so as to avoid a sudden influx after 1997. Priority of entry approval should be based on the parents' length of residence in Hong Kong, age of the children and their marital status. The number of authorized immigrants should be in addition to the existing daily quota of 78.
- For Hong Kong residents who have resided in places other than Hong Kong (including other regions in China) for a continuous period of more than one year, their children born at those places may not become Hong Kong residents.
- As long as persons listed in category (3) are permanent residents, they shall enjoy the freedom of entry and exit and should not be subject to the restriction of entry quota.
- Persons under 21 years of age born outside Hong Kong of those residents listed in category (4) should qualify as permanent residents.
- The provisions of category (4) need to be studied and deliberated carefully.

Reason: - By 1997, Vietnamese refugees in Hong Kong will have become persons of non-Chinese nationality who have resided in Hong Kong for a continuous period of no less than seven years. Hence, this category must be clearly defined to safeguard against this problem.

- The provisions of categories (4) and (5) must be amended with caution.

Reason: - Persons listed in these categories have dual nationality and this will cause confusion in Hong Kong.

3.14.3 Suggestions on the definition of "non-permanent resident"

- It should be adequate if the Basic Law states that only permanent residents as defined have the right of abode.

Reason: - There does not seem to be any real need for such a definition in the Basic Law. The rights and duties of all residents should be the same, save the right of abode.

3.14.4 Suggestions on the definition of "having ordinarily resided"

- Explanatory notes of the term "ordinarily" should be given.

Reason: - To allow Hong Kong residents to give further comments.

3.14.5 Suggestions on the definition of "place of permanent residence"

- Explanatory notes to the clause "have taken Hong Kong as their place of permanent residence" should be given.

Reason: - To allow Hong Kong residents to give further comments.

- The specific way to "take Hong Kong as their place of permanent residence" should be stated in the Basic Law.

Reason: - To put aside the anxiety of persons of foreign nationality now residing in Hong Kong about their resident status in Hong Kong after 1997.

- "Permanent" could be elaborated to mean having ordinarily resided or worked in Hong Kong for a long period of time. There should not be any stipulation that foreign nationality or property must be given up.

- The requirement of "have taken Hong Kong as their place of permanent residence" can be satisfied by swearing an oath.

- The act of applying for permanent identity cards may be regarded as the wish to take Hong Kong as the place of permanent residence.

- To become permanent residents of Hong Kong, indigenous inhabitants of the New Territories who are of foreign nationality must also meet the requirement of taking Hong Kong as their place of permanent residence. Considerations to give them right of abode may be based on their traditional link with Hong Kong.

Reason: - Under the existing practice, indigenous

inhabitants of the New Territories who have been naturalized as British nationals may still enjoy the right of abode in Hong Kong even if they have emigrated to Britain.

3.14.6 Suggestions on the definition of "Chinese nationals"

- It is necessary to specify that holders of British (Hong Kong) passports are also Chinese nationals.
- The term "Chinese nationals" mentioned in this article should be applicable to persons of Chinese nationality only, but not holders of foreign passports.
- "Chinese nationals" should be properly defined.
- "Chinese nationals born in Hong Kong" should be properly defined.
- Persons who are permanent residents of the HKSAR must also hold the HKSAR passports to become Chinese nationals.
- Chinese nationals should be defined on the basis of the Chinese Memorandum of the Sino-British Joint Declaration.
- If it can be specified in the Basic Law whether persons born and brought up in Hong Kong who have obtained foreign nationality are "Chinese nationals" or not, it will be advantageous to persons who have contributed to the society of Hong Kong but now hold foreign nationality should they wish to return to work in Hong Kong.
- The minority of persons of non-Chinese origin born in Hong Kong should be protected, so that they have the right to apply for Chinese nationality.
- The issue of nationality is not clear, it should be clearly specified.
- "Persons of Chinese nationality" should be properly defined.
- "Persons of Chinese nationality born [of Hong Kong residents]" should be properly defined.
- "Persons of non-Chinese nationality who have taken Hong Kong as their place of permanent residence" should be properly defined.

3.14.7 Suggestions on other issues

- This article should only provide for the principles. The details should be stated in an appendix.

Reasons: - There are many loopholes in this article.

- To allow for more flexibility in future amendments.
- The Basic Law should state the definition of "Hong Kong people" as persons who were born, brought up and educated in Hong Kong. Those who were not born, brought up and educated in Hong Kong should be referred to as people who take Hong Kong as their place of residence.
- Persons listed in categories (1), (2) and (3) should be called "Chinese nationals (Hong Kong)" who enjoy the rights as listed in the Draft Basic Law for Solicitation of Opinions.
- Political rights should not be given to persons listed in category (3).
- Persons listed in categories (4) and (5) should be called "Hong Kong jimin" in Chinese (meaning people living in Hong Kong away from home) with the right of abode only. They should be required to renew their visas annually and may not enjoy the rights listed in the Draft Basic Law for Solicitation of Opinions.

Reason: - Since Hong Kong is a Chinese territory, non-Chinese nationals should not interfere with the internal affairs of China.

- This article should include the right to obtain travel documents.
- The restrictions in this article should be carefully examined to ensure that they do not conflict with ideals such as Article 109.
- There should be a detailed explanation for being "qualified to obtain Hong Kong identity cards but have no right of abode".
- The provisions on the right of abode should fall within the scope of law.
- It should be stipulated that the HKSAR government is responsible for controlling population growth in the HKSAR.

Reason: - Expansion of the population will bring about social unrest.

- The Central People's Government should forbid by law, citizens of the People's Republic of China who do not belong to the HKSAR to enter the territory of the HKSAR. The HKSAR government should adopt the policy of immediate repatriation of all illegal immigrants arrested,

irrespective of their nationality, race, ethnic origin, language, sex, occupation, religious belief, political views, educational level, economic status and so on.

- Mainland residents making single or return journeys to Hong Kong must be vetted and granted approval by China and Hong Kong respectively. If each side holds a different view, the case should be referred to an organization formed jointly by China and Hong Kong for a final decision. People making return journeys must return to the mainland when their permitted period of stay expires. Their stay must not be extended indefinitely to a period of more than seven years so that they may qualify for residence in Hong Kong.
- Special provision: If not all of the Vietnamese refugees have been resettled in Western countries or repatriated to Vietnam by 1 July 1997, the HKSAR government will not accept any refugees (boat people), regardless of their number. They should be handled and taken back by Britain. All persons born in Hong Kong of Vietnamese refugees (boat people) are not eligible for Hong Kong residence as they have the same refugee (boat people) status as their parents.

Reason: - This measure is taken to avoid any racial conflicts between Chinese and Vietnamese in the future.

- The HKSAR government shall not accept any Vietnamese boat people after 1997.

4. Issues to be clarified

4.1 On nationality

- What is the definition of Chinese nationals?
- Who should screen and determine which persons qualify as "Chinese nationals"?
- What is the screening standard for "Chinese nationals"?
- Do "Chinese nationals" mentioned in categories (1) and (2) of Paragraph 2 and "persons of Chinese nationality" mentioned in category (3) have the same meaning?
- Is the definition of "Chinese nationals" of the HKSAR and the same as that of "Chinese nationals" of China?
- Are the terms "Chinese nationals" and "Chinese nationality" both based on the definition of Article 31 of the Chinese Constitution?
- Will the Chinese born and brought up in Hong Kong but

having acquired foreign nationality be considered "Chinese nationals"?

- What is the difference in status between the Chinese now residing in Hong Kong who hold foreign passports and the Chinese nationals who have moved to the HKSAR from other cities and provinces after 1997?
- Are Chinese holding foreign passports "Chinese nationals"?
- May Chinese holding British National (Overseas) passports become Chinese nationals?
- Are children born of Chinese-foreign inter-marriages Chinese nationals?
- Are children born in Hong Kong of illegal immigrants from China Chinese nationals?
- Do persons of Chinese nationality refer to persons of Chinese descent?
- According to the provision of category (3), persons of Chinese and non-Chinese nationality are distinguished on the basis of race but not the length of residence, how is this provision different from the principle of racial segregation?
- What will be the post-1997 nationality status of the Chinese born and brought up in Hong Kong who are currently regarded as British subjects?
- For ex-Hong Kong residents who are holders of foreign passports and have resided overseas for a period of time, what will be their nationality status upon their return to Hong Kong?
- For persons born of indigenous inhabitants of the New Territories residing overseas, what will be their nationality status in the HKSAR after 1997?
- Will the British National (Overseas) passport be regarded as a foreign passport?
- How will China guarantee its recognition of the British National (Overseas) passport as a travel document?
- Will Hong Kong residents have dual nationality?

4.2 On "have ordinarily resided"

- What is the meaning of "have ordinarily resided for a continuous period of no less than seven years"?
- Does it mean that any person of any status, at any time

may obtain the "right of abode" after having resided in Hong Kong for a continuous period of no less than seven years?

- Will members of the military forces stationed in Hong Kong or Chinese nationals from the mainland working in Hong Kong who have resided in Hong Kong for a continuous period of no less than seven years be regarded as permanent residents of Hong Kong?
- Will persons who have to travel back and forth to foreign countries during the seven-year period of residence in Hong Kong still be considered residents of the HKSAR?

4.3 On "place of permanent residence"

- What is meant by the expression "have taken Hong Kong as their place of permanent residence"?
- Does the expression "have taken Hong Kong as their place of permanent residence" imply having resided in Hong Kong all the time without being overseas at all (with the exception of travelling)?
- Is a simple declaration to "take Hong Kong as the place of permanent residence" the only requirement?
- Will the persons who "have taken Hong Kong as their place of permanent residence" be required to give up their foreign nationality and overseas property?

4.4 On "permanent residents"

- What is meant by "permanent residents"?
- What are the conditions for one to be regarded as having lost or renounced the status of permanent resident?
- May permanent residents retain their status after they have emigrated?
- What laws will be used to define permanent residents?
- May persons of any nationality become "permanent residents"?
- Category (3) states that "[p]ersons of Chinese nationality born outside Hong Kong...", do the places "outside Hong Kong" include mainland China?
- Category (3) states that persons born on the mainland of Hong Kong residents are permanent residents. But if such persons are subject to the entry quota after 1997, will it not be in contravention with the provision of category (3)?

- After persons listed in category (3) have become permanent residents, may their spouse and children outside Hong Kong also become permanent residents?
- What kind of persons are included in category (3)? If a HKSAR resident marries a person on the mainland, will their children be HKSAR residents?
- Is the spouse of a Hong Kong permanent resident considered a Hong Kong permanent resident?
- What will be the difference in treatment between Chinese nationals and British nationals who are permanent residents of the HKSAR?
- Will the British nationals who have become permanent residents in accordance with the provision of category (4) be required to renounce their rights and obligations as British nationals?
- According to the provision of category (5), will persons born in Hong Kong of residents listed in category (4) remain Hong Kong permanent residents when they reach 21 years of age?
- According to the provision of category (5), in what way can persons born in Hong Kong of residents listed in category (4) who are above 21 years of age become permanent residents?
- In what way can the provision of category (6) be met?
- According to the provision of category (6), will the second generation of permanent residents qualify as permanent residents?

4.5 On "non-permanent residents"

- Why is it necessary to distinguish between permanent and non-permanent residents on identity documents?
- What is the purpose and use of distinguishing between permanent and non-permanent residents?
- What is the purpose of making persons listed in category (5) become non-permanent residents after the age of 21?
- According to the provision of category (5), children of persons of non-Chinese nationality are permanent residents under 21 years of age. If they have not resided in Hong Kong for a period of more than seven years when they turn 21, they will lose their qualification for permanent residents. Can this unreasonable provision be withdrawn?

- Apart from categories (1) to (6), how should the New Territories indigenous inhabitants and their offsprings who have emigrated overseas be handled if they return to settle in Hong Kong after 1997 (as these people are holders of foreign passports)?

4.6 On the "right of abode"

- What rights are included in the right of abode?
- There is a need to clarify the right of abode of persons of non-Chinese descent.
- Will Hong Kong residents originally of Chinese nationality who have eventually obtained foreign nationality still have the right of abode in Hong Kong in 1997?
- Will overseas persons born of indigenous inhabitants of the New Territories still have the right of abode in Hong Kong after 1997?
- Is category (4) in conflict with Article 30?

4.7 On other issues

- Does the clause "are qualified to obtain, in accordance with the laws of the Hong Kong Special Administrative Region, Hong Kong identity cards" imply that permanent residents of Hong Kong will definitely be entitled to identity cards? Is this a procedural provision or a restrictive provision?
- What rights should be enjoyed by the children of Chinese nationals?

1. Original text

All Hong Kong residents shall be equal before the law, regardless of their nationality, race, ethnic origin, language, sex, occupation, religious belief, political views, educational level and property status.

2. Views

2.1 Supporting view

- Support is expressed for the provisions of this article.

2.2 Opposing views

- Objection is expressed to the provisions of this article.

Reasons: - This article does not specify that residents have the right to be free from discrimination and the right of equal protection by the law. (Note 24-1)

- This article does not specify that residents have the right to be free from discrimination by government authorities.

- This article does not forbid discrimination against residents on the grounds of their social background. (Note 24-2)

- This article does not forbid discrimination against residents on the grounds of their place of birth.

- This article does not forbid discrimination against residents on the grounds of their marital status.

- This article does not forbid discrimination against residents on the grounds of their ideological belief.

- This article does not specify that residents of different social classes shall have the same rights and protection before the law.

- This article does not specify that residents of different social backgrounds shall have the same rights and protection before the law.

- This article does not state that residents have the right to life.

- This article does not state that residents have the right to be free from torture or cruel, inhuman or degrading treatment and punishment.
- The mentioning of "[a]ll Hong Kong residents shall be equal before the law" alone is inadequate in safeguarding equality on humanity grounds.
- The phrase "equal before the law" is not clear.
- It provides a constitutional basis for discrimination, at least in the public sector.

2.3 Reservations

- This article contradicts with Article 48 (12).

Reason: - The Chief Executive has the power to pardon or commute the sentence of criminal offenders. If the Chief Executive exercises this power for political or economical reasons, it will defy the provision in this article that "[a]ll Hong Kong residents shall be equal before the law".

- This article is in conflict with Article 100 and so not everyone is equal.
- This article has a communist implication as there is no provision for "private property", which will cause a lot of problems.
- If residents are not equal before the Basic Law, this article cannot be enforced.

2.4 Other views

- This article involves a fundamental principle.
- This article could not possibly include all conditions.
- Extension of this article to private actions may have a profound impact on a lot of purely economic or contractual relationships.
- The potential use of this article depends very much on the imagination of the judiciary. As time passes, it may well prove to be the most powerful provision in Chapter III.

3. Suggestions

3.1 Rewriting

- It should be rewritten as: "All persons are equal before the law and are entitled without any discrimination to

equal protection by the law. In this respect, there shall be no discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

- It should be rewritten as: "Every permanent resident shall have the right and the opportunity, without discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status, and without unreasonable restrictions:
 - (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
 - (c) to have access, on general terms of equality, to the public service."

Reason: - To comply with the provisions of the International Covenant on Civil and Political Rights.

- It should be rewritten as: "Hong Kong residents, regardless of their nationality, race, ethnic origin, language, sex, occupation, religious belief, political views, educational level, property status and so on; shall have equal treatment and respect, and the welfare of the people shall be taken as the ultimate aim."
- It should be rewritten as: "All Hong Kong residents shall be equal before the law; their right to equal treatment before the law shall not be lost on the grounds of nationality, race, ethnic origin, language, sex, occupation, religious belief, political views, educational level and property status."
- It should be rewritten as: "All Hong Kong residents shall have the right to equal protection by the law. They shall be equal before the law and shall be free from discrimination regardless of their nationality, race, ethnic origin, language, sex, occupation, religious belief, political views, educational level and property status."
- It should be rewritten as: "All Hong Kong residents shall be equal before the law, regardless of their nationality, race, ethnic origin, language, sex, occupation, religious belief, political views, educational level and property

status. Likewise they shall have equal protection by the law and shall not be subject to discrimination."

- It should be rewritten as: "All Hong Kong residents shall be equal before the law regardless of their nationality, race, language, sex, religious belief, political views, educational level and property status. They shall be free from discrimination or preferential treatment and shall have the right to equal protection by the law."
- It should be rewritten as: "All Hong Kong residents shall be equal before the law and shall have the right to equal protection by the law. They shall be free from discrimination regardless of their nationality, race, sex, language, occupation, religion, political or ideological belief, educational level, property status and social background." (Note 24-3)
- It should be rewritten as: "The residents and other persons of the HKSAR shall be equal before the law, and shall be free from discrimination, irrespective of their nationality, descent, race, ethnic origin, language, sex, occupation, religious belief and practices, political views or beliefs, educational level, economic status or social conditions."
- It should be rewritten as: "All Hong Kong residents shall be equal before the law and shall have the right to equal protection by the law. They shall be free from discrimination regardless of their nationality, race, ethnic origin, sex, language, occupation, religious, political or ideological belief, educational level, property status or social background."

Reason: - Being "equal before the law" is an affirmative principle which should not be subject to restrictions on any grounds. Hence, the listing of such factors as "nationality, race, ethnic origin, language..." should only be regarded as a supplement to the above affirmative statement. As this supplement cannot possibly include all the factors, it is therefore suggested that these factors should be presented in a separate sentence after "equal before the law" to avoid making these factors the prerequisites for the establishment of the statement. Otherwise, the statement of "equal before the law" cannot be applied if factors other than the ones listed above are involved.

- It should be rewritten as: "All Hong Kong residents shall have equal treatment and equal protection by the law."

Reason: - It is impossible to include all factors such as nationality, race, ... and property. Since

there may be omissions, these factors should not be listed at all as they are already implied in the text. Not only should Hong Kong residents be equal before the law, the law should be enacted in such a way that equal protection will be given to everyone.

- It should be rewritten as: "All Hong Kong residents shall be equal before the law and shall have the right to equal protection by the law."
- It should be rewritten as: "Any person shall be equal before the law and be respected by the law."

3.2 Amendments

- The order of "political views" and "religious belief" should be reversed.

Reasons: - [Translator's note: This view is on the Chinese wording and has no relevance to the English version.]

- To give due respect to the point that "political views" are protected by the law.
- The term "political views" should be amended to read "political stand".
- [Translator's note: This view is on the Chinese wording and has no relevance to the English version.]

- The term "property status" should be amended to read "economic status".

Reason: - The definition of "economic status" is more specific.

- The clause "shall be equal before the law" should be amended to read "shall have equal protection by the law".

Reason: - The statement of "shall be equal before the law" does not imply equality in the law itself, it only implies equality in the handling method while the law itself can still be discriminatory.

- The clause "shall be equal before the law" should be amended to read "shall have equal protection by the law and shall be free from discrimination". (Note 24-4)

Reason: - The clause "before the law" in the original text refers to the enforcement of the law, and does not imply that the law itself will protect the equality of treatment to everyone while

- The clause "shall be equal before the law" should be amended to read "shall have the right to equal protection by the law".

3.3 Additions

- The clause "shall have equal protection by the law and shall be free from discrimination" should be added after "shall be equal before the law".
- The clause "shall be equal politically" should be added.

Reason: - It is not adequate just to state that all residents "shall be equal before the law". The present wording does not provide adequate protection to HKSAR residents who hold different political views towards China.

- The following should be added: "[All Hong Kong residents] shall not intentionally advocate hatred and discrimination against other persons of certain race, ethnic origin, language, sex, occupation, sexual and emotional inclination, religious belief, educational level, property status, etc."
- The following should be added: "All Hong Kong residents shall be free from discrimination regardless of their nationality, race, ethnic origin, language, birth, sex, marital status, sexual preference, occupation, religious belief, political views, educational level and property status."
- The following should be added: "HKSAR residents shall have the right to equal protection by the law and they shall be protected against discrimination on the grounds of their race, sex, nationality, etc."

Reason: - The law should give equal protection to everyone in the same category.

- The following should be added: "All Hong Kong residents shall have the right to equal protection by the law, regardless of their nationality, race, language, sex, occupation, religious belief, political views, educational level, property status, class and background." (Note 24-5)
- The following should be added at the end of this article: "Hong Kong residents shall also have the right to a safe and healthy environment and the right to make the same request for their descendants."
- The following should be added at the end of this article:

"Unless otherwise prescribed by this Law, Hong Kong residents shall equally enjoy the rights and freedoms specified in Chapter III of this Law, regardless of their nationality, race, ethnic origin, language, sex, occupation, religious belief, political views, educational level, marital status, social background and other differences."

- The following should be added at the end of this article:
"They shall be free from discrimination on the grounds of different backgrounds."
- The clause "and free from discrimination" should be added after "shall be equal before the law".

3.4 Other suggestions

- Apart from being equal before the law, residents should also be free from discrimination in social life.

Reason: - Everyone has dignity and the right to life and should be treated equally.

- This article should include the provision "shall be free from discrimination".
- The following which should not be subject to discrimination should be added:
 - (1) No distinction between handicapped and able-bodied persons.
 - (2) Health status.
 - (3) Free from persecution or discrimination on the ground of sexual and emotional inclination (eg. homosexuality).
 - (4) Sexual preference. (Note 24-6)
 - (5) Family background.
 - (6) Right to life.
 - (7) To be presumed innocent before trial.
 - (8) Nationality.
 - (9) Thought.
 - (10) Political belief.
 - (11) Party membership or status as party member.

Reasons: - There is not yet any formal political

parties in Hong Kong, the statement of equality before the law regardless of nationality, race, political views and so on will merely give communist party members a more superior status.

- The term "political views" do not include the implication of this suggestion.

(12) Ethics.

Reason: - There are a lot of beliefs which are neither "religious" nor "political" in nature.

(13) Birth status. (Note 24-7)

Reasons: - To protect the right of babies born by in vitro fertilization or of surrogate mothers.

- To realize the principle of equality before the law.
- To make illegal any acts of discrimination against illegitimate children.

(14) Marital status. (Note 24-8)

Reason: - To avoid legal provisions which cause discrimination in tax rates on the grounds of "marital status".

(15) Social status.

(16) Social background. (Note 24-9)

Reasons: - "Social background" is included in the International Covenant as well as the Sino-Portugese Joint Declaration.

- This provision will eliminate the influence of the popular concept of "five black types" during the Cultural Revolution.
- The following explanatory note should be given to the term "political views": "whether they are anti-communist or anti-marxist views or not".
- It should be specified that the term "law" refers to "the law which protects human rights".

Reason: - To avoid misinterpretation.

- It is necessary to further reinforce the protection afforded by the provisions of this article.
- All persons who have violated the law in Hong Kong must be subject to legal sanction, regardless of their nationality and race.
- Equality of opportunity in society should be promoted through legislation.

Reasons: - This is different from being "equal before the law".

- To protect the interests of the handicapped.
- The law must be enacted with fairness and equality. Everyone should be equal before the law.
- A basic principle should be included in all articles of the Basic Law, that is, all persons residing in the HKSAR should have respect as an individual. They should be free from discrimination and infringement on their civil rights regardless of their sex, age, race, language, occupation, religious belief, political thoughts, physical disability, opinions on public affairs and conduct. (The above basic principle must not be amended under any circumstances.)
- Article 33 of the Chinese Constitution should be taken as reference. There is no need to list out all the conditions which shall be free from discrimination in this article.
- This article should be amended so that persons of different ideologies and political views may have equal status before the law.
- It is suggested that the International Covenants on Human Rights should be used as the basis for this article.

Reason: - To avoid omission of any right and freedom.

(There are views which indicate that this point would have been mentioned under Article 38.)

- The provisions of Article 27 of the "International Covenant on Civil and Political Rights" should be taken as reference for the wording of this article: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

Reason: - To protect the residents' right to be free from

4. Issues to be clarified

- It is not clear whether this article applies only to government action or is intended to regulate private relationships among ordinary citizens as well.
- What is meant by "[a]ll Hong Kong residents shall be equal before the law"?
- Does the clause "shall be equal before the law" in this article mean that everyone will be treated equally when the law is enforced, or that the law itself will treat everyone equally?
- What is the difference between "equal protection by the law" and "equal before the law"?
- What does the "law" refer to in this article?
- Will this article be applicable to educational institutions and professional bodies?

Article 25

1. Original text

Permanent residents of the Hong Kong Special Administrative Region who have reached the age of 21 shall have the right to vote and the right to stand for election as prescribed by law.

2. Views

2.1 Supporting view

- Support is expressed for the provisions of this article.

Reasons: - Persons of the age of 21 are more mature.

- Persons of the age of 21 have a definite knowledge of Hong Kong.

- Persons of the age of 21 have a definite sense of civic awareness.

- Persons of the age of 21 have a better knowledge of the political figures and will therefore make rational choices.

- Everyone should have the right to vote.

- The stipulation that only permanent residents have the right to vote is in line with the existing legal provisions in Hong Kong.

- The age restriction on the right to vote and to stand for election should be spelt out so as to avoid confusion caused by frequent amendments.

2.2 Reservations

- The restriction on voting age should be related to the political sense and civic awareness of the people.

- The wording of this article is not clear and may cause problems in its interpretation.

- This article does not specify the elections to which the right to vote and the right to stand for election will be applicable.

2.3 Opposing view

- Objection is expressed to the provisions of this article.

Reasons: - Persons who enjoy the right to vote and the

- right to stand for election need not be permanent residents.
- The age restriction on voters should not be laid down in a constitutional instrument.
 - The age restriction should depend on the prevailing social situation.
 - The present lawful age in Hong Kong has already been lowered to 18 years of age, which reflects a definite social trend.
 - The lawful age in Hong Kong is 18 years of age and if the voting age needs to be changed in the future, it will involve the major issue of amending the Basic Law.
 - It is a world trend to lower the voting age. In many countries nowadays, young people of the age of 18 have the right to vote and the right to stand for election.
 - In Hong Kong, besides political rights, young people of the age of 18 already enjoy other legal rights as majors such as the right to sign contracts and so on.
 - The voting age in China is also 18 years of age.
 - To set the voting age at 21 in the Basic Law will restrict the flexibility in future development and obstruct the smooth operation of the political system. (Note 25-1)
 - The age restriction of 21 is not in line with the age restriction of 18 under Article 34 in Chapter II of the Constitution. There is no need to set the bad example of violating the Constitution in the Basic Law.
 - There is a large number of people under the age of 21 in Hong Kong who have political consciousness.
 - With the improving educational standard of Hong Kong people, the popularization of civic education and the gain of experience in elections, the age limit of 21 will be lowered.
 - The development of knowledge and intellect in the civic awareness of young people will change with the advancement of society.

- 香港基本法諮詢委員會
- It does not specify whether the elections contemplated are in respect of local authorities or the principal legislature.

2.4 Other views

- Another problem arises from Article 20 of this Law, which provides for election of deputies of the HKSAR to the National People's Congress. Presumably the age requirement in Article 25 would apply to Article 20. Yet it has been suggested that the Organic Law of the National People's Congress and the relevant electoral law should apply to the HKSAR. Under Article 3 of the Electoral Law of the National People's Congress and People's Congresses at All Levels, the age at which one exercises one's right to vote is 18. This raises an important question of possible conflict between a nationwide law applicable to the HKSAR and the Basic Law, on which no answer is provided by the Basic Law.

- The lowering of the voting age to 18 is not favoured.

Reasons: - People of the age of 18 are still in school and they are not mature enough nor experienced enough. Very few people at this age will make good judgement.

- People at this age are not firm enough and are easily influenced by others.

- At the present stage, there are too many youngsters in Hong Kong who lack civic awareness.

- They are not familiar with politics.

3. Suggestions

3.1 Deletion

- The phrase "as prescribed by law" should be deleted.

3.2 The voting age should not be specified in the Basic Law.

Reasons: - The voting age should not be stipulated so as to allow the HKSAR government to make the specific provisions through legislation according to the prevailing social situation.

- A specific provision lacks flexibility and will pose difficulties in future amendment.

- Age should not be the primary criterion in determining one's right to vote and right to stand for election.

- The current promotion of civic education will help to build up the civic awareness of youngsters slowly.
- To avoid contradicting the age restriction on candidates in Articles 44 and 70 and to avoid conflicts with the electoral law on deputies to the National People's Congress.

3.2.1 Suggestions on the rewriting:

- "Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election as prescribed by law." (Note 25-2)
- "Permanent residents of the Hong Kong Special Administrative Region who have reached the lawful age shall have the right to vote and the right to stand for election as prescribed by law."
- "Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election as prescribed by law. The qualification of and restriction on voters and candidates shall be stipulated by the electoral law of the Hong Kong Special Administrative Region."
- "Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election as prescribed by law. The age restriction shall be stipulated through legislation by the legislature."
- "Permanent residents of the Hong Kong Special Administrative Region shall, out of their own free will, have the right to vote and the right to stand for election as prescribed by law."
- "Permanent residents of the Hong Kong Special Administrative Region, irrespective of their occupation, shall have the right to vote and the right to stand for election as prescribed by law."
- "Permanent residents of the Hong Kong Special Administrative Region, irrespective of their nationality, shall have the right to vote and the right to stand for election."
- "Permanent residents of the Hong Kong Special Administrative Region who are majors shall have the right to vote and the right to stand for election as prescribed by law."

- "In accordance with the electoral law, all qualified residents shall have the right to vote and the right to stand for election."
- "Permanent residents of Chinese nationality of the Hong Kong Special Administrative Region who have reached the age of 21 shall have the right to vote and the right to stand for election as prescribed by law. Permanent residents of non-Chinese nationality of the Hong Kong Special Administrative Region who have reached the age of 21 shall have the right to vote and the right to stand for election for posts not restricted to residents of Chinese nationality."
- "Permanent residents of the Hong Kong Special Administrative Region may take up any public or official posts within the Hong Kong Special Administrative Region government except for the post of Chief Executive of Hong Kong and the posts of principal executive officials. Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election to the municipal council and regional council but not the Executive Council or the Legislative Council."

Reason: - To make sure that only persons of Chinese nationality may fill such posts as the Chief Executive, members of the executive authorities, principal officials, members of the legislature and so on.

3.3 The voting age should be lowered to 18.

- Reasons: - This would enhance the participation, initiative and rights of young people in social affairs.
- According to the existing law, a person of the age of 18 is considered as a major. There is a considerable number of secondary school students who are concerned about the affairs of Hong Kong but can do nothing since they have no right to participate in elections due to the age restriction.
 - The present world trend favours 18 as the voting age.
 - The voting age in the majority of countries is 18.
 - The Chinese Constitution also sets the voting age at 18.
 - With universal education, advanced telecommuni-

cations and the gradual development of civic education, youngsters of 18 years of age will be capable enough to exercise their civil rights and bear their responsibilities as citizens.

- The political consciousness of young people will be enhanced under the policy of "one country two systems" and "a high degree of autonomy".
- Age is not necessarily relevant to the degree of maturity of a person.
- The practice of maintaining the lawful age at 21 lacks stability in the long run.

3.3.1 Suggestions on the rewriting:

- "Permanent residents of the Hong Kong Special Administrative Region who have reached the age of 18 shall have the right to vote and the right to stand for election as prescribed by law."
- "Residents of the Hong Kong Special Administrative Region who are above 18 years of age shall have the right to vote and the right to stand for election as prescribed by law."

3.4 Only persons of Chinese nationality should have the right to vote and the right to stand for election.

Reason: - In countries in Europe and America, the right to vote is only given to citizens of their own countries.

3.4.1 Suggestions on the rewriting:

- "Chinese nationals who reside in Hong Kong in accordance with law, irrespective of their length of residence, shall have equal political right, the right to vote and the right to stand for election."

Reason: - According to the Chinese Constitution, Chinese nationals who have reached the voting age have the right to vote. Hence, Chinese nationals residing in Hong Kong should not be given different political right on the grounds of their length of residence. If permanent residents (persons who have resided in Hong Kong for a period of more than seven years), including persons of non-Chinese nationality have the right to vote and the right to stand for election while non-permanent residents (persons who have resided in Hong Kong for a period of less than seven years) do not have

these rights even if they are Chinese nationals, it will be an insult to the Chinese people.

- "Only Hong Kong citizens of Chinese nationality shall have political rights such as the right to vote."
- "Hong Kong permanent residents of Chinese nationality who have reached the age of 21 shall have the right to vote and the right to stand for election."

3.5 Persons of the age of 18 should have the right to vote only.

Reason: - Persons of the age of 18 have usually completed secondary education and they are able to distinguish right from wrong, so they should have the right to vote. But at 18, they have limited knowledge and they do not have the ability to practise politics, so they should not have the right to stand for election.

3.5.1 Suggestion on the rewriting:

- "Permanent residents of the Hong Kong Special Administrative Region who have reached the age of 18 shall have the right to vote but not the right to stand for election."

3.6 Addition

- The following should be added: "Chinese nationals in Hong Kong shall have the right to take up the posts of Chief Executive and principal executive officials of the Hong Kong Special Administrative Region as prescribed by law. They shall also enjoy the right to vote and the right to stand for election in the elections to the executive authorities and the legislature of the Hong Kong Special Administrative Region."

3.7 Other suggestions

- Residents should have universal and equal rights to vote and to stand for election. They should be able to choose their own representatives to take part in political affairs by periodic elections.
- All adults should be voting for the legislature and Chief Executive. The will of the people is expressed in periodic and genuine adult suffrage. It is through such elections that any government develops a true basis of authority and confidence.
- Specific protection should be given to the citizens' right to vote so as to prevent the government from arbitrarily infringing upon this basic political rights of citizens.

- It is suggested that the right to vote should be made available to non-permanent residents who have "ordinarily resided in Hong Kong for a continuous period of no less than seven years before or after the establishment of the Hong Kong Special Administrative Region".

Reason: - This would instil in these non-permanent residents a sense of belonging to the Region and is conducive to maintaining Hong Kong as a cosmopolitan city.

- The age requirement for residents to vote and to stand for election should be the same as the prevailing lawful age.
- The specific voting age should be stipulated in the article.
- The voting age should be set at 28.
- Persons under the age of 21 who wish to stand for election should have the written consent of their parents.
- The right to vote and the right to stand for election should be subject to fewer restrictions (free from unreasonable restrictions), as compared with other rights.
- The voting age should be above the age of completion of primary education.
- Eligible voters must have an educational level of Form Three (or equivalent) or above besides meeting the requirement in Article 25.
- Persons who ordinarily reside in Hong Kong and who have reached the age of 21 may participate in elections and shall have the right to take up public offices.
- The candidates must be university graduates or must have worked in society for 20 years with achievement.
- The candidates must have reached the age of 25.
- The candidates must have reached the age of 30 who are reliable with many years of working experience and who have resided in Hong Kong for a period of more than 10 years.
- Each candidate should have been nominated by three legitimate residents with three sponsors before he can become a legitimate candidate.
- Each candidate should be accountable to all Hong Kong residents and should work for the welfare of Hong Kong.

- The candidates should have a decent background with no records of convictions such as having been jailed for six months or fined \$10,000.00. If such offences have been committed, he may not be nominated for the election.
- Candidates may run for election irrespective of their ideology and stand, but they must abide by the Basic Law and must support the People's Republic of China.
- Persons who have committed crimes and have been sentenced to three months' imprisonment or more, but have not served the sentence or who have criminal records, and persons who have been confirmed to be psychologically unsound or have been judged to be insane according to the law of Hong Kong, should lose their rights to vote and of recall.
- All persons, including released prisoners, should have the right to vote and the right to stand for election.
- All persons who meet the provisions of this article should have the right to stand for election and the right to vote for the Chief Executive and members of the legislature.
- No citizen should be barred from voting or running for any posts within the political structure of Hong Kong, including the posts of Chief Executive and president of the legislature, on such grounds as race, colour, religion, belief, sex, intelligence, occupation, educational level or class.
- It should be stated which permanent residents shall not have the right to vote and the right to stand for election.

4. Issues to be clarified

- How is this provision related to Article 39?
- Is the voting age specified in the Basic Law out of line with that in Article 34 of the Chinese Constitution? Is this incompatibility necessary?
- According to Article 44 in Chapter IV, the post of the Chief Executive of Hong Kong must be filled by "a Chinese national who is a permanent resident of the Region". However, it can be seen from the five methods for selecting the Chief Executive in Annex I that permanent residents listed in categories (4), (5) and (6) will have no right to stand for election for the Chief Executive. Is this situation not in conflict with the content of Article 25? If not, does it imply that the Chief Executive will definitely not be selected by election? Or does it mean that the right to stand for election of these people is restricted to direct election of the legislature?

- Would the words "in accordance with law" refer to a law born of some future interpretation by the Chinese National People's Congress?
- Who shall decide on the law as referred to in "as prescribed by law" in this article?
- Does the clause "have the right ... as prescribed by law" imply that permanent residents of Hong Kong may, by legislation, be deprived of their rights to vote and to stand for election? Is there any restriction on these laws?
- Is it appropriate to specify the voting age in the Basic Law?
- Why can we not allow the HKSAR government to make their own decision on the voting age?
- If we set the minimum age limit at 21 for permanent residents of Hong Kong to exercise their rights to vote and to stand for election, can we be sure that this age limit will still be appropriate in the next 50 years after 1997?
- Is 21 years of age the suitable legal voting age?

1. Original text

Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, to form and join trade unions, and to strike; and freedom of assembly and of demonstration.

2. Views

2.1 Supporting views

- Support is expressed for the provisions of this article.

Reasons: - This article will protect Hong Kong people.

- The provision for freedom of the press in this article is adequate.
- Support is expressed for the present wording as there is no need to add the phrase "as prescribed by law".

2.2 Reservations

- The wording of this article is too vague.
- The meaning of "freedom" is not clear.
- This article has not specified the limits on the freedoms to be enjoyed by residents.
- The freedom of assembly and of demonstration and the freedom to strike are not clearly defined.
- According to the present situation of labour organizations in Hong Kong, it should not only be a freedom but a right to form trade unions, assemble and demonstrate.
- The provision for the freedom to form and join trade unions and to strike in this article merely serves to re-affirm the existing labour rights in Hong Kong. There is no mention of the legislative recognition of the representation of trade unions and the right of collective bargaining to be enjoyed by trade unions, which is the cause of constant struggle of the trade unions in Hong Kong.
- The provisions of this article do not offer adequate protection to the freedom of the press.
- The significance of the protection of the freedom of

speech, of the press and of publication afforded by this article is to protect the right of expression of individuals. However, the essential basis of freedom of expression is derived from the right "to seek, receive and impart information and ideas of all kinds", which is not included in this article.

- Hong Kong residents do not truly enjoy the freedom of speech.

Reason: - Residents may be sued for libel anytime. For instance, an incorrect news report could bring about prosecution.

- This article does not state whether there will be the right to receive information of all kinds regardless of frontiers.
- There is no provision for the residents' right to receive information.
- This article does not list all the social and political freedoms in full.
- This article states all the freedoms to be enjoyed by Hong Kong residents but does not specify that Hong Kong residents may elect representatives to the legislature.
- Since this article is restricted by the principle of Article 39, the legislature may enact any legislation to reduce the rights and freedoms listed in this article.
- The freedoms and rights stated in this article are actually subject to the condition that national security, social order and security would not be undermined. Hence, the rights and freedoms stated in this article are actually restricted and bound by the Central People's Government.
- The freedoms as promised in this article are impeded by the provisions of Article 17.
- According to this article, Hong Kong residents shall enjoy much freedom which, when exercised, will only create chaos in society.
- The freedom to form and join political parties is not included in this article. This freedom is of utmost importance to the future development of the political system in Hong Kong.
- It would be an act of indulgence to give residents the freedom of association, and to form and join political parties, which will only cause political confusion.

- If residents have the freedom of demonstration, social order may be at risk.

2.3 Other views

- Freedom of the press is one of the most fundamental freedoms which should be enjoyed by residents. Without this freedom, many of the rights and freedoms would become meaningless. If we do not have freedom of the press as a vehicle, freedom of speech and freedom of expression would be restricted.
- Freedom of the press does not only concern the interests of the press but also the interests of society as a whole.
- This article stipulates that Hong Kong residents will have the freedom of speech, the press, and publication; of association, assembly and demonstration and to strike, this should of course include similar rights to religious and political belief. (Note 26-1)
- The issue of enjoying the freedom of association, to form and join trade unions and to strike involves the question of how to exercise these rights.
- Residents must not be deprived of the freedom to strike.
- There would be problems if political parties may not establish a subordinate relationship with political parties of other regions and countries.

Reason: - Politics is becoming internationalized.

- This article stipulates that Hong Kong residents shall have the freedom of the press and of speech while Article 22 prohibits any act designed to undermine national unity or subvert the Central People's Government. These two articles are in conflict with each other.
- When compared with Article 41 in Chapter II of the Chinese Constitution, this article does not state that citizens have the right to criticize government organs and officials as this right should not fall within the scope of this article.

Reason: - There are different provisions for the freedom of speech and the above-mentioned rights in the Chinese Constitution.

- Freedoms in communist style, Hong Kong style and democratic style are all different.

3. Suggestions

3.1 Rewriting

- It should be rewritten as: "Hong Kong residents shall have:
 - (1) The right to the freedom of speech which shall include freedom of the press and of publication, freedom to seek, receive and impart information and ideas;
 - (2) The right of association, to form and join trade unions and to form and join political parties;
 - (3) The right to the freedom to strike and the right of collective bargaining; and
 - (4) The right to the freedom of assembly and of demonstration."
- It should be rewritten as: "Hong Kong residents shall have freedom of speech, of the press and of publication. The Central People's Government shall not interfere with or query any source of information or content of reports."
- It should be rewritten as: "Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, to form and join trade unions, and to strike; freedom of assembly and of demonstration; and freedom as prescribed by appropriate legislation."
- It should be rewritten as: "Hong Kong residents shall have the right and freedom of speech, of the press and of publication; the right and freedom of association, to form and join trade unions, and to strike; the right and freedom of assembly and of demonstration."
- It should be rewritten as: "The freedom of speech, of the press and of publication; freedom of association, to form and join trade unions, and to strike; and freedom of assembly and of demonstration of Hong Kong residents shall not be restricted by law, administrative measures or any other means."

Reason: - Such wording will not lead to the abuse of freedom. In the U.S.A., Congress has passed many laws to restrain the freedom of the people but the judiciary has not ruled such legislation as unconstitutional.

- It should be rewritten as: "Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, to form and join trade unions, of assembly and of demonstration as prescribed by law, including [freedom] to form organizations with different political views and even political parties."

- It should be rewritten as: "Hong Kong residents shall have right and freedom of speech, of the press, of information and of publication; right and freedom of association, to form and join political parties, to form and join trade unions and to strike; right and freedom of assembly and of demonstration, etc."

3.2 Amendments

- The word "freedom" should be replaced with "right".

Reasons: - The word "freedom" may be abused.

- The word "right" will state clearly that while residents have the right in a certain aspect, they also have the obligation to abide by the law.
- This wording is closer to the wording of Article 3 (5) of the Sino-British Joint Declaration.

3.3 Additions

- The words "of thought and" should be inserted before "speech".
- The phrase "and of expression of different political views" should be added after "Hong Kong residents shall have freedom of speech".
- The words "the right and" should be inserted before the word "freedom".
- The following should be added at the end of the article: "on the principle of not undermining the interests and reputation of the country."
- The following provision should be added: "The government of the Hong Kong Special Administrative Region shall not enact any legislation to impede freedom of speech, of the press and of publication in Hong Kong."
- The following provision should be added: "News organizations in the Hong Kong Special Administrative Region shall be independent and act on their own. They shall have freedom of coverage, editing, publication, distribution and broadcast."

Reasons: - To maintain the autonomy in management enjoyed by the news organizations all along.

- To ensure the independence of news organizations in Hong Kong after 1997.

- The following provision should be added: "Hong Kong

residents shall have freedom to form and join political parties. All political parties must not have subordinate relationship with political parties in other regions and countries. The platform and activities of such political parties must not contravene this Law or the laws of the Hong Kong Special Administrative Region." (Note 26-2)

- The following should be added: "Hong Kong residents shall have the right and freedom to form and join political parties and to propagate political ideology in public."

Reason: - The words "in public" are especially important.

- The following provision should be added: "Hong Kong residents may express different political views and criticize the mistakes of party policies and of the leadership in public."
- The phrase "as prescribed by law" should be added.

Reasons: - To ensure that the relevant rights will be protected after 1997.

- The scope of freedom may be defined.

- The "freedom to join international organizations" should be added.

Reason: - Hong Kong is an international city. A great number of its residents, especially the professionals, have joined various international organizations. Hence the Basic Law should provide for protection of such right.

- The following should be added: "...right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in art, or through any other media of their choice."

- The "freedom to transmit data and information" should be added.

- The "freedom of information" should be added. (Note 26-3)

- The clause "enjoy the freedom to receive information" should be added.

- The provision "the press shall have the right of information" should be added.

Reason: - If this protection is not provided, the relevant parties may make use of the Secrets Act to stem the flow of information.

- The phrase "freedom of procession" should be inserted. (Note 26-4)

Reason: - Article 35 of the Chinese Constitution states that citizens have the freedom of procession. Since the HKSAR is an integral part of China, the same freedom should be enjoyed by residents of the HKSAR.

- The "freedom of petition" should be added. (Note 26-5)
- The "freedom to form and join political parties" should be added. (Note 26-6)

Reasons: - The original text does not state whether freedom of association includes freedom to form and join political parties and may give rise to disputes in future.

- The above-mentioned freedom is a fundamental right to be enjoyed by residents in a democratic society.

- To let residents know the exact needs of Hong Kong and to see if the provision will work when implemented.

- With the trend of development of the HKSAR, there seems to be a potential for the emergence of political parties.

- China may allow the existence of political parties.

- In other places in the world where there are elections, political parties usually exist as it is a natural and healthy phenomenon.

- Countries in the world which are civilized, socio-politically advanced and economically developed with people enjoying a high standard of material and spiritual life have multi-party system, such as Britain, the U.S.A., and France. On the other hand, economically and politically backward countries, especially communist countries, have one-party dictatorship. Political liberalization is a sign of civilized and advanced societies and is also the prevailing trend of development. Hong Kong should progress with the times.

- Countries with one-party dictatorship hinder the development and advancement of society for such a party will not accept criticisms nor be

stopped by others in spite of its mistakes.

- The "freedom and right to form and join political parties" should be added.
- The "freedom of privacy" should be added.
- The "freedom of religious activities" should be added.
- The "right to be free from persecution" should be added. (Note 26-7)
- The "right to consultation" should be added.
- The "right to recognition by law" should be added. (Note 26-8)
- The provision that workers shall have the right of collective bargaining should be added.
- The provision that workers shall have the right and freedom to join trade unions should be added.
- The provision that "workers shall have the freedom and right to go on strike" should be inserted.
- The following should be added: "and other social, economic and cultural rights".

3.4 Other suggestions

3.4.1 Suggestions on freedom of association:

- There should be a clear definition on "freedom of association".
- Freedom of association should include:
 - (1) Everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
 - (2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
 - (3) This article shall not prevent the imposition of lawful restrictions on the exercise of this right by members of the police and of the armed forces."
- The political parties in the HKSAR should be independent

and should not belong to any organizations outside the HKSAR.

- Hong Kong residents should enjoy the freedom to form and join political parties. The platform and activities of these political parties should not violate the Basic Law or the laws of the HKSAR.
- The emergence of political parties should not be rejected.
- The relationship between the mentioned association and political parties should be specified.
- Regarding the existing and newly established community bodies, they should enjoy civil rights and undertake civil obligations once they have completed the registration formalities for legal persons.

Reason: - The doubts and anxiety of a lot of members of community bodies would be allayed if such principled guidance is provided for.

- The forms of free organizations should be specified. For instance, triad organizations should not be allowed to develop freely, they should be restricted.
- The Basic Law should stipulate that freemasonry may continue to exist in Hong Kong after 1997.

3.4.2 Suggestions on freedom of speech:

- The Basic Law should ensure freedom of speech and of thoughts.
- Freedom of speech should include :
 - (1) Everyone has the right to freedom of expression. This right includes the freedom to hold opinions without interference, and the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
 - (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such restrictions as are prescribed by law and are necessary in a democratic society for the protection of national security, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

- This article stipulates that residents shall have freedom of speech and of the press. It should also be stipulated that the speech must be true.
- This article should stipulate that freedom of speech shall not be restricted by the relevant provisions of the Chinese Constitution.

Reason: - The provisions of this article are inconsistent with those of Articles 24, 25, 36, 49 and 51 of the Chinese Constitution.

- This article should delimit freedom of speech and of publication in that persons opposed to the speech or publication should refute it publicly or take the matter to court. They should not abuse their authority to prohibit such speech or publication before a judgement is reached by the court.
- Newspapers, television, magazines and other forms of the media shall have freedom of speech.
- Hong Kong residents should have the right and freedom to publicly criticize or make sarcastic remarks about others.
- The HKSAR should set up a public forum similar to the one at Hyde Park.

3.4.3 Suggestions on freedom of the press:

- Freedom of the press should be guaranteed by a provision at a higher level. For example, there is a provision in the American Constitution which stipulates that the legislature must not enact any laws to exploit freedom of the press.
- The American model should be consulted in that the judiciary must be established as an independent body and not a subordinate to the executive and legislative branches.

Reasons: - To perform the functions of preventing the abuse of power and of interpreting the law impartially.

- If such protection is not provided, freedom of the press would be reduced to a privilege given out of tolerance by the people in power. Once the people in power feel threatened, this freedom will turn into an empty promise. If the press is restrained and cannot obtain reliable information concerning the various policies and their consequences, they will not be able to verify the information which will not be readily accepted by the public. This

will threaten the prosperity and stability of the HKSAR.

- A well-established political system is required as a fundamental safeguard to protect freedom of the press. Under such a political system, the power of the Chief Executive will be checked by a representative legislature while the judiciary will be independent and free from intervention.

3.4.4 Suggestions on freedom of assembly:

- Freedom of assembly should include:

- (1) Everyone has the right to peaceful assembly.
- (2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- (3) This article shall not prevent the imposition of lawful restrictions on the exercise of this right by members of the police and of the armed services.

3.4.5 Suggestion on other issues:

- It should be specified that the freedoms contained in this article are not freedoms of the proletariat.

Reason: - The concept of "freedom" in China is based on class distinction. Although the Chinese Constitution stipulates that the people shall have freedom of speech and of religious belief, these freedoms are not practised in reality for they belong to the proletariat.

4. Issues to be clarified

- Will the freedoms listed under this article be in conflict with the "act designed to undermine national unity or subvert the Central People's Government" referred to in Article 22? If the final power of interpretation rests with the Central People's Government, would they not have all say in the matter?
- Does "freedom of speech" involve politics, news or religion?
- This article stipulates that Hong Kong people shall have freedom of speech. After 1997 when Hong Kong comes directly under the jurisdiction of the Central People's

Government, will Hong Kong people be able to criticize the Central People's Government or their senior officials?

- Will the provision of this article permit journalists, and hosts or guests of television programmes to make constructive and beneficial criticisms of the Central People's Government and the HKSAR government?
- Does freedom of assembly include the freedom to form and join political parties?
- This article stipulates that Hong Kong people shall have freedom of association, will the present illegal gatherings be taken as a violation of the law?
- Is there any difference between "right" and "freedom"?
- Is there any difference between "enjoy" and "have"?
- Will non-permanent residents enjoy these freedoms?

1. Original text

The freedom of the person of Hong Kong residents is inviolable.

Hong Kong residents shall not be unlawfully arrested, detained or imprisoned. Unlawful deprivation or restriction of the residents' freedom of the person by any means shall be prohibited. Unlawful search of the body of any resident shall be prohibited.

2. Views

2.1 Supporting views

- Support is expressed for the provisions of this article.
- This article can protect the people of Hong Kong.

2.2 Reservations

- The word "unlawful" may pose some problems.

Reasons: - This article provides a constitutional basis for suppressive laws.

- The word "unlawful" empowers the legislature to enact laws which deprive residents of their rights.
- "Lawful" acts may not necessarily be "reasonable". (Note 27-1)
- If a law violates the natural rights of a resident, it is considered unreasonable.
- The concept of "unlawful" is unclear and may create loopholes in the law.
- Specific laws already provide restrictions on "unlawful" arrest or detention.
- There is no legal basis for the meaning of "unlawful".
- This article does not stipulate the right of residents to fair legal proceedings after they are lawfully arrested. (Note 27-3)
- Although Article 86 in Chapter IV spells out some protection in relation to fair legal proceedings, this article is written in a simplistic and general manner and

does not specify the rights of the residents after arrest.

- The wording of this article is vague.
- This article does not afford any protection.
- The freedoms listed under this article are not substantive.

Reason: - Whether the residents will enjoy all the freedoms listed depends on what is meant by "unlawful".

2.3 Other views

- There is no absolute standard as to what is meant by the infringement on freedom of the person.
- The English word "arbitrary" is more desirable than the word "unlawful". It is unacceptable that the word "arbitrary" is not adopted simply because its Chinese translation does not reflect its meaning correctly.
- The present article only meets the minimum standard of human rights protection.

Reason: - According to the present wording, if the law itself cannot fully protect individual interests and safety, then acts of violation of individual interests and safety will occur under lawful circumstances.

3. Suggestions

3.1 Rewriting

- It should be rewritten as: "The freedom of the person of Hong Kong residents is inviolable and personal data shall be protected. Hong Kong residents shall not be arbitrarily or unlawfully arrested, detained or imprisoned. Arbitrary or unlawful deprivation or restriction of the residents' freedom of the person by any means shall be prohibited. Arbitrary or unlawful search of the body of any resident shall be prohibited."
- It should be rewritten as: "The freedom of the person of Hong Kong residents is inviolable and personal data shall be protected. Hong Kong residents shall not be arbitrarily arrested, detained or imprisoned. Arbitrary deprivation or restriction of the residents' freedom of the person by any means shall be prohibited. Arbitrary search of the body of any resident shall be prohibited. All persons shall be presumed innocent before conviction by an impartial and independent judicial organ."

- It should be rewritten as: "Hong Kong residents shall not be arbitrarily arrested, detained or imprisoned. Arbitrary deprivation or restriction of the residents' freedom of the person shall be prohibited. Arbitrary search of the body of any resident shall be prohibited. Hong Kong residents, after being lawfully arrested or detained, shall have the right to a fair trial by the judicial organs as soon as possible and shall be presumed innocent before conviction by the judicial organs."
- It should be rewritten as: "The freedom of the person of Hong Kong residents is inviolable. Hong Kong residents shall not be arbitrarily arrested, detained or imprisoned. Arbitrary deprivation or restriction of the residents' freedom of the person shall be prohibited. Arbitrary search of the body of any resident and the application of cruel punishment and torture shall be prohibited. During the period of detention, residents shall have the right to remain silent and to an open and fair trial as soon as possible."

3.2 Amendments

- The word "unlawful" should be amended to read "arbitrary". (Note 27-4)
- Reasons:
- The word "arbitrary" is generally adopted in international covenants.
 - If the scope of a lawful power is defined too loosely with vague contents to the degree of being unreasonable, then such a power will be an "arbitrary" power.
 - Its definition is wider than that of "unlawful".
 - It covers acts which are unlawful, unreasonable and unjust.
 - There are many precedents which can be cited in interpreting the concepts recognized by the common law. There are legal basis and legal procedures to follow to provide an objective vetting standard so as to avoid inappropriate or incorrect interpretation.
 - Its interpretation is stipulated by law and by reasonable, fair and rational consideration.
 - To ensure that the residents' freedom of the person is given adequate protection.
 - To ensure that the constitution can play its

role in keeping the legislature in check.

- To allow the courts to have discretionary power.
- To maintain the common law customs and to prevent government officials from abusing the discretionary power prescribed by executive rules and laws. This may bring about the situation where laws are being observed in name only whilst human rights are being violated in reality.
- The word "unlawful" should be replaced with "not in accordance with the Basic Law or the prevailing law."

Reason: - To clarify the meaning of the words "arbitrary" and "unlawful".

- The word "unlawful" should be replaced with "unreasonable".
- The word "unlawful" should be replaced with "arbitrary or unreasonable".
- In Paragraph 2, the phrase "Hong Kong residents" should be replaced with "[t]hese persons", and "resident" with "this person".
- The provision "[t]he freedom of the person of Hong Kong residents is inviolable" should be amended to read: "The right and freedom of the person of the citizens of Hong Kong are inviolable."
- The provision "Hong Kong residents shall not be lawfully arrested,..." should be amended to read: "Any person in the Hong Kong Special Administrative Region shall not be unlawfully arrested,..."

3.3 Additions

- The word "unlawfully" should be deleted and replaced with "unless there is evidence to show that a criminal offence has been committed".

Reason: - The concept of "unlawful" is not clear.

- The word "arbitrarily" should be added.

Reason: - If "unlawfully" is used together with "arbitrarily", the provision will be more effective in protecting human rights.

- A third paragraph should be added: "Hong Kong residents shall, after having been lawfully arrested or detained,

have the right to a fair trial by the judicial organs as soon as possible. Hong Kong residents shall be presumed innocent before conviction by the judicial organs."

Reason: - Residents should have the right to fair judicial proceedings. On many occasions, such procedural protection may constitute the most effective protection for a defendant.

- The following should be added: "Anyone shall, after having been lawfully arrested, have the right to a fair trial by an impartial and independent judicial organ as soon as possible. Anyone shall be presumed innocent before conviction by an impartial and independent judicial organ."
(Note 27-6)

- The following should be added:

"(1) No one shall be deprived of his liberty unless on such grounds and in accordance with such procedure as are established by law.

(2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

(3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power, and shall be entitled to a trial within a reasonable period of time or to release.

(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

(5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

- The following should be added: "In criminal proceedings in the Hong Kong Special Administrative Region, the parties concerned shall, after having been lawfully arrested, have the right to a fair trial by an impartial and independent judicial organ as soon as possible."

- The following should be added: "Hong Kong residents shall not be subjected to torture or to inhuman or degrading treatment or punishment. In civil or criminal proceedings, the parties concerned shall have the right to an open and fair trial as soon as possible and when being prosecuted for criminal offence, shall be presumed innocent before trial by an impartial and independent

judicial organ."

- The following should be added: "In criminal proceedings in the Hong Kong Special Administrative Region, the principles previously applied in Hong Kong and the rights of the parties concerned shall be maintained."
- The following should be added: "In any criminal proceedings in the Hong Kong Special Administrative Region, the principles previously applied in Hong Kong and the rights of the person concerned shall be maintained. Anyone shall, after having been lawfully arrested, have the right to a fair trial by an impartial and independent judicial organ. Anyone shall be presumed innocent before conviction by an impartial and independent judicial organ." (Note 27-7)
- The following should be added: "the lawful detention of a person after conviction by a competent court".
- The following should be added: "the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law".
- The following should be added: "the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent him from committing an offence or from fleeing after having done so".
- The following should be added: "the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority".
- The following should be added: "the lawful detention of persons for the prevention of the spreading of infectious diseases, and of persons of unsound mind, alcoholics or drug addicts, or vagrants".
- The following should be added: "the lawful arrest or detention of a person to avoid his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition".
- The following should be added: "In cases of arrest, detention or imprisonment, Hong Kong residents must have and be given the guarantee to protect their own lawful rights and interests."
- The following should be added: "Torture shall not be used

arbitrarily, especially against pregnant women. Anyone shall, after having been lawfully arrested, have the right to a fair trial by an impartial and independent judicial organ. Anyone shall be presumed innocent before conviction by an impartial and independent judicial organ."

- The following should be added: "Anyone shall be presumed innocent before conviction by an impartial and independent judicial organ."
- The following should be added: "Hong Kong residents, after having been arrested, shall be promptly brought to a fair and open trial in accordance with law. Before conviction, they shall be presumed innocent and shall have the right to remain silent."
- The following should be added: "Hong Kong residents shall not be deported without consent in such procedure as is established by the law."

Reason: - The Draft Basic Law for Solicitation of Opinions makes no mention that Hong Kong residents must not be deported to Mainland China. No matter how good the system in Hong Kong is, if Hong Kong people can be deported to Mainland China randomly, then Hong Kong people would not be able to enjoy any actual protection.

3.4 Other suggestions

- The right of residents to fair legal proceedings after having been lawfully arrested should be added, which include :
 - (1) The right to a trial by an impartial judicial organ.
 - (2) The right to a hearing by an independent judicial organ.
 - (3) The right to a fair trial.
 - (4) The right to be judged by an independent judicial organ whose judicial power is stipulated by this Law.
 - (5) The right to be informed promptly in a language which he understands, of the reasons for the arrest and of any charge against him.
 - (6) The right to be presumed innocent before conviction.
 - (7) The right to obtain the attendance and examination of witnesses.
 - (8) The right to free interpreting service.

- (9) The right not to be compelled to testify against himself or to confess guilt.
- (10) The right of not to be subjected to torture or any other inhuman means of interrogation.
- (11) Victims of unlawful arrests or detentions shall have the enforceable right to compensation.
- (12) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditional subject to guarantees to appear for trial.
- (13) The right to institute proceedings in court, so that the court may decide without delay on the lawfulness of his detention and order his prompt release should the detention be unlawful.

- Reasons: - Although Article 86 stipulates that the principles "previously" applied in Hong Kong and the rights "previously" enjoyed by the parties to criminal or civil proceedings shall be maintained, there is no specification of the time referred to by the term "previously". Hence, if the rights to fair judicial proceedings presently enjoyed by Hong Kong people are withdrawn before 1997, the protection of the freedom of the person of residents could not be guaranteed.
- According to the common law, a citizen shall be presumed innocent and shall, after arrest, be entitled to such rights as the right to remain silent, and the right to be informed of the charges and the case. However, there is no mention of the rights Hong Kong residents shall enjoy after lawful arrest in Chapter III of the Draft Basic Law.
 - For a defendant, the most effective protection is provided by his right to a fair trial by an impartial, open and independent judicial organ as soon as possible. This protection is laid down in detail in the International Covenant on Civil and Political Rights.
 - The articles on the right to a fair trial in the International Covenant on Civil and Political Rights (Articles 9, 10, 14 and 15) should be incorporated into the Basic Law for reference.

Reason: - To ensure that residents will enjoy this right.

- People who are not in the public service of the HKSAR may not search the body of any resident.
- People who are not in the public service of the HKSAR may not restrict the residents' freedom of the person or take any act to curtail the human rights of residents.
- The HKSAR government may not harm the body of any resident.
- Provisions should be added in this article to prevent the abuse of freedom.
- Laws should be enacted to prohibit residents from smoking any time, anywhere.

Reason: - To protect other people's freedom of the person.

- This article should serve to ensure that there will still be an organization in the HKSAR government with the exclusive responsibility of protecting the environment and that residents will be allowed to assist or monitor this organization.
- If a resident finds that his freedom of the person has been infringed upon to the extent beyond that of "arbitrarily", he may request the courts to conduct a constitutional review. The case will then be handled according to the general interpretation of the law.
- The meaning of "unlawful" treatment to the "freedom of the person" should be specified.
- This article should be interpreted on the basis of precedents.
- Hong Kong residents should have the right of loitering in the streets.
- The collusion of corrupt policemen with gangsters should be prevented in order to avoid harming the residents.

4. Issues to be clarified

- What is meant by "unlawful"? How is it defined?
- What law is the term "unlawful" based on?
- Will the term "unlawful" be able to provide adequate protection?
- Even if the act is lawful, is there any guarantee that the

residents will not be subjected to unreasonable treatment?

- What are the restrictions and criteria of "freedom of the person"?

Article 28

1. Original text

The homes and other premises of Hong Kong residents shall not be violated. Unlawful search of, or intrusion into, a resident's home or other premises is prohibited.

2. Views

2.1 Supporting views

- Support is expressed for the provisions of this article.
- The fundamental rights of Hong Kong residents are already specified in this article and have been given due protection.

2.2 Opposing views

- The meaning of the word "unlawful" needs to be clarified.

Reasons: - A constitutional basis is provided for suppressive laws.

- The legislature is given the power to enact laws which deprive residents of their rights.
 - Legal loopholes may be produced to allow those in power to infringe upon the freedoms of residents.
 - The word has too many implications.
 - The meaning is unclear.
 - "Unlawful" acts are already prohibited by the law.
 - "Lawful" acts may not be "reasonable". (Note 28-1)
 - If an act is in accordance with a law which infringes upon the fundamental rights of residents, it will still be considered "unreasonable".
- This article does not afford sufficient protection to the residents.
 - This article fails to afford any protection to the residents.

2.3 Other views

- The word "arbitrary" is more desirable than the word "unlawful". It is unacceptable that the word "arbitrary" is not adopted simply because its Chinese translation does not reflect its meaning correctly.
- The present wording of this article only affords the minimum standard of human rights protection.

Reason: - According to the present wording, if the law itself cannot fully protect individual interests and safety, then acts of violation of individual interests and safety will occur under lawful circumstances.

3. Suggestions

3.1 Rewriting

- It should be rewritten as: "The homes and other premises of Hong Kong residents shall not be violated. Arbitrary search of, or intrusion into, a resident's home or other premises is prohibited."
- It should be rewritten as: "Arbitrary (i.e. unlawful, unreasonable and unjust) search of, or intrusion into, a resident's home or other premises is prohibited."
- It should be rewritten as: "The homes and other premises of Hong Kong residents shall not be violated. Unlawful search of, or intrusion into, a resident's home or premises owned by him is prohibited."

3.2 Amendments

- The word "unlawful" should be replaced with "arbitrary". (Note 28-2)

Reasons: - It implies unlawful, unreasonable and unjust principles.

- This is a concept recognized by the common law and there are many case precedents for reference in its interpretation. There are legal basis and procedures to follow. It also provides an objective standard for assessment so that inappropriate or incorrect interpretation may be avoided. (Note 28-5)
- The term "arbitrary" is generally adopted in the international covenants.
- To ensure that the residents' freedom of the person is given adequate protection.

- So that the constitution can play its role in keeping the legislature in check.
 - To allow the courts to have discretionary power.
 - To maintain the common law customs and to prevent government executives from abusing the discretionary power prescribed by executive rules and laws. This may bring about the situation where laws are being observed in name only whilst human rights are being violated in reality. (Note 28-7)
 - If the power is suppressive and its scope is vague, even if it is lawful, it can still be "arbitrary".
-
- The word "unlawful" should be replaced with "arbitrary and unreasonable".
 - The word "unlawful" should be replaced with "unreasonable".
 - The word "unlawful" should be replaced with "arbitrary or unreasonable".

3.3 Deletion

- The word "unlawful" should be deleted.
- Reason: - The concept of "unlawful" is not clear.

3.4 Additions

- The word "arbitrary" should be added.
 - The following should be added at the beginning of the article: "The Hong Kong Special Administrative Region shall protect the freedom of Hong Kong residents to lawfully acquire, own, use and transfer goods, invisible assets and capital."
- Reason: - There is no mention of the right to private property of Hong Kong residents in the whole of Chapter III. This is an enormous loophole in the implementation through the Basic Law of the policy of keeping the capitalist economy in Hong Kong unchanged for 50 years.
- The following should be added at the beginning of the article: "Unless a search warrant has been issued by the courts,...."

3.5 Other suggestions

- If a resident finds that the criteria of the government for restricting freedoms are beyond the extent of "arbitrary", he may request the courts to conduct a constitutional review. The case will then be handled according to the general interpretation of the law.
- It should be clearly stipulated that should any law curtail fundamental rights, the law itself will be considered unlawful.

Reason: - To protect the inviolability of residents' of premises.

- Laws should be enacted to prohibit smoking.

4. Issues to be clarified

- Will the term "unlawful" afford adequate protection?
- What are the criteria for being "lawful"?
- Even if the act is lawful, can it be ensured that the residents will not be subjected to unreasonable treatment?
- Can this article ensure that the police will not make unlawful arrest, detention or imprisonment?
- What will happen if human rights are infringed upon under "lawful" circumstances?
- Do other premises refer to commercial premises?

香港
人權
保障
基金會
HRI

Article 29

香港
基本法
條文
匯編

1. Original text

The freedom and privacy of communication of Hong Kong residents shall be protected by law. No department or individual may, on any ground, infringe upon the residents' freedom and privacy of communication except in cases where, to meet the needs of public security or of investigation into criminal offences, the relevant authorities may censor communication in accordance with legal procedures.

2. Views

2.1 Supporting views

- Support is expressed for the provisions of this article.

Reason: - The provision that "except in cases where, to meet the needs of public security or of investigation into criminal offences" is necessary.

2.2 Reservations

- There is no protection for the right to privacy.
- There is no clear definition of the expression "the relevant authorities", which may affect the rights of residents.
- There are more restrictions under this article than under the two International Covenants.
- The implication of the sentence "except in cases where, to meet the needs of public security or of investigation into criminal offences" is too wide.
- Although there may be a need to include the sentence "except in cases where, to meet the needs of public security or of investigation into criminal offences", it should not be rigidly laid down in a constitutional instrument.

2.3 Opposing views

- Objection is expressed to the provisions of this article.

Reasons: - The provisions of this article, such as "except in cases where, to meet the needs of public security or of investigation into criminal offences" and "in accordance with legal procedures", will form a legal basis for the

deprivation of the freedom of communication by the legislature.

- This article actually grants unrestricted authority to a governmental functionary to intercept or otherwise tamper with private communications upon the purely subjective belief that such interception is necessary.
- The protection of the freedom and privacy of communication should be absolute and not be enjoyed only in accordance with law.

2.4 Other views

- This article imposes even more stringent restrictions on freedoms than Article 39.
- According to the precedents under the English common law system, the right to privacy is not recognized. Although the UK has enacted a new law to protect the right to privacy, Hong Kong is not subject to British law. Unless that new law is incorporated into the laws of Hong Kong, becoming one of its ordinances, the "right to privacy" will not be recognized by the courts of Hong Kong.
- "The relevant authorities" usually refers to the police department or even the Independent Commission Against Corruption. However, according to the interpretation provided by Article 40 of the Chinese Constitution, it should refer to the public security organs and the procuratorial organs of the Chinese government.

3. Suggestions

3.1 Deletions

- The phrase "of public security or" should be deleted.

Reason: - The definition of "public security" is too wide and its implication will rely largely on the explanation supplied by the person interpreting the Basic Law. The legal protection afforded to individuals in this regard will therefore be diminished.

- The provision: "No department or individual may...in accordance with legal procedures." should be deleted.

3.2 Rewriting

- It should be rewritten as: "Everyone shall have the right to respect for his private and family life, his home and his correspondence."

"There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

- It should be rewritten as: "The freedom and privacy of communication of Hong Kong residents shall be protected by law. No department or individual may, on any grounds, infringe upon the residents' freedom and privacy of communication except in cases where laws have been violated, the relevant authorities may censor communication in accordance with legal procedures."
- It should be rewritten as: "The freedom of communication and the right to privacy of communication of Hong Kong residents shall be protected by law. No department or individual may, on any grounds, infringe upon the residents' freedom of communication and right to privacy of communication except in cases where, to meet the needs of public security or of investigation into criminal offences, the statutory organs may censor communication in accordance with legal procedures."
- It should be rewritten as: "The freedom and privacy of communication of Hong Kong residents shall be protected by law. No organization, department or individual may, on any grounds, infringe upon the residents' freedom and privacy of communication except in cases where, to meet the needs of internal security of Hong Kong or of investigation into criminal offences, the public security organs, including the Police Force, the Independent Commission Against Corruption and the procuratorial organs, may censor communication in accordance with procedures stipulated by the laws of the Hong Kong Special Administrative Region."

Reason: - In the original text, the term "department" is used, which is not equivalent to "organization" as apart from "departments", there are "organizations".

3.3 Amendments

- The first sentence should be amended to read: "Hong Kong residents shall have the freedom and privacy of communication."

Reasons: - This wording is consistent with that of Article 26.

- To affirm the protection of the freedom and privacy of communication by law.

- The last sentence should be amended to read: "the relevant authorities may not censor communication unless it is in accordance with the legal procedures prescribed by laws passed by the legislature."
- The term "the relevant authorities" should be replaced with "the law enforcing organs".
- The term "the relevant authorities" should be replaced with "the statutory organs".
- The term "criminal offences" should be replaced with "felony".
- The clause "shall be protected by law" should be amended to read: "shall have the right to protection by law".

Reason: - The freedom of communication is not a passive right. Residents may request the government to enact laws for their protection.

- The term "privacy of communication" should be replaced with "right to privacy of communication".

3.4 Additions

- The following should be added: "Hong Kong residents shall have the right to privacy."
- The word "confidential" should be added before "communication".

Reason: - To make sure that the residents' freedom of communication will not be infringed upon by the government.

3.5 Other suggestions

- Special laws should be enacted to take care of exceptional cases which are provided for by this article.
- The second sentence should clarify that only the HKSAR authorities may, in accordance with legal procedures, engage in such activities.
- When censoring communication, the relevant authorities must act according to the "legal procedures" as stipulated in this article. After the legal procedures have been established, they must be strictly implemented so that the freedom and privacy of communication of Hong Kong residents will truly be protected by law.
- The term "legal procedures" should be defined.

- Civil correspondence is personal secret. If the government censors such correspondence, it should do so in accordance with law and put a seal on the correspondence and state the reasons for the censoring. The censor must not make public or disclose the content of the correspondence, otherwise, the party whose correspondence is being censored will be entitled to file counter-claims against the censor for ultra vires act.
- This article should cover the protection of personal secrets.
- The meaning of "public security" should be defined.
- It should be specified which organs may be "the relevant authorities".
- The expression "department or individual" should be defined.
- It should be specified that persons enforcing the law must not make public or transfer the secrets contained in personal correspondence of the residents at will.
- There should be specification of the circumstances under which restrictions will be imposed on the residents' freedom and privacy of communication.
- All the conditions which may restrict the freedom and privacy of communication should be narrowly defined.
- It should be stipulated that "unlawful censoring shall be prohibited" to go in line with the way of expression of Articles 27 and 28. The law should also stipulate that if necessary, censoring will be conducted according to individual cases.
- Everyone in Hong Kong has the right to communicate with people in other countries or regions.

4. Issues to be clarified

- Will this article be able to ensure the residents' privacy of communication?
- If there is no existing legislation in Hong Kong to protect the right to privacy of communication, how will the provisions of this article be enforced?
- If there is legislation in Hong Kong to protect the right to privacy of communication, how will the future HKSAR government be prevented from degrading the legislation to a lower rank or repealing it on the basis of the provision on national security of Article 39?

- Does this article imply that the present degree of infringement upon the residents' privacy will be reduced in future?
- What is meant by "to meet the needs of public security or ... offences"?
- What do the "relevant authorities" refer to?
- Will the phrase "shall be protected by law" afford adequate protection? If no relevant laws exist, will Hong Kong residents have the right to demand the legislature to enact laws for their protection?

1. Original text

Hong Kong residents shall have the freedom of movement within the Hong Kong Special Administrative Region and the freedom of emigration to other countries and regions. Hong Kong residents who hold valid travel documents shall have the freedom to travel and the freedom of entry and exit and, unless restrained by law, shall be free to leave the Hong Kong Special Administrative Region without special authorization.

2. Views

2.1 Supporting views

- Support is expressed for this article.

Reason: - This article is reasonable and positive.

- Support is expressed for the provision that Hong Kong residents who hold valid travel documents shall have the freedom to travel and the freedom of entry and exit.

2.2 Opposing views

- Objection is expressed to this article.

Reasons: - It is stated in this article that "Hong Kong residents who hold valid travel documents shall have the freedom to travel and the freedom of entry and exit"; but it does not guarantee that Hong Kong residents will have the right to obtain valid travel documents. (Note 30-1)

- It is an inherent right to obtain and hold valid travel documents in accordance with law. There should not be the question of arbitrary approval or disapproval by the administrative department.

- In most countries, their citizens have the right to apply for travel documents. If the right of abode and the application for travel documents are regarded as two separate issues, it would have an impact on the freedom of entry and exit of Hong Kong residents.

- The criteria for issuing travel documents by the HKSAR are not specified.

- Permanent residents should be able to leave

Hong Kong freely at any time. They should not be stopped by the government nor be required to apply to the government.

- A resident's freedom to travel will depend on whether he holds valid travel documents or not, which is a case of putting the incidental before the fundamental, as all residents should have the right to obtain valid travel documents.
- The HKSAR government will be able to restrict the residents' freedom of entry and exit through the issuance of travel documents.
- The requirement for a resident to hold valid travel documents is already a legal restriction in itself, there is no need to include the phrase "unless restrained by law". (Note 30-2)
- This article already states that the freedom of entry and exit will be "restrained by law", which imposes adequate restrictions on the freedom. There is no need to add the restriction of having to "hold valid travel documents".
- Article 39 already stipulates that the rights of Hong Kong residents may be subject to restrictions, hence, the wording of "unless restrained by law" is redundant.
- In any country, its nationals have the due right to return to their own country. (Note 30-3)
- Under international human rights law, the right to return home may be exercised by a citizen whether or not he has a passport or other travel document, and no sanction, penalty, punishment or reprisal may attach to any person for exercising or attempting to exercise this right.
- The right of Hong Kong residents to return to Hong Kong should not be dependent on whether they hold valid travel documents, as it is a fundamental human right. Otherwise, the persons concerned will become persons without a nationality.
- The provision that "Hong Kong residents shall have the freedom of movement within the Hong Kong Special Administrative Region" is redundant and ill-coordinated because this

article aims at protecting the freedom of entry and exit, which is irrelevant to the freedom of movement within the Region. Moreover, Hong Kong is such a small place, it seems that there is no need for this provision.

- This article uses the expression "freedom of movement" to describe the freedom to emigrate to other countries or regions, which is not the freedom to travel abroad as understood by the general public.
- This article makes no mention of the quota of people who may emigrate or travel abroad.
- This article does not list out the conditions under which Hong Kong residents' freedom of entry and exit will be prohibited.
- This article indirectly serves to encourage Hong Kong people to emigrate.

2.3 Other views

- The term "valid travel documents" referred to in this article should mean either the British National (Overseas) passports or the identity cards (which are valid beyond 1997). If foreign countries do not recognize these documents, and the relevant authorities of China refuse or delay the issue of passports to persons who intend to exit the Region, then the freedom to travel and the freedom of entry and exit of Hong Kong residents will be affected.
- According to the wording, this article may be interpreted as: Hong Kong residents who hold valid travel documents (not necessarily the British National (Overseas) passports) will have the freedom to travel and the freedom of entry and exit. However, they may not be allowed to go to regions or countries which are not under the sovereignty of China as they will be required to obtain approval from the HKSAR government.

- Reasons:
- The Basic Law does not provide guarantee that the British National (Overseas) passports will be recognized by China as a travel document.
 - This article does not specify which are the "countries" and "regions".
 - This article only states that residents shall have the freedom to travel and the freedom of entry and exit. It does not state whether or not such freedoms are granted "without special authorization."

- According to the wording, this article may be interpreted as: Hong Kong residents will have no freedom to leave and return to the HKSAR, they will only have the freedom to leave the HKSAR and such freedom does not require special authorization, unless restrained by law.

Reason: - It is only stated in the relevant provision that Hong Kong residents "shall be free to leave the Hong Kong Special Administrative Region". If this freedom is already implied in the "freedom of entry and exit", there is no need to repeat such wording as "shall be free to leave".

- According to the wording, this article may be interpreted as: Hong Kong residents who leave Hong Kong for other regions or countries will require the approval of the government before they may return to the HKSAR.
- If the freedom of entry and exit of Hong Kong residents is protected, it will be favourable to the trade, cultural exchanges and promotion of Sino-foreign cooperation in Hong Kong.

3. Suggestions

3.1 Hong Kong residents should have the right to obtain valid travel documents, the following are suggestions for amendments:

3.1.1 Deletions

- The phrase "unless restrained by law" should be deleted.
- The clauses "who hold valid travel documents" and "unless restrained by law" should be deleted.

Reason: - The HKSAR government certainly has the right to impose reasonable and legitimate restrictions on persons entering and leaving Hong Kong. This right is already stipulated in Article 39, so there is no need for repetition.

- The clause "who hold valid travel documents" should be deleted.

Reasons: - Administrative measures should not be laid down in a constitutional instrument.

- There should not be such a stringent stipulation.
- It may be specified through legislation that only persons who hold valid travel documents have the freedom of entry and exit.

3.1.2 Rewriting

- It should be rewritten as: "Hong Kong residents shall have the freedom of movement within the Hong Kong Special Administrative Region and the freedom of emigration to other countries and regions. Hong Kong residents shall have the freedom to travel and the freedom of entry and exit. They shall have the right to obtain valid travel documents and the freedom to leave the Hong Kong Special Administrative Region without special authorization, unless restrained by law." (Note 30-4)
- It should be rewritten as: "Citizens of the Hong Kong Special Administrative Region shall have the right to apply for and to hold travel documents for entry into and exit from Hong Kong. They shall also have adequate freedom of entry and exit and, unless restrained by law, shall be free to leave Hong Kong without special authorization."
- It should be rewritten as: "Everyone lawfully within the Hong Kong Special Administrative Region shall, within that region, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave the Region. No restrictions shall be placed on the exercise of these rights except those which are prescribed by law and are necessary in a democratic society to protect national security, public order, public health or morals, or the rights and freedoms of others. No Hong Kong resident shall be deprived of the right to enter the Hong Kong Special Administrative Region."

Reason: - To take this as a safeguard and to comply with international standard.

- It should be rewritten as: "Hong Kong residents shall have the freedom of movement within the Hong Kong Special Administrative Region and the freedom of emigration and transferring their properties legally to any country and region without special authorization. Hong Kong residents who hold valid travel documents as the British National (Overseas) passport, Hong Kong identity card and certificate of identity, shall have the freedom to travel to any country and region as permitted by the documents they hold and the freedom of entry and exit without special authorization, unless the Hong Kong residents concerned have broken the criminal law."

3.1.3 Amendments

- Suggested elaboration on the word "emigration".

[Translator's note : This view is on the Chinese wording and has no relevance to the English version.]

- The clause "shall be free to leave the Hong Kong Special

Administrative Region" should be amended to read: "shall be free to enter and exit the Hong Kong Special Administrative Region".

- The expression "the freedom of emigration to other countries and regions" should be amended to read: "the freedom of emigration to other countries and regions within the territory of the People's Republic of China".
- The clause "unless restrained by law" should be amended to read: "unless restrained by the laws of the Hong Kong Special Administrative Region".
- The expression "the freedom of entry and exit" should be amended to read: "the freedom of entering and exiting the territory".

3.1.4 Additions

- The following should be added: "Permanent residents of Hong Kong, that is, Hong Kong people who have resided in Hong Kong for a continuous period of no less than seven years, after having emigrated to other countries and obtained foreign nationality and passports, may return to reside in Hong Kong any time and shall obtain the approval of the Hong Kong Immigration Department through the simplest procedure and in the shortest possible time."
- The following should be added: "Hong Kong residents shall, in accordance with the law, have the right to obtain travel documents or passports of the Hong Kong Special Administrative Region."
- The following should be added: "Residents shall have the right and freedom to obtain valid documents for entry and exit."
- The following should be added: "Hong Kong residents shall have the right to obtain valid travel documents." (Note 30-5)
- The following should be added: "Valid travel documents of Chinese nationals in Hong Kong, for travelling overseas, shall be the National of the People's Republic of China passports issued by the government of the People's Republic of China. Holders of such passports, when travelling in foreign countries, shall be under the protection of the embassies of the People's Republic of China at those countries."

"Valid documents of permanent residents of Hong Kong, for travelling overseas, shall be :

- (1) The Certificate of Identity issued by the government of the Hong Kong Special Administrative Region.

Holders of the document, when travelling in foreign countries, shall be under the protection of the embassies of the People's Republic of China at those countries.

(2) The British National (Overseas) Passport issued by the British Consulate General in Hong Kong. Holders of such passports, when travelling in foreign countries, shall be under the protection of the British Consulate General at those countries."

3.2 Other suggestions

- According to Article 23, persons who have the right of abode in Hong Kong should have unlimited right to return to Hong Kong. They should not be subject to the condition of having to "hold valid travel documents".
- Hong Kong residents not only have the absolute right to travel, but also the right to acquire travel documents.
- It should be stipulated that all lawful residents of Hong Kong shall have the right to obtain valid travel documents.
- The rights of holders of travel documents (permanent residents) should be specified.
- The freedom to travel and of entry and exit should not be confined to those Hong Kong residents who hold valid documents.
- Hong Kong residents should have the right to obtain travel documents, unless restrained by law.
- This article should protect the residents' right to apply for travel documents at any time, unless the applicants have violated the law or have other valid reasons.
- The relevant authorities should only refuse to issue travel documents to Hong Kong residents on the grounds of safeguarding national interests.
- It should be stated that Hong Kong residents shall have the right to obtain valid travel documents in accordance with statutory procedures.
- There should be guarantee that Hong Kong residents may apply to the HKSAR government or their representatives overseas for travel documents.
- The present system whereby travel documents are taken into custody by order of the court in accordance with law as a result of criminal offences may be maintained.

- There should be guarantee that Hong Kong residents' application for travel documents will be approved within a reasonable period.
- Applications for travel documents should be approved within a short time.
- It should be stated which categories of people have the right to obtain valid travel documents.
- Travel documents with a special status should be issued to Hong Kong residents.

Reason: - Whether Hong Kong residents hold the Chinese or BNO passports, they will still have limited protection overseas, which will affect the stability and prosperity of Hong Kong.

- The distinctions between the valid travel documents held by "permanent residents" and those held by "non-permanent residents" should be listed.
- The meaning of "valid travel documents" should be defined.
- The issuing authority should be specified.
- The procedure of application for travel documents should be stated.
- It should be stated whether the travel documents issued by the British Government before 1997, that is the BNO passports, are considered valid travel documents or not.
- The future procedure of application for the HKSAR passport should be as simple as the present procedure of application for passports and certificates of identity issued by the Hong Kong government.
- The restrictions imposed by the laws of the HKSAR on this freedom should be specified.
- Laws may not be enacted to restrict Hong Kong residents' right to the freedom of entry and exit.
- Except under the circumstances specified in Article 39, the HKSAR may not enact laws to restrict Hong Kong residents from obtaining travel documents and from entering or exiting the Region.
- Hong Kong residents should have the freedom of entry and exit, there is no need for special authorization.
- The freedom of Hong Kong residents to return to Hong Kong should be protected.

- Chinese indigenous inhabitants living overseas should have the freedom of entry and exit as in accordance with the present Immigration Ordinance.

Reason: - To give them assurance so that they will return to further their careers in Hong Kong.

- The definitions of Chinese nationals under the Chinese Nationality Law and of Chinese nationals in the HKSAR should be stated in the travel documents.
- The number, qualification and identity of those permitted to emigrate or to travel abroad should be specified.
- It should be stated that Hong Kong residents shall have the right to the freedom to move or travel to the Mainland.
- It should be specified that residents may travel abroad without authorization from the HKSAR.
- It should be stated whether Hong Kong residents who have emigrated abroad may return to reside in Hong Kong.
- Permanent residents of Hong Kong who hold Hong Kong identity cards but have emigrated overseas, whether or not they have acquired foreign nationality, if they wish to return to reside in Hong Kong, their applications should be given priority and approved speedily. Or, holders of Hong Kong identity card should be allowed to enter Hong Kong (as they cannot change their identity cards overseas now).
- A note should be added to the freedom of emigration to other countries: "Upon return to Hong Kong, a 'return fee' or 're-entry fee' shall be levied."

Reason: - To deal with persons above the age of 21 who have emigrated to other countries before 1997, as this is the price to pay for emigration.

- It should be stated that Hong Kong residents must not be deported to the Mainland.
- People from outside should be prohibited from residing in Hong Kong.

4. Issues to be clarified

- What is meant by "restrained by law" in this article?
- On "unless restrained by law", is the restraint a procedural or a substantive one? What is the relationship of this provision with Article 39?

- Who determines the law referred to in "restrained by law" in this provision?
- On "unless restrained by law", when will the restraint by law be lifted?
- What are the countries referred to by "other countries"?
- What are the regions referred to by "regions"?
- Is there any restriction on the destination after departure from Hong Kong (such as Taiwan)?
- What are "valid travel documents"?
- For Hong Kong residents who want to emigrate to other countries or regions, will they be required to obtain special authorization from the HKSAR government beforehand?
- Is it true that any Hong Kong resident may apply for valid travel documents?
- Will the procedure for application of departure from Hong Kong be as simple and easy as the present procedure, or will it be similar to the procedure on the Mainland, which will take a few years to be approved?
- What are the qualifications for obtaining "valid travel documents"?
- According to the provision of this article, is it true Hong Kong residents who do not hold valid travel documents will not be able to return to Hong Kong? (Note 30-6)
- If the valid travel document is lost, does it mean that there will be no freedom to travel and of entry and exit?
- Will holders of valid travel documents have the right to protection by the Chinese Embassy?
- Is it necessary to make provisions in the Basic Law on the entry of mainland compatriots into Hong Kong?

Article 31

1. Original text

Hong Kong residents shall have the freedom of conscience.

Hong Kong residents shall have the freedom of religious belief and the freedom to preach and to carry out and participate in religious activities in public.

2. Views

2.1 Supporting views

- In comparison with Article 36 of the Chinese Constitution, this article adopts affirmative wording, which is more specific than adopting wording such as "shall be prohibited" to restrict certain activities. It also offers positive protection.
- This article already stipulates that there will be "freedom of religious belief", there is no need to add the "freedom to propagate atheism".

2.2 Reservations

- This article contravenes Articles 24, 25, 36, 49 and 51 of the Chinese Constitution.
- "Freedom of conscience" may harbour the existence of cults.
- Only mentioning "freedom of conscience" cannot clearly indicate that residents will have the freedom of thought, including the political and ideological aspects.
- The protection of the freedom of religion provided for by this article may not be realized.
- If there is strong demand from the religious sector, amendments should be made.
- The original text is so vaguely phrased that it may give rise to interpretation problems.
- This article does not stipulate specifically how the existing relationship with foreign churches should be maintained, such as the appointment of bishops and other members of the clergy.
- This article does not include the right to public preaching. (Note 31-1)
- This article does not include the right to organize

religious activities freely. (Note 31-2)

- The conditions for preaching or holding public religious activities are not mentioned in detail. When these activities are held in public places, it is possible that they may be mistaken as an illegal assembly or even a violation of the law. In this way, the freedom of the person of HKSAR residents will be infringed upon.
- This article offers less protection to religious freedom than the Universal Declaration of Human Rights.
- The provisions of Article 18 of the International Covenant on Civil and Political Rights are more effective in protecting the freedom of conscience than those under this article.
- The provisions on freedom of religion and conscience in Article 18 of the Universal Declaration of Human Rights are more detailed than those under this article.
- In some places, not only are certain people (such as Muslims, party members etc.) forbidden to accept other religions, it is also illegal to preach to these people. If in the process of preaching, the law is violated by mistake because the preacher is not aware of the special identity of the people, he would bring upon himself unexpected troubles.
- Since "religious activities" is not a legal term and its scope is wide and ill-defined, there is the possibility that some political bodies may call themselves religious bodies so that they would not be subject to restrictions while engaging in political activities.

2.3 Other views

- It is still under observation whether Hong Kong residents truly have the freedom of religion. But it is certain that they do not have the freedom of "reactionary belief".
- After 1997, Hong Kong residents will enjoy a lesser degree of freedom in various aspects including the religious aspect than they do now.
- The provisions under Article 18 of the International Covenant on Civil and Political Rights are more detailed than those under this article but the difference is not significant.

3. Suggestions

- 3.1 This article should be deleted. "Freedom of conscience" should be incorporated into Article 26 to avoid

repetition.

3.2 Rewriting

- It should be rewritten as: "Hong Kong residents shall have the freedom of political belief.

"Hong Kong residents shall have the freedom of political belief, the freedom to propagate politics and to carry out assembly in public as well as the right to carry out political activities and to form political parties."

- It should be rewritten as: "Hong Kong residents shall have the freedom of religious belief and the freedom to preach and to carry out and participate in religious activities in public. Hong Kong residents shall, at the same time, have the freedom of other beliefs, including the freedom of political belief."

- It should be rewritten as: "Hong Kong residents shall have the freedom of thought and conscience.

"Hong Kong residents shall have the freedom of political belief and thought, the freedom of religious belief, the freedom to propagate thought and political belief in public as well as the freedom to preach and to carry out and participate in religious activities in public."

- It should be rewritten as: "Residents of the Hong Kong Special Administrative Region shall have the freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice, and freedom, either individually or in community with others and in public or private, to manifest their religion or belief in worship, observance, practice and teaching."

- It should be rewritten as: "Residents of the Hong Kong Special Administrative Region shall have the freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice, and freedom, either individually or in community with others and in public or private, to manifest their religion or belief in worship, observance, practice and teaching. No one shall be subject to discrimination or impairment of his civil rights on the grounds of his religious belief."

- It should be rewritten as: "Hong Kong residents shall have the freedom of religious belief and the freedom to preach and to carry out and participate in religious activities in public or private. No one shall be subject to discrimination or deprivation of his civil rights on the grounds of his religious belief or religious activities."

- It should be rewritten as: "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to change his religion or belief, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

"Freedom to manifest one's religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

- It should be rewritten as: "Hong Kong residents shall have the freedom of religious belief and the freedom to carry out and participate in religious activities and to preach to anyone in public or private."
- It should be rewritten as: "Residents of the Hong Kong Special Administrative Region shall have the freedom of thought, conscience and religion."
- It should be rewritten as: "Hong Kong residents shall have the freedom of conscience."

3.3 Amendments

- Paragraph 1 should be amended to read: "Hong Kong residents shall have the freedom of conscience including the freedom of political belief and religious belief."
- Paragraph 1 should be amended to read: "Hong Kong residents shall have the freedom of thought and political belief."

3.4 Additions

- A third paragraph should be added: "No one shall be subject to discrimination or impairment of his civil rights on the grounds of his religious belief." (Note 31-3)
- The following should be added at the end of Paragraph 2: "The content of religious belief of Hong Kong residents shall not be subject to limitations."
- The following should be added at the end of Paragraph 2: "but any propaganda of heresies to poison the mind of the people shall be prohibited."
- The following should be added: "Hong Kong residents shall have the freedom of other beliefs, including the freedom of political belief."

- The words "in public" should be inserted after "preach" in the paragraph "Hong Kong residents ... and the freedom to preach and to carry out and participate in religious activities in public."
- The following should be added at the end of Paragraph 2: "They shall have the freedom to carry out and participate in religious activities in private places. The civil rights of all persons shall not be impaired on the grounds of their religious belief."
- The following should be added: "Hong Kong residents shall have the freedom of unbelief."
- The following should be added: "The existing churches in Hong Kong may maintain their international link and subordinate relationships."
- The following should be added: "Hong Kong residents shall have the freedom of choice of the form and target of preaching and the freedom to carry out and participate in religious activities in public or private."
- The following should be added: "Hong Kong residents shall have the freedom of political thought, conscience and religious belief. No one shall be coerced by administrative orders to participate in political activities."
- The following should be added: "Public missionaries shall have the freedom and right to carry out and participate in all religious activities." (Note 31-4)
- The religious freedom stipulated in Article 18 of the International Covenant on Civil and Political Rights should be incorporated into the Basic Law:
 - (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
 - (2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
 - (3) Freedom to manifest one's religion or belief may be subject only to such limitations as those prescribed by law which are necessary for the protection of public safety, order, health and morals, or the fundamental rights and freedoms of others.

(4) Parents or legal guardians shall have the freedom to ensure that their children or wards accept religions and ethics in conformity with their own convictions.

3.5 Other suggestions

- This article should be amended so that Hong Kong residents' freedom of thought and of political belief will be affirmed.
- Freedom of belief should be given constitutional protection.
- Activities of family gatherings or group gatherings should be protected.
- It should be stipulated that followers of cults must neither preach nor carry out activities in public.
- It should be stipulated that religions must not seek profit illegally.
- This article should stipulate that the freedom of conscience and of religion shall be free from restriction imposed by the relevant provisions of the Chinese Constitution.
- Other rights which are particularly relevant to religious organizations, such as freedom of speech, publication, assembly, association, and communication, could also be enhanced. In particular, the right to seek and receive information should be specifically guaranteed, although such a right for religious organizations might be implied by the right of religious organizations "to maintain and develop their relations" with religious organizations and believers elsewhere, foreign countries, and relevant international organizations (Articles 149 and 157).
- The established right to and freedom of religious belief of Hong Kong residents should be maintained. They should have the freedom to choose their religious doctrines and to worship either individually or in community with others and in public or private. They should also have the freedom to choose the manners of worship and preaching, the venue and the target and the freedom to participate in religious activities. Affairs which do not violate the laws of the HKSAR should not be restricted.
- This article should be amended to expand and clarify the freedom of conscience and religion, by guaranteeing, inter alia, the right to worship individually or in community with others and in public or private.
- It should be made clear that freedom of conscience and

religious belief can never be limited, even if exceptional circumstances may permit restrictions on the manifestation or practice of certain activities.

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- The Basic Law should stipulate that everyone has the freedom not to carry out any act which is against his conscience.
- No religion may manipulate any trade by not employing non-believers, in order to protect the freedom of belief.
- The definition of carrying out religious activities in public should be laid down.

4. Issues to be clarified

- There is no mention whether or not activities of religious cults will be legal after 1997.
- How could "freedom of conscience" exist while there are restrictions on religious cults?
- If preaching in public disrupts law and order and disturbs the residents, how will these cases be handled?
- What is the distinction between "religious belief" and "reactionary belief"?
- Will the place of preaching be designated or subject to restrictions?
- Does "in public" mean carrying out activities "in public" in a designated place or "in public" in other places?
- Will there be protection for religious activities carried out "in private"?

1. Original text

Hong Kong residents shall have the freedom of choice of occupation.

2. Views

2.1 Supporting view

- It is of utmost importance that Hong Kong residents shall have the freedom of choice of occupation.

2.2 Reservation

- If the freedom of "choice of occupation" is to be exercised under restrictive conditions, then it may not be said to be freedom of choice of occupation.

2.3 Other views

- According to the European Committee of Experts, conduct such as the coercion of any worker to carry out work against his wishes and without his freely expressed consent, or to carry out work he had previously agreed to do but which he subsequently no longer wants to carry out, is an infringement of the relevant provision in ESC. That provision is also infringed when penal sanctions are imposed on a public servant or other person responsible for a public service, in the event of his unwarranted refusal or failure to perform, or unwarranted delay in performing, the duties of his office or service, or in the event of any interruption or abandonment of the service with intent to disturb its regularity, or having the effect of doing so.

3. Suggestions

3.1 Rewriting

- It should be rewritten as: "Hong Kong residents shall have the freedom of choice of occupation. The government shall provide adequate employment opportunities, security for employment, occupational safety and health protection and opportunities to receive vocational training. The welfare benefits and retirement security of the working people shall be protected by law."
- It should be rewritten as: "Hong Kong residents shall have the freedom of choice of occupation and the Hong Kong Special Administrative Region shall provide adequate employment opportunities and vocational training."

- It should be rewritten as: "Hong Kong residents shall have the freedom of choice of occupation and the Hong Kong Special Administrative Region shall provide adequate employment security."
- It should be rewritten as: "Hong Kong residents shall have the freedom of choice of occupation and the Hong Kong Special Administrative Region shall promote adequate employment opportunities."
- It should be rewritten as: "Hong Kong residents shall have the right to and freedom of choice of occupation."

3.2 Additions

- The following should be added: "The Hong Kong Special Administrative Region government must provide the conditions for creating adequate employment opportunities for the working people."

Reason: - It does not mean anything to the working people if they have the freedom of choice of occupation without adequate employment opportunities provided for them.

- The following should be added: "Street vendors shall have the freedom to legally run a business."

Reason: - "Street vendors' organizations" are mentioned in Alternative 3 of Annex I to the Draft Basic Law, so there should also be stipulation within the scope of employment security.

3.3 Other suggestions

- This article should include the following safeguards:
 - (1) Equal pay to men and women for equal work, equal treatment, and equal employment and promotion opportunities. (Note 32-1)
 - (2) Women shall not be subject to discrimination on the grounds of marital status and pregnancy. (Note 32-2)
 - (3) Women shall have the right to obtain subsidized social services so that their right to work is protected.
 - (4) The right to paid maternity leave.
 - (5) The right of trade unions to recognition and their right of collective bargaining. (Note 32-3)
 - (6) Employment security. (Note 32-4)

(7) Comprehensive social security. (Note 32-5)

(8) Occupational safety and health protection. (Note 32-6)

Reason: - According to the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and international labour conventions, residents should have various types of security for employment.

- It should be stressed that the HKSAR government has the responsibility to provide adequate employment opportunities for the residents of Hong Kong.
- No one shall be coerced into carrying out work which is not his specialty. No one shall be denied public assistance on the grounds of his unwillingness to carry out work which is not his specialty.

4. Issue to be clarified

- What is the definition of "occupation" in the Basic Law?

1. Original text

Hong Kong residents shall have the freedom of academic research, of literary and artistic creation, and of other cultural pursuits.

2. Views

2.1 Supporting views

- This article offers sufficient protection for cultural freedom.
- Support is expressed for this article as it provides protection for the freedom of academic research.

2.2 Other views

- The freedom of academic research is an important aspect of the freedom of expression.
- The provisions of Article 39 will impose serious restrictions on the exercise of this freedom.
- It would be difficult to realize the freedoms stipulated in this article without the financial support of the government.

3. Suggestions

3.1 Rewriting

- It should be rewritten as: "Hong Kong residents shall have the freedom of academic research, of literary and artistic creation and the freedom to organize and participate in other cultural activities in public."

3.2 Additions

- The following should be added: "Political interference and political review shall be prohibited."
- The following should be added: "Hong Kong residents shall have the right to patent their inventions."

3.3 Other suggestions

- Everyone in Hong Kong has the right to hear or watch any radio or television programme of any country or region.
- Everyone in Hong Kong has the right to sing songs, recite poems and read prose of any region or country.

4. Issue to be clarified

- Is technological development covered by this article?

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Article 34



1. Original text

Hong Kong residents shall have the right to confidential legal advice, access to the courts, and choice of lawyers for timely protection of their legitimate rights and interests, and for representation in the courts, and the right to judicial remedies.

Hong Kong residents shall have the right to challenge in the courts the actions of the executive organs or their personnel.

2. Views

2.1 Supporting view

- Support is expressed for the provisions in this article.

2.2 Reservation

- This article provides inadequate protection for human rights for it has not included the following:

(1) The right to be presumed innocent until proven guilty in accordance with law.

(2) The right to a fair trial.

(3) The right to a public hearing.

(4) The right not to be subjected to collective punishment.

(5) The right of a defendant not to be compelled to testify against himself.

(6) The right to be tried without undue delay.

(7) The right to free interpretation assistance.

(8) The provision that residents shall be protected by proper legal proceedings.

3. Suggestions

3.1 Deletions

- The word "legitimate" should be deleted.

Reason: - Before a case is tried in court, sometimes it cannot be determined whether certain right or interest is "legitimate" or not. Thus, the word

"legitimate" should be deleted from the phrase "legitimate rights and interests" in order to protect the rights of the residents.

- Objection is expressed to the deletion of the word "legitimate".

Reason: - The word "legitimate" makes the concept much clearer.

3.2 Rewriting

- It should be rewritten as: "Hong Kong residents shall have the right to confidential legal advice, access to the courts, and choice of lawyers for timely protection of their rights and interests, and for representation in courts, and the right to judicial remedies.

"Hong Kong residents shall have the right to challenge in the courts the actions of the executive organs or their personnel."

- It should be rewritten as: "In the determination of their civil rights and obligations, or of any criminal charge against them, all Hong Kong residents are entitled to a fair and public hearing within a reasonable time by an independent, competent, and impartial tribunal established by law. Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law."

3.3 Amendments

- The phrase "confidential legal advice" in the first paragraph should be amended to read: "confidential and independent legal advice".

- The second paragraph should be amended to read: "Hong Kong residents shall have the right to impeach before a court actions of the executives or public servants working for the government departments of the Hong Kong Special Administrative Region."

- The second paragraph should be amended to read: "Hong Kong residents shall have the right to challenge in the courts the illegal actions of other persons, including actions of the executive organs or their personnel and actions of organizations stationed by the Central Authorities in Hong Kong or their personnel."

- The words "challenge in the courts" should be amended to read: "institute legal proceedings in courts".

Reason: - The Chinese word for "challenge in the courts" has connotations of "redressing an injustice" and "lodging a complaint", which generally

refers to the lodging of complaints against certain public policies or public servants through the Legislative Council or the Governor by residents. Whereas actions taken in courts should be legal proceedings.

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- The word "challenge" should be replaced with the word "prosecute".

Reasons: - The word "prosecute" means "to bring criminal charges against someone". Whereas the Chinese word for "challenge" usually means "to lodge a complaint" which can be dealt with by an organization without independent administration.

- If the word "challenge" carries any special legal meaning, it should be so stated in order to avoid confusion with the expression "lodge complaints" or "prosecute". If it carries no special legal meaning, the expression "lodge complaints" or "prosecute" should be adopted as they are commonly used by Hong Kong people.

3.1 Additions

- The following provision should be added: "Hong Kong residents shall have the right to institute legal proceedings in courts against the unlawful actions of organs stationed by the Central Authorities in Hong Kong or their personnel."
- The following provision should be added: "Hong Kong residents shall have the right to put forward their reasons for shelving, amending or abolishing any law before or after it is enacted, and shall have the right to challenge it."
- The following provision should be added: "Anyone being prosecuted for criminal charges or whose rights and obligations are required to be determined in legal proceedings should be entitled to a fair and public hearing by an independent and impartial court with statutory jurisdiction."
- The following provision should be added: "Anyone who considers any of the provisions in Chapter III of this Law has been violated, is being violated or will be violated may lodge a complaint with a court. The court shall have the right to hear the complaint and issue an appropriate order or declaration, or resort to other judicial remedies."
- The following provision should be added: "Hong Kong residents shall have the right to enjoy judicial remedies"

should their rights and freedoms safeguarded by this Chapter or their other legitimate rights and interests be infringed upon."

- The following provision should be added: "Apart from national defence and foreign affairs, Hong Kong residents shall have the right to institute legal proceedings in courts against the actions of organs stationed by the Central Authorities in Hong Kong or their personnel."
- The following provision should be added: "Relatives and legal counsel should be informed without delay of the arrest and whereabouts of detainees and that they and medical personnel should have prompt and regular access to the detainees."

Reason: - In order to safeguard the right of residents not to be subjected to torture.

3.5 Other suggestions

- Residents shall have the right to a fair trial, including:
 - (1) prompt information, in a language which he understands, of the nature and cause of the charge;
 - (2) presumption of innocence;
 - (3) trial without undue delay;
 - (4) fair and public hearing by an independent and impartial court;
 - (5) public pronouncement of judgment;
 - (6) right to legal aid;
 - (7) absence of retroactive penal laws;
 - (8) right to defend himself in person or through a lawyer of his choice or to legal assistance provided by the state;
 - (9) free services of an interpreter;
 - (10) access to a court of appeal;
 - (11) freedom from self-incrimination; and
 - (12) freedom from double jeopardy.
- The provisions in the second paragraph should include possible judicial reviews of the decisions made by the Chief Executive.

Reasons: - In accordance with the general principle of equality before the law, the Chief Executive should receive no preferential treatment in the absence of expressed privilege or immunity.

- Since Article 60 of this Law stipulates that the Chief Executive is the head of the SAR, he must therefore fall within the meaning of "personnel" in this article.

- The terms "executive organs" and "[executive] personnel" mentioned in this article should refer to the executive organs of the HKSAR and their personnel.

- The provision that residents may "challenge in the courts" is inadequate. There should be a higher organ of appeal. Moreover, it is not necessary to hire a lawyer in accordance with legal procedures. Written or oral appeal or information on just grounds should also be accepted.

- Residents should be allowed the right to challenge in the courts the laws which infringe on human rights.

Reason: - To protect human rights from being infringed upon by the legislature.

- As to whether the residents of Hong Kong should have the right to institute legal proceedings in the courts of Hong Kong against the acts of organs stationed by the Central Authorities in Hong Kong or their personnel, it should be provided for under the subject of jurisdiction by the relevant Subgroup.

- It should be clearly stated whether Hong Kong residents have the right to institute legal proceedings in courts against the actions of organs stationed by the Central Authorities in Hong Kong or their personnel.

- Hong Kong residents should have the right to lodge complaints with the people's courts in China against the actions of the Central People's Government.

- The right to prosecute organs stationed in Hong Kong by the Central Authorities should be dealt with by the HKSAR.

Reason: - To ensure that these organs and their personnel will not perform any ultra vires or unlawful acts.

4. Issues to be clarified

- Does the right of residents to the choice of lawyers for timely protection of their legitimate rights and interests impose a duty on the state to provide legal aid in all

civil matters as well?

- What is meant by "legitimate" rights and interests mean?
- When, and by whom, is it to be determined whether a right or interest is "legitimate"?
- In the clause "...and for representation in the courts, and the right to judicial remedies", who is being represented? What is the representation for?
- Is there a misprint in the Chinese version of "remedies" in the first paragraph?
- Is it the "right to judicial remedies" or the right to "seek" judicial remedies that is contemplated?
- Can a constitution guarantee the right to obtain a judicial remedy?
- What does the term "executive organs" refer to?
- What does the term "[executive] personnel" refer to?
- Hong Kong residents shall have the right to challenge in the courts the actions of the executive organs and their personnel. Do these organs and personnel include those stationed in Hong Kong by the Central Authorities?
- It is clearly stated in Article 13 that members of the garrison stationed in Hong Kong should abide by the laws of the SAR and it is mentioned in Article 21 that all offices and their personnel shall abide by the Basic Law. In the light of these provisions, will Hong Kong residents have the right to appeal against them?
- Does the word "actions" refer to the acts rendered illegal by the courts?
- Does the word "actions" refer to the acts of an individual or the improper handling of affairs by public servants?
- Do the actions provided for in the second paragraph include infringement of freedoms of the residents by the executive organs or their personnel "in accordance with law"? If an act of infringement upon a certain right or freedom performed by an executive organ or its personnel is not in accordance with any law, and the right or freedom infringed upon is not yet protected by the laws of Hong Kong, will the Hong Kong resident concerned be able to institute legal proceedings in a court against such an infringement?

1. Original text

Hong Kong residents shall have the right to social welfare; the welfare benefits of the working people shall be protected by law.

2. Views

2.1 Supporting views

- The provisions of the Basic Law have already exceeded the welfare policy of "helping those who are most unable to help themselves" formulated by the Hong Kong Government. This article is a tremendous breakthrough as it has affirmed that social welfare is a right of the Hong Kong residents.
- Support is expressed for the provision that "Hong Kong residents shall have the right to social welfare...".
- The meanings carried by "welfare benefits" are acceptable.

2.2 Reservations

- This article does not provide for employment security and safety, vocational training or a comprehensive system of social security.
- The way of expression for social welfare in this article may give rise to problems.
- This article only briefly states that "the welfare benefits of the working people shall be protected by law", but does not specifically provide that workers may enjoy employment or retirement security.
- The term "welfare benefits" has not been clearly defined. As its meaning is too vague and lacks indication, it fails to afford any substantive protection to workers.
- It is provided in the second half of the sentence that "the welfare benefits of the working people shall be protected". But this does not mean that the working class shall have any fundamental rights.
- This article does not mention the status of the International Labour Conventions.
- This article can never be taken as an article which provides protection for the rights of the disabled.

Reason: - This article only provides for the entitlement

to welfare services. However, what the disabled ask for are more extensive social rights. This is a struggle for more rights rather than for just an entitlement to welfare services.

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- The provisions in this article are vague.

Reasons: - If what is contemplated is the right to social security, including social insurance, it should be so stated.

- Social welfare could mean a broader concept including food, clothing, housing, medical care, and necessary social services. Under international law, these rights are classified as "economic and social", their achievement may be progressive, and they are not intended to be enforceable through the judicial system.

2.3 Other views

- Labour welfare is different from general social welfare or social security. The existing social welfare policy in Hong Kong is in the form of public aids, which only provides social security to those who are unable to help themselves. The two are different in concept and idea.
- The right to social welfare is different from civil and political rights. It cannot be enforced by courts under the common law jurisdiction.
- With respect to social welfare, what the Basic Law can safeguard is restricted by existing facilities and standards. Taking into consideration that the low tax policy will continue to be implemented and the annual social welfare expenditure of the HKSAR, it will be difficult to go beyond the present standard.
- The maintenance of the status quo and the continued implementation of the low tax policy will only make the social welfare system in Hong Kong unable to perform its function of redistribution.
- This article is clearly the result of political compromise.

3. Suggestions

3.1 Rewriting

- The second half of this article should be rewritten as:
(1) "...; the welfare benefits of workers and the rights and interests of consumers shall be protected by law."

Reason: - The rights and interests of consumers are in fact the rights and interests of the majority of residents.

- (2) "...; the welfare benefits of workers and the disabled shall be protected by law."
 - (3) "...; the welfare benefits and retirement security of workers shall be protected by law."
 - (4) "...; the welfare, benefits, provident funds, and retirement security of workers shall be protected by law."
 - (5) "...; the welfare benefits and social security (including that for retirement, sickness, disability, unemployment, and industrial safety and health) of workers shall be protected by law."
 - (6) "...; workers shall enjoy the right to employment security including minimum wage, industrial health and safety, and a sound system for retirement security, and be protected by law."
 - (7) "...; workers shall at the same time enjoy the rights to employment security, industrial safety and health, vocational training and comprehensive social security, and their welfare, benefits, and rights and interests shall be protected by law."
 - (8) "...; workers shall enjoy the rights to employment security, industrial safety and health, and comprehensive social security, and their welfare, benefits, and rights and interests shall be protected by law."
 - (9) "...; such welfare as labour welfare, education, housing and medical care shall be protected by law."
- "Hong Kong residents shall enjoy the rights to comprehensive social security, employment security, industrial safety and sanitation, and priority for employment." (Note 35-1)
 - "Hong Kong residents shall enjoy the rights to social welfare and comprehensive social security; workers shall enjoy the rights to employment security, reasonable wage and benefits, equal pay for men and women, industrial safety and health, and sound retirement security."
 - "Hong Kong residents shall enjoy the rights to housing, education, medical care, social welfare, labour, subsistence and other social services, and shall be protected by law."

- "Hong Kong residents shall enjoy the rights to housing, education, medical care, social welfare, subsistence and other social services. The welfare benefits of workers shall be protected by law."
- "Hong Kong residents shall have a sound system of social security, and enjoy a reasonable standard of living; the welfare benefits of workers shall be protected by law."
- "Permanent and non-permanent residents of Hong Kong shall enjoy the right to social welfare, including the welfare benefits of workers prescribed by law."

3.2 Amendments

- The clause "Hong Kong residents shall have the right to social welfare" should be amended to read: "Hong Kong residents shall enjoy the right to social welfare as specified by the government of the Hong Kong Special Administrative Region."

Reason: - The scope of social welfare is too extensive. It may include medical care, education and so on.

- The term "social welfare" should be replaced with "social services".

Reason: - In addition to social welfare, residents should be entitled to such social services as housing, medical care, education and labour.

3.3 Additions

- The following provision should be added: "Registered trade unions should have the legitimacy and the right of collective bargaining that are protected by law. Registered trade unions shall be protected by law in improving labour-management relations and promoting the communication and consultation between labour and management."

Reasons: - The "labour-management consultations" provided for in the Basic Law lacks specific indication. It neglects the rights and status of labour and registered trade unions in labour-management negotiations and maintains the present rights and status of registered trade unions in labour-management negotiations, i.e. their illegitimacy and the unreasonable and unequal right of bargaining. This will intensify the conflicts between labour and management under the administration of the HKSAR government. Without the mediation by registered trade unions, labour-management disputes will end up in confrontations and conflicts.

- The registered trade unions in Hong Kong are lawful representatives of workers. Under the present "Prevention of Discrimination Against Trade Unions Ordinance", no protection has been afforded to the right of bargaining and the legitimacy of trade unions. Only if such a situation is actually changed after 1997 will the relationship between labour and management be improved, thus promoting labour-management communication and eliminating unnecessary confrontations and conflicts between the two parties.
- The following provision should be added: "Proposals or guidelines for amending labour legislation may be put forward to the authorities concerned provided such proposals or guidelines have been adopted by two-thirds of the registered trade unions in Hong Kong."
- The following provision should be added: "The government of the Hong Kong Special Administrative Region must develop and establish a long-term, positive policy on industrial relations."

Reason: - The policy on industrial relations of the present government lacks a long-term, positive and harmonious perspective.

- The following provision should be added: "The provisions of the International Labour Conventions as applied to Hong Kong shall be implemented through legislation by the Hong Kong Special Administrative Region."

Reasons: - The International Labour Conventions are relatively comprehensive and important documents protecting the rights and interests of workers worldwide. They should be used as an important basis for formulating labour legislation of the HKSAR.

- The protection of labour welfare provided for in the Basic Law lacks specific indication, thus no legal protection is given to labour rights.
- The following provision should be added: "All welfare benefits for the elderly in Hong Kong shall be gradually improved, and the government of the Hong Kong Special Administrative Region shall allocate funds to improve the living standard of the elderly."
- The following provision should be added: "Senior residents who are unemployed shall be given old age pension or unemployment assistance sufficient for their subsistence."

3.4 Rearrangement

- This article should be moved to Chapter VI.

Reason: - In many countries and societies, the right to welfare and the social policies are provided for under the chapter called "Directive Principles" which lays down the guidelines for the executive departments and can only be enforced in political courts.

3.5 Other suggestions

- According to the "Universal Declaration of Human Rights" and the International Labour Conventions, labour shall enjoy the following rights which should also be clearly stated in the Basic Law:

- (1) employment security, including unemployment assistance and employment services; (Note 35-2)
- (2) industrial safety and health insurance, including supervision over safety and publicity of related knowledge; (Note 35-3)
- (3) vocational training; (Note 35-4)
- (4) comprehensive social security, including that for retirement, illness and disability; (Note 35-5)
- (5) the right of collective bargaining of trade unions; (Note 35-6)
- (6) reasonable wage; (Note 35-7)
- (7) registered trade unions should enjoy the right to mediate disputes concerning labour-management relations, and to conduct labour-management consultations and negotiations as protected by law;
- (8) registered trade unions may propose amendments or additions to the relevant labour legislation or policy provided that they have the support of the majority of units;
- (9) workers shall have the right and freedom to join trade unions and to strike;
- (10) workers shall have the right of collective bargaining;
- (11) full employment;
- (12) the freedom of choice of occupation;
- (13) equal wages and benefits, and equal opportunities in

employment and promotion for men and women; (Note 35-8)

- (14) determining suitable working conditions; and
- (15) develop relations with international labour organizations.

Reasons: - To comply with the international standard of labour protection.

- In most of the developing countries, especially those countries and regions which are neighbours of Hong Kong and whose economic standards are similar to that of Hong Kong, the above positive policies have already been established. Thus, the above rights should be stipulated in the Basic Law of Hong Kong.
- Labour welfare and the labour legislation should be listed in detail in an annex.
- It is necessary to explain in detail the rights and obligations of labour.
- It is necessary to expressly provide for "social welfare" in law.
- It should be specified what kinds of social welfare the residents of Hong Kong will be entitled to.
- It should be specified under what conditions Hong Kong residents may enjoy the right to social welfare.
- The Basic Law should ensure that all residents, especially manual workers, may enjoy the right and obligation to social security.

Reasons: - In most countries, including Taiwan and the Mainland and those not as economically developed as Hong Kong, the right of their nationals and workers to social security is safeguarded by their constitutions.

- The existing articles of the Draft only look after the retirement security of such people as civil servants, judicial personnel and judges.
- Social security has stabilising effects on society in times of economic recession, which is conducive to the stability and prosperity of society.
- It is not necessary to prescribe the proportion of welfare expenditure to the total expenditure of the HKSAR

government.

Reason: - To avoid reducing the government's flexibility in using welfare policies to stabilize society and balance the interests of different social strata.

- It should spell out in detail the welfare benefits for the elderly and retirement security.

Reason: - As the population of Hong Kong is aging, if no legislation is formulated on retirement security, it will add to the burden of welfare expenditure on the future HKSAR government and workers will lack security in their old age.

- The restriction that old people will stop receiving public aids and old age allowance if their visit to the mainland exceed a certain time limit should be abolished.
- Mainland compatriots who emigrated to Hong Kong after retirement shall be entitled to continue to receive their retirement pensions.
- For labour-management disputes of mainland enterprises, the rulings of the HKSAR courts shall be final, provided that they do not contravene the Constitution of the PRC.
- It should be clearly stated that "the right to social welfare" and "welfare benefits" shall be in accordance with the standards of Hong Kong.
- The "social welfare" and "welfare benefits" mentioned in this article should be limited to "as prescribed by law".

4. Issues to be clarified

- What is the definition of "social welfare"?
- Does the the word "law" refer to the existing labour legislation? Is it possible to list out this law in detail?
- Does the protection provided for in this article cover those who are no longer working such as the elderly?
- May Hong Kong residents institute legal proceedings in courts if they are not allowed to enjoy these rights?
- At present, Hong Kong joins the International Labour Organization as a dependent territory of Britain. It is still not clearly indicated how this status will be dealt with when China resumes the exercise of sovereignty over Hong Kong.

1. Original text

The freedom of marriage of Hong Kong residents and their right to raise a family shall be protected by law.

2. Views

2.1 Supporting views

- Support is expressed for the principles of "freedom of marriage" and "freedom of setting up a family and bringing up children".
- Support is expressed for the "right to raise a family" included in this article.

Reasons: - This will ease the problem of an expanding population.

- Strict family planning will not be introduced after 1997.

2.2 Reservations

- The right to raise a family may mean that each family may only bring up one child.
- This provision may allow the government of the HKSAR to pass a "Protection Ordinance" to set the minimum marriageable age of residents at 21 for the purpose of controlling the population.
- Under the provision of this article, the possibility of imposing compulsory family planning, for example the one-child policy, in the HKSAR still exists.
- This article does not provide any guarantee that the residents of Hong Kong shall enjoy the right to life with their families.

Reason: - According to the provisions of Articles 17 and 39 of this Draft, men may be conscripted.

- This article does not fully safeguard the rights of women in the choice of marriage and raising a family.
- It is inappropriate to provide for the freedom of marriage and the right to raise a family in one article and to treat marriage as a prerequisite for raising a family.
- The clause "shall be protected by law" in fact means "shall be restricted by law".

3. Suggestions

3.1 Rewriting

- It should be rewritten as: "Hong Kong residents shall enjoy the freedom of marriage. The rights of Hong Kong residents to set up a family and bring up children shall be protected by law under whatever circumstances."
- It should be rewritten as: "Hong Kong residents shall have the freedom of marriage and the right to raise a family."

Reason: - As the freedom of marriage and the right to raise a family are fundamental rights protected by the Constitution, it is therefore unnecessary to specify that they "shall be protected by law".

- It should be rewritten as: "Hong Kong residents shall enjoy the freedom of marriage and the right to raise a family. Such freedom and right shall be protected by law."
- It should be rewritten as: "Hong Kong residents, irrespective of their sex, shall have the freedom to select their spouses and dissolve their marriages. In a family, spouses shall enjoy equal rights and status, and bear equal responsibilities towards their family. Women shall enjoy the right to raise a family voluntarily and the freedom to terminate pregnancy."

Reasons: - This article does not fully safeguard the rights of women in the choice of marriage and raising a family.

- Hong Kong residents shall have the freedom of marriage and the right to raise a family in order to prevent the future government from controlling the population by means of the one-child policy.
- It should be rewritten as: "Marriage is the free union of two adults. Violation of the freedom of marriage shall be prohibited. Marriage may be dissolved with the consent of both parties or at the request of either party."

"In a family, spouses shall enjoy equal status, bear equal responsibilities and enjoy equal rights. Children may adopt the surname of either parent.

"Women shall enjoy the right to raise a family voluntarily and the freedom to terminate pregnancy."

3.2 Amendment

- The clause "shall be protected by law" should be amended to read: "shall be entitled to the protection by law."

Reason: - The freedom of marriage is not a passive right. Residents may demand the government to protect such a right through legislation.

3.3 Additions

- The following provision should be added: "Permanent residents of Hong Kong shall have the priority in applying for the residence of their legitimate wives or husbands and/or their children in Hong Kong. Their applications shall be given priority by the local public security organs in processing."
- The following provision should be added: "The right of abortion shall be protected by law."

3.4 Other suggestions

- It should be provided that Hong Kong residents shall not be forced to practise family planning or have abortions.

Reasons: - The wording of this article in this respect is vague.

- One of the provisions in Article 49 of the Constitution of the PRC demands Chinese nationals to practise family planning.
- It should take into account the right to the choice of sex.
- It should grant the freedom to terminate pregnancy to women. (Note 36-1)
- It should provide that women shall have the freedom of marriage. (Note 36-2)
- It should provide that women shall have the freedom to select their spouses. (Note 36-3)
- It should provide that women shall have the freedom to dissolve their marriages.
- It should provide that women shall have the right to change or retain their own nationalities after marriage.
- Children may adopt the surname of either parent.
- It should recognize that the family is the natural and fundamental group unit of society.
- It should recognize the right of men and women of

marriageable age to marry and to set up a family.

- It should recognize that no marriage shall be entered into without the free and full consent of the intending spouses.
- In a family, spouses shall enjoy equal rights and status, and shall bear equal responsibilities towards their family. (Note 36-4)
- It should recognize the equality of rights and responsibilities of spouses as to marriage, during marriage, and at its dissolution.

1. Original text

Hong Kong residents shall enjoy the other rights and freedoms safeguarded by the laws of the Hong Kong Special Administrative Region.

2. Views

2.1 Supporting view

- Apart from the rights specified in the Constitution, Hong Kong people will have other rights that the relevant principles under the common law will be maintained.

2.2 Reservation

- This article implies that rights and freedoms not safeguarded by law may not be enjoyed. Such wording obviously contravenes the capitalist concept of natural rights and the theory of social contract (i.e. the government is constituted by powers delegated by the people; powers not delegated will be retained by the people and do not need to be defined or safeguarded by law).

3. Suggestions

3.1 Rewriting

- It should be rewritten as: "Hong Kong residents shall enjoy the other rights and freedoms safeguarded by the laws of the Hong Kong Special Administrative Region and the common law."

Reason: - The common law is internationally recognized. It covers a greater area than the statute law and its scope is more extensive than that of the laws (statutes) of the HKSAR.

- It should be rewritten as: "The other fundamental rights and freedoms of Hong Kong residents shall not be curtailed by law or any other means."

Reasons: - The fundamental rights should be defined by courts according to the common law conventions.

- The word "curtailed" means that certain rights or freedoms may be safeguarded through legislation but the exercise of such rights and freedoms may not be restricted.

3.2 Other suggestions

- This article should be incorporated into Article 5.
- It should be incorporated into a Bill of Human Rights.
- This article should be incorporated into the European Convention on Human Rights.
- The rights defined by laws should not be separated from those defined by the Constitution. The rights being enjoyed by Hong Kong residents at present should be included in this article.
- "Other rights and freedoms" should be specified in detail.

4. Issues to be clarified

- Will the rights which have not yet constituted part of the law of Hong Kong but are already being enjoyed by Hong Kong people be safeguarded?
- Is this article adequate for safeguarding those fundamental rights (such as the right not to be subjected to torture and the right to life) which are not specified in the Basic Law?

Article 38

1. Original text

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 legislation by the Hong Kong Special Administrative Region.

2. Views

2.1 Supporting views

- The provisions of this article have been accepted.
- This article may make up for the inadequacy of the provisions on the safeguarding of human rights in this chapter.
- The "International Covenant on Civil and Political Rights" and the "International Covenant on Economic, Social and Cultural Rights" are only guiding conventions for international reference. They are not accepted in their entirety by many countries and regions, including Hong Kong. They can only be selectively implemented. As different countries and regions have different conditions, the implementation of these conventions should adapt to such conditions.
- It is necessary to implement the two covenants through legislation.

Reasons: - All signatories to the covenants are required to implement the covenants through their own legislation.

- The existing laws of Hong Kong provide protection for the rights of Hong Kong residents.

- China is actively participating in the legislative activities of the United Nations within the domain of human rights. As Hong Kong will be under the sovereignty of China, human rights will be safeguarded by law.

2.2 Reservations

- The provision on the "International Covenant on Economic, Social and Cultural Rights" is acceptable.

Reasons: - The rights safeguarded by this covenant cannot take effect instantly, they have to be realized

gradually according to social development and macro-economic conditions.

- This covenant does not have to carry any legal effect.
- The "International Covenant on Economic, Social and Cultural Rights" is only an international aspiration. It would be inappropriate to turn it into a piece of legislation.

2.3 Opposing views

- This article is inadequate for ensuring the implementation of the two covenants in Hong Kong.

Reasons: - Britain has declared reservation on the application of certain articles in Hong Kong, such as the constitution of the legislature by regular direct and general elections and equal pay for men and women for equal work.

- At present China is not a signatory to either of the covenants, and it is still doubtful whether China will implement these two covenants.
- As China is not a signatory to these two covenants, it will not be subject to pressure from other countries regardless of its interpretation of the provisions of the covenants and whether it observes the principles laid down in the covenants or not.
- China's interpretation of these two covenants may be different from that of Britain.
- Britain is the country which affords the least protection for human rights among the European countries mainly because of the loopholes found in the procedures for applying the provisions. Thus, the wording of the stipulation that "[t]he provisions...as applied to Hong Kong..." in this article is not satisfactory.
- As one of the objectives of international conventions is to exercise checks and balances on the legislature, the status of international covenants must therefore be above the common law.
- If the implementation of the provisions of international covenants in Hong Kong may only be through the legislature, those provisions which have not been laid down by the

legislature will never be implemented in Hong Kong.

- The determination of the rights of the residents through legislation by the legislature itself does not necessarily mean that the legislature will give immediate legal effect to international covenants.
- If the provisions of the covenants are only formulated as ordinary legal provisions, they may be abolished.
- The legislature should not be vested with the power to selectively implement the two international covenants.
- The "International Covenant on Civil and Political Rights" safeguards the "fundamental" rights of citizens. Its implementation through specific legislation should not be decided by the legislature.
- The legislature may violate human rights through legislation, for example through amending the laws.
- This article carries no provision on the measures or remedial measures to be taken should the legislature fail to implement the relevant provisions of the covenants through legislation, or should it diminish the rights provided for in the covenants.
- This article cannot prevent the legislature from passing laws which contravene the covenants.
- It is difficult to put into practice the substance of the covenants through laws.
- The two covenants are not totally suitable for Hong Kong.
- The two covenants cannot be applied in Hong Kong as there are many rights which are not safeguarded by laws.
- The stipulation that "[t]he provisions ... as applied to Hong Kong..." seems vague.
- This article has not spelt out which provisions of the two international covenants are applicable to Hong Kong.

- This provision has not included the "International Labour Conventions". The interests of labour have obviously been overlooked.
- As the power of interpretation of the Basic Law is vested in the Standing Committee of the NPC, it is worrying how the Committee is going to interpret the applicability of the two covenants in Hong Kong.

2.4 Other views

- The party to enforce the two covenants must be a signatory to the covenants.
- Whether the provisions of the two international covenants on human rights will be implemented through legal procedures of the HKSAR depends on whether the future government is democratic.
- The safeguarding of civil rights cannot solely depend on the introduction of international covenants. A sound legal system, an open and democratic political system, and the understanding of the residents of their fundamental rights will have direct bearing on the safeguarding of civil rights.
- As this article provides that the relevant provisions of the two international covenants will be applicable in Hong Kong, it may give rise to questions such as the incompatibility between the provisions of the two covenants and those in Chapter III of this Law.
- The rights mentioned in the covenants are not adequately provided for in the Basic Law, and they include:
 - (1) Every one shall be equal before the law and free from discrimination irrespective of his social background or status.
 - (2) The right to life.
 - (3) The right not to be subjected to torture, or to inhuman or degrading treatment or punishment.
 - (4) The right to privacy.
 - (5) The right to information.
 - (6) The right to be exempt from hard labour.
 - (7) The right to universal suffrage.
 - (8) In criminal and civil proceedings, parties to the proceedings shall continue to enjoy all their existing rights, such as the right to a fair trial and

the right to be presumed innocent until proven guilty.

- It is essential to incorporate the "International Covenant on Civil and Political Rights" into the Basic Law.
- The wording used in the Draft suggests room for the possible inclusion of more provisions of the covenants which are not applicable to Hong Kong.
- International covenants are ordinary international treaties. It is a common practice to incorporate international treaties into the laws of a country. Thus, the incorporation of international covenants into the Basic Law is not totally unprecedented.
- Objection is expressed to the incorporation of the "International Covenant on Civil and Political Rights" into the Basic Law.

3. Suggestions

3.1 Deletion

- The stipulation: "The provisions of...as applied to Hong Kong..." should be deleted.

Reason: - This provision has the implication of declaring reservation on application and is therefore misleading.

3.2 Rewriting

- It should be rewritten as: "The provisions of the 'International Covenant on Civil and Political Rights' which are applicable to Hong Kong and may take legal effect shall have legal effect in the Hong Kong Special Administrative Region. Any part of the laws of the Hong Kong Special Administrative Region which is inconsistent with the above-mentioned legally effective provisions of the covenants shall be rendered void. The provisions of the 'International Covenant on Economic, Social and Cultural Rights' as applied to Hong Kong shall be implemented in accordance with the laws of the Hong Kong Special Administrative Region." (Note 38-1)
- It should be rewritten as: "Apart from the provisions which are not applicable to Hong Kong, all provisions of the 'International Covenant on Civil and Political Rights' shall have legal effect in the Hong Kong Special Administrative Region. Any part of the laws of the Hong Kong Special Administrative Region which is inconsistent with the above-mentioned legally effective provisions of the covenants shall be rendered void. Apart from the provisions which are not applicable to Hong Kong, all provisions of the 'International Covenant on Economic,

Social and Cultural Rights' shall be implemented in accordance with the laws of the Hong Kong Special Administrative Region." (Note 38-2)

- It should be rewritten as: "The provisions of the 'International Covenant on Civil and Political Rights' as applied to Hong Kong are integral parts of this Chapter, and shall have immediate legal effect in the judicial organs of the Hong Kong Special Administrative Region. The relevant provisions of the 'International Covenant on Economic, Social and Cultural Rights' shall be implemented through legislation by the Hong Kong Special Administrative Region."
- It should be rewritten as: "Should there be conflicts between the provisions of the 'International Covenant on Civil and Political Rights' and this Chapter, the judicial organs shall adopt the interpretation which is most capable of reflecting the objectives of the two instruments. If the conflict cannot be resolved by the judicial organs, the provisions of this Chapter shall prevail."
- It should be rewritten as: "The relevant provisions on the protection of the rights of the disabled under the 'International Covenant on Civil and Political Rights', the 'International Covenant on Economic, Social and Cultural Rights', the 'Declaration of the Eighties of the International Federation of Rehabilitation' and other international covenants which are applicable to Hong Kong shall be implemented through legislation by the Hong Kong Special Administrative Region."
- It should be rewritten as: "Provisions of the 'International Covenant on Civil and Political Rights' which do not contravene the articles of this Law shall become integral parts of this Law, and carry the same legal effect as other articles in this Chapter. The provisions of the 'International Covenant on Economic, Social and Cultural Rights' as applied to Hong Kong shall be implemented through legislation by the Hong Kong Special Administrative Region."
- It should be rewritten as: "All Hong Kong residents shall enjoy the rights and freedoms specified in the 'International Covenant on Civil and Political Rights' whose detailed regulations shall have immediate legal effect in Hong Kong. In addition, the relevant provisions of the 'International Covenant on Economic, Social and Cultural Rights' and the International Labour Conventions as applied to Hong Kong shall be implemented through legislation by the Hong Kong Special Administrative Region."
- It should be rewritten as: "The provisions of Part Three

(i.e. Articles 6-27) of the 'International Covenant on Civil and Political Rights' shall have legal status and be enforced by the courts of the HKSAR. Any law applicable to the HKSAR shall be rendered void if it is in conflict with the provisions of the covenant mentioned above."

- It should be rewritten as: "The provisions of the 'International Covenant on Economic, Social and Cultural Rights' as applied to Hong Kong shall be implemented by the HKSAR and when appropriate, through legislation by the HKSAR."
- It should be rewritten as: "Everyone shall enjoy the rights and freedoms specified in the 'International Covenant on Civil and Political Rights'. Such rights and freedoms must be implemented in accordance with the reservations contained in Annex I."
- It should be rewritten as: "Everyone shall enjoy the rights and freedoms recognized by the common law and the rules of equity before the enforcement of the Basic Law, such as the regulations on natural rights, the spirit of the rule of law, habeas corpus, the right to judicial remedy, the presumption of innocence, and the principles of residual rights."

"The government of the HKSAR must agree to take various measures and exhaust its available resources to gradually realize the various rights specified in the 'International Covenant on Economic, Social and Cultural Rights' by an appropriate method, particularly through legislative measures."

- It should be rewritten as: "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 legislation by the Hong Kong Special Administrative Region. Should there be any conflict between the two sets of provisions, the provisions of the covenants shall prevail."
- It should be rewritten as: "The rights and freedoms enjoyed by Hong Kong residents shall only be subject to reasonable restrictions imposed by laws. And such restrictions must be those readily acceptable to a free and democratic society. When reviewing whether a piece of legislation is necessary to a democratic society, the documents and resolutions of the United Nations on human rights, the international covenants for the protection of human rights, the judicial precedents of other democratic societies, and the principles and traditions of respecting human rights under the common law must be taken as reference."

- It should be rewritten as: "The provisions of the 'International Labour Conventions', 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 legislation by the Hong Kong Special Administrative Region."
- It should be rewritten as: "The provisions of the 'International Covenant on Civil and Political Rights', the 'International Covenant on Economic, Social and Cultural Rights' and the 'International Labour Conventions' as applied to Hong Kong shall be implemented in the form of law by the Hong Kong Special Administrative Region, and shall develop on this basis."
- It should be rewritten as: "The 'International Covenant on Civil and Political Rights' shall be given the status of a constitutional instrument. The provisions of the 'International Covenant on Economic, Social and Cultural Rights' and the 'International Labour Conventions' as applied to Hong Kong shall be implemented through legislation by the Hong Kong Special Administrative Region."
- It should be rewritten as: "The provisions of the 'International Covenant on Civil and Political Rights' and the 'International Covenant on Economic, Social and Cultural Rights' previously applied to Hong Kong must be implemented through legislation by the Hong Kong Special Administrative Region. All laws enacted by the legislature of the Hong Kong Special Administrative Region shall not contravene the provisions mentioned above."
- It should be rewritten as: "The provisions of the 'International Covenant on Civil and Political Rights' and the 'International Covenant on Economic, Social and Cultural Rights' which have already taken effect in Hong Kong shall be listed in this Law and remain in force. However, such provisions may not affect the other rights and freedoms granted to the residents by this Law. And the provisions of this Law may not be interpreted in such a way as to curtail the rights and freedoms safeguarded by such provisions."
- It should be rewritten as: "The Basic Law of the Hong Kong Special Administrative Region incorporates totally the 'International Covenant on Civil and Political Rights' and the 'International Covenant on Economic, Social and Cultural Rights'."
- It should be rewritten as: "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 have legal

effect in the Hong Kong Special Administrative Region. The laws enforced in the Hong Kong Special Administrative Region shall not contravene the legally effective provisions of the covenants mentioned above. The legislature of the Hong Kong Special Administrative Region may enact laws which are necessary and appropriate for the actual implementation of the legally effective provisions mentioned above."

- It should be rewritten as: "The residents of Hong Kong shall continue to enjoy the rights safeguarded by these two international covenants since 1976."
- It should be rewritten as: "The provisions of the 'International Covenant on Civil and Political Rights' as applied to Hong Kong shall be enforceable in the courts of the Hong Kong Special Administrative Region and shall, to the extent of inconsistency, prevail over any law of the Hong Kong Special Administrative Region.

"The provisions of the 'International Covenant on Economic, Social and Cultural Rights' as applied to Hong Kong shall be implemented, and if appropriate, through legislation, by the Hong Kong Special Administrative Region."

3.3 Amendments

- The clause "[t]he provisions of...as applied to Hong Kong..." should be amended to read: "The provisions of...previously implemented in Hong Kong...".

Reason: - This article has not specified which party has the authority to decide which provisions of the two covenants are applicable to Hong Kong.

- [Translator note: This view is on the Chinese wording and has no relevance to the English version.]
- The clause "[t]he provisions of ...as applied to Hong Kong ..." should be amended to read: "All provisions of...as applied to Hong Kong...".

3.4 Additions

- The following provision should be added at the end of the article: "If there is any inconsistency, the covenants and precedents shall prevail."
- The following provision should be added at the end of the article: "Any part of the laws of the Hong Kong Special Administrative Region which contravenes the two covenants mentioned above shall be repealed."
- The following provision should be added: "The provisions

of the Covenants will apply in the Hong Kong Special Administrative Region as provided for under The Sino-British Joint Declaration and the jurisprudence regarding the interpretations of the provisions by the Human Rights Committee should have binding effect on HKSAR courts."

Reason: - There is no need to provide that all international obligations on the HKSAR should be implemented through the HKSAR legislature. This basic law is itself a hybrid of the civil law and common law systems. To incorporate the provisions of the twin Covenants will ensure at least nominal implementation of the Sino-British Joint Declaration. To provide for the binding effect of the Human Rights Committee has a lot of advantages. First, it gives pointers as to the substance of human rights protection. Second, it helps judges to determine the legality of the complaint. Third, it avoids the activation of the complaint procedure at the international level and thus embarrassing the HKSAR government.

- The following provision should be added: "The power of the Hong Kong Special Administrative Region to retain, maintain or amend the present provisions or to introduce any new provisions shall not be restrained".

3.5 Other suggestions

3.5.1 On the "International Covenant on Civil and Political Rights" and the "International Covenant on Economic, Social and Cultural Rights"

- The Chinese government should allow the two international covenants to be entirely applicable to Hong Kong.
- The Basic Law should specify that the two covenants be entirely applicable to Hong Kong. (Note 38-3)

Reasons: - At present Britain has declared reservation on the application of some of the provisions of the covenants in Hong Kong. After 1997, the reservation on these provisions should no longer be retained in order to remove the colonial tone.

- China is not a signatory to either of the two covenants.
- Hong Kong should implement the two international covenants. (Note 38-4)
- The two international covenants on human rights should be incorporated into the judicial system of Hong Kong. (Note

- The two covenants should be incorporated into the Basic Law. (Note 38-6)
- The two covenants should be incorporated into the Basic Law as an annex.
- The provisions of any international covenants which are applicable to Hong Kong should have legal effect in Hong Kong.
- The provisions of the two international covenants which have taken effect in Hong Kong should form an integral part of the Basic Law.

Reasons: - The two international covenants must be given legal effect in order to be binding on the courts.

- As the Chinese government has a different concept of human rights, the two covenants should therefore be given the status of a constitutional instrument.
- To prevent the legislature from formulating laws which contravene the covenants.
- To avoid the abolishment of the laws enacted by the legislature.
- The relevant precedents may be quoted as reference.
- The protection of human rights in Hong Kong will be more in conformity with the international standard because through international monitoring, the deprivation of human rights will, to a great extent, be prevented.
- The guarantee of civil and political rights afforded by the covenants will be advantageous to the healthy development of society and the stability of Hong Kong.
- Legal provisions which contravene the provisions of the covenants may be declared void by the courts, and the authorities concerned will take remedial measures.
- The provisions of the two covenants which are applicable to Hong Kong should be incorporated into the Basic Law in the form of an annex.

- A binding annex specifying the provisions of the two covenants applicable to the HKSAR should be formulated to provide that the first legislature of the HKSAR shall implement these provisions through legislation.
- 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 should be specified in an annex. Amendments to this annex may be proposed by the legislature of Hong Kong and adopted by the Chief Executive. After being reviewed and processed by the Committee for the Basic Law and with the consent of the legislature and the Chief Executive of Hong Kong, the amendment proposals may be recommended to the Standing Committee of the National People's Congress for approval.
- The relevant provisions of the covenants should be listed in an annex to the Basic Law and amended accordingly should there be any change in the applicability of the two covenants in Hong Kong.
- The full text of the two covenants should be presented in the form of an annex.

Reason: - To strengthen the applicability of the two covenants in the HKSAR.

- International covenants which have been implemented or will be applicable to Hong Kong should be listed in the form of an annex.

Reason: - As Hong Kong residents are generally not familiar with the contents of these two covenants and do not know which provisions have been implemented in Hong Kong, the relevant provisions should be listed in detail to ensure that the rights and interests of Hong Kong residents will be safeguarded.

- A brief explanation of the two international covenants should be provided for in the Basic Law.

Reason: - Hong Kong people are not familiar with their contents.

3.5.2 On the "International Covenant on Economic, Social and Cultural Rights"

- The provisions of the "International Covenant on Economic, Social and Cultural Rights" which are applicable to Hong Kong should be incorporated into the laws of Hong Kong, and appropriate amendment should be made so that they fall within the jurisdiction of the courts of the HKSAR.

Reason: - To avoid any conflict between the provisions of the covenants and those of Chapter III, and to adopt an internationally recognized format.

- The "International Covenant on Civil and Political Rights" should be incorporated into the Basic Law.

Reasons: - If the "International Covenant on Civil and Political Rights" is incorporated into the Basic Law and enjoys legal status, residents may institute legal proceedings in courts when their rights are infringed upon, and the judicial organs will render judgment in accordance with the Basic Law to protect the rights of the residents.

- To have international monitoring.
- To check the legislature from enacting statutes which will violate the rights and freedoms of citizens.
- The Covenant embodies the political, legal and philosophical concepts of civil and political rights widely accepted by countries worldwide.
- The provisions of the Covenant are more comprehensive than those of Chapter III.
- The incorporation of the Covenant into the Basic Law will facilitate the internationalization of the principles concerned, and is in line with the status of Hong Kong as an international city.
- In the coming years, these principles will be adopted as domestic laws by other countries and administrative regions. If the Covenant is incorporated into the Basic Law of the Hong Kong Special Administrative Region, it may be quoted as reference which will be extremely helpful to the promotion of the international standardization of laws on civil and political rights of citizens.

- The provisions of the "International Covenant on Civil and Political Rights" as applied to Hong Kong, particularly the following provisions, should be incorporated into the Basic Law:

- (1) Everyone irrespective of his social background or status shall be equal before the law and free from discrimination.
- (2) The right to life shall be safeguarded.

(3) No one shall be subjected to torture, or to inhuman or degrading treatment or punishment.

(4) In civil and criminal proceedings, the rights of parties to the proceedings shall remain unchanged, including the right to an open and fair trial without delay, and when being prosecuted for criminal charges, the right to be presumed innocent until proven guilty by an impartial and independent judicial organ.

- The rights recognized in the "International Covenant on Civil and Political Rights" must be incorporated into the domestic laws of the Hong Kong Special Administrative Region by inclusion in Chapter III of the Basic Law, and they must be made enforceable by the provision of an appropriate judicial remedy.
- All legally effective provisions of the "International Covenant on Civil and Political Rights" which are applicable to Hong Kong shall have legal effect in the Hong Kong Special Administrative Region. (Note 38-7)

Reasons: - The provisions of international covenants should have the status of a constitutional instrument.

- It is not a matter of sovereignty.
- To treat international covenants as domestic laws is not unprecedented.
- The provisions of the "International Covenant on Civil and Political Rights" which are applicable to Hong Kong should be listed in an annex to the Basic Law.
- The "International Covenant on Civil and Political Rights" should be listed in an annex to the Basic Law.
- There should be provisions in the Basic Law directing the government of the Hong Kong Special Administrative Region to progressively legislate or adopt other measures to give effect to the rights recognized by the "International Covenant on Civil and Political Rights".

3.5.3 On the "International Covenant on Economic, Social and Cultural Rights"

- This covenant should be in the form of law.
- The provisions of this covenant should not have absolute legal effect.
- The "International Covenant on Economic, Social and Cultural Rights" should be incorporated into the Basic

- The "International Covenant on Economic, Social and Cultural Rights" should be treated as a principled directive which serves as a basis for interpretation of economic, social and cultural matters by the future courts.
- The "International Covenant on Economic, Social and Cultural Rights" and the policy objectives of Hong Kong should be spelt out in the Basic Law and implemented if the available resources permit.
- The provisions of the "International Covenant on Economic, Social and Cultural Rights" which are applicable to Hong Kong should be implemented through the laws of the Hong Kong Special Administrative Region. (Note 38-8)

Reason: - To avoid possible conflicts between the provisions of the covenant and those in Chapter III, and to adopt an internationally recognized format.

- There should be provisions in the Basic Law instructing the government of the Hong Kong Special Administrative Region to fully utilize the existing resources of the Region and to take appropriate measures, including legislation, to progressively realize all the rights recognized in the "International Covenant on Economic, Social and Cultural Rights".

3.5.4 On the relationship between the two international covenants and the laws of Hong Kong

- The laws of the Hong Kong Special Administrative Region shall not contravene the "International Covenant on Civil and Political Rights" and the "International Covenant on Economic, Social and Cultural Rights". (Note 38-9)
- The legislature shall not impose any restrictions on the rights safeguarded by the covenants through legislation.
- Laws which contravene the provisions of the covenants shall be revoked or rendered void.
- Any law of the Hong Kong Special Administrative Region which contravenes this article shall be rendered void.
- It should be stipulated that the courts may quote the relevant parts of the covenants which are applicable to Hong Kong and that in case of conflicts between the domestic laws and the covenants, the covenants shall prevail.
- It should be specified that in case of conflicts between

the laws of the Hong Kong Special Administrative Region and those of China, these two covenants shall prevail.

- The future laws of Hong Kong should be based on these two covenants on human rights.
- It should be provided that any law which contravenes the provisions of the "International Covenant on Civil and Political Rights" shall be rendered void.

Reasons: - This is in order to solve the technical problem of incorporating the "International Covenant on Civil and Political Rights" into the laws.

- The provisions of the Covenant should have the status of a constitutional instrument.
- The incorporation of international covenants into domestic laws is not unprecedented.

3.5.5 On the enforcement of the two international covenants

- The courts of Hong Kong may enforce the provisions of the two covenants.
- A resident may file a complaint with a court and receive judicial remedy if any of his rights safeguarded by the "International Covenant on Civil and Political Rights" has been infringed upon.
- Residents who are affected by laws formulated by the legislature which contravene the "International Covenant on Civil and Political Rights" may request the court to review whether the law in question contravenes the provisions of the Covenant. If the court rules that the law in question contravenes the Covenant, it may refuse to enforce that law.

3.5.6 On the interpretation of the two international covenants

- The Hong Kong Special Administrative Region and not the Standing Committee of the National People's Congress should be responsible for interpreting the provisions of the covenants.
- Should an interpretation of the provisions of these covenants be required, international precedents should be taken as reference.
- It should be stipulated that the interpretation of laws by the courts of the Hong Kong Special Administrative Region may not contravene the two covenants.
- The interpretation of rights according to the laws of Hong Kong should follow the interpretation rendered by the

"International Covenant on Civil and Political Rights", and be incorporated into the Basic Law to make it binding on the power of judicial interpretation of the courts of Hong Kong.

3.5.7 On the inclusion of the International Labour Conventions

- The provisions of the "International Labour Conventions" applicable to Hong Kong should be implemented through the laws of the Hong Kong Special Administrative Region.

Reasons: - Hong Kong has long been a member of the International Labour Organization and has applied forty-eight of the conventions (among which twenty-nine are applied in full and nineteen are enforced with modification). Since these conventions will remain in force after 1997, they should therefore be spelt out clearly in the Basic Law to affirm their legitimacy.

- The International Labour Conventions specify many labour rights, including the choice of occupation, equality for men and women, equal pay for equal work, the right and freedom to form and join trade unions and labour organizations, the rights to recognition and of collective bargaining to be enjoyed by trade unions, and the right of Hong Kong labour to full employment.

- Hong Kong may, in accordance with the spirit and standard of the International Labour Conventions, continue to put into practice and ratify agreements and treaties to protect its labour.

- The International Labour Conventions are limited to states and are formulated on the basis of the conventions held by representatives of governments, employers and labour. Furthermore, the inclusion of the International Labour Conventions is advantageous to the maintenance of labour-management relations in Hong Kong, and good for foreign trade negotiations. Thus, it may be said to be advantageous to all three parties -- the employees, the employers and the government.

- According to Section 11 of Annex I to the Sino-British Joint Declaration: "Representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the People's Republic of China,

in international organisations or conferences in appropriate fields limited to states and affecting the Hong Kong Special Administrative Region, or may attend in such other capacity as may be permitted by the Central People's Government and the organisation or conference concerned,...", Hong Kong may still be able to join the International Labour Organization after 1997 and continue to adopt the International Labour Conventions as directives for formulating the labour legislation of the Hong Kong Special Administrative Region. Hence, the arrangement that the provisions of the International Labour Conventions as applied to Hong Kong be implemented through legislation by the Hong Kong Special Administrative Region must be contained in the Basic Law.

- The provisions of the International Labour Conventions enforced in Hong Kong should be listed in the Basic Law.

3.5.8 On China becoming a signatory to the two covenants

- China should become a signatory to the two international covenants.

Reasons: - This will prevent China from enacting laws which violate human rights.

- China will as a result be committed to safeguarding the human rights of Hong Kong people.

- China may follow Britain's footsteps by indicating to the United Nations and declaring reservation on those provisions of the two covenants which are not applicable to Hong Kong after it has ratified the covenants.

- The PRC Government must accede to the two covenants and accept, inter alia, the obligation to submit periodic reports to the Optional Protocol on or before 1 April 1997, and thereby to the international institutions which monitor the implementation of the two covenants.

3.5.9 On Hong Kong becoming a signatory to the two covenants

- Hong Kong should be able to become a signatory to the two covenants.

- Hong Kong should ratify international covenants on its own, submit reports to the Human Rights Committee, and be subject to its direct supervision and inquisition.

- The Hong Kong Special Administrative Region should be empowered to use its status as a "Region" to become a

Reasons: - In addition to legislation, the two covenants are being applied in Hong Kong also through executive and judicial means. Thus, it will be very difficult, if not impossible, to codify the existing practice in the form of law.

- This suggestion is similar to the arrangement provided for in Article 159 which allows Hong Kong to join organizations in respect of external relations. Whether it is necessary for Hong Kong to ratify the "Optional Protocol" awaits exploration.

- China should allow the Hong Kong Special Administrative Region to ratify the two covenants using the name "Hong Kong, China".

Reason: - China has already set the precedent by allowing Hong Kong to join the "General Agreement on Tariffs and Trade", to negotiate and conclude air service agreements and to maintain a shipping register. By the same token, China should allow the Hong Kong Special Administrative Region to have the right to accede to the two international covenants mentioned above.

3.5.10 Other suggestions

- Refer to the two covenants, select those provisions which are applicable to Hong Kong, and incorporate them into the Basic Law.

- It should be clearly provided [in the Chinese version] that the Hong Kong Special Administrative Region shall implement the two international covenants through legislation.

- It should be clearly specified that the provisions of the two covenants which are applicable to the Hong Kong Special Administrative Region shall "remain in force".

- The provisions of the "International Covenant on Civil and Political Rights" and the "International Covenant on Economic, Social and Cultural Rights" which are applicable to the Hong Kong Special Administrative Region shall remain in force even if they have not been adopted through legislation. The continued validity of the covenants has already been clearly stated in the Sino-British Joint Declaration.

- The future Hong Kong Special Administrative Region should be vested with the power to expand the scope of

application of these two international covenants.

- The right and freedom to strike, the right and freedom to maintain and develop relationship with labour organizations outside Hong Kong, the right to constantly improve one's living standard, the right to employment security, industrial safety and health, and the right to comprehensive social security should be specifically laid down as footnotes to this article.
- Whether or not the provisions of the Covenants are incorporated into the Basic Law or the laws of the HKSAR, the Basic Law should be amended so there can be no restriction upon or derogation from any of the human rights recognized in the Covenants on the grounds that such rights are not recognized or are recognized to a lesser extent by the laws of China or the HKSAR.
- The contents of this article should be incorporated into Article 5.
- The contents of this article should be incorporated into the Bill of Rights.

4. Issues to be clarified

- Who decides the contents of the "International Covenant on Civil and Political Rights" and the "International Covenant on Economic, Social and Cultural rights"?
- Are the provisions of this article intended to prevent the present Hong Kong Government from implementing the two covenants?
- Are the two covenants not legally binding in Hong Kong?

1. Original text

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless prescribed by law. But such restrictions shall not go beyond the necessity for the maintenance of national security, public order, public safety, public health, public morals and for the safeguarding of the rights and freedoms of other persons.

2. Views

2.1 Supporting views

- This article is acceptable.

Reasons: - The "International Covenant on Civil and Political Rights" has been taken as reference for the wording of this article, and the word "necessity" has imposed considerable restriction on legislation in this respect.

- The second sentence of this article in fact provides protection for the rights and freedoms of residents so that their freedoms will not be abused.
- This article sets the criterion for all restrictions "prescribed by laws", which is in conformity with the restrictions imposed on the same freedoms laid down in the "International Covenant on Civil and Political Rights". This will ensure that unreasonable restrictions will not easily become legislation for restricting freedoms.
- It is very important that this article is expressed by "shall not go beyond the necessity for".

2.2 Opposing views

- This article provides a legal basis for deprivation of the rights of residents.

Reasons: - The wording of this article is vague.

- This article grants the legislature the power to deprive the residents of their freedoms.
- This article grants the Chinese Government the power to deprive the residents of their rights.
- This article provides much room for the Hong

Kong Special Administrative Region to deprive the residents of their rights.

- This article grants the governing authority the power to interfere with and repudiate the various kinds of rights and freedoms presented in Articles 23 to 38.

- The scope of restriction is so extensive that "freedom" will be nothing but an empty promise.

- It disregards the fact that some human rights are absolute while others are not, and that the grounds for restricting the exercise of those which are not may not necessarily be the same for all.

- In its present form, this article will permit the legislature to restrict the following absolute rights referred to in earlier articles:
 - (1) the right to equality before the law;
 - (2) the right of permanent residents to vote and to stand for election;
 - (3) the freedom of the person;
 - (4) the right of a permanent resident to return to Hong Kong;
 - (5) the freedom of belief;
 - (6) the right to found a family; and
 - (7) the right of access to courts and to legal advice.

- The restrictions imposed by this article exceed the scope set by the two international covenants.

Reasons: - Article 4 of the "International Covenant on Civil and Political Rights" provides that only in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, may the State concerned restrict the rights under the Covenant, provided that such restrictions do not involve discrimination solely on the grounds of race, religion, etc.

- Under no circumstances should the following fundamental human rights be restricted:
 - (1) the right to life;
 - (2) the right not to be subjected to torture,

or to cruel, inhuman or degrading treatment or punishment;

(3) the right to recognition as a person before the law;

(4) in accordance with nationwide or international laws, the right not to be held guilty of any criminal offence arising from any act or omission which did not constitute crime at the time when such act or omission was committed;

(5) the freedom of thought and religion.

- In the "International Covenant on Civil and Political Rights", only four or five kinds of freedoms are restricted by the six criteria including the maintenance of national safety and public order. This article puts all freedoms under the restriction of those six criteria.

- Any restriction will be unfair to the residents of Hong Kong.

Reason: - It will violate the autonomy of Hong Kong.

- This article may destroy the ideology which maintains the capitalist system, and jeopardize the previous capitalist system and lifestyle.

- There is no clear definition on how far "freedom" may extend until it reaches the limitation of "for the maintenance of national security, public order, public safety, public health, public morals and for the safeguarding of the rights and freedoms of other persons". That means this article only indicates the existence of a "bottom line" without specifying what the "bottom line" is.

- If "public health and public morals" is defined in accordance with Articles 24, 25 and 49 of the Chinese Constitution, the provisions of this article will greatly threaten the safeguarding of human rights.

- [Translator's note: This view is on the Chinese wording and has no relevance to the English version.]

- This article only sets a standard for or provides more effective monitoring on the laws enacted by the future legislature. It does not seem to be able to monitor those laws which are already in force.

- If the word "through" in Article 38 is interpreted to mean that the legislature will on its own decide which provisions in the covenants will be applicable to Hong

Kong, the restriction imposed on the power of the legislature by this article will weaken.

- This article concerns the power of interpretation of the Basic Law. If the Standing Committee of the NPC frequently exercises this power and interprets the Law according to mainland concepts, the human rights and freedoms of the Hong Kong people will no doubt be affected.
- As the Standing Committee of the NPC has the power of final interpretation of the Basic Law, even if the courts of the Hong Kong Special Administrative Region have the power to decide whether the restrictions stipulated in this article have gone beyond the "necessity", their powers will be greatly diminished.
- Since the courts of Hong Kong will not have the power of final interpretation of the provisions on Hong Kong's internal affairs, if the Standing Committee of the NPC is not satisfied with the interpretation of this article made by a court of Hong Kong, it will provide a new interpretation which will have to be followed by the courts of Hong Kong thereafter.
- As there is, to a certain extent, protection for "public order" and "public safety" in the existing legislation, there is no need to include this article which imposes too many restrictions and is vague in meaning.
- Although Article 39 is put under Chapter III, it may be applied to the provisions in other chapters. This will lead to serious consequences.
- This article denies the contents of Article 38.
- This article is contradictory to Article 38.
- This article violates the provisions in the Sino-British Joint Declaration.

Reason: - Section XIII of Annex I to the Sino-British Joint Declaration states that provisions of the two international covenants as applied to Hong Kong shall remain in force.

2.3 Other views

- In democratic or politically developed countries, there is extensive protection for fundamental human rights and the state authorities are prohibited from abusing their power to infringe upon human rights.
- Too many restrictions on the freedoms of residents will make the residents revolt.

- The kind of restriction provided for in this article is typical of Chinese law.
- Should China consider a certain citizen is no longer qualified to be a "Chinese citizen" of the Hong Kong Special Administrative Region, it may, as it wishes, deprive him of his civil rights "in accordance with law".

3. Suggestions

3.1 Deletions

- This article should be deleted.(Note 39-1)

Reasons: - The ambiguity of this article will lead to the infringement of the rights of residents.

- The first sentence of this article is a duplicate of Article 42.
- The area subject to restriction as prescribed by the second sentence of this article has in fact included the basic domain of the life of residents.
- This article imposes far too many restrictions on the exercise of rights by citizens.
- The existing laws have already maintained an appropriate balance between individual freedoms and public interests.
- If the provisions of the two covenants that are already in force in Hong Kong were incorporated into the Basic Law, the contents of this article would have been a duplicate of Article 4 of the "International Covenant on Civil and Political Rights".
- To be consistent with the deletion of Article 22.(Note 39-2)

- The second half of this article, i.e. the sentence "But such restrictions...of other persons.", should be deleted.

Reasons: - This sentence is so vague that it will be subject to abuse when being interpreted.

- To avoid deprivation of human rights and freedoms as a result of verbal flexibility.
- The part to be deleted is superfluous.
- The part to be deleted may seriously restrict

freedom of the press.

- The part to be deleted will violate the freedoms and rights specified in the first half of this article.
- The part to be deleted is a legislative objective which has nothing to do with the rights and freedoms enjoyed by residents.
- The clause "shall not be restricted unless prescribed by law" should be deleted.

3.2 Rewriting

- It should be rewritten as: "The rights and freedoms of Hong Kong residents shall not be restricted unless prescribed by law, and for the maintenance of national security, public order, public safety, public health and morals, and the safeguarding of the rights and freedoms of other persons in a democratic society."
- It should be rewritten as: "Legislation which abrogates or restricts the rights and freedoms provided for in this chapter shall be void, unless such restrictions have been definitely proven to be those which must be accepted by a free and democratic society."
- It should be rewritten as: "The provisions of the 'International Covenant on Civil and Political Rights' as applied to Hong Kong, which may have legal effect shall have legal effect in the Hong Kong Special Administrative Region. Any part of the laws of the Hong Kong Special Administrative Region which does not comply with the legally effective provisions mentioned above shall be rendered legally void."
- It should be rewritten as: "The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless prescribed by laws. The restrictions on the rights and freedoms safeguarded by the 'International Covenant on Civil and Political Rights' which are applicable to Hong Kong must be in conformity with those laid down by the relevant provisions of the Covenant. The restrictions on other rights and freedoms must be those which are necessary for the safeguarding of national security, public order, public safety, public health, public morals or, rights and freedoms of other persons."(Note 39-3)
- It should be rewritten as: "The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless they are detrimental to or hinder the rights and freedoms of other persons."
- It should be rewritten as: "The rights and freedoms of

Hong Kong residents shall not be restricted unless prescribed by law. The restrictions prescribed by law on the rights and freedoms specified in the 'International Covenant on Civil and Political Rights' and the 'International Covenant on Economic, Social and Cultural Rights' as applied to Hong Kong must be those stated by the relevant provisions of the Covenants. The restrictions prescribed by law on the rights and freedoms not specified in the Covenants shall not go beyond the necessity for the maintenance of national security, public order, public safety, public health and public morals and for the safeguarding of the rights and freedoms of other persons."

- It should be rewritten as: "The rights and freedoms enjoyed by Hong Kong residents which are provided for in the 'International Covenant on Civil and Political Rights' and the 'International Covenant on Economic, Social and Cultural Rights' shall not be restricted."

Reason: - The fundamental human rights of residents and other rights provided for in the international covenants must be given direct legal effect.

- It should be rewritten as: "The rights and freedoms enjoyed by Hong Kong residents shall not be restricted except when a state of emergency has been officially proclaimed. A state of emergency shall be proclaimed by the authorities of the Hong Kong Special Administrative Region when the life of the residents of the Hong Kong Special Administrative Region are under direct and imminent threat. A state of emergency may not exceed seventy-two hours unless extended by the legislature of the Hong Kong Special Administrative Region but such extension shall not exceed one month. Any provisions enforced in a state of emergency involving the infringements of the freedoms of residents shall be narrowly and clearly defined and corresponding to the emergency officially proclaimed, and their justifiability shall be subject to the review of the courts."

Reasons: - The government of the Hong Kong Special Administrative Region may have to take exceptional measures under certain circumstances. The relevant provisions should be more specific and narrowly defined.

- The principles of greatest leniency and least interference should be adopted under all circumstances when applying this article, and prior confirmation should be sought from the court before its application.
- It should be rewritten as: "When examining whether a law is necessary for a democratic society, the documents and

resolutions of the United Nations on human rights, the international covenants on the protection for human rights, the verdicts given by the European Commission on Human Rights and the European Court on Human Rights, the precedents set by other democratic societies, and the principles and traditions for respecting human rights under the common law must be taken as reference."

- It should be rewritten as: "The rights and freedoms enjoyed by Hong Kong residents shall only be subject to justified restrictions prescribed by law. Such restrictions must be those readily accepted by a free and democratic society."

3.3 Amendments

- The term "Hong Kong residents" in the first sentence should be amended to read "persons within the Hong Kong Special Administrative Region".
- The phrase "shall not go beyond the necessity for the maintenance of" should be amended to read "shall only be on those which are detrimental to".

Reason: - The amendment will indicate that as long as the above-mentioned rights and interests are not detrimental to national security etc., they will not be restricted. The expression "detrimental to" carries a passive and negative meaning, i.e. only if a right or freedom really does harm "national security, public order, etc." will it be suppressed by law.

- The term "public health" should be amended to read "environmental health and safety".

3.4 Additions

- The following provision should be added at the beginning of the article: "Hong Kong residents shall enjoy the rights and freedoms prescribed by this Law and other rights and freedoms safeguarded by the laws of the Hong Kong Special Administrative Region."

Reason: - The present provision causes the following confusion: it is not certain whether "the rights and freedoms" mentioned in this article refer to those safeguarded by the Basic Law or those safeguarded by the laws of the Hong Kong Special Administrative Region, or both. The proposed amendment will make it clearer.

- The following provision should be added at the end of the article: "Any restriction should be one which is absolutely necessary for a free and democratic society."

(Democracy here is not interpreted in its political sense.)

- Reasons: - To give substance to constitutional review concerning human rights.
- Through flexible application of this article, different restrictions may be imposed on different rights.
- The wording of this article is similar to that of the restrictive clauses of the "International Covenant on Civil and Political Rights" and the "European Convention on Human Rights", so that the precedents set by other countries may be taken as the basis for interpreting the provisions.
- This is to ensure that the rights enjoyed by and the restrictions imposed on the residents of the HKSAR will not be changed as a result of the transfer of sovereignty.

3.5 Other suggestions

- It is necessary that the limitations on the exercise and operation of certain rights should be either precisely defined, or made conditional upon an objective determination by a court that such limitations are necessary in a democratic society to achieve specified public objectives.
- The "International Covenant on Civil and Political Rights" should be incorporated directly into the Basic Law without revision.

Reasons: - To incorporate entirely into the Basic Law the provisions on the protection of rights under the international covenants.

- To internationalize the standard for human rights protection.
- China should become a signatory to the "International Covenant on Civil and Political Rights" and the "International Covenant on Economic, Social and Cultural Rights".

Reason: - There will be channels for complaints against infringements of the rights of residents.

- A provision should be added to the Basic Law, along the lines of Article 5(2) of the "International Covenant on Civil and Political Rights", stating that no right may be limited or restricted on the grounds that it is recognized

to a lesser extent in the Basic Law or HKSAR law than it is under the Covenants.

Reason: - This would assure that fundamental rights are protected to the fullest degree possible, whether that is under the Basic Law, HKSAR law, or international law.

- This article should be rewritten according to Article 4 of the "International Covenant on Civil and Political Rights" and the provisions restricting individual freedoms.
- The precedents set by the international courts and other countries should be taken as reference for formulating a standard compatible with the international one.
- The wording of the restrictive clause should, as far as possible, be the same as that of the international covenants.

Reasons: - This is aimed at strengthening the influence and binding force of international precedents.

- This is to avoid prevent the relevant authorities from giving up the abundant international precedents for some new interpretation for the purpose of restricting human rights.
- To provide an international standard to the courts in interpreting such vague articles.
- The restrictions permitted should be defined more narrowly in relation to the specific rights guaranteed under the Basic Law.
- It would be clearer and more appropriate to adopt a more narrowly-defined general clause regarding restrictions.

Reasons: - According to the restrictive clause, different provisions may be laid down for different rights.

- This is to save the article from being redundant and repetitive.
- Any laws restricting the fundamental human rights may only be enacted under the circumstances stated in the two international covenants.
- It will be adequate to make relevant amendments to this article should it be found upon comparison that it is in conflict with the two international covenants.
- This article should state clearly the definition of

"necessity" and such definition must be acceptable to a free and democratic society.

- The qualification regarding restrictions on rights and freedoms under Article 39 should apply equally to persons in the HKSAR apart from residents.
- This article should confirm the 48 articles of the covenant already ratified by Hong Kong.
- There should be an appendix to explain clearly such phrases as "national security", "public order", "public health", "public morals" and "the safeguarding of the rights and freedoms of other persons" in order to boost the confidence of the general public.
- The Basic Law should provide clear interpretations of the terms "rights" and "freedoms".
- The definition and rules of "national security" and "public morals" must be laid down by Hong Kong and should not be in accordance with those provided for by the nationwide laws of the PRC.
- The restrictions imposed by this article should be evaluated by an independent judicial organ.
- The list of restrictions on the rights and freedoms of the residents mentioned in this article should be finally decided by the highest legislative power of the Hong Kong Special Administrative Region.

Reason: - Only through such a practice may the spirit of a high degree of autonomy of the HKSAR be realized.

- Reference should be made to the case law, moral code, social practices and conventions currently applicable in Hong Kong, together with any development and changes derived therefrom.

Reason: - This is in order to avoid any radical changes made to the provisions on the restriction of freedoms.

- This article should clearly specify the rights and freedoms enjoyed by residents.

Reason: - The present article is not detailed enough.

- When drafting provisions on human rights in future, the "International Covenant on Civil and Political Rights" and not the present criterion should be adopted as basis.

Reason: - The safeguarding of human rights by the existing

laws of Hong Kong, such as the Public Order Ordinance (Amendment), and the power of the police, have not yet met the expectation of the residents whose rights are frequently subject to harsh restrictions.

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4. Issues to be clarified

- What is meant by "public health"?
- What is meant by "public morals"?
- What is meant by "public safety"?
- What is meant by "national security"?
- What scope does the expression "the rights of other persons" cover?
- Will all rights be subject to the same degree of restriction?
- What does the word "law" refer to in the phrase "as prescribed by law"?
- Does the word "maintenance" imply that the restrictions will not be tightened in future?
- As the power of interpretation of the Basic Law is vested with the Standing Committee of the NPC, will the legislature of the HKSAR be able to avoid enacting laws which violate human rights?
- Will demonstrations and processions caused by politics violate this article?
- Has this article violated the freedoms of residents mentioned in Article 26?
- What does "necessity" mean?
- If a resident of the HKSAR is suspected of having violated the laws on national security or public order, will he be tried in the HKSAR or in other parts of China? Will he have the right to choose to be tried in the HKSAR? If the Central People's Government would like to arrest the above-mentioned suspect, will it arrest him through the government of the HKSAR or will it directly send officials to Hong Kong to arrest him?

1. Original text

The legitimate traditional rights and interests of the indigenous inhabitants of "New Territories" shall be protected by the Hong Kong Special Administrative Region.

2. Views

2.1 Supporting views

- As it is stressed in the Sino-British Joint Declaration that the existing laws and lifestyle will remain unchanged, the legitimate rights and interests of indigenous inhabitants of the New Territories should be incorporated into the Basic Law in order to set people's minds at rest. It can only be beneficial and not detrimental.
- To incorporate into the Basic Law the legitimate traditional rights and interests of indigenous inhabitants of the New Territories totally complies with the spirit of the Sino-British Joint Declaration.
- As the ancestors of indigenous inhabitants of the New Territories lived in the New Territories from generation to generation, their legitimate rights and interests should be respected.
- The burial rights and interests enjoyed by indigenous inhabitants of the New Territories, like those regarding the exclusive use of cemeteries enjoyed by other charitable religious organizations, should be given special protection.
- It is a traditional custom observed for centuries that the land and houses of indigenous inhabitants of the New Territories be inherited by their male offsprings and such a custom is protected under the New Territories Ordinance (Cap. 99) and enforceable by district courts or the Supreme Court.
- It is not necessary to list out in detail the specific policies on the rights and interests concerned.

2.2 Opposing views

- It is contradictory to Article 24.
- Remnants of the unequal treaties should be done away with following the changes brought about by 1997.
- The concept of indigenous inhabitants of the New

Territories originates from the "Convention respecting an extension of the Hong Kong territory" which took effect on July 1 1898. This concept should disappear following the transfer of sovereignty.

- The interests enjoyed by indigenous inhabitants of the New Territories should not be stressed as they are matters concerning the British colonial policies which will no longer exist after Hong Kong is reverted to China.
- The concept of "indigenous inhabitants" originates from the lease of land from local inhabitants by the government through the granting of some ex gratia rights on the piece of land leased. In fact there is no difference between the ceding of Hong Kong Island and Kowloon Peninsula and the leasing of the New Territories only that the inhabitants on the Hong Kong Island and in Kowloon do not enjoy any privileges.
- The distinction of indigenous inhabitants of the New Territories has become blurred as time passes.
- The privileges enjoyed by indigenous inhabitants of the New Territories should not be retained.
- Objection is expressed to the maintenance of the unreasonable system provided for in this article by a constitutional instrument.
- It is unfair to the ordinary inhabitants of Hong Kong.
- Most of the legitimate traditional rights and interests are not enjoyed by female indigenous inhabitants of the New Territories. This causes serious discrimination against women. (Note 40-1)
- The provisions of this article hinder the progress of society.
- These rights and interests will encourage the male indigenous inhabitants to be idle and give up their decent jobs.
- If the legitimate traditional rights and interests of indigenous inhabitants of the New Territories are retained, it will lead to "one system, two policies".
- The safeguarding of the rights and interests of indigenous inhabitants of the New Territories is an exploitation to others.
- It will impose restrictions on the town planning for the development of new towns.
- As regards the small house policy, if a part of the Hong

Kong population is granted "privileges" and hence the right of land usage, the rights of the Hong Kong people at large to land usage will be directly derogated.

- Custom laws should be amended in line with social development and "privileges" should not be given to indigenous inhabitants of the New Territories indefinitely.
- This article is meaningless because the "legitimate rights and interests" of all persons, whether or not they are traditional, should be protected.
- This article is obviously meaningless because it has already been provided for in Article 5 that the rights of residents shall be safeguarded by law, in Article 6 that the rights of property ownership shall be safeguarded, in Article 7 that the land and natural resources shall be owned by the state, and in Article 24 that all Hong Kong residents shall be equal before the law.
- These rights and interests purely involve economic and property rights which have already been provided for under Articles 6 and 128.

2.3 Other views

- It is not stipulated in this article whether the rights and interests of indigenous inhabitants of the "Hong Kong Region" and the "Kowloon Region" are protected in the same way.
- It is questionable whether it is necessary to have such a provision in the Basic Law.
- The laying down of this provision in the Basic Law is based on political consideration.

3. Suggestions

- This article should be deleted. (Note 40-2)

Reasons: - Traditional rights and interests are privileges and not human rights.

- Privileges should not be granted to certain groups of people especially when the usage of land is involved.
- The traditional rights and interests of indigenous inhabitants of the New Territories are conventions of discrimination against women. The Basic Law should not protect or encourage such outdated and unfair traditions.

- These legitimate traditional rights and interests are already outdated.
- These rights and interests are remnants of feudalism. To have them retained is retrogressive.
- These rights and interests are incongruous with modern China.
- These rights and interests should be abolished in 1997.
- It is not worthwhile to retain the rights and interests of indigenous inhabitants of the New Territories in order to encourage these inhabitants to stay in Hong Kong and contribute.
- Indigenous inhabitants of the New Territories have not contributed significantly to the development of Hong Kong, thus they should not enjoy privileges.
- After 1997, indigenous inhabitants of the New Territories should not be distinguished from other inhabitants.
- As the urbanization of the New Territories progresses, indigenous inhabitants are same as any other residents of Hong Kong.
- The deletion of this article will give equal treatment to inhabitants of the New Territories and other inhabitants.
- This article will create conflicts among social classes.
- This article does not meet the needs of the development of Hong Kong.
- The safeguarding of the relevant traditional rights and interests of indigenous inhabitants of the New Territories has already been provided for under Article 128 in Chapter V. It is not necessary to repeat the provision in this chapter.
- This article is contrary to the principle upheld all along by the Chinese Government of not recognizing any of the three unequal treaties.
- It is inappropriate to lay down in a

constitutional instrument customs practised by certain groups of people.

- The rights and interests acquired by indigenous inhabitants from building small houses will affect the land revenue receivable by the Government.
- The small houses of indigenous inhabitants are exempt from property tax, land tax and rates. Government revenue in these respects will be reduced.

3.2 It is agreed that the rights and interests of indigenous inhabitants of the New Territories should be safeguarded but the present wording should be amended as follows:

3.2.1 Rewriting

- "The legitimate traditional rights and interests of indigenous inhabitants living in areas north of (the existing) Boundary Street and south of the Shenzhen River shall be protected by the Hong Kong Special Administrative Region."

Reason: - After China's resumption of sovereignty over Hong Kong, the term "New Territories" should not be found in the Basic Law.

- "In accordance with the other rights provided for in Chapter III of the Draft, the legitimate traditional rights and interests enjoyed by indigenous inhabitants of the New Territories shall be protected by the Hong Kong Special Administrative Region."
- "The legitimate rights and interests of inhabitants of a village previously established and their descendants shall be protected by the Hong Kong Special Administrative Region."

Reasons: - The definition of the term "New Territories" is vague. The term "New Territories" originates from the "Convention respecting an extension of the Hong Kong territory--June 9, 1898" signed between the Chinese and British Governments. It covers the area north of Boundary Street and south of the Shenzhen River, including all outlying islands. However, under the present division of administrative districts, the area south of the Lion Rock and north of Boundary Street, where there are villages previously established and indigenous inhabitants, have not been regarded as part of the "New Territories".

- The term "indigenous inhabitants" is inconsistent with the expression used in Article 128.

- "The legitimate traditional rights and interests of indigenous inhabitants of the New Territories shall be recognized and protected by the government of the Hong Kong Special Administrative Region."

- "The legitimate traditional rights and interests of indigenous inhabitants of the New Territories under the existing New Territories Ordinance shall be protected by the Hong Kong Special Administrative Region."

- "The legitimate and traditional customs, rights and interests of indigenous inhabitants of the New Territories shall be protected by the Hong Kong Special Administrative Region."

Reason: - Traditions are different from customs; the rural customs of indigenous inhabitants should be protected.

- "Before any village or town in the 'New Territories' reaches the same level of development as that of ordinary urban areas of the Hong Kong Special Administrative Region, the traditional rights and interests of indigenous inhabitants shall be protected by the laws of the Hong Kong Special Administrative Region."

Reason: - At present, the traditional rights and interests of indigenous inhabitants of the New Territories are put into effect only by administrative means and not through legal provisions.

- "The legitimate and traditional rights and interests of indigenous inhabitants of the New Territories are entitled to protection by law."

Reason: - According to the present wording, indigenous inhabitants of the New Territories have the right to demand the government of the HKSAR to protect their rights through legislation. This is unfair to other residents.

- "The legitimate and traditional rights and interests of indigenous inhabitants of the New Territories shall be protected by the laws of the Hong Kong Special Administrative Region."

- "The legitimate and traditional rights and interests of indigenous inhabitants of the New Territories shall be protected by the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region may, in the light of social development, amend these rights and

interests in accordance with legal procedures."

- "The legitimate rights and interests of indigenous inhabitants of the New Territories shall be protected by the Hong Kong Special Administrative Region."

Reason: - With the word "traditional" deleted, the ideological influence of some of the feudal traditions may be averted, putting into practice equality for men and women.

- "The justified, legitimate traditional rights and interests of indigenous inhabitants of the New Territories shall be protected by the Hong Kong Special Administrative Region."

3.2.2 Additions

- The following provision should be added: "Female indigenous inhabitants of the New Territories shall enjoy the same rights as male indigenous inhabitants and have the right to inherit property and land."
- The following provision should be added at the end of the article: "Indigenous inhabitants of the New Territories and their spouses residing abroad are entitled to permanent residence and work in Hong Kong."

Reason: - Under the provisions of Article 23, indigenous inhabitants who have acquired foreign passports are required to apply for their right of abode in Hong Kong in accordance with the relevant provisions. However, under the existing policy, their applications to return to Hong Kong to live or work do not present any problems.

3.3 Objection is expressed to the protection of the rights and interests of indigenous inhabitants of the New Territories alone. The following amendments have been proposed:

- It should be amended to read: "The legitimate rights and interests of all indigenous inhabitants shall be protected by the Hong Kong Special Administrative Region."

Reasons: - After 1997, Hong Kong residents, including those living in the "New Territories", "Kowloon" and "Hong Kong", should enjoy the equal legal status.

- The term "New Territories" should be amended to "Hong Kong".

Reason: - The legitimate rights and interests of all indigenous inhabitants should be protected and should not be confined to those of indigenous

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3.4 Other suggestions

- The legitimate rights and interests of indigenous inhabitants of the New Territories should be protected by means of legislation in future.
- The legitimate rights and interests of indigenous inhabitants of the New Territories should be protected under the principle that there should be no inequitable privileges and interests.
- The rights and interests of indigenous inhabitants of the New Territories should be changed gradually.

Reason: - As a great number of urban dwellers are moving to the New Territories, the proposed amendment will avert unfairness and class distinction.

- The rights and interests of indigenous inhabitants of the New Territories should be deemed a flexible policy which needs not be incorporated into the Basic Law.
- The identity, rights and interests of Hong Kong and New Territories inhabitants residing in Britain, as well as those of their descendants, should be listed in the form of an annex.
- The legitimate traditional rights and interests of indigenous inhabitants of the New Territories should be confined to Hong Kong permanent residents of Chinese nationality and should exclude those who have emigrated abroad.

Reason: - To avert inequality among residents.

- It should be provided by legislation that women have the right to inherit estate and that men and women shall both enjoy the right to be allocated a small house.
- The provision on equality for men and women should be applicable to this article.
- The meaning of the phrase "traditional rights and interests" should be defined.
- The legitimate rights and interests of indigenous inhabitants of the New Territories and the related policies should be listed in detail.
- Indigenous inhabitants of the New Territories who have acquired foreign nationality are required to take Hong Kong as their place of permanent residence and reside in Hong Kong for a consecutive period of seven years before

they can be qualified as permanent residents of the HKSAR. However, according to the present practice, indigenous inhabitants of the New Territories who have been naturalized as British may still enjoy their right of abode in Hong Kong even though they have emigrated to Britain. Thus, these people's traditional relationship with Hong Kong may be considered a condition for them to acquire permanent residence in Hong Kong.

- The rights and interests of the children of indigenous inhabitants of the New Territories, such as whether overseas Chinese may, upon their return to Hong Kong, have the right of abode and entry, or the right to hold special passport or resident identifications.
- It has been suggested that the provisions of this article should be presented in an annex and not the constitutional instrument itself.

Reason: - These rights and interests only belong to a small group of people.

- The right to inherit land and small houses should be clearly specified.
- The status of Heung Yee Kuk should be dealt with in the chapter on "Political Structure" in the Draft Basic Law for Solicitation of Opinions.
- Those who made their living by fishing along the coast of the New Territories should restore their identity as indigenous inhabitants and should enjoy the same rights and interests as those of other indigenous inhabitants.

4. Issues to be clarified

- May indigenous inhabitants of the New Territories who have acquired foreign nationality enjoy the rights and interests provided for in this article?
- May the children of indigenous inhabitants of the New Territories residing abroad acquire HKSAR passports after 1997?
- Is there any difference between "protected by the Hong Kong Special Administrative Region" and "protected by law"?

Article 41

1. Original text

Persons in the Hong Kong Special Administrative Region other than Hong Kong residents shall, in accordance with law, enjoy the rights and freedoms of Hong Kong residents prescribed in this Chapter.

2. Views

2.1 Supporting views

- Support is expressed for the provisions of this article.
- This article is a special supplement to Article 24. Since the identity of persons other than Hong Kong residents is special, this supplement is therefore necessary.
- The rights and freedoms enjoyed by persons other than Hong Kong residents are confined to those provided for in this chapter.

2.2 Reservations

- The way in which this article is written will enable the legislature to deprive the rights of those who are not residents of Hong Kong.
- The restriction imposed on the legislature under Article 39 is not applicable to non-residents of Hong Kong because it will affect the international status of Hong Kong.
- If persons other than Hong Kong residents "shall, in accordance with law, enjoy the rights and freedoms of Hong Kong residents prescribed in this Chapter", then the rights enjoyed by Hong Kong residents will not be different from those enjoyed by persons other than Hong Kong residents.
- No society will unconditionally allow persons other than local residents to enjoy the same rights and freedoms as those of local residents.
- If "persons other than Hong Kong residents" include those who are temporarily residing in, visiting, or on business trip to Hong Kong, there will be conflicts with the rights of Hong Kong residents.

2.3 Other views

- It has not been mentioned whether persons other than residents of the HKSAR will enjoy the right of private ownership of property.

- There are fundamental human rights which should be enjoyed by all, whether they are residents or not.
- If persons other than Hong Kong residents are only not entitled to vote or to stand for election, the phrase "in accordance with law" will impose too many restrictions on the rights of these persons.

3. Suggestions

- This article should be deleted.

Reasons: - It is highly inappropriate to let persons other than Hong Kong residents enjoy the rights and freedoms of Hong Kong residents prescribed in Chapter III.

- This article repeats the provisions of Article 5 in Chapter I which states: "The Hong Kong Special Administrative Region safeguards the rights and freedoms of the residents and other persons in the Region in accordance with law."
- The provisions of Chapter III should apply (with appropriate exceptions in order to safeguard the political rights of permanent residents) to all persons within the jurisdiction of the HKSAR and not only to HKSAR residents.
- The meaning of this article is vague.

3.1 Rewriting

- It should be rewritten as: "Persons other than Hong Kong residents shall, in accordance with law, enjoy the rights and freedoms of Hong Kong residents (except the rights to vote and to stand for election, and the freedom of entry and exit) prescribed in this Chapter."
- It should be rewritten as: "Persons other than Hong Kong residents shall, in accordance with law, enjoy the rights and freedoms of Hong Kong residents (except the rights to vote and to stand for election) prescribed in this Chapter."
- It should be rewritten as: "Persons in the Hong Kong Special Administrative Region other than Hong Kong residents shall, in so far as applicable, enjoy the rights and freedoms co-extensive to those of Hong Kong residents as prescribed in this Chapter."
- It should be rewritten as: "Persons in the Hong Kong Special Administrative Region other than Hong Kong

residents shall enjoy the rights and freedoms of Hong Kong residents prescribed in this Chapter, except for the right to vote under Article 25, the right to the choice of occupation under Article 32 and the right to social welfare under Article 35."

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- It should be rewritten as: "Persons in the Hong Kong Special Administrative Region other than Hong Kong residents shall have their personal rights and freedoms protected by law."

3.3 Other suggestions

- Persons other than Hong Kong residents should enjoy the rights specified under Articles 24, 26, 27, 28 and 29 in order to be in conformity with the provisions of Article 5.
- Hong Kong residents should enjoy the rights to reasonable wage and remuneration, and to equal pay to men and women for equal work.
- "Persons other than Hong Kong residents" may not enjoy the rights to vote and to stand for election.
- It should be stipulated that "legal persons" shall also have the rights and duties of the Hong Kong Special Administrative Region.
- The connotation of "in accordance with law" and "the rights and freedoms of persons other than Hong Kong residents" should be further elaborated in order to enable the Hong Kong public to further express their opinions.
- Consideration should be given to whether or not to allow refugees to enjoy the rights and freedoms of Hong Kong residents.

4. Issues to be clarified

- What is meant by "persons other than Hong Kong residents"? Do they include illegal residents or illegal immigrants? Or do they refer to tourists visiting Hong Kong?
- Does the expression "persons other than Hong Kong residents" refer to those "non-permanent residents of Hong Kong"?
- Is the expression "persons other than Hong Kong residents" interpreted in its broad sense to include "legal persons"?
- Should the rights of "persons other than Hong Kong residents" be subject to more restrictions than those of Hong Kong residents?

Article 42

1. Original text

Hong Kong residents and other persons in Hong Kong shall have the obligation to abide by the laws of the Hong Kong Special Administrative Region.

2. Views

2.1 Supporting view

- This article in fact covers a lot. Its details will be provided for by legislation.

2.2 Opposing views

- This article is the irony of this chapter.
- This article may be taken as a basis for depriving the law offenders of their rights.
- The intention of including an article which stipulates an obligation acceptable to all is vague.
- Hong Kong residents should not abide by the laws of Hong Kong alone and pay no attention to the nationwide laws of China.

2.3 Reservations

- The need for this is unclear, and its inclusion may suggest that if a person is in breach of it, then he would no longer be assured of the protection of his other rights under the Basic Law.
- The acceptance of this clause does not by itself impose any real obligation.
- It seems that the term "other persons" does not include legal persons and members of the garrison. All rights and freedoms contained in Chapter III are hinged on the concept of Hong Kong residents. Accordingly, when the term "other persons" is used as opposed to Hong Kong residents, it should probably be confined to natural persons. This is unfortunate as there is no reason why a legal person should not receive constitutional protection of its freedom of expression or right to judicial remedies.

2.4 Other views

- Right and obligation are parallel to each other.
- The persons referred to in this article should include the

Chief Executive, and members of the legislature and executive authorities.

3. Suggestions

3.1 Rewriting

- It should be rewritten as: "Hong Kong residents have the obligation to abide by the nationwide laws of their country and the laws of the Hong Kong Special Administrative Region."
- It should be rewritten as: "Hong Kong residents and other persons in Hong Kong have the obligation to maintain national unity, support the Central People's Government, and abide by the laws of the Hong Kong Special Administrative Region."
- It should be rewritten as: "Chinese nationals who are permanent residents of the Hong Kong Special Administrative Region have the obligation to pledge allegiance to their country and its people, and to maintain national unity; other persons residing in Hong Kong have the obligation to abide by the laws of the Hong Kong Special Administrative Region."
- It should be rewritten as: "Hong Kong residents and other persons in Hong Kong have the obligation to abide by the laws of the Hong Kong Special Administrative Region, including the laws on the maintenance of national unity."

3.2 Additions

- The following provision should be added: "Chinese nationals in Hong Kong have the obligation to defend the security, honour and interests of their country, and must not perform acts which undermine the security, honour and interests of their country."

Reason: - To get rid of the worry caused by Article 22.

- The following provision should be added: "All permanent residents of Hong Kong, whether or not they are of Chinese descent, must pledge allegiance to the Hong Kong Government, and must not undermine or alter the capitalist system and lifestyle of Hong Kong."

Reasons: - This is one of the obligations of residents.

- This will ensure that capitalism will not be influenced by the extreme leftists in Hong Kong.

3.3 Other suggestions

- It should be stipulated that "legal persons" shall, in accordance with law, also have the rights and obligations of the Hong Kong Special Administrative Region.
- It should be provided that the Chief Executive, and members of the executive authorities and legislature also have the obligation to abide by law.
- It should be spelt out in this chapter the obligations to be fulfilled by residents. It should not be assumed that residents will abide by law automatically.
- The nationwide laws to be observed by residents of Hong Kong should be incorporated in detail into the Basic Law.
- Since Hong Kong is a part of China, Hong Kong residents should fulfil the obligations of Chinese nationals.
- The obligations to be fulfilled by Hong Kong residents who are Chinese nationals should be specified.
- Hong Kong residents have the obligation to serve their country.
- Hong Kong residents have the obligation to loyally uphold and support the wise decisions of the Central People's Government.
- Hong Kong residents have the obligation to pledge allegiance to the Central People's Government.
- Hong Kong residents have the obligation to safeguard national security and public order, maintain public health and public morals, and so on.
- Hong Kong residents have the obligation to respect and not to infringe upon the rights, honour or dignity of others.
- Hong Kong residents have the obligation to bear military expenses.
- It should be clearly stated whether Hong Kong residents will have to perform military service.
- Hong Kong residents have the obligation to perform military service.
- Hong Kong residents should be exempt from military service.
- Hong Kong residents have the obligation to be voluntarily drafted.
- The study and application of Putonghua and simplified characters should be stipulated as an obligation of Hong

Kong residents.

4. Issues to be clarified

- Why do we need this article?
- Why should this article provide for an obligation which is acceptable to all?
- This article provides that Hong Kong residents and other persons in Hong Kong have the obligation to abide by the laws of the Hong Kong Special Administrative Region. Does it mean that there is only an obligation and no right?
- Is "other persons" interpreted in its broad sense to include "legal persons"?

OVERALL COMMENTS ON CHAPTER IV

1. Titles

1.1 The Chief Executive

The title "Chief Executive" is unsuitable.

Reason: - Political leaders around the world are normally given the title of president, premier, or chairman.

The Chief Executive of the HKSAR can be given the title of:

(1) "Governor"

Reason:- The present international prestige and status of Hong Kong would therefore not be affected.

(2) "Chairman of the HKSAR" or "Regional Head of the HKSAR".

Reasons: - The Chinese equivalent of the term "the chief" is a Japanese form of appellation.

- Of the Chinese official posts, the title "the chief" is usually used in the war arena, but the HKSAR is not going to be an area under military control.

- Implicit in the title "the chief" is the meaning that the lower ranks are commanded by the upper level.

(3) Governor, Chairman, Commissioner, Regional Head, Executive Head or Premier.

(4) Chief Secretary of Administration, Regional Head, Mayor or Governor.

Reason: - This is more suited to Chinese culture and traditional practices.

1.2 The Legislative Council

- Two alternative suggestions for the title of the Legislative Council. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the English translation.]

1.3 The Executive Council

- An alternative suggestion for the title of the Executive Council. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the English translation.]

1.4 Public Servants

- The Chinese version of the term "public servants" in section 6 of Chapter IV and the Chinese version of the term "public servants" in Article 48 (7) of Chapter IV are inconsistent. A uniform term should be used.

1.5 The Government

- The definition of "government" should be consistent throughout the entire Draft Basic Law.
- The definitions of "Government", "the executive authorities", and "the Executive Council" are unclear.

1.6 The Heads of the Government Departments

- A suggestion to make the titles of heads of government departments uniform. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the English translation.]

2. Rewriting of Articles

- Articles 50, 52, 72, 73 and 75 should be merged and rewritten as the following four articles:

"Although the Chief Executive has the power to refuse to sign a bill passed by the Legislative Council, rendering it ineffective, if the Legislative Council again passes the original bill by no less than a two-thirds majority, the Chief Executive shall be required to sign it. If the Chief Executive does not sign the bill within one month after it is passed, and does not exercise his power of refusing to sign, the original bill shall automatically come into effect.

"The Chief Executive's power to dissolve the Legislative Council may be exercised only when the Legislative Council refuses to pass a budget presented by the executive authorities. If the new Legislative Council still refuses to pass the budget of the executive authorities, the Chief Executive shall resign.

"The Legislative Council has the power to pass a vote of no confidence against the Chief Executive through a resolution by two-thirds of its members, and shall report such a vote to the Central People's Government for the removal of the Chief Executive.

"Members of the Legislative Council may, in accordance with the provisions of this Law and legal procedures, individually or jointly introduce bills, including those relating to public expenditure, government policies, and the structure and operation of the government."

3. Budget and Final Accounts

- The budget and appropriation bill should be submitted annually. There should be a specified period for consideration and comment with the possibility of proposed amendments by the Legislative Council before the formal approval procedure.
- The Basic Law refers to "final accounts" in Articles 48, 62 and 72, but the meaning of the term is unclear.
- The precise meaning of "final accounts" should be given. In this way, questions such as their presentation and acceptance can be resolved. The following suggestions are proposed:
 - (1) Accounts should be submitted periodically in the same format and gazetted, as at present.
 - (2) The findings of the government auditors (Article 58) should be made public.
 - (3) There is no point in accounts being approved or rejected. The accounts reflect what has happened, which is a thing of the past and cannot be changed. The power of remedy lies in the approval procedures for future budgets.
 - (4) There should be a select committee of the Legislative Council for scrutinizing the annual accounts and reports of the Auditor General.
 - (5) The Legislative Council should have the power to summon and question the Auditor General and other Department Heads.
- Article 50 contradicts Article 72 in that if the Legislative Council does not approve the budget as presented, it faces dissolution.

Reason: - Article 72 empowers the legislature "to examine and approve budgets and final accounts". The Basic Law not only should clearly state that the legislature has the right to amend the budgets, but should also state that the Chief Executive shall not have the power to dissolve the Council when the budget is not accepted. Article 51 should therefore be amended to allow the Chief Executive to approve short-term funding at the

level of the previous fiscal year should the passage of the budget be delayed by the process of debate.

4. The Selection of the Chief Executive and the Formation of the Legislative Council
- The methods of selecting the Chief Executive and of constituting the Legislative Council as prescribed in the Annexes are in the main leaning towards conservative prerogative politics. The alternatives listed are contradictory to the resumption of sovereignty over Hong Kong and to the ideals of political democratization.
 - In Article 45 and Paragraph 3 of Article 67, the direction in which the political structure will develop should be clearly indicated. It should also be stated that the legislature of the HKSAR shall have the power to conduct necessary reviews and make necessary amendments from time to time.
 - Changes in the methods of selecting the Chief Executive and of constituting the Legislative Council should be in accordance with the wishes of Hong Kong residents. Thus, such changes should only be reported to the NPC for the record, not for approval.
 - The methods of election are detailed in some of the presented alternatives, but only briefly outlined in others. This will affect the decision of Hong Kong residents in making their choices. A more uniform presentation will help the public understand the issue better.
5. Elections
- In elections involving more than two candidates as referred to in the Annexes, the ballot system currently used by the Legislative Council and district organizations whereby election is based on the number of votes gained should be adopted.
 - The simplest and fairest method of election is that all qualified voters, regardless of sex or nationality, shall be eligible for all official posts provided that they have reached 21 years of age and have resided in the territory for more than 21 years. This suggestion also applies to Articles 25, 35, 70, 88, 91 and 100.
 - All Hong Kong residents who have resided in Hong Kong for seven years should have the right to vote and the right to stand for election regardless of their nationality.
6. Impeachment of the Chief Executive and dissolution of the Legislative Council

- Since both the Chief Executive and the Legislative Council will be returned by election, neither should be stripped of their power as a result of a political deadlock. A more appropriate solution would be to decide a bill in dispute by means of referendum.

7. Supervision

- A supervisory committee should be established within the government structure of the HKSAR.

Reasons: - This is necessary to assist the Chief Executive in supervising the normal functioning of government organs at various levels and for receiving complaints from members of the public against these organs.

- The setting up of such a committee will help avoid or minimize bureaucratic practices of "shirking responsibility" and "shielding each other" and thus help maintain the HKSAR government's democracy and integrity.
- A supervisory committee should be set up under a "Hong Kong People's Congress". It should be called the "Supervisory Council" and its powers and functions should include the following:
 - (1) To supervise the executive authorities in matters of taxation and public spending.
 - (2) To propose to the Hong Kong People's Congress motions of impeachment against public servants (of the judicial, legislative and executive branches of the government) who neglect their duty. If members of the Supervisory Council neglect their duty, the heads of government departments should be able to report them and the Hong Kong People's Congress should be responsible for carrying out the impeachment.
 - (3) The powers and functions detailed in Paragraph (8) of Article 72 should be handled by this Council.
 - (4) To bring charges in respect of any serious breach of law or dereliction of duty on the part of the Chief Executive and, in conjunction with the Legislative Council, to initiate a motion of impeachment at the Hong Kong People's Congress and report the motion to the Central People's Government for a decision.
 - (5) To oppose or veto legislation proposed by the Legislative Council and put right the inappropriate deeds of members of the Legislative Council.

The Supervisory Council should be able to check and balance the extensive powers of the members of the Legislative Council after 1997. For instance, it should be able to restrain legislators from making defamatory remarks or reprimand the Speaker in respect of his/her actions.

- An ombudsman's office should be established to handle potential abuse of power by public servants and by judicial or legislative organs.
- An independent department which is responsible for supervision and impeachment of public officials should be established to receive and act on complaints and suggestions by members of the public. It should be vested with the power of investigation and impeachment and the department head should be able to refer cases either to the Speaker of the Legislative Council or the courts. If the complaints are verified as true after investigation, the accused should be reprimanded and punished, or removed from office and prosecuted, depending on the seriousness of the case. This will serve as a deterrent against corrupt officials.
- The Basic Law must clearly stipulate that Hong Kong people may form their own HKSAR government and may restrict, redefine or withdraw the power vested in the Chief Executive and public officials of the HKSAR.
- Under the Basic Law, members of the public do not have the power to remove the Chief Executive from office. This puts the public under a power structure which is beyond their supervision.
- The Basic Law should state that Hong Kong people will have the right to veto legislative decisions through referendum. The relevant provision might read as follows: "Legally-registered voters of the HKSAR may, through a jointly-sponsored motion (the legal provisions should perhaps stipulate that this motion must be brought by at least 15% of such voters), require the holding of a referendum through which bills or laws passed by the legislature can be vetoed."

8. Qualifications of government officials

- Public servants as well as members of the Legislative Council and the judiciary should be required to possess the same qualifications as those prescribed for the Chief Executive. However, the minimum age requirement should be set as follows: 21 for public servants, 35 for Secretaries and Commissioners, and 30 for members of the Legislative Council and the judiciary. The retirement age should be set at 65.

- The future Chief Executive and senior officials of Hong Kong should be required to fulfil the following:
 - (1) They must pledge their allegiance to the PRC and be accountable to the people of Hong Kong.
 - (2) Besides possessing the necessary academic qualifications, they must also have administrative ability and experience and have a solid knowledge of Chinese and world affairs.
 - (3) They must be fluent in Putonghua.
 - (4) They must have the trust of leaders of the Central People's Government.
 - (5) They must not say anything that may harm the Chinese people or be detrimental to the reputation of Hong Kong.
 - (6) They must not be Hong Kong people who hold foreign passports.
- The ideal requirement would be that the Chief Executive, members of the Executive Council, the President of the Legislative Council and the principal officials must be permanent residents of the HKSAR who are Chinese nationals.

9. Other views

- For the Basic Law and the HKSAR, the NPC should be the ultimate and only source of power. This suggestion also applies to Articles 11, 12, 13, 14, 17, 18, 21, 43, 45, 48, 62, 95, 131, 133, 135, 137, 140, and 158 to 165.
- It should be specified where deputies to the NPC stand in relation to the government structure of the HKSAR. For instance, it is not clear whether or not the roles of the deputies to the NPC and those of members of the Legislative Council are parallel and mutually non-interfering. Coordination and checks between the roles of these two groups of representatives will be of tremendous importance to the political stability of the HKSAR when deputies to the NPC and members of the Legislative Council disagree on bills or issues at meetings.
- The concept of "governing by doing nothing that goes against nature" should be upheld.
- When Hong Kong reverts to China, it should seek conformity with China in terms of political structure. A "Hong Kong People's Congress" which represents all local organizations should therefore be established. Heads of

statutory organizations with a history of 30 years or more who are patriotic intellectuals and have resided in Hong Kong for at least 25 years should become ex-officio members of the Standing Committee of the "Hong Kong People's Congress". These intellectuals who have long resided in Hong Kong and have an intimate knowledge of the conditions in Hong Kong will be more desirable than petty politicians with undeserved reputation because the former will have the interests of the people and the nation in mind. Deputies to the "Hong Kong People's Congress" should be elected by all organizations and their qualifications will be clearly laid down. This most impartial body will definitely bring about political harmony in Hong Kong.

- The supreme heads of the executive, judicial and supervisory authorities should be elected or selected through consultation by Hong Kong residents and the nominations reported to the Central People's Government for appointment. Principal officials should be nominated by the heads of these three authorities and appointed or employed with the approval of the Central People's Government. In this way, the three top officials will be able to work in coordination.
- There are repetitions and ambiguities in the present Draft Basic Law. For instance, there is no need to stipulate in the Basic Law that the Chief Executive, the department heads and other officials must be persons of integrity and must fulfil their duty. Also, the term "principal officials" should be more clearly defined. Otherwise people in the professional fields who are not Chinese nationals will be shut out in the cold.

10. Issues to be clarified

- When designing the future political structure, should the management councils which are already in existence or are being set up by the Hong Kong Government be incorporated into the framework of the executive authorities?
- Is it necessary for Hong Kong residents to share the political views of the Chinese Government?

OVERALL COMMENTS ON SECTION 1 OF CHAPTER IV

1. Views

1.1 Title

- Since the Chief Executive will be elected, the use of the Chinese term which means "chief" is undesirable.
- There is no need to change the title of the "Governor of Hong Kong" to that of "Chief Executive" after 1997. The term "gang-du" which is the Chinese equivalent of "Governor of Hong Kong" is actually a Chinese appellation and there is nothing intrinsically English about it.

1.2 Role

- As laid down in Articles 43 and 60, the Chief Executive will be the top representative and leader of the HKSAR.
- The Chief Executive will be the key figure in the organizational structure of the HKSAR. He/she must be vested with sufficient power so that he/she can represent the HKSAR and lead the government. He/she must also be subject to effective supervision to facilitate the formation of a HKSAR government in which there is tripartite division of power, cooperation and mutual checks and balances.
- If the Chief Executive is selected through open and democratic means, the electoral process itself should be able to guarantee that the appointee will be a trustworthy leader who is knowledgeable about the affairs of the HKSAR. He/she will be ultimately responsible for all government matters. There is thus no need to subject him/her to powerful checks and balances from members of the executive authorities.
- The Chief Executive will be playing two potentially conflicting roles. He/she will represent the HKSAR as a whole and will be the person who is ultimately responsible for the exercise of executive power in the HKSAR. As his/her first priority should be to properly fulfil his/her role as the overall representative, his/her responsibility in the exercise of executive power should, as far as possible, be limited to personnel matters.
- The Chief Executive should also act as the President of the Legislative Council and the executive authorities. He/she should be accountable to the Central People's Government in all his/her actions.
- The Chief Executive must have the respect and trust of the Central People's Government. This is the only way in

which dialogue will be possible.

- The Chief Executive should be accountable to both the Central People's Government and the HKSAR, and should abide by the law and accept constructive criticism.
- It should be stipulated that the Chief Executive shall have the rank of either a mayor or provincial governor. Judging from the importance of the post, perhaps the rank of provincial governor will be more appropriate.

1.3 Qualifications

1.3.1 The requirements and powers and functions detailed in Article 48 are not binding on the Chief Executive. The following suggestions have been put forward as possible qualifications for the future Chief Executive:

(1) Basic personal qualifications:

- Be between 45 and 65 years of age;
- Be male;
- Be a locally born and bred resident with roots in Hong Kong;
- Has resided in Hong Kong for more than 20 years;
- Has received education at university level or above;
- Possesses recognized academic qualifications or experience;
- Be able to speak Cantonese;
- Has a clean background;
- Has moral integrity;
- Be a respected mainland democratic personage who embraces liberal ideas;
- Has rich administrative experience;
- Has ability and prestige and be able to win the trust and support of the public;
- Be selfless, fair-minded and unbiased;

(2) Ability to serve Hong Kong:

- Be able to put the interests of Hong Kong people above all else;

- Has an intimate knowledge of Hong Kong;
- Has the sense of belonging as a local resident;
- Has the ability to maintain stability and prosperity in Hong Kong;
- Be able to improve Hong Kong's investment environment;
- Be knowledgeable about Hong Kong's industrial and business sectors;

- Be able to improve the living standards of residents;

(3) Ability to act as a bridge between China and Hong Kong:

- Has a profound understanding of Chinese culture;
- Be able to communicate with the Central People's Government;
- Be able to advise and assist the Chinese government in its efforts to improve its economy;
- Be knowledgeable about Chinese and Hong Kong affairs;
- Be familiar with the workings of capitalism and communism;
- Be familiar with Hong Kong, Chinese and international laws;
- Has the ability to cement better ties between the governments and peoples of China and Hong Kong and make contributions to China's four modernizations;
- Has the ability to make contributions towards the unification of China's territory;
- Be able to implement the provisions of the Joint Declaration;

(4) Ability to compromise:

- Be able to develop and maintain good relations with foreign countries and to promote Hong Kong's export trade;
- Be able to mediate between different interests and solicit the help and advice of overseas Chinese;
- Be able to ease tension, calm agitation and bring about unity in times of conflicts;

- Be able to correctly handle all kinds of social contradictions;
- Be able to remain impartial and refrain from favouring one class or sector at the expense of the others so as to maintain an equilibrium between different interest groups.

1.3.2 The elected Chief Executive should:

- Have his/her names submitted to the Central People's Government for appointment.
- Resign all public and private offices previously held.
- Declare his/her property and source of family income in order to prevent corruption.
- Sever all links with private enterprises so as not to affect the discharge of his/her administrative duties.

1.3.3 A "Selection Committee" should be established to screen candidates for the post of Chief Executive. The composition of this 35-member committee should be as follows:

Representatives of the electoral college	5 seats
Deputies to the NPC and members of the National Committee of the CPPCC	3 seats
Representatives of the legislature	10 seats
Representatives of the judiciary	3 seats
Representatives of the Urban and Regional Councils and the District Boards	3 seats
Representatives of non-governmental organizations	11 seats

1.4 Power

- The Chief Executive should be vested with real power.

Reasons: - This is necessary to maintain the efficiency of the government.

- This is necessary to ensure his/her authority.

- While it is undesirable for the Chief Executive to hold power in the current colonialist form, he/she should be vested with real power as detailed in Article 48. Excessive constraints on the Chief Executive's power by the Legislative Council will also be undesirable.
- The powers and functions to be exercised by the Chief Executive under the provisions of Article 48 and Articles 55 to 58 are quite substantial. He/she will thereby have a sufficient power base to represent the HKSAR and lead

the government.

- Under the present provisions, the Chief Executive will be too powerful, since he/she will have ultimate control over the legislature and the Executive Council.
- Since the Chief Executive will have absolute control over the Executive Council, he/she will be a replica of the dictatorial colonial governor.

Reasons: - He/she will have the power to appoint members to the Executive Council.

- The Chief Executive will be able to have his/her own way when he/she does not accept the majority view of the Executive Council. All he/she will have to do is to put his/her specific reasons on record.
- If the Chief Executive is too powerful, it will be difficult for the legislature to exercise effective monitoring.
- The Draft Basic Law proposes giving enormous powers to the Chief Executive. This will be acceptable provided that the Chief Executive is openly elected by all Hong Kong people and there are adequate checks and balances by the legislature and the judiciary.
- The Basic Law confers special privileges on the Chief Executive. For instance, the Chief Executive will be allowed to keep secrets about his property holdings; he/she will not be prosecuted except in the case of serious breach of law; and he/she will be able to restrict the introduction of certain bills by members of the Legislative Council.

1.5 Source of power

- The executive power of the Chief Executive should come from the Central People's Government.
- The power of the Chief Executive should be placed in the hands of the liberals.

1.6 Acceptance of supervision

- The Chief Executive should accept supervision.
- The Chief Executive should be accountable to the legislature.
- Under the provisions of Article 50 and Paragraphs (2) and (3) of Article 52, the Legislative Council will not have sufficient authority to check and balance the power of the

Chief Executive.

Reason: - These provisions cover the following situations:

- (1) The Legislative Council refuses to pass bills which the Chief Executive hopes to see passed.
- (2) The Chief Executive refuses to endorse bills which the Legislative Council hopes to see endorsed.

In the first situation, the Chief Executive may amend the bill in dispute and present the amended bill to the new Legislative Council. If the new Legislative Council again refuses to pass the bill, the Chief Executive will not be required to resign and will be able to extricate himself/herself from the dilemma by withdrawing the bill. In the second situation, there will, theoretically speaking, be considerable checks and balances on the powers of the Chief Executive. However, the chances of this situation ever occurring are very remote because the Draft Basic Law has imposed considerable constraints on the power of the Legislative Council to introduce bills.

- The Legislative Council is not vested with full powers to introduce bills. Neither is it vested with the power to pass a vote of no confidence against the principal officials or to impeach them.
- The Chief Executive will have the power to impose constraints on the workings of the Legislative Council. As the supreme representative and leader of the HKSAR, the Chief Executive will be able to exercise considerable powers and functions. It will not be conducive to the overall and long-term development of the HKSAR if there is no effective supervision to check and balance his/her power.
- It does not matter how the Chief Executive is selected as long as the people have the power to remove him/her from office. The public interest will be greatly affected if the Chief Executive makes errors. Thus, the Chief Executive should be required to resign when one-third of Hong Kong people demand that he/she be removed. The NPC should then call a meeting to find a suitable replacement.

1.7 Appointment

- The system whereby the Chief Executive will be "appointed by the Beijing Government" is already a means of striking

a balance. The Chinese and British governments will carefully take into consideration the other party's situation when deciding on the candidate.

- It is hoped that the Central People's Government will consider the seriousness of the consequences and not refuse to appoint the Chief Executive nominated.
- Since the appointment of the Chief Executive by the Central People's Government will not be a mere gesture, it is possible that Beijing may not accept the candidate nominated. Prior consultation will thus be a necessary and prudent step to take.
- It would hardly be consistent with a high degree of autonomy if the Central government had the power to impose upon the HKSAR an unpopular Chief Executive, though provision must be made to avoid a possible deadlock between the HKSAR and the Central government.
- The present practice whereby the Governor of Hong Kong is appointed by the Queen has the following advantages:
 - (1) The appointee is chosen through careful selection;
 - (2) There is no need to listen to or please any particular organization or sector;
 - (3) There is no need to take the risks of an election; and
 - (4) In his professional and neutral capacity, the appointee is able to implement long-term and stable policies.

If the people of Hong Kong have confidence in the Central People's Government, the Chief Executive could be selected by the Central People's Government on the advice of Hong Kong people.

1.8 Other views

- The Chief Executive should make a point of respecting China's unity and pledge his/her loyalty by reading out a prescribed oath when assuming office. The oath could cover the following points: Respecting China's unity, loving China and Hong Kong, wholeheartedly working for Hong Kong's development and prosperity, living up to the trust of China and the hopes of Hong Kong people, maintaining stability and prosperity and dedicating himself/herself to his/her duties.
- The Chief Executive should base his/her actions on the interests of Hong Kong and should not listen to the Central Authorities all the time. Otherwise it will be very difficult to achieve "a high degree of autonomy".

- Steps should be taken to prevent the Chief Executive from being controlled by the principal officials.
- Under this section there should be an article which will allow more governmental organizations (commissions) to be set up, for commissions are a vital mechanism conducive to the Chief Executive's accountability to the public and should therefore not be restricted in number by the Basic Law.
- Support is expressed for the suggestions concerning the Chief Executive as detailed in "A Collection of Opinions".
- The roles and status of the Executive Authorities as prescribed in Articles 50, 54 and 56 need further clarification.

2. Suggestions

2.1 Deletions

- Articles 50 and 51 should be deleted.

Reasons: - Article 49 already reflects the checks and balances between the legislative and the executive branches of the government. If the Legislative Council again passes the original bill in dispute with a two-thirds majority, there is no reason why the Chief Executive should not sign, promulgate and implement that bill.

- The deletion of these two articles will save the trouble of dissolving and re-electing the Legislative Council. It will also prevent the situation where the new Legislative Council will have to endorse public spending approved by the Chief Executive prior to its election.

- Articles 50 and 51 and Paragraphs (2) and (3) of Article 52 should be deleted.

Reason: - Article 49 already reflects the checks and balances between the legislative and the executive branches of the government.

- Articles 54 and 56 should be deleted.

2.2 Amendments

- The title of the Chief Executive should be simplified to that of "Mayor" because the term "Chief Executive" is not easy to comprehend or accept.

Independent Commission Against Corruption, the Commission of Audit, the Administrative Ombudsman, the Judicial Services Commission and the Public Service Commission shall work independently and be accountable to the legislature."

- Articles 57 and 58 should be amended to read: "The HKSAR may establish independent government departments which are directly accountable to the Chief Executive. The existing Independent Commission Against Corruption and Audit Department shall be maintained."

Reason: - The HKSAR should establish independent departments which are accountable to the Chief Executive. However, there is no need to specify which departments will be established. This will allow more flexibility.

2.3 Rearrangement

- Articles 54, 55 and 56 should be moved to Section 2: "The Executive Authorities".

2.4 Other views

- The post of "Deputy Chief Executive" should be created. The appointee should be nominated by the Chief Executive, approved by the Legislative Council and appointed by the Central People's Government. He/she should be able to exercise the following powers and functions:

- (1) To assist the Chief Executive in the discharge of his/her duties;
- (2) To exercise the powers and functions of the Chief Executive when the Chief Executive is travelling abroad, is ill or has died.
- (3) To discharge duties similar to those of the pre-1997 Chief Secretary.

- The post of Chief Executive should be a full-time job with remuneration. His/her salary should be paid by the HKSAR.
- Residents of Hong Kong should be able to elect another Chief Executive if they are not satisfied with the performance of the incumbent.

3. Issues to be clarified

- What will be the official title of the chief executive of the HKSAR?
- If the chosen Chief Executive fails to win majority support and the Central Authorities are not in a position

to remove him/her from office, what will be done?

- The impression given under Articles 59 and 60 is that the Chief Executive is one of the executive authorities. If this is the case, Articles 43 and 64 will contradict each other because in the former the accountability of the Chief Executive is to the HKSAR while in the latter his/her accountability is to the Legislative Council. Further, Article 43 states that the Chief Executive is the head of the HKSAR and is at the same time accountable to the HKSAR. Does this mean that the Chief Executive will be accountable to himself/herself? How will this accountability be put into practice?

- The meaning of "in accordance with the provisions of this Law" in Article 43 is vague and obviously requires clarification. Could this be made more specific by a better definition, i.e., by naming the articles? The inclusion of the Chief Executive in Article 103 under the section on "Public Servants" confuses the status of the Chief Executive further. For instance, is he/she to be a public servant in the accepted sense (i.e., not politically accountable)?

1. Original Text

The Chief Executive of the Hong Kong Special Administrative Region is the head of the Hong Kong Special Administrative Region and represents the Region.

The Chief Executive of the Hong Kong Special Administrative Region shall be accountable to the Central People's Government and the Hong Kong Special Administrative Region in accordance with the provisions of this Law.

2. Views

- Support is expressed for this article.
- The Chief Executive should be accountable to the citizenry.
- If the Chief Executive is unable to maintain the stability and prosperity of Hong Kong and raise the people's standard of living, the people should have the power to remove him/her.
- The Chief Executive should be accountable to the legislature.

Reasons: - The HKSAR government is constituted by the executive authorities and the head of the executive authorities is the Chief Executive. If the executive authorities are accountable to the legislature, the Chief Executive should also be accountable to the legislature.

- The Chief Executive should be accountable to the people. If the legislature is elected by the people, the Chief Executive should also be accountable to the legislature.
- The legislature represents the overall interests of the people of the HKSAR.
- According to the provision of the draft, the Chief Executive is accountable to the HKSAR. But it does not specify the organ to which he/she is to be accountable. In order to uphold the division of powers, the Chief Executive should be accountable to the legislature. This will check and balance the Chief Executive's power.

- This is consistent with the Sino-British Joint Declaration.
- Stating that the Chief Executive is accountable to the HKSAR is insufficient and too vague.
- The Chief Executive should not be accountable to the Central People's Government.

Reasons: - If this were the case, the Central People's Government would directly control the Chief Executive and the legislature would be ignored.

- If the Chief Executive is directly elected by the people of Hong Kong, he/she should be accountable to the people.
- The Chief Executive should only make reports to the legislature and answer questions from its members. He/she should not make reports to or answer queries from the Standing Committee of the NPC.
- If the Chief Executive is not to be directly appointed by the Central Authorities, Hong Kong will have a high degree of autonomy and there will be more faith in the policy of "Hong Kong people administering Hong Kong".
- If the Chief Executive violates the laws, he/she should be subject to legal sanctions. The leadership of the Chief Executive is not the rule by prerogative. If such a case is reported to the Central Authorities for their decision, the people of Hong Kong should be subsequently informed.
- The Chief Executive should be appointed by the Central Authorities.

Reasons: - This will be beneficial to stability during the transition.

- This will symbolise China's resumption of the exercise of sovereignty over Hong Kong.
- The Chief Executive should be accountable to the Central People's Government. If he/she fails to do so, the Central People's Government can take action against the Chief Executive of the HKSAR.

3. Suggestions

3.1 Admendments

3.1.1 Overall amendments

- This article should be amended to read: "The Chief Executive of the HKSAR is the head of the HKSAR and represents the Region. The Chief Executive of the HKSAR shall be accountable to the Central People's Government and the legislature of the HKSAR in accordance with this Law." (Note 43-1)

Reason: - The "Central People's Government" is a real entity, an organ with authority; but the term "HKSAR" refers to Hong Kong in general. The original text could be misleading. The Chief Executive's accountability to the former is concrete, but his/her accountability towards the latter is vague. (Note 43-2)

- This article should be amended to read: "The Chief Executive of the HKSAR is the head of the HKSAR and the executive authorities, representing the executive authorities, and is accountable to the Central People's Government, the HKSAR, and the legislature of the HKSAR in accordance with the provisions of this Law."

- This article should be amended to read: "The Chief Executive of the HKSAR is the head of the HKSAR and the executive authorities of the HKSAR, representing the HKSAR and leading the executive authorities, and is accountable to the Central People's Government and the legislature of the HKSAR in accordance with the provisions of this Law." (Note 43-3)

Reason: - In addition to being accountable to the Central People's Government and the people of the HKSAR, the Chief Executive should be held accountable to the legislature in accordance with the Sino-British Joint Declaration. These relationships should be clearly stated.

- This article should be amended in accordance with the suggestion detailed in "A Collection of Opinions" to read: "The Chief Executive of the HKSAR is the head of the Region and the head of the executive authorities of the Region, representing the Region and leading its executive authorities, and shall be accountable to the Central People's Government, the people of the HKSAR, and the legislature of the Region in accordance with the provisions of this Law." (Note 43-4)

Reasons: - This revision is clearer and can prevent the Chief Executive from overstepping his/her authority.

- This will provide sufficient constitutional basis for the Chief Executive's appropriate

authority.

- In Annex I to the Sino-British Joint Declaration, it is stated that "the executive authorities shall abide by the law and shall be accountable to the legislature". Since the Chief Executive is the head of the executive authorities, he/she should also be required to abide by the law and be accountable to the legislature. (Note 43-5)
- Since the Chief Executive will be an administrative representative of the people of the HKSAR in addition to being a representative of the HKSAR, he/she should also be accountable to the people of the HKSAR. Only this treble accountability can ensure the confidence of the people of Hong Kong. (Note 43-6)
- This article should be amended to read: "The Chief Executive is the head of the HKSAR and the head of the executive authorities, representing the HKSAR and leading the executive authorities, and shall be accountable to the Central People's Government, the Standing Committee of the NPC, the residents of Hong Kong and the legislature of the HKSAR in accordance with the provisions of this Law."
- This article should be amended to read: "The Chief Executive is the head of the HKSAR and the head of its executive authorities, representing the Region and leading its executive authorities, and shall be accountable to the Central People's Government, the residents of the HKSAR and the legislature of the HKSAR in accordance with the provisions of this Law."

Reasons: - The Chief Executive of the the HKSAR should be accountable to the residents of the Region.

- According to the Sino-British Joint Declaration, the executive authorities shall be accountable to the legislature.
- This article should be amended to read: "The accountability of the Chief Executive shall be laid down in accordance with different responsibilities. For those responsibilities outside the scope of autonomy, he/she should be accountable to the Central People's Government. For those responsibilities within the scope of autonomy, he/she shall be accountable to the people and the legislature of the HKSAR."

3.1.2 Amendments to individual paragraphs

- Paragraph 1

- (1) This paragraph should be amended to read: "The regional head of the HKSAR is the Chief Executive, representing the Region...."
- (2) This paragraph should be amended to read: "The Chief Executive is the head of the HKSAR and the head of its executive authorities, representing the Region and leading its executive authorities."

- Paragraph 2

- (1) This paragraph should be amended to read: "The Chief Executive shall be accountable to the Central People's Government and the residents of the HKSAR in accordance with the provisions of the Basic Law."
- (2) This paragraph should be amended to read: "The Chief Executive shall be accountable to the Central People's Government and the legislature of the HKSAR in accordance with the provisions of this Law."

Reason: - The original text only requires the Chief Executive to be accountable to the HKSAR. Its meaning is unclear. In the political structure, the legislature represents the overall wishes of the residents of the HKSAR. Therefore, it should be specified that the Chief Executive shall be accountable to the legislature.

- (3) This paragraph should be amended to read: "The Chief Executive shall be accountable to the Central People's Government, the HKSAR and its legislature."

Reason: - The Chief Executive's accountability to the legislature is stated in the Sino-British Joint Declaration.

- (4) The clause "accountable to the Central People's Government and the HKSAR" should read "accountable to the HKSAR and its legislature."
- (5) The clause "accountable to the Central People's Government and the HKSAR" should read "accountable to the Central People's Government and all the residents of the HKSAR".

Reason: - This will manifest the spirit of democracy.

3.2 Additions

- The following provision should be added: "The primary task of the Chief Executive shall be to administer the HKSAR fairly and impartially, uninfluenced by outside pressures, and in the best interests of Hong Kong and of

maintaining the Region's prosperity and way of life, as laid down in this Law which is based on the Joint Declaration."

- There may be inevitable influence from different interest groups, which will affect the peace and prosperity of Hong Kong.

Reason: - The impartiality and strength of character of the Chief Executive will be key factors in maintaining Hong Kong's way of life in the future.

- The following provision should be added: "...leading the executive authorities and all the public servants."
- The following provision should be added: "The Chief Executive of the HKSAR may continue to use the title of Governor."

Reason: - The title "Governor" in itself is not a colonial term. There should be no problem in following the traditional practice.

3.3 Other suggestions

- It should be clearly specified to which organ of the Central Authorities the Chief Executive will be accountable.
- It should be clearly stated that the Chief Executive of the HKSAR is the supreme head of the HKSAR.

4. Issues to be clarified

- In what way will the Chief Executive be accountable to the Central People's Government and how will this accountability be put into practice? To whom will he/she be accountable in the Central People's Government?
- Is there any difference between the meaning of the word "accountable" as used in this article and the meaning of same word as it appears in the clause "accountable to the legislature" in Annex I to the Sino-British Joint Declaration? If there is, why is there a difference and what is the significance of the difference? When differences arise between the Central Authorities and the local authorities and the Chief Executive stands on the side of the HKSAR, will it be possible for the Central Authorities to invoke the second paragraph to demand the accountability of the Chief Executive? If this will be so, what form of accountability it should take?
- If differences arise between the Central Authorities and the HKSAR, to whom should the Chief Executive be

accountable?

- What will happen if the Chief Executive fails to be accountable to the satisfaction of the Central People's Government? It appears that the Chief Executive will be more accountable to the Central People's Government than to the HKSAR. Is this impression correct?
- Does the HKSAR in this case mean "eventually the people"? Note that the "provisions of this Law" do not include "the people".
- If the scope of the Chief Executive's accountability to the Central People's Government is not as prescribed in Article 48, it should be defined.
- What does it mean to be accountable to the HKSAR? If it means accountable to the legislature of the HKSAR, then the legislature should be able to take appropriate measures to control the Chief Executive.
- The meaning of the words "accountable to the HKSAR" is very vague. What will the HKSAR be able to do if the Chief Executive fails to be accountable to the HKSAR?

1. Original text

The Chief Executive of the Hong Kong Special Administrative Region shall be a Chinese national of no less than 40 years of age who is a permanent resident of the Region and has ordinarily resided in Hong Kong for a continuous period of 20 years.

2. Views

2.1 Overall views

- Support is expressed for this article.
- This article is not acceptable.

Reason: - It takes away the legitimate political rights of the permanent residents of Hong Kong.

2.2 Age limit

2.2.1 Age limit should not be set.

- There is no need to specify that the Chief Executive must be at least 40 years of age.
- There should be no age limit on the Chief Executive.

Reasons: - The Chief Executive should not be required to be at least 40 years of age as long as he/she is able and responsible.

- One's knowledge is not directly proportional to one's age.
- Other articles already place restriction on the qualifications of the Chief Executive. Age is not a principal measurement of one's administrative ability.
- This will restrict the social contribution which can be made by the residents of Hong Kong.
- The young should also be considered.
- If the Chief Executive is too old, his/her thinking might be conservative. This will lead to the aging of the government.

2.2.2 Upper and lower limits

- There is no need for any upper or lower limit on age.
- There is no need to specify the minimum age requirement for the Chief Executive. The upper age limit on standing for election to the post of Chief Executive should be 65. If an incumbent Chief Executive reaches the age of 65 during his/her term of office, he/she should not be allowed to stand for re-election.
- To have a lower limit (age 40) but not an upper limit is unreasonable.

Reason: - The health, physical strength and psychological state of the person in power is very important. If no upper limit on age is set, it will cause problems.

- The lower age limit should be dispensed with.

Reasons: - Society is developing rapidly and the future belongs to young people.

- This restriction limits the participation of young people.

- The lower limit of 40 is too low.

Reason: - When one is 40 years old, one is only reaching maturity. To be a Chief Executive, one requires certain experience. It is not right to have a chief executive who is too young.

- The lower age limit should be raised to 45.

Reasons: - Middle age is 50. A 40-year-old person is still young and politically immature.

- 40 is too young, 45 is more mature.

- The Chief Executive should be at least 50 years old.
- The lower age limit of the Chief Executive should be 45 or 50.
- Anyone reaching the legal age should be able to run for the office of Chief Executive. The upper limit should be set at 70.

2.3 Residency requirement

- The meaning of the clause "ordinarily resided in Hong Kong for a continuous period of 20 years" should be defined. Otherwise, a person with little knowledge of Hong Kong may be elected as Chief Executive.

- It is sufficient to require the appointee to have resided in the HKSAR for a continuous period of 10 years.

Reason: - One may have resided in Hong Kong for 20 years but if he/she has been away for too long, he/she might lose touch.

- The requirement on the length of residency should be shortened so that more people will qualify.
- Preference is not given to locally born and bred candidates. This violates the principle of "Hong Kong people administering Hong Kong".
- The post should be open to locally born people only.
- The length of residency in Hong Kong does not necessarily mean a strong sense of belonging.

2.4 Nationality

- The Chief Executive must be a permanent Hong Kong resident of Chinese nationality. Otherwise, he/she should give up his/her original nationality, be naturalized as a Chinese citizen and be qualified for permanent residency.
- The Chief Executive should not hold dual nationality.
- The Chief Executive should not be required to be a Chinese national, as long as he/she is a permanent resident.
- It should be permissible for the Chief Executive to hold dual nationality as long as he/she is able and can serve the people.

2.5 Other views

- The Chief Executive should be at least 51 years old, have continuously resided in Hong Kong for no less than 35 years and be a permanent resident of Chinese nationality.

Reasons: - This will guarantee that he/she will have a sense of belonging to Hong Kong.

- This will ensure that he/she will have rich experience in life.

- This will ensure that he/she will understand the living conditions in Hong Kong.

- Age and residency requirements for voting and standing for election are the same in many countries. There should not be different requirements for different posts.
- Other than having attained a minimum age of 40 and being

a permanent resident, there should not be any other requirements. These requirements should be spelt out in detail.

- No personnel stationed in Hong Kong by the Chinese Government or any member of the Communist Party should be allowed to serve as the Chief Executive.
- There should be more specific provisions on the computation of the time spent outside of Hong Kong for travelling or business purposes. For example, if only one year in ten were spent abroad for these purposes, it should be counted as residency.

3. Suggestions

3.1 Deletions

- The word "ordinarily" should be deleted.

Reason: - The word "ordinarily" is followed by "resided in Hong Kong for a continuous period of 20 years". It is redundant.

- The word "continuous" should be deleted.

Reason: - It prevents those people who left Hong Kong when they were small, and were educated and trained as decision-makers in foreign countries from serving as the Chief Executive.

3.2 Amendments

- This article should be amended to read: "The Chief Executive of the HKSAR shall be a Chinese national of no less than 40 years of age who is a permanent resident of the Region and has ordinarily resided in Hong Kong for a period of 20 years before taking office."

Reason: - The Chief Executive as the head of the HKSAR, should be familiar with Hong Kong affairs.

- This article should be amended as suggested above, with the following addition: "and who has resided in Hong Kong for a continuous period of 5 years immediately before taking office".

Reason: - This will prevent people who have been away for many years and know little about Hong Kong from returning to run for election.

- This article should be amended to read: "... and who has resided in Hong Kong for a continuous period of 10 years immediately before taking office."

Reason: - This will ensure that the Chief Executive has a deep understanding of Hong Kong.

- This article should be amended to read: "... and who has resided in Hong Kong for a continuous period of 15 years immediately before taking office."
- This article should be amended to read: "... and who does not hold a non-Chinese nationality."

Reason: - This will prevent dual allegiance and political privileges.

- This article should be amended to read: "The Chief Executive of the HKSAR shall be a permanent resident of the Region of no less than 40 years of age who has ordinarily resided in Hong Kong for 20 years and has resided in Hong Kong for a continuous period of 10 years immediately before taking office."
- This article should be amended to read: "...of no less than the lawful voting age who ... has ordinarily resided in Hong Kong for a continuous period of 21 years."

Reason: - It is a person's abilities, not age, that matters.

- This article should be amended to read: "The Chief Executive of the HKSAR shall be a permanent resident of the Region who has ordinarily resided in Hong Kong for a continuous period of 20 years as prescribed by law." (Note 44-1)

Reason: - Being no less than 40 years of age is not an important criterion. (Note 44-2)

- This article should be amended to read: "... who is a locally-born permanent resident"
- This article should be amended to read: "The Chief Executive ... shall be a Hong Kong-born Chinese of no less than 40 years of age who has ordinarily resided in Hong Kong for a continuous period of 20 years."

3.3 Additions

- The words "before taking office" should be added at the end of this article.

Reason: - This will prevent people who have left Hong Kong for a long time and do not understand Hong Kong but satisfy the relevant requirements from becoming the Chief Executive.

- The clause "and has resided in Hong Kong for a continuous

period of 10 years immediately before taking office" should be added to make sure that the Chief Executive understands Hong Kong.

- The clause "proficient in both Cantonese and English" should be added to make the article read: "The Chief Executive ... is a permanent resident of the Region, is proficient in both Cantonese and English and has ordinarily resided in Hong Kong for a continuous period of 20 years."

4. Issues to be clarified

- Will the holder of a British National (Overseas) passport be considered a Chinese national? Will he/she be eligible to serve as the Chief Executive?
- There should be a clear and concrete definition of the phrase "has ordinarily resided".

Article 45

1. Original text

The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government.

The specific method for selecting the Chief Executive is prescribed in Annex 1: "Method for Selecting the Chief Executive of the Hong Kong Special Administrative Region".

The method for selecting the Chief Executive as prescribed in Annex I may be modified in the light of actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. Such modifications shall require the endorsement of a two-thirds majority of the members of the Legislative Council of the Hong Kong Special Administrative Region and the consent of the Chief Executive, and shall be submitted to the Standing Committee of the National People's Congress for approval.

2. Views

2.1 Appointment

- Objection is expressed to the stipulation that the Chief Executive has to be appointed by the Central People's Government.

Reasons: - This stipulation is not consistent with the principle of "Hong Kong people administering Hong Kong".

- This goes against the principle of "a high degree of autonomy".
- This amounts to intervention in the administration of Hong Kong by the Central People's Government.
- The HKSAR government will not be able to make appointments according to people's ability if all the principal officials are appointed by the Central People's Government.
- The Central People's Government has no way of knowing the abilities of Hong Kong officials.
- The Basic Law should spell out more clearly the power of the People's Republic of China to exercise the right of appointing the Chief Executive after he/she has been

elected locally.

- It should be stated that the HKSAR will pay the Chief Executive's salary and expenses.

Reason: - This will demonstrate that the Chief Executive is the representative selected by the people of the HKSAR even though he/she is appointed by the Central People's Government.

- The level of salary and expenses for the Chief Executive should be decided by the HKSAR in the light of the level offered by the Central People's Government.

2.2 Election or consultation

- Consultation is not as democratic as direct or indirect election.
- The Basic Law is a piece of long-term legislation for the governing of Hong Kong in the future. The method of selecting the Chief Executive should not be specified at this stage.
- Election and consultation are very different methods. Only one of these two methods should be adopted.
- It should be specified that the Chief Executive will not be selected through consultations.
- A Chief Executive selected through consultations will inevitably be controlled by interest groups and is likely to develop into a dictator.
- In the first few terms of office, it should be acceptable that the Chief Executive be returned by consultations.

2.3 "May be modified" and "in accordance with the principle of gradual and orderly progress"

- The clause "in accordance with the principle of gradual and orderly progress" is vague and difficult to define legally. Since it is hard to define, it will be necessary for the Standing Committee of the NPC to interpret this. However, democracy has different meanings under socialism and capitalism. It is still not sure whether or not the political system of the HKSAR will develop in the direction of socialist democracy.
- It should be stipulated that the method for selecting the Chief Executive shall be regularly reviewed after 1997 to ensure progress in the method of selection.
- Detailed regulations on the selection of the Chief

Executive should be laid down in the laws of the HKSAR.

- Under the provisions of this article, the "majority faction" in the first HKSAR government may change the method for selecting the Chief Executive to that of consultation.
- The adoption of another method for selecting the Chief Executive should be decided upon by some higher authorities or referendum, rather than requiring the consent of the Chief Executive.
- If the Chief Executive does not give his/her consent, bills should not be approved even if they are endorsed by all members of the Legislative Council.
- Modifications to Annex I should not require the approval of the Standing Committee of the NPC. The latter should only be notified of such modifications.

Reason: - Such modifications are mere administrative steps.

3. Suggestions

3.1 Overall amendments

- This article should be amended to read: "The Chief Executive of the HKSAR shall be elected by the Legislative Council and be appointed by the Central People's Government.

"Candidates for the post of Chief Executive shall be nominated by no less than one-tenth of the members of the Legislative Council. Each member may not nominate more than one candidate. Detailed election rules shall be prescribed by the laws of the HKSAR."

- This article should be amended to read: "The method for selecting the Chief Executive may be modified in accordance with the actual situation in the HKSAR. Such modifications shall require the endorsement of a two-thirds majority of the members of the Legislative Council and shall be submitted to the Standing Committee of the NPC for approval."

Reason: - The suggested amendment is more reasonable and logical, since modifications in the method of selection do not really require the consent of the Chief Executive.

3.2 Amendment of individual paragraphs

3.2.1 Paragraph 1

- The words "or through consultations" should be deleted.

Reasons: - Consultations are undemocratic.

- The word "consultations" is retained in the Draft Basic Law probably because the drafters thought they had to stick to the wording of the Joint Declaration. However, since all methods for selecting the Chief Executive detailed in Annex I involve elections and only the nominations will perhaps be made through consultation, the role of consultation will actually be very minimal in the selection of the Chief Executive.

- This paragraph should be amended to read: "The Chief Executive of the HKSAR shall be returned by election on a one-person-one-vote basis."
- This paragraph should be amended to read: "The Chief Executive of the HKSAR shall be returned by election, but may be selected through consultations within the first 10 years of the establishment of the HKSAR."

Reason: - The words "or through consultations" are written into the Basic Law out of political considerations. This is understandable, but this should only be regarded as a temporary measure and a time limit should be required.

- This paragraph should be amended to read: "The Chief Executive shall be elected locally by universal suffrage."
- The words "and be appointed by the Central People's Government" should be amended to read "and his/her name shall be reported to the Central People's Government for the record".

Reason: - According to the Joint Declaration, the HKSAR is to enjoy a high degree of autonomy.

- The words "and be appointed by the Central People's Government" should be amended to read "and be appointed by the NPC."
- The words "and be appointed by the Central People's Government" should be amended to read "and his/her name shall be submitted to the Central People's Government for appointment".
- The following provision should be added at the end of this paragraph: "The Chief Executive must be a person of integrity, dedicated to his/her duties".
- Paragraphs 1 and 2 should be merged so as to sum up and

truthfully reflect the wishes and experience of the Chinese and British Governments. This is also more appropriate and flexible.

3.2.2 Paragraph 2

- Paragraph 2 should be deleted.

Reason: - Views on the method for selecting the Chief Executive are very divergent at present. It will not be conducive to the unity of different social strata if, in disregard of such differences, the method of selection is written into the Basic Law. Further, the five alternatives detailed in Annex I should only be regarded as methods for selecting the first Chief Executive because a more ideal method may be found in future.

- This paragraph should be amended to read: "The Chief Executive shall be returned by indirect elections."

3.2.3 Paragraph 3

- The phrase "the consent of the Chief Executive" should be deleted.

Reasons: - No Chief Executive would agree to the restriction of his/her authority or to measures designed to make the appointment of his/her successor difficult.

- If a bill on modifications to the method for selecting the Chief Executive is passed by a two-thirds majority of the Legislative Council, the Chief Executive should be required to give his/her consent and accept the resolution because this shows that the resolution has sufficient public support and theoretical justification.

- The words "and in accordance with the principle of gradual and orderly progress" should be deleted.

Reasons: - The words "gradual and orderly progress" are very subjective and may be interpreted differently by different people.

- The direction in which "gradual progress" will be made is not clearly indicated.

- It is to be expected that the initial elections will be conservative.

- The slow pace of progress projected is very

worrying.

- This paragraph should be amended to read: "The method for selecting the Chief Executive as prescribed in Annex I has as its goal the development of popular and democratic participation and may be modified in the light of the actual situation in Hong Kong."

Reason: - The people of Hong Kong, whether they are from the industrial or business sectors, the professions, or the grassroots, are all in favour of the democratic system. It should therefore be clearly stipulated that the political structure of the HKSAR will develop in the direction of democracy.

- This paragraph should be amended as suggested above, with the addition of the clause "and in accordance with the principle of gradual and orderly progress" after the words "actual situation in Hong Kong".

Reason: - This addition is necessary to show that in future the HKSAR will gradually give the public more rights to participate in politics.

- This paragraph should be amended to read: "The method for selecting the Chief Executive as prescribed in Annex I may be modified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress with a view to introducing universal suffrage in the third term. Such modifications shall require the endorsement of a two-thirds majority of the members of the Legislative Council and the consent of the Chief Executive, and shall be submitted to the Standing Committee of the NPC for approval."

Reasons: - As seen from global trends and judging by the political development of the HKSAR, it is inevitable that the Chief Executive will be popularly elected one day. The stipulation that universal suffrage will be introduced in the third term is in conformity with the pace of democratic development and the fact that political development is unlikely to reach a stage of relative maturity until the third term. It is also in line with "the principle of gradual and orderly progress".

- This paragraph should be amended to read: "The method for selecting the Chief Executive If the motion to modify this method is vetoed by the Chief Executive, it shall be discussed again by the Legislative Council. If it is again passed by a two-thirds majority of the members of the Legislative Council, it shall be submitted to the Standing Committee of the NPC for approval."

- This paragraph should be amended to read: "The method for selecting the Chief Executive.... If modification is required, a new method must be jointly proposed by a two-thirds majority of the members of the Legislative Council. This will then be put to the vote by all voters on a one-person-one-vote basis and finally submitted to the Standing Committee of the NPC for approval."

- This paragraph should be amended to read: "The modification of the method for selecting the Chief Executive shall require the endorsement of a two-thirds majority of the members of the Legislative Council and shall be directly submitted to the Standing Committee of the NPC for approval without having to obtain the consent of the Chief Executive."

Reason: - If the consent of the Chief Executive is required, it will be possible for the Chief Executive to veto and obstruct the modification when his/her personal interests are at stake.

- This paragraph should be amended to read: "The method for selecting the Chief Executive The method of returning the Chief Executive by universal suffrage shall be introduced during elections for the third to fifth terms. Such modifications shall require"

Reason: - As Hong Kong people's educational level rises and the opportunities for public participation in political reforms increase, the selection of the Chief Executive by universal suffrage will be recognized by the majority to be the ultimate goal.

- The phrase "submitted to the Standing Committee of the NPC for approval" should be amended to read "submitted to the Standing Committee of the NPC for the record".

Reason: - This amendment is necessary to ensure that the HKSAR will enjoy a high degree of autonomy.

- The phrase "towards general election by universal franchise" should be inserted after "...the principle of gradual and orderly progress".

Reason: - With democracy as the final goal, the method for selecting the Chief Executive should only be modified in accordance with the principle of gradual and orderly progress.

- Paragraph 3 may be moved to Annex I.

- If the Chief Executive is to be selected through consultations, who should be consulted?
 - The Draft Basic Law stipulates that the HKSAR will enjoy a high degree of autonomy. Why then will it be necessary for the Chief Executive to be appointed by the Central People's Government?
 - Is the clause "in accordance with the principle of gradual and orderly progress" precise legal language? Does such a clause have a precise legal definition?
 - What is meant by "actual situation"?
 - The Draft Basic Law stipulates that the Chief Executive will be appointed by the Central People's Government. What will happen if the Central People's Government refuses to appoint the Chief Executive elected by the HKSAR?
 - Will the Central People's Government be required to appoint the elected Chief Executive?
 - Will the Central People's Government have the power not to appoint the Chief Executive-designate who is "selected by election or through consultations"? If the answer is in the affirmative, how should the provision be drafted in order to guarantee that the Chief Executive elected will not be subject to political interference or pressure?
- * For the views and suggestions on the methods for selecting the Chief Executive, please also refer to the section on Annex I in the present report as well as the Special Consultation Report on Political Structure.

Article 46

1. Original text

The term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years. He/she may serve for no more than two terms.

2. Views

2.1 Term of office

- The term of office should be five years.
- The term of office should be four years.

Reasons: - This conforms with the term of office of members of the Legislative Council.

- This accords with the principle of staggered elections for Legislative Council members.
- In order to maintain checks and balances between the executive authorities and the legislature, the Chief Executive should be accountable to the Legislative Council.
- A five-year term for the Chief Executive is too long and there is no precedent for such a long term of office.
- This will ensure that every member of the Legislative Council will be able to take part in nominations for the Chief Executive during his/her term of office.
- A four-year term is more desirable if Alternative 1 under Annex I is adopted.
- The term of office should be three years.
- The term of office should be at least one year and at most three years.
- The term of office should be one year if the Chief Executive-designate fails to win 50% of the votes of qualified voters.
- If the Chief Executive is returned by differential election (in which two or more candidates are running) and if he/she wins over 50% of the votes of qualified voters, his/her term of office should be four years.
- If the turnout rate exceeds 50% of the total number of

qualified voters, but the candidate who wins the greatest number of votes fails to gain the votes of 50% of qualified voters, he/she should be considered to have been elected, but only for a term of one year.

- If the Chief Executive is selected by differential election, and the turnout rate is less than 35% of the total number of qualified voters, the election should be declared void, because it will be an indication that the time is not yet ripe for the introduction of universal suffrage. The Chief Executive should then be selected through consultations and the term of office should be four years.
- The term of office of the Chief Executive should be considered in conjunction with the term of office of members of the Legislative Council.
- The term of office of the Chief Executive should be identical to the term of office of members of the Legislative Council in order to facilitate a closer working relationship.
- It would be better if the term of office of the Chief Executive differed from that of members of the Legislative Council.

Reason: - There is no need to elect the Chief Executive and members of the Legislative Council simultaneously. It will be more conducive to the continuity of administration if the Chief Executive is in office when Legislative Council elections are held.

- The term of office of the Chief Executive and of members of the Legislative Council should be four years. Elections should be held alternately every two years. In this way frequent elections and policy shifts resulting from government reshuffles will be prevented.
- Provisions on the term of office should depend on which alternative for the selection of the Chief Executive detailed in the Annex is adopted.

2.2 Consecutive terms of office

- The Chief Executive should be allowed to serve three consecutive terms.

Reasons: - Only those who perform well will be able to successfully secure consecutive terms of office.

- The entire society and members of the public will benefit if an able Chief Executive is

allowed to continue to serve Hong Kong.

- This will ensure continuity in the policies introduced by a Chief Executive.
- The Chief Executive should not be allowed to serve three consecutive terms.
- The Chief Executive should not be allowed to serve more than three consecutive terms.
- The Chief Executive should be allowed to serve four consecutive terms.
- The Chief Executive should be allowed to serve several consecutive terms. If he/she has acted against the prescribed policies, the matter should be handled by the Central People's Government.
- The Chief Executive should be allowed to serve consecutive terms if he/she is re-elected or appointed under special circumstances.

3. Suggestions

3.1 Amendments

- This article should be amended to read: "The term of office of the Chief Executive of the HKSAR shall be four years. He/she may serve for no more than two consecutive terms."
- This article should be amended to read: "The term of office of the Chief Executive of the HKSAR shall be four years. He/she may serve for no more than three consecutive terms." However, if the post of Chief Executive is left vacant as a result of his/her resignation, removal due to impeachment or death, or if the Legislative Council is dissolved during the incumbent's term of office, the new Chief Executive or members of the new Legislative Council should only be allowed to complete the remaining term of office. If the above-mentioned situation occurs in the latter half of the incumbent's term of office, the new Chief Executive or members of the Legislative Council should be allowed to complete the remaining term of office and subsequently serve another term.
- This article should be amended to read: "The term of office of the Chief Executive shall be considered in conjunction with the term of office of members of the Legislative Council."
- A suggested amendment for the Chinese equivalent of "no more than". [Translator's note: A suggested change in

the wording of the Chinese version which will not affect the English translation.]

香港
地政
總署
法律
事務
處

3.2 Addition

- The word "consecutive" should be added before the word "term".

4. Issue to be clarified

- If the term of office of the Chief Executive shall be five years and the term of office of members of the Legislative Council shall only be four years, how will the Chief Executive be able to serve as a member of the Legislative Council?

Article 47

1. Original text

The Chief Executive of the Hong Kong Special Administrative Region must be a person of integrity, dedicated to his/her duties.

The Chief Executive, on assuming office, shall declare his/her assets to the Chief Justice of the Court of Final Appeal of the Hong Kong Special Administrative Region. This declaration shall be put on record in strict confidence.

2. Views

2.1 Declaration of assets

- Objection is expressed to the clause "shall be put on record in strict confidence".
- The Chief Executive should declare his/her assets to the Legislative Council. The declaration should be put on public record.

Reasons: - It is not conducive to the development of democracy if the declaration of assets is not made public.

- This will facilitate public supervision.
- The practice of requiring officials at all levels to declare their assets and income will sooner or later be universally introduced on the mainland. Hong Kong will be lagging behind if the declaration of assets by the Chief Executive is kept in confidence after 1997.
- The provisions that the Chief Executive shall "declare his/her assets" to be "put on record in strict confidence" do not serve any practical purpose because such a declaration will be confined to the declaration of his/her economic status as at a certain point in time and no one will have access to the information.
- The Chief Executive should serve full-time and should not be allowed to take up concurrent duties in a private capacity after assuming office. He/she should be required to publicly declare his/her assets on assuming and leaving office in order that the public can exercise supervision over his/her personal integrity.
- The Chief Executive, principal officials and public servants of the HKSAR should be required to declare their

assets to the public. They should also be required to make public their annual tax returns.

Reason: - This is necessary to strengthen checks, balances and control.

- The Chief Executive should also be required to declare his/her assets on leaving office. This declaration should also be put on record in strict confidence. This may then be compared against the declaration made by him/her on assuming office to find out if he/she has carried out his/her duties in a devoted and honest manner.
- This article should be amended in the light of the methods by which other countries exercise supervision over the assets of their chief executives.

2.2 Other restrictions

- The incumbent should be required to relinquish all personal business commitments.
- After assuming office, the Chief Executive should be required to relinquish all other positions which provide remuneration.
- It should be stipulated that even after leaving office, the Chief Executive may not take up positions with pay or remuneration (not even deferred remuneration) within a reasonable period (at least one year).
- The Chief Executive should not accept job offers from the private sector even after he/she has retired.
- Career restrictions should be imposed on the Chief Executive and the principal officials after they have left office.
- The Chief Executive should be allowed to draw a pension from the government after retirement.

2.3 Other views

- The provision that the Chief Executive "must be a person of integrity, dedicated to his/her duties" should be defined in more concrete terms.
- The wording of this article is too subjective. More concrete provisions should be set down.

3. Suggestions

3.1 Deletions

- Paragraph 1 should be deleted.

Reasons: - A person's integrity and dedication to his/her duties cannot be assured by means of legal provisions. Besides, Articles 43, 52 and 53 also serve the same purpose.

- The words "a person of integrity" and "dedicated to his/her duties" are mere modifiers. Different people may interpret these words differently.

- Hong Kong people will not elect someone who is not "a person of integrity" and "dedicated to his/her duties" to be their Chief Executive.

- The phrase "in strict confidence" should be deleted.

Reason: - It is common practice to require the chief executive to publicly declare his/her assets. People should not be kept in the dark.

3.2 Amendments

3.2.1 Paragraph 1

- This paragraph should be amended to read: "The Chief Executive of the HKSAR shall be dedicated to his/her duties in the interests of the people of the HKSAR."

- This paragraph should be amended to read: "The Chief Executive ... must pledge his allegiance to the People's Republic of China and the HKSAR. He/she must be a person of integrity and be dedicated to his/her duties."

3.2.2 Paragraph 2

- This paragraph should be amended to read: "The Chief Executive, on assuming office, shall declare his/her assets to a court or the Court of Final Appeal of the HKSAR. This declaration shall be put on record."

Reasons: - If the Chief Executive will only be required to declare his/her assets to the Chief Justice of the Court of Final Appeal, whose appointment was decided by the Chief Executive, it will be possible for them to collaborate and hide the truth about such assets.

- In many countries, the chief executive is required to declare his/her assets. However, in order to avoid suspicions by the public, the declaration is not kept confidential.

- This paragraph should be amended to read: "The Chief Executive and top-ranking public servants of the HKSAR are

not only required to declare their assets but also to make public their tax returns so as to ensure the integrity of the government."

Reason: - This is a necessary safeguard against corruption.

- This paragraph should be amended to read: "The Chief Executive ... shall declare his/her assets to the Standing Committee of the NPC...."
- This paragraph should be amended to read: "The Chief Executive ... shall declare and place in trust his/her assets.... This declaration and trust"

Reason: - Mere declaration is not enough to avoid conflicts of interests. All assets must be held in trust to be handled by disinterested parties.

- The word "shall" in "shall declare his/her assets" should read "must".
- This paragraph should be amended to read: "The Chief Executive shall publicly declare his/her assets on assuming office and his/her personal assets shall be checked against this declaration at the end of his/her term of office so as to provide an account to the people of the HKSAR."

Reason: - This is a concrete measure that will enable the Chief Executive to demonstrate that he/she is "a person of integrity".

3.3 Additions

- The following provision should be added at the end of Paragraph 1: "If the Chief Executive does not fulfil this requirement, through a motion by a majority of the members of the Legislative Council, a report may be made to the Central People's Government, requiring his/her removal."
- The following provision should be added at the end of Paragraph 1: "Without prejudice to the Basic Law, he/she must put the interests of the HKSAR above all else."
- The following provision should be added as Paragraph 3: "The Chief Executive and principal officials shall be free to choose their employment after retirement, but their employment must be reported to the Chief Justice of the Court of Final Appeal of the HKSAR and put on record, and be subject to the supervision of the people of the HKSAR."
- The following provision should be added: "The employment taken up by the Chief Executive and principal officials in

the private sector after retirement must not be similar in nature to their official duties when employed by the government. They shall be bound by a code of confidence where matters of defence, foreign affairs and security are concerned. The Chief Executive must relinquish all posts with pay or remuneration before assuming office."

Reasons: - In order to keep defence, foreign affairs and security matters in strict confidence, the Chief Executive and principal officials should not be allowed to seek personal benefits by trading in official secrets after retirement.

- Such officials should be required to declare their assets on assuming office so as to ensure their honesty.

- The following provision should be added: "The Chief Executive shall set a good example in abiding by and implementing the Basic Law and shall spare no efforts in the performance of his/her duties."

- The following provision should be added: "The Chief Executive, on assuming office, shall relinquish all positions with pay or remuneration."

Reasons: - This will prevent any possible conflicts between the private and official duties of the Chief Executive.

- This will ensure that the Chief Executive will serve the HKSAR government with dedication.

- The following provision should be added: "The Chief Executive, on assuming office, shall relinquish all positions with pay or remuneration in the public or private sector."

Reason: - This will ensure the impartiality of the Chief Executive.

- The following provision should be added: "The Chief Executive shall be prosecuted and put on trial in accordance with law if it is discovered, on his/her assuming or leaving office, that his/her assets are not commensurate with his/her official post." (Note 47-1)

Reason: - Paragraph 2 does not state what punishments the Chief Executive will be subject to if his/her assets are not commensurate with his/her official post. (Note 47-2)

- The following provision should be added: "The Chief Executive shall be punished in accordance with law if it is discovered that his/her income is not commensurate with

his/her official post."

3.4 Other suggestion

- It should be stipulated that the Chief Executive will also be required to declare his/her assets at the end of his/her term of office. This declaration will be checked by the Director of Audit to ensure that he/she has not abused his/her position to seek personal gains.

4. Issues to be clarified

- What is meant by "a person of integrity"? How should the term be defined?
- Will details of the assets of the Chief Executive be kept in confidence indefinitely? If the Chief Executive is suspected of corruption, members of the Legislative Council should be able to conduct investigations through an independent investigating committee. What is to be done if the Chief Executive demands that details of his assets be kept in confidence indefinitely in accordance with the provisions of this article?
- To whom will the Chief Executive be accountable in these respects and how will this be put into practice? Where is there a mention of the duties of the Chief Executive in the Basic Law?
- What will happen if, after appointment, it is revealed that the Chief Executive's integrity and dedication to his/her duties are not up to expectations?
- Who will carry out supervision and bring charges to bear if the Chief Executive is corrupt?

1. Original text

The Chief Executive of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To lead the government of the Region;
- (2) To be responsible for the implementation of this Law and other laws which, in accordance with this Law, apply in the Hong Kong Special Administrative Region;
- (3) To sign bills passed by the Legislative Council and to promulgate laws;

To sign bills on budgets and final accounts passed by the Legislative Council and report them to the Central People's Government for the record;

- (4) To decide on government policies and to issue executive orders;
- (5) To nominate and to report to the Central People's Government for appointment the following principal officials: Secretaries and Deputy Secretaries of Departments, Directors of Bureaus, 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;

To employ advisers at or above the director level as required and subject to the approval of the Central People's Government.

- (6) To appoint or remove judges of the courts at various levels in accordance with legal procedures;
- (7) To appoint or remove public servants in accordance with legal procedures;
- (8) To implement the directives issued by the Central People's Government in respect of the relevant matters provided for in this Law;
- (9) To deal with, on behalf of the government of the Hong Kong Special Administrative Region, external affairs and other affairs authorized by the Central Authorities;
- (10) To approve the introduction of motions regarding revenues or expenditure to the Legislative Council;

- (11) To decide, in the light of security and public interest, whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Council;
- (12) To pardon persons convicted of criminal offences or commute their penalties; and
- (13) To handle petitions and complaints.

2. Views

2.1 Powers and functions

- The specific powers and functions of the Chief Executive should be as follows:

- (1) To be in charge of various administrative departments and lead the government of the HKSAR;
- (2) To nominate principal officials and to report their names to the Central People's Government for appointment;
- (3) To appoint or remove officials below the Secretary level;
- (4) To appoint judges;
- (5) To sign, or defer the signing of, bills;
- (6) To be in command of the public security forces;
- (7) To represent the government of the HKSAR externally;
- (8) To introduce motions to the legislature;
- (9) To give verdict on appeals, petitions or objections raised in accordance with law on matters of administration; and
- (10) To enforce laws and to formulate and implement policies.

2.2 Relationship with the Joint Declaration

- This article goes against the Joint Declaration.

Reasons: - The Joint Declaration stipulates that the executive authorities shall be accountable to the legislature. However, according to the provisions of this article, the Chief Executive will have the power to nominate principal

officials, while the members of the Legislative Council will not have the power to impeach principal officials.

- The Joint Declaration only stipulates that the principal officials of the HKSAR shall be nominated by the Chief Executive and reported to the Central People's Government for appointment. However, according to the provisions of this article, the list of principal officials is extended to include officials not belonging to the Secretary grade, such as Deputy Secretaries, Directors of Bureaus, Commissioner Against Corruption, Director of Audit, Commissioner of Police and Commissioner of External Affairs. This will enable the Central People's Government to exercise greater control and influence.
- The Joint Declaration does not say that the approval of the Central Authorities will be required for the appointment of principal officials and advisers.

2.3 The powers of the Chief Executive

- The powers of the Chief Executive as prescribed in this article are not comprehensive. It should be stipulated that the Chief Executive shall have full authority to carry out his/her duties as Chief Executive, to be followed by detailed provisions in respect of his/her powers and functions.
- This article is not truly in keeping with the principle of "one country, two systems" since the Chief Executive will be required to seek the approval of the Central Authorities on practically all matters.
- It would be more reassuring if the Chief Executive could exercise greater power.
- It is not very likely that a political body, or an alliance of political bodies, will be able to control the majority of seats on the Legislative Council. Even if that was possible, the situation would be unlikely to last. Thus, in order to guarantee the unity and stability of Hong Kong, the Chief Executive should be given the power to nominate for appointment, or remove, any members of the Legislative Council.
- The powers of the Chief Executive should be subject to restrictions.

2.4 Views on individual paragraphs

2.4.1 Paragraph (1)

- The Chief Executive should have actual executive and decision-making powers in leading the HKSAR. However, the powers of the Chief Executive should be subject to supervision and restrictions from different quarters.

2.4.2 Paragraph (2)

- This paragraph provides the Chief Executive with too much power.

2.4.3 Paragraph (4)

- The term "executive orders" needs to be defined.

2.4.4 Paragraph (5)

A. Principal officials

- It would be better to confine the list of principal officials whose appointments will require the approval of the Central People's Government to the posts stipulated in the Joint Declaration.
- The appointment of the Director of Audit, which will not be a Secretary-level post, should not require the approval of the Central People's Government. However, the candidate should be approved by the legislature and appointed by the Chief Executive.
- The Chief Executive should be able to directly appoint the heads of various departments, bureaus, divisions and commissions without having to report his/her nominations to the Central People's Government for appointment. The Chief Executive will be able to work more efficiently if he/she is given greater power and is subject to fewer restrictions.
- There are too many restrictions on the powers of the Chief Executive since the approval of the Central People's Government will be required even for the appointment of Directors of Bureaus and Commissioners.
- Nominations for principal posts should be made by a nomination committee.
- The procedures for the removal of principal officials are too simple.
- The Chief Executive should be able to appoint about 25 principal officials (the term "principal establishment officials" or other appellation may be used) with the approval of the Central Authorities. During his/her term of office, the Chief Executive should be able to assign

these officials to departmental secretary posts, or assign them as Directors or Commissioners in the light of the actual situation. Their promotion, transfer or demotion should only need to be reported to the Central Authorities for the record.

Reason: - In this way the power to approve the appointment or removal of principal officials will still be vested in the Central People's Government, but the Chief Executive will have greater authority and flexibility in the handling of executive matters.

- The Chief Executive should have the power to nominate principal officials, but he/she should be required to state the reasons for such nominations and the Central People's Government should be required to explain its decision.
- The Chief Executive should have the power to appoint or remove principal officials in order to increase the efficiency of government. Such appointments or removals should be reported to the Central People's Government by the legislature for confirmation. The approval of the legislature before submission to the Central Authorities should be required to prevent the latter from interfering in the appointment or removal of Hong Kong officials.
- The Chief Executive should have the power to appoint capable persons as government officials at various levels.
- The Chief Executive should have the power to appoint principal officials without having to obtain the approval of the Central People's Government. This is because principal officials will be accountable to the Chief Executive, not the Central People's Government.
- The Chief Executive will have very limited powers since he/she will require the approval of the Central Authorities for the appointment or removal of officials.
- Although principal officials will be appointed by the Chief Executive, the appointments will be political because the principal officials will be required to be politically accountable for the policies they formulate and implement. Thus, they should not be considered a part of the public service structure.
- Principal officials of the HKSAR government should be required to be politically accountable for policies which they formulate and implement. If they commit serious errors, they should be removed by the Central People's Government on the recommendation of the Chief Executive.

Reason: - Paragraph (5) does not indicate whether or not

principal officials will be required to be politically accountable. If they will not be so required, some officials might end up acting irresponsibly.

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- It should be stipulated which principal posts will be "political appointments" to be made by the Chief Executive and which will be filled by public servants.
- This paragraph should be rewritten to allow for changes in executive titles and positions from time to time, e.g., the creation of the post of Commissioner for Administrative Complaints.
- The manner in which the posts of Commissioner of Audit, Commissioner of Police and Commissioner of External Affairs are titled should be standardized. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the English translation.]
- Under no circumstances should the posts of Commissioner Against Corruption and Commissioner of Police be abolished.

Reason: - If these posts are abolished, no one will be charged with the responsibility of fighting corruption and maintaining public order.

B. Employment of advisers

- Support is expressed for the provisions in this paragraph.
- The approval of the Central People's Government should be required for the employment of advisers at or above the bureau level.

Reason: - Caution is necessary because the employment of advisers may be misunderstood by political groups.

- Since advisers will normally be employed to deal with executive matters, their employment should require the approval of the legislature or the executive authorities.
- The status of advisers is not clearly defined. If they are only to be employed to study specific matters and report their findings to the government, the approval of the Central People's Government should not be required.
- The approval of the Central People's Government should be unnecessary.

Reasons: - It should be quite sufficient to report their employment to the NPC for the record.

- It is against the principle of "a high degree of autonomy" to require the approval of the Central People's Government for the employment of advisers.
- Advisers should be accountable to the Chief Executive, not to the Central People's Government.
- If such approval is required, the power of the Central People's Government will be too great.
- The Central People's Government should only be responsible for the appointment or removal of Secretaries of departments.
- Local people should be employed as advisers wherever possible.
- Advisers should not be vested with executive power.

2.4.5 Paragraph (6)

- The so-called "legal procedures" should be laid down by the judicial service commission referred to in Section III of Annex I to the Joint Declaration and approved by the legislature. The "eminent persons" serving on this committee should include no less than half the number of democratically-elected members of the Legislative Council.
- To ensure judicial independence, judges of courts at all levels should be appointed or removed by the legislature, not by the Chief Executive.

2.4.6 Paragraph (7)

- It should be made clear whether people appointed by the government to consultative bodies will be public servants or public office bearers.
- Distinction should be made between "public servants" and "public office bearers".

2.4.7. Paragraph (8)

- To be consistent with the Joint Declaration which stipulates that "the HKSAR shall enjoy a high degree of autonomy except in foreign affairs and defence, which are the responsibilities of the Central People's Government", directives issued by the Central People's Government must be limited to those relating to defence and foreign affairs.

2.4.8 Paragraph (10)

- This paragraph provides the Chief Executive with too much power.
- The Chief Executive should approve motions introduced to the Legislative Council.
- It should be stipulated that the Chief Executive will not carry out this function on his own but in consultation with the Executive Council.

Reason: - Such a provision is necessary because the powers of the Chief Executive are vaguely defined and there are not many checks on his/her powers.

2.4.9 Paragraph (11)

- The meaning of the word "security" is vague.
- The meaning of the phrase "in the light of security and public interest" is vague and may be abused in different ways to the detriment of public interest.
- Since it will be up to the Chief Executive to define the meaning of "security" and "public interest", the legislature will be placed in a passive position and unable to exercise supervision. (Note 48-1)
- The circumstances under which public servants will be called upon to testify or give evidence before the legislature, as well as the scope of matters which may be involved, should be clearly specified. (Note 48-2)

Reasons: - This will prevent the removal of the power of the legislature to summon government officials to testify, and to carry out investigation.

- In this way, the provision that the executive authorities must be accountable to the legislature will not be violated.
- This will prevent the Chief Executive from abusing this power to interfere with the checks and balances between the executive authorities and the legislature.
- Under the principle of maintaining checks and balances among the executive authorities, the legislature and the judicial organs, it will be possible to prevent government organs from abusing their power. (Note 48-3)
- The Chief Executive may decide whether government officials or other personnel in charge of government affairs should testify or give evidence before the

- The legislature may have to question administrative officials on matters of security or public interest. In such cases, the Chief Executive may first consult with the legislature before the administrative officials concerned are called to testify or give evidence.

Reasons: - This will prevent the Chief Executive from having too much power.

- If the legislature is not consulted, a tendency will develop among administrative officials who are accountable only to the Chief Executive and not to the legislature. This will result in the situation where the Chief Executive is too powerful and the truth is kept from the public.
- The Chief Executive should not have the power to prevent his/her officials from testifying before the Legislative Council.
- This power should be exercised by the legislature, otherwise the legislature will not be able to exercise supervision over the executive authorities and the power of supervision of the legislature will be weakened.
- This will guarantee that the legislature will be able to exercise its power of supervision. The legislature should have the power to establish ad hoc committees to investigate the officials concerned and summon them to testify.
- There should be legislation stipulating that the Legislative Council shall have the power of supervision and the power to obtain all necessary evidence.
- If the Chief Executive is not required to consult the legislature, the power of the Legislative Council to question the Executive Council will be undermined.
- The Joint Declaration stipulates that the executive authorities shall be accountable to the legislature. If the Chief Executive may decide whether or not administrative officials should testify or give evidence before the legislature, the administrative officials will not be fully accountable to the legislature. This is against the spirit of the Joint Declaration.

- This provision will give government officials an excuse not to reveal certain policies to the public, thus undermining the real function of questioning.
- The government should not be allowed to keep the Legislative Council in the dark on any grounds, for the public have the right to know.
- During judicial proceedings, it should be up to the judicial organs to decide what is "in the interests of the public". They should be allowed to obtain confidential information through internal hearings, thus making sure that the evidence will not be revealed to the public.
- The accountability of the legislature is very limited.

2.4.10 Paragraph (12)

- The Chief Executive should have the power to pardon convicted criminals, restore the civil rights of ex-convicts, and annul all additional penalties.
- Persons convicted of murder, arson and other serious crimes should not be pardoned.
- The extent to which convicts will be pardoned and penalties commuted should be specified.
- The Chief Executive should not have the power to pardon persons convicted of criminal offences or commute their penalties.

Reason: - If the Chief Executive has such power, judicial independence will be in doubt and might be subject to intervention.

2.5 Other views

- The meaning of the term "government" as used in this article should be the same as that used in other chapters.
- This article should stipulate that the Chief Executive shall be accountable for the exercise of the powers and functions prescribed.

3. Suggestions

3.1 Overall amendment

- This article should be amended to read: "The Chief Executive of the HKSAR shall exercise the following powers and functions:

(1) To represent the HKSAR;

- (2) To lead the executive authorities of the HKSAR;
- (3) To be responsible for the implementation of the Basic Law and other laws which, in accordance with the Basic Law, apply in the HKSAR;
- (4) To approve and to promulgate laws passed by the legislature or withhold approval of these laws;
- (5) To decide on policies and to issue executive orders;
- (6) To nominate principal officials and to report their names to the Central People's Government for appointment;
- (7) To appoint or remove public officials in accordance with legal procedures;
- (8) To appoint or remove judges at all levels in accordance with the provisions of the Basic Law;
- (9) To establish investigating committees on matters of public concern;
- (10) To appoint members to policy committees or exercise the power of removing these members from such committees;
- (11) To represent the government of the HKSAR in the handling of external affairs and other affairs authorized by the Central People's Government;
- (12) To decide whether public servants should testify or give evidence before the Legislative Council or committees under the Legislative Council with regard to matters relating to the navy, army or air force, the security of Hong Kong, or the responsibility of the Central People's Government over the administration of the HKSAR;
- (13) To grant pardons or commute the penalties imposed on persons convicted of criminal offences (including convicts sentenced to death);
- (14) To handle petitions and complaints;
- (15) To be responsible for working out budgets;
- (16) To exercise the power to deport people;
- (17) To appoint or remove members of the executive authorities;
- (18) To preside over meetings of the executive authorities;

(19) To approve land use; and

(20) To be responsible for the internal security of the HKSAR.

- This article should be amended as above, with the omission of Paragraph (20).
- The first sentence should be amended to read: "The Chief Executive of the HKSAR shall be accountable for the exercise of the following powers and functions:".

3.2 Amendments to individual paragraphs

3.2.1 Paragraph (1)

- The suggestion on this paragraph as detailed in "A Collection of Opinions" should be adopted.

Reasons: - The term "executive authorities" is more appropriate than "government".

- The legislature should be considered part of the government, but should not be placed under the authority of the Chief Executive.

3.2.2 Paragraph (2)

- This paragraph should be amended to read: "To be responsible for the implementation of laws which apply in the HKSAR".

- The Chief Executive should not be responsible for the implementation of the Basic Law. He/she should only discharge his/her duties in accordance with the Basic Law and the relevant legal provisions. This paragraph should thus be amended.

3.2.3 Paragraph (3)

- This paragraph should be deleted.

Reason: - The government of the HKSAR will only be a local administrative organ. It will not have the power to handle defence and foreign affairs on its own. Thus the Chief Executive will have the obligation to implement the laws of the legislature.

- This paragraph should be amended to read: "To implement bills passed by the Legislative Council and to promulgate laws;

"To implement the budgets and final accounts passed by the

Legislative Council and report them to the Central People's Government".

Reason: - The word "sign" implies the power to refuse to sign, which is a violation of the constitutional requirement that the Chief Executive shall be returned by the legislature and shall be accountable to the legislature. Thus it is suggested that the word "implement" be used.

- This paragraph may be inferred to mean that the duty of the Chief Executive will only be to report to the NPC on bills passed by the legislature of the HKSAR.

3.2.4 Paragraph (4)

- This paragraph should be amended to read: "To decide on government policies after approval has been given by the legislature, and to issue executive orders".

Reason: - The Chief Executive should not be allowed to decide on government policies without first obtaining the approval of the legislature, for this will result in dictatorial rule.

- This paragraph should be amended to read: "To issue executive orders, and to decide on administrative policies in conjunction with the Executive Council".

Reason: - This will prevent the Chief Executive from becoming too powerful.

- The clause "after consulting the Executive Council" should be added at the end of this paragraph.
- There should be some checks and balances, e.g., one authority formulating policies, one issuing executive orders and one exercising the right of veto.

3.2.5 Paragraph (5)

- This paragraph should be deleted.
- The provision "[t]o employ advisers at or above the director level as required and subject to the approval of the Central People's Government" should be deleted.
- The post "Director of Audit" should be deleted from the list of principal officials.
- The posts "Commissioner Against Corruption" and "Director of Audit" should be deleted from the list of principal officials.

Reason: - The Commissioner Against Corruption and the

Director of Audit, together with the Commissioner for Administrative Complaints and members of the Judicial Service Commission and the Civil Service Commission, should be appointed by the Chief Executive with the consent of the legislature and should be offered fixed tenures to ensure their independence.

- This paragraph should be amended to read: "To nominate principal officials at the "Secretary" or "Director" level and to report their names to the Central People's Government for appointment; and to propose to the Central People's Government the removal of the above-mentioned officials".

Reason: - The Commissioner Against Corruption, the Director of Audit and the Commissioner of Police are executive posts not involving the formulation of government policies. These posts should be filled through recruitment procedures and there is no need to report nominations to the Central People's Government for appointment. If advisers employed at or above the director level are not political appointments, the HKSAR government should have the necessary executive autonomy to make the appointment. There should not be restrictions in this regard.

- This paragraph should be amended to read: "To employ advisers at or above the director level as required without having to obtain the approval of the Central People's Government".

Reason: - The Joint Declaration does not stipulate that the approval of the Central People's Government will be required for the employment of advisers.

- The first subparagraph of this paragraph should be amended to read: "To nominate and to report to the Central People's Government for appointment persons for the following principal official posts, after obtaining the prior consent of the legislature;"
- The clause "after consulting the Executive Council" should be added after "the following principal officials".
- This paragraph should be amended to read: "To nominate ... Commissioner of External Affairs and Commissioner for Administrative Complaints who handles complaints against any wrongs perpetrated by the government; and to appoint or remove the above-mentioned officials after approval has been sought by the legislature from the Standing Committee of the NPC;

"To employ advisers at or above the director level as

required and subject to the approval of the Standing Committee of the NPC."

- A suggested change for the titles of the Commissioner of Police, the Commissioner of External Affairs, and so on. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the English translation.]
- The existing titles of the principal officials should be retained.
- Some organs should be amalgamated at an appropriate time. For instance, the establishment of the Commission Against Corruption might be enlarged to cover reports and complaints against the public service and economic and commercial crimes.

Reason: - This will avoid having overlapping authorities, which hampers both administration and management.

3.2.6 Paragraph (6)

- This paragraph should be amended to read: "To appoint or remove judges of courts at all levels in accordance with legal procedures and with the consent of the Chief Justice".

Reason: - This will distinguish executive power from judicial power.

- This paragraph should be amended to read: "To appoint or remove judges of courts at all levels in accordance with legal procedures approved by the majority of the members of the legislature".
- This paragraph should be amended to read: "To appoint judges of courts at all levels in accordance with legal procedures or remove them from office if they do not give fair judgment as judges should".

3.2.7 Paragraph (7)

- This paragraph should be amended to read: "To appoint public servants in accordance with legal procedures or to remove them from office if they act contrary to their duty to serve the residents of Hong Kong".

3.2.8 Paragraph (8)

- This paragraph should be amended to read: "To act, if in agreement, on relevant matters specified in this Law at the request of the Central People's Government;"

Reason: - This will give expression to the spirit of a high degree of autonomy.

3.2.9 Paragraph (9)

- The words "Central Authorities" should read "Central People's Government".

Reasons: - The meaning of the original is unclear.

- The amended version will stylistically be more in conformity with Article 43.

3.2.10 Paragraph (10)

- This paragraph should be deleted.

Reasons: - This paragraph makes it impossible for the legislature to introduce budgets.

- This paragraph prevents the legislature from exercising its power to introduce bills and to conduct investigations and hear testimony.
- This paragraph provides the Chief Executive with too much power.
- This paragraph should be amended to read: "To introduce motions regarding revenue or expenditure to the Legislative Council;"

Reason: - The meaning of the word "approve" in the original text is unclear and difficult to understand.

- The clause "after consulting the executive authorities" should be added at the end of this paragraph.
- The following provision should be added: "Motions not approved by the Chief Executive may be discussed at the Legislative Council if the motions are again introduced by two-thirds of the members of the legislature."

3.2.11 Paragraph (11)

- This paragraph should be deleted. (Note 48-5)

Reasons: - The provision is too cumbersome.

- The deletion of this paragraph is necessary so that the legislature will be able to effectively exercise supervision over the executive authorities.

- The legislature should have the power to ask

any person to testify or give evidence on matters relating to the internal affairs of the Region. Thus, the powers prescribed here should be enshrined in Article 72 to become Paragraph (10) of that article.

- This paragraph provides the Chief Executive with too much power. (Note 48-6)
- This paragraph seriously undermines the power of the legislature to investigate and hear testimony.
- If the Chief Executive thinks that the testimony or evidence to be given by a subpoenaed government official will concern defence or foreign affairs or is likely to be detrimental to public interest, he/she may apply to the Court of Final Appeal to excuse that official, but should not make the decision.
- This paragraph should be amended to read: "To approve of (or withhold approval for) public servants appearing before committees under the legislature to testify or give evidence in matters relating to the navy, army or air force, the security of Hong Kong, or the responsibility of the Central People's Government over the administration of the HKSAR."
- This paragraph should be amended to read: "To decide, in the light of security and public interest, whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Council in matters relating to the navy, army or air force, the security of Hong Kong, or the responsibility of the Central People's Government over the administration of the HKSAR."

Reason: - The original paragraph, which does not define the areas in which the subpoenaed shall be required to testify or give evidence, may be abused by irresponsible chief executives.

- This paragraph should be amended to read: "To approve or refuse to approve, in the light of security and public interest, public servants in appearing before committees under the legislature to testify or give evidence in matters relating to the navy, army or air force, foreign affairs secrets, security work, or the responsibility of the Standing Committee of the NPC over the administration of the HKSAR."
- This paragraph should be amended to read: "To decide whether public servants should testify or give evidence

before the Legislative Council or its committees in matters relating to the navy, army or air force, the security of Hong Kong, or the responsibility of the Central People's Government over the administration of the HKSAR."

Reason: - This will prevent the Chief Executive from becoming too powerful and from indiscriminately using "security and public interest" as an excuse to obstruct supervision by the Legislative Council.

- This paragraph should be amended to read: "To allow, in the light of security and public interest, government officials or other personnel in charge of government affairs to testify in camera".

Reasons: - The original paragraph restricts and diminishes the supervisory power of the legislature.

- Everyone is equal before the law. Officials who have committed offences against the law should also stand trial and testify before the courts.
 - The original paragraph makes it possible for government personnel to refuse to testify and get away with irresponsible deeds.
 - The Basic Law must ensure the impartiality and independence of the judiciary in order to increase the confidence of Hong Kong people.
- This paragraph should be amended to read: "To request, in the light of security and public interest, that the Legislative Council allow government officials or other personnel in charge of government affairs to testify or give evidence in camera".
 - This paragraph should be amended to read: "To request, in the light of security and public interest, that the Legislative Council meet in closed session, subject to the consent of a two-thirds majority, and that the relevant information be kept in confidence".

Reasons: - The Chief Executive should not have the power to decide whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Council.

- The officials or public servants concerned should be required to testify and give evidence.

- This paragraph should be amended to read: "To decide, in the light of security and public interest, either on his/her own or at the request of two-thirds of the members of the Legislative Council, whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Council;"
- The phrase "in the light of security and public interest" should read "in the light of national security".

Reason: - The term "national security" is much more concrete in meaning than "security and public interest".

- The phrase "in the light of security and public interest" should read "in the light of public security".

Reasons: - The idea that the Chief Executive may restrict the power of the legislature to conduct investigations and hear testimony is unacceptable, for this will make it impossible for the legislature to summon government officials to testify.

- Special arrangements should be possible for sensitive issues relating to public security.

- The phrase "in the light of security and public interest" should read "in the light of special circumstances relating to security and public interest".

- The following provision should be added after this paragraph: "However, the veto of the Chief Executive will cease to have effect if two-thirds of the members of the Legislative Council endorse a summons that requires an official to testify and give evidence."

Reason: - The concept of not making public certain evidence for reasons of security or public interest is acceptable. However, the Chief Executive should not be allowed to make an absolute decision. The Legislative Council should be given the power to veto his/her decision as a means to maintain a balancing of powers.

- The phrase "in the light of security and the public interest" should be amended to read "in the light of the considerations of security, defence and foreign affairs".

Reason: - Since it is not easy to define public interest, the Chief Executive could use "public interest" as an excuse to refuse to allow government officials to testify before the Legislative Council if he/she does not want the latter to

find out about the truth. This will seriously undermine the power of the legislature to exercise supervision over the executive authorities.

- Where "security and public interest" are concerned, government officials or other personnel in charge of government affairs should be allowed to testify or give evidence in the form of a closed hearing.

Reasons: - Not allowing these officials to testify or give evidence may prove damaging to public interest.

- This will provide the legislature with an effective means of exercising supervision over the Chief Executive and will thus maintain checks and balances.
- Government officials or other personnel in charge of government affairs should not be allowed to testify or give evidence before the Legislative Council under the following circumstances:

- (1) When the relevant evidence concerns defence or other national security matters; or
- (2) When the relevant evidence concerns matters which are administered by the Central People's Government and are of no concern to the HKSAR.

(This suggestion is based on Article 14 (2) of the "Legislative Council (Power and Privileges) Ordinance".)

3.2.12 Paragraph (12)

- The Chief Executive should have the power to "pardon" not just Hong Kong residents but also criminal offenders. For instance, a mainland cadre who has assaulted an innocent citizen during a visit to Hong Kong may also be pardoned for political reasons. However, even so, the abuse of such power should be subject to public criticism.

3.2.13 Paragraph (13)

- This paragraph should be amended to read: "To receive and handle petitions and to resolve complaints referred by the Commission of Complaints".
- The Chief Executive should only have the power to preside over meetings and to settle disputes between organs.

3.3 Additions

- The following provision should be added: "To exercise other rights as prescribed in this Law."

Reasons: - This will give the Chief Executive greater flexibility in the exercise of his/her functions.

- The suggested amendment detailed in "A Collection of Opinions", namely, "[t]o exercise other powers, which are ...", is open to misinterpretation as there is no objective yardstick.

- The following provision should be added: "To exercise other powers which are necessary and reasonable for carrying out his/her duties as prescribed in this Law."
(Note 48-7)

Reason: - Although the powers and functions of the Chief Executive detailed in this article are quite comprehensive, this additional provision is still necessary as a safeguard against possible omission.

- The following provisions should be added: "(1) To submit, regularly or otherwise, reports on government policies and work to the NPC or the Committee for the HKSAR; (2) To submit, regularly or otherwise, reports on policies and work to the legislature."

- The following provision should be added: "To preside over meetings of the executive authorities."

- The following provision should be added: "To appoint members to policy committees and remove members from such committees."

- The following provision should be added: "To appoint investigating committees on matters of public concern."

- The following provision should be added: "To represent the HKSAR."

- The following provision should be added: "To be responsible for drawing up budgets."

- The following provision should be added: "To approve land use."

- The following provision should be added: "To be responsible for the internal security of the HKSAR."

- The following provision should be added: "To investigate and deal with administrative appeals."

- The following provision should be added: "To promote public office holders with outstanding performance in

accordance with regulations and report the promotion to the Central People's Government."

4. Issues to be clarified

4.1 Paragraph (3)

- Is there such a thing as a bill on final accounts? If so, what purpose does it serve?

4.2 Paragraph (5)

- What does "advisers" refer to?
- Will it really be necessary to give advisers the status of director or above?
- Why will it be necessary to seek the approval of the Central People's Government for the appointment of advisers at or above the director level?
- In the employment of foreign advisers, will positions be created for foreign nationals or will the present provision be a means of gradually phasing out expatriate public servants from the public service?
- There is a discrepancy between the listing of principal officials in this paragraph and in Article 100. Why is this so?
- There is a discrepancy between the listing of principal officials in this paragraph and in Article 100. For instance, the post of "Inspector General of Customs and Excise" is omitted. Will it be necessary to obtain the approval of the Central People's Government for the appointment of officials not listed in this paragraph?
- The status, duties and term of office of principal officials (at Secretary level) are not clearly defined. Will the principal officials be regular public servants or assistants to the Chief Executive in the formulation of policies? In what ways will they be different from members of the Executive Council?
- Is it really necessary to make the employment of advisers, whose posts should be temporary with no actual executive power, part of the establishment and make provisions for them in the Basic Law?

4.3 Paragraph (8)

- Clarification is needed.
- The term "relevant matters" needs clarification.

4.4 Paragraph (11)

- What is meant by "in the light of security and public interest"? Can concrete examples be cited?
- Why should the Chief Executive be allowed to meddle with judicial matters?
- Why are government officials and other personnel in charge of government affairs put under a separate category in the handling of judicial matters?

Article 49

1. Original text

If the Chief Executive considers that a bill passed by the Legislative Council is not compatible with the overall interest of the Hong Kong Special Administrative Region, he/she may return it to the Legislative Council within three months for reconsideration. If the Legislative Council passes the original bill again by no less than a two-thirds majority, the Chief Executive must sign and promulgate it within one month, or act in accordance with the provisions of Article 50 of this Law.

2. Views

2.1 Supporting views

- Support is expressed for this article.
- Support is expressed for the provision that, as a means of maintaining checks and balances between the Chief Executive and the Legislative Council, the Chief Executive may return a bill passed by the Legislative Council for reconsideration if he/she considers it incompatible with the overall interest of the HKSAR.

2.2 Reservations

- Articles 49 and 50 are contradictory and meaningless.
- The Legislative Council is not vested with sufficient power to exercise supervision over the Chief Executive and the government led by him/her or to maintain checks and balances.
- This article virtually gives the Chief Executive one-third of the legislative power of the Legislative Council, so that he/she will only need the support of one-third of the members of the Council to veto the original bill which has been passed a second time. Such power is too great.
- This article will result in the legislature coming completely under the control of the Chief Executive.
- This article fails to give the assurance that the HKSAR will have a stable Legislative Council.
- On whether a bill is compatible with the overall interest of the HKSAR, the collective wisdom of a two-thirds majority of the Legislative Council should be more credible than the decision of the Chief Executive alone.
- There is only a very remote chance that the situation

referred to in Articles 49 and 50 will ever happen.

Reason: - Since only the executive authorities will have the power to introduce bills, the Chief Executive is not likely to refuse to pass a bill introduced by himself/herself.

- A three-month time limit is too long. A bill passed by the Legislative Council should be implemented within a short time of its passage. The validity of legislation will be seriously affected if the Chief Executive expresses his/her objections after three months.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reason: - If the legislature, presuming it is properly constituted, is unable to collectively judge the overall interest of the HKSAR properly, it is hard to see how the Chief Executive on his/her own will be able to do it better. If this article is left to stand, and the Chief Executive exercises this power, the HKSAR is bound to see its interests subject to those of the Central People's Government.

- The clause "or act in accordance with the provisions of Article 50 of this Law" should be deleted.
- Words like "not compatible with the overall interest of the HKSAR" should be deleted.

3.2 Amendments

- This article should be amended to read: "If the Chief Executive of the HKSAR considers that a bill passed by the Legislative Council is not compatible with the overall interest of the HKSAR, he/she may veto that bill within one month. If the Legislative Council passes the original bill again by no less than a two-thirds majority of the members present at the session, the Chief Executive must sign and promulgate it within one month." (Note 49-1)

Reasons: - This will avoid tipping the scale of power towards the Chief Executive and violating the principle of maintaining checks and balances.

- The original article provides the Chief Executive with too much power. It poses a threat to the legislature and may result in an executive-led government.

- This will avoid unnecessary delay.
 - Without the power to pass a vote of no confidence against the Chief Executive or to call for his/her removal by the Central People's Government, the legislature will not dare, under the threat of dissolution by the Chief Executive, to refuse to pass or to refuse to uphold a bill which the Chief Executive considers important.
 - The new Legislative Council may not be able to muster a sufficient majority to contest the will of the Chief Executive.
 - The Chief Executive could make a slight compromise by amending the original bill to avoid having to resign.
- This article should be amended to read: "If the Chief Executive of the HKSAR considers that a bill passed by the Legislative Council is not compatible with the overall interest of the HKSAR, he/she may return it to the Legislative Council within three months for reconsideration. If the Legislative Council passes the original bill again by no less than one-third of its members, the Chief Executive must sign and promulgate it within one month."

Reason: - The two-thirds majority required to pass again a bill vetoed by the Chief Executive is too large. It will stifle any voice of opposition in the legislature and thus render it impossible for the legislature to check and balance the power of the Chief Executive.

- This article should be amended to read: "When the Chief Executive vetoes a bill passed by the Legislative Council [bills should not be classified as important or unimportant because definition is difficult], he/she shall return it to the Legislative Council for reconsideration. If the Legislative Council passes the original bill again by no less than a two-thirds majority, the original bill may become law."
- This article should be amended to read: "If the Chief Executive of the HKSAR does not sign a bill one month after its passage and does not exercise his/her power of veto, the bill in question shall automatically come into effect."
- This article should be amended to read: "If the Chief Executive of the HKSAR considers that a bill passed by the Legislative Council is not compatible with the overall interest of the HKSAR, he/she may return it to the

Legislative Council for reconsideration. If the Legislative Council passes the original bill again by no less than a two-thirds majority, the Chief Executive must sign it within one month. If the Chief Executive fails to attend to the bill passed by the Legislative Council within the specified period, the bill in question shall automatically come into effect."

- This article should be amended to read: "If the Chief Executive of the HKSAR considers that a bill passed by the Legislative Council is not compatible with the overall interest of the HKSAR, he/she may return it to the Legislative Council within three months for reconsideration. If the Legislative Council passes the original bill again by no less than a two-thirds majority, the Chief Executive must sign and promulgate it within one month."

- This article should be amended to read: "If the Chief Executive of the HKSAR considers that a bill passed by the Legislative Council is not compatible with the overall interest of the HKSAR, he/she may return it to the Legislative Council within two months for reconsideration. If the Legislative Council passes the original bill again by no less than a two-thirds majority, the Chief Executive must sign and promulgate it within one month."

Reasons: - The time limit should be reduced to two months because a three-month period would unnecessarily delay the passage of important bills.

- Article 50 provides the Chief Executive with too much veto power, which is not compatible with the ideal set forth in the first half of Article 49 for maintaining checks and balances between the Chief Executive and the Legislative Council. Thus the clause "or act in accordance with the provisions of Article 50 of this Law" should be deleted.

- This article should be amended to read: "If the Chief Executive ... for reconsideration. If the Legislative Council passes the original bill again by a majority, the Chief Executive shall not dissolve the Legislative Council but shall, instead, sign and promulgate the bill within one month." (Note 49-2)

Reason: - This amendment is necessary to ensure checks and balances between the powers of the Chief Executive and the legislature. If the Chief Executive will have the power to dissolve the Legislative Council should the latter pass the original bill again by a majority, the Legislative Council will be deterred from

upholding the bill vetoed by the Chief Executive. Thus checks and balances between the Chief Executive and the legislature cannot be maintained. For this reason, the Chief Executive should, if the Legislative Council passes the original bill again, adhere to the resolution of the Legislative Council and endorse that bill to give it effect. (Note 49-3)

- This article should be amended to read: "To implement the principle of maintaining checks and balances between the executive authorities and the legislature, a bill passed by the Legislative Council must be signed and promulgated by the Chief Executive before its entry into force. If the Chief Executive does not sign the bill within three months, the bill should automatically come into effect. If the Chief Executive refuses to sign the bill, the bill shall be discussed again by the Legislative Council within two months. If the Legislative Council passes the bill again by a two-thirds majority of the members present at the session, the Chief Executive must sign and promulgate it forthwith." (Note 49-4)
- The words "within three months" should be amended to read "within one month".

Reason: - The Chief Executive should be quite familiar with the spirit and principles of the bill under discussion when it was being formulated. Thus, a one-month period should be quite sufficient for him to decide whether it should be returned to the Legislative Council for reconsideration.

- The words "a two-thirds majority" should be amended to read "a four-sevenths" majority".

Reason: - If debate over a bill is intense, chances are that it will be passed (or vetoed) by a very narrow majority. If the Chief Executive is not required to act until after the Legislative Council passes the original bill again by a two-thirds majority, the bill might be stalled forever.

- The clause "may return it for reconsideration" should be amended to read "shall return it for reconsideration".

3.3 Other suggestions

- This article retains the overwhelming power of the executive authorities under colonial rule. The government of the HKSAR should be a democratic government and the Chief Executive should be required to accept all bills passed by the Legislative Council. (Note 49-5)

- The Chief Executive should have the power to veto bills passed by the legislature, but likewise the legislature should have the power to overrule the Chief Executive's decision if such a motion is passed by a two-thirds majority.

Reason: - The threat of dissolution by the Chief Executive could deter the Legislative Council from voting against bills the Chief Executive wants to see passed, thus eroding the independent legislative functions of the legislature.

- The Chief Executive should have the power to refuse to sign a bill passed by the legislature. However, if the legislature passes the original bill again by a two-thirds majority, the Chief Executive should be required to sign that bill. If the Chief Executive refuses to sign, the bill should automatically come into effect after one month.
- If the original bill is passed again by the Legislative Council, the Chief Executive should adhere to the resolution of the Legislative Council and sign it.

Reason: - If the Chief Executive is still allowed to exercise his/her power to dissolve the Legislative Council after the latter passes the original bill again by a majority, the Legislative Council will be deterred from insisting the passage of the bill vetoed by the Chief Executive. Thus the purpose of maintaining checks and balances will be defeated.

- After the Chief Executive has vetoed a bill and the Legislative Council has passed the original bill again by a two-thirds majority, the Chief Executive should be required to sign the bill without recourse. The only exception should be budgets, in which case Article 50 will apply.
- If the Chief Executive considers that a bill "is not compatible with the overall interest of the HKSAR", he/she should state the reasons for such an opinion or return the bill to the Legislative Council for reconsideration.

4. Issues to be clarified

- What happens if the Chief Executive refuses to return the bill within three months?
- Would it not be possible for the Chief Executive, on the pretext of having to leave Hong Kong for an overseas visit, to have the Chief Secretary act in his/her absence and refuse to sign the bill re-submitted by the

Legislative Council, thus avoiding having to resign?

- What is meant by "may return it"? Why not say "shall return it"?

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Article 50

1. Original text

If the Chief Executive refuses to sign the bill passed by the Legislative Council for a second time, or the Legislative Council refuses to pass the budget or other important bills introduced by the government and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council.

Before dissolving the Legislative Council the Chief Executive should ask for opinions from the Executive Council. A Chief Executive can dissolve the Legislative Council only once in each term of office.

2. Views

2.1 The Chief Executive should have the power to veto any bill passed by the Legislative Council for a second time, and should have the power to dissolve the Legislative Council.

2.1.1 Support is expressed for this article.

Reasons: - The provisions of this article provides the Chief Executive with the greatest authority, and in fact the Chief Executive should have such veto power.

- The Chief Executive should be given a free hand in the handling of matters.

2.1.2 Partial support is expressed for this article.

Reasons: - The Chief Executive is vested with too much power.

- The Chief Executive should have the power to veto bills but not the power to dissolve the Legislative Council.

- It should be stipulated that the Chief Executive shall only have the power to refuse to pass the budget and to dissolve the Legislative Council when consensus cannot be reached after consultations.

- It should not be stipulated that the Chief Executive can dissolve the Legislative Council only once in each term of office.

- The Chief Executive should only be allowed to dissolve the Legislative Council when a vote of no confidence against the Chief Executive is

passed by members of the Legislative Council.

- Even if the Chief Executive is to have the power of dissolving the legislature, such a power should not be exercised in accordance with the provisions of this article. Rather, it should be exercised only when the legislature fails to fulfil its functions in accordance with the provisions of Article 72.

2.1.3 Disagreement is expressed on this article.

Reasons: - Under this article, the Legislative Council will not be able to check and balance the power of the Chief Executive.

- (1) The power of the Chief Executive will be too great.
- (2) The Legislative Council will be unable to exercise supervision over the workings of the government.
- (3) The Legislative Council will be straight-jacketed.
- (4) If a bill is opposed by two-thirds of the members of the Legislative Council, there must be something wrong with it. It also indicates reservations on the part of the public. If the Chief Executive dissolves the Legislative Council under such circumstances, there will be serious consequences.
- (5) Opinions from the Executive Council are unlikely to be a reasonable counter-balance.
- (6) This article completely destroys the checks and balances between the executive authorities and the legislature.

- Political concession

- (1) If the Chief Executive has the power to dissolve the Legislative Council, members of the Legislative Council may be forced to make political concessions for fear of losing their seats. This will render it impossible to maintain an effective system of supervision.
- (2) This article will result in members of the Legislative Council having misgivings when

- (3) This article will prompt members of the Legislative Council to put their personal interests or the interests of their group above overall interests. It will also turn the Legislative Council into a rubber stamp. Since the Legislative Council will be dissolved if it refuses to pass a certain bill, members hoping to retain their seats will not reject bills.

- Other reasons:

- (1) This article will lead to a political crisis.
- (2) This article is undemocratic.
- (3) The Chief Executive will be likely to show favouritism.
- (4) This article will seriously affect the functions and workings of the Legislative Council.
- (5) The independent legislative power of the Legislative Council will be affected.
- (6) The source of power of the Chief Executive is different from that of the legislature.
- (7) There will be social unrest and public resentment if the Chief Executive obstinately decides to dissolve the Legislative Council.
- (8) The Chief Executive should not be given the sole power to dissolve the Legislative Council, to refuse to sign bills and to appropriate funds. Should conflicts arise between the Chief Executive and members of the Legislative Council, a mechanism might be established whereby the people of the HKSAR could participate in the decision-making, such as the holding of a referendum.

2.2 Other views

- As members of the Legislative Council will be from different backgrounds and political groups, they are likely to have conflicting interests. It will be very difficult for them to pass by a two-thirds majority a bill not accepted by the Chief Executive.

- This article goes against the Joint Declaration.

Reason: - The Joint Declaration stipulates that the executive authorities shall be accountable to the legislature, suggesting that the future political structure will be legislature-led. However, under the provisions of this article, the Chief Executive will have the power to dissolve the Legislative Council, while the Legislative Council will only have the power to impeach but not remove the Chief Executive. This will turn the Legislative Council into a puppet manipulated by the Chief Executive.

- There is a touch of colonialism in replacing the title of "Governor" by "Chief Executive".

- The Chief Executive should have the power to dissolve the Legislative Council, but a new Legislative Council should be elected within six months.

- The Chief Executive should not have the power to dissolve the Legislative Council. He/she should only have the power to postpone a Legislative Council session once in each term of his/her office.

3. Suggestions

3.1 Deletions

- This article should be deleted. (Note 50-2)

Reasons: - This article goes against legislative independence.

- The power of the Chief Executive will pose a direct threat to the existence of the Legislative Council, rendering the latter incapable of independently exercising control over the Executive Council.

- The entire system of checks and balances will be destroyed by this article.

- Under this article, the Chief Executive will be able to abuse his/her excessive power.

- It is not stipulated in Article 48 that the Chief Executive will have the power to dissolve the Legislative Council.

- If the Chief Executive has lost the support of the legislature to this extent and has, by extension, also lost the support of the Hong

Kong people, he/she should gracefully step down and arrange for a replacement who does have the support of the legislature and the people.

3.1.1 Articles 50 and 51 should be deleted and replaced with the following article: "If the Chief Executive has sufficient reasons to dissolve the Legislative Council, he/she shall first have to secure the support of all members of the Executive Council and shall put to the people of Hong Kong a motion calling for the dissolution of the Legislative Council, which shall then be voted on by all legitimate voters. If the motion is passed by two-thirds of the voters who took part in the ballot, he/she may dissolve the Legislative Council."

Reasons: - If the Chief Executive has overriding power in the dissolution of the Legislative Council, the latter will be easily controlled by the Chief Executive. This will have bearing on the principle of division of powers.

- If the Legislative Council is to be elected by the people, the people should have the power to dissolve it as a means of giving expression to the spirit of democracy.

- The clause "[i]f the Chief Executive refuses to sign the bill passed by the Legislative Council for a second time" in Paragraph 1 should be deleted.

3.2 Amendments

3.2.1 Overall amendments

- This article should be amended to read: "If the Chief Executive refuses to sign the bill passed by the Legislative Council for a second time, or the Legislative Council refuses to pass the budget or other important bills introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council. The Chief Executive shall then have to resign and a new Legislative Council and Chief Executive shall be elected."

- This article should be amended to read: "If the Legislative Council refuses to pass the budget or other important bills introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council."

"The Chief Executive should consult the Executive Council before dissolving the Legislative Council. The Chief Executive may dissolve the Legislative Council only once in each term of office."

- This article should be amended to read: "If the Legislative Council refuses to pass the budget introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council. The Chief Executive may dissolve the Legislative Council only once in each term of office."

Reason: - This will avoid vesting too much power in the Chief Executive and thus undermining the principle of checks and balances. (Note 50-4)

- This article should be amended to read: "If the Legislative Council refuses to pass the budget introduced by the government, and if the budget bill still cannot be passed by a majority after consultations, the Chief Executive may dissolve the Legislative Council.

"The Chief Executive may dissolve the Legislative Council only once in each term of office.

"Except in the case of a budget, the Chief Executive shall not have the power to dissolve the Legislative Council on the basis of the latter's refusal to pass a bill for a second time."

3.2.2 Amendments to individual paragraphs

(1) Paragraph 1

- This paragraph should be amended to read: "If the Legislative Council refuses to pass the budget introduced by the government, and if consensus still cannot be reached after consultations, the Executive Council may dissolve the Legislative Council."
- The word "consensus" should be amended to read "agreement between the Chief Executive and the Legislative Council".

Reason: - The word "consensus" may be interpreted to mean that the consent of all members of the Legislative Council will be required. If the term is interpreted this way, the requirement will be too stringent.

- The following provision should be added at the end of this paragraph: "However, he/she must state the reasons to the public beforehand."
- The following provision should be added at the end of this paragraph: "The Chief Executive shall have to resign and a new Legislative Council and Chief Executive shall be elected."

Reason: - In this way the power of the Chief Executive and

that of the Legislative Council will be more or less equal, and thus the Chief Executive will not misuse or abuse his/her power to "dissolve the Legislative Council". If the executive authorities and legislature cannot reach consensus on a social policy, the decision should be left to the public (for they are the source of power of the Chief Executive and the members of the Legislative Council).

(2) Paragraph 2

- The last sentence should be deleted.
- The following provision should be added at the end of this paragraph: "If members of the Legislative Council consider that the way the Chief Executive of the HKSAR handles a bill passed by the Legislative Council is against the overall interest of the Region, they may initiate a motion to impeach or remove the Chief Executive and report this to the Central People's Government for decision and implementation after the motion is passed by a two-thirds majority of the Council."

Reason: - This will prevent the Chief Executive from becoming too powerful, to a degree where the Legislative Council will not have any way of checking or balancing his/her power. Since members of the Legislative Council will be elected, they should be directly accountable to the people. The Chief Executive will have overriding power over the people if he/she has the power to dissolve the Legislative Council.

- The following provision should be added: "If the Chief Executive is impeached as a result of serious breach of law or dereliction of duty, the signing of bills into law, formerly carried out by the Chief Executive, may be effected by the joint signatures of two-thirds of the members of the Executive Council or Legislative Council until the Central People's Government decides on other arrangements."

3.3 Other suggestions

- The Chief Executive should not have the power to dissolve the Legislative Council.

Reason: - Such power will jeopardize the autonomy of the Legislative Council.

- The Chief Executive should not be allowed to veto bills introduced by members of the Legislative Council under Article 73 (except the three kinds of bills listed in that article) without limitations.

Reason: - In most democratic organizations there is some means by which such a veto can be overruled by an appropriate majority.

- The Chief Executive should be required to resign when the Legislative Council is dissolved.

Reasons: - This is necessary to maintain checks and balances between the executive authorities and the legislature.

- This is necessary because the Chief Executive will no longer have the trust of the elected Legislative Council.

- To implement the principle of maintaining checks and balances between the executive authorities and the legislature, bills passed by the Legislative Council must be signed and promulgated by the Chief Executive. If the Chief Executive fails to sign a bill within three months, the bill should automatically enter into force. If he/she refuses to sign the bill, it should be discussed by the Legislative Council again within two months. If the Legislative Council passes the bill again by a two-thirds majority, the Chief Executive should be required to sign and promulgate it forthwith.
- If the Chief Executive refuses to sign a bill passed by the Legislative Council, the Chief Executive should be allowed to return the bill to the Legislative Council for a second vote. If the bill is again passed by a two-thirds majority, the Chief Executive should have no option but to sign and promulgate it as law.
- In addition to consulting the Executive Council, the Chief Executive should also be required to obtain the consent of two-thirds of the members of the Executive Council before dissolving the Legislative Council.
- If "consensus still cannot be reached after consultations", the bill should be submitted to the Central People's Government for decision.

4. Issues to be clarified

- When will a new Legislative Council be formed after the Chief Executive has exercised his power of dissolution?
- If an important bill needs to be passed when the Legislative Council is dissolved, what is to be done?
- Should the Chief Executive find it necessary to dissolve the Legislative Council for a second time under special circumstances, will the provisions of this article affect

his/her power of dissolution?

- The meaning of the words "or other important bills" is vague.
- Article 50 presupposes possible conflicts between the Chief Executive and the Legislative Council. Why should such conflicts be envisaged? Are they so envisaged because, given that the Chief Executive will be accountable to the Central People's Government, he/she will represent the interests of the Central People's Government, which will be in conflict with the interests of the HKSAR as represented by the Legislative Council?

Article 51

1. Original text

If the Legislative Council refuses to pass the budget bill presented by the government, or if appropriation of public funds cannot be approved because the Legislative Council is already dissolved, the Chief Executive may approve temporary short-term appropriations according to the level of the previous fiscal year's expenditure prior to the election of the new Legislative Council.

2. Views

- The support of no less than half or two-thirds of the members of the Legislative Council should be required for the approval of appropriations.
- If the budget introduced by the government cannot be passed because the Legislative Council is unable to form a quorum, the Chief Executive should not have the power to approve temporary short-term appropriations in accordance with the provisions of this article.
- This article should be amended because it is illogical.
- This article should be kept as it is.

3. Suggestions

3.1 Deletions

- This article should be deleted. (Note 51-1)
- The clause "or if appropriation of public funds cannot be approved because the Legislative Council is already dissolved" should be deleted.
- The clause "prior to the election of the new Legislative Council" at the end of this article should be deleted. It is possible that after further consultations the existing Legislative Council may pass the budget.

3.2 Amendments

- This article should be deleted along with Article 50 and replaced with the following provision: "If the Chief Executive has sufficient reasons to dissolve the Legislative Council, he/she shall first have to secure the support of all members of the Executive Council and then put to the people of Hong Kong a motion calling for the dissolution of the Legislative Council. If the motion is passed by two-thirds of the voters taking part in the ballot, he/she may dissolve the Legislative Council."

Reasons: - If the Chief Executive has overriding power in the dissolution of the Legislative Council, the latter will be easily controlled by the Chief Executive. This will have bearing on the principle of division of powers.

- If the Legislative Council is elected by the people, the people should have the power to dissolve it as a means of giving expression to the spirit of democracy.

- This article should be amended to read: "If the Legislative Council refuses to pass the budget introduced by the government, the Chief Executive may approve temporary short-term appropriations in accordance with the level of expenditure of the previous fiscal year. However, the vetoed budget must be reconsidered within three months, and if the original bill is passed again by no less than one-third of the members, the Chief Executive must sign and promulgate it within one month."

Reason: - Under the original article, the Chief Executive will be so powerful that he/she will be able to control the government's purse-strings. This is because when the budget is being reconsidered it may not be possible for members of the Legislative Council to muster sufficient force to oppose it. Moreover, when the budget is being put to a vote for the first time, the Legislative Council which lacks sufficient strength to check and balance the power of the Chief Executive may not dare refuse to pass the budget for fear of being dissolved by the Chief Executive.

- This article should be amended to read: "If the Legislative Council refuses to pass the budget introduced by the government, or if appropriation of public funds cannot be approved because the Legislative Council is already dissolved, the Chief Executive may approve temporary short-term appropriations, in accordance with the level of the previous fiscal year, prior to the election of the new Legislative Council and after consulting the Executive Council. The provisions of this article shall only be valid for a maximum period of three months after passage of the budget is refused."

- This article should be amended to read: "If the Legislative Council refuses to pass the budget introduced by the government, the Chief Executive may return it to the Legislative Council within three months for reconsideration. If the original budget is passed again by no less than a two-thirds majority, the Chief Executive may not raise any objection. If the new budget is not

ready in time to be re-submitted to the Legislative Council, the Chief Executive may approve temporary short-term appropriations in accordance with the level of the previous fiscal year."

Reason: - The collective wisdom of a two-thirds majority of the Legislative Council should be more credible than the decision of the Chief Executive alone on whether a bill is compatible with overall interests.

1. Original text

The Chief Executive shall have to resign under any of the following circumstances:

- (1) When he/she loses the ability to discharge the functions of his/her office due to serious illness or other reasons;
- (2) When, after the Legislative Council is dissolved because he/she twice refuses to sign the bill it passes, the new Legislative Council has again passed the original bill in dispute with a two-thirds majority; and
- (3) When, after the Legislative Council is dissolved because it refuses to approve the budget or any other important bill, the new Legislative Council still refuses to pass the original bill in dispute.

2. Views

2.1 Paragraph (1)

- This paragraph is very appropriate.
- The use of the term "resign" may not be the most appropriate.

Reason: - The Chief Executive will not be able to resign should he/she be mentally or physically ill. Under such circumstances, the NPC should step in and declare that the Chief Executive is to be relieved of his/her duties because he/she is incapable of discharging the functions of his/her office.

2.2 Paragraph (2)

- This paragraph is appropriately worded, is not rigid and will not result in a deadlock.

Reasons: - There is sufficient flexibility in stipulating that the Legislative Council will only be dissolved after the Chief Executive twice refuses to sign the bill it passed. If the Chief Executive is allowed to refuse to sign bills or to dissolve the Legislative Council as often as he/she pleases, his/her power will be much too great. That will not be democratic.

- A deadlock will result only if the Legislative

Council insists on the original bill and the Chief Executive keeps refusing to sign it.

- This paragraph promises flexibility. It provides the Chief Executive and members of the Legislative Council with ample time to discuss and amend their respective stands, make compromises and reach a consensus, thus avoiding a deadlock.
- This paragraph is in keeping with the principle of maintaining checks and balances, which is a guarantee for maintaining the political stability of the HKSAR.
- There is no need to include such a provision in the Basic Law.

Reason: - Paragraph (3) already covers the spirit and intention of this paragraph.

- It weakens the ability of the Legislative Council to check and balance the power of the Chief Executive.

2.3 Paragraph (3)

- Support is expressed for this paragraph.
- This paragraph provides an important and necessary means of maintaining checks and balances. The fact that the Basic Law vests such a power in the legislature is an indication of the progress Hong Kong has made in its political development.

2.4 Paragraphs (2) and (3)

- These two paragraphs cannot prevent the Chief Executive from abusing his/her power. Since the new Legislative Council will be formed by the Chief Executive, there is no guarantee that the majority of members elected to it will not be his/her supporters, which makes it rather unlikely that the new Legislative Council will oppose the wishes of the Chief Executive and put the Chief Executive in a situation where he/she will have to resign.
- In paragraphs (2) and (3), the use of the word "original" does not seem to have taken into account the possibility that a bill may be amended without any disputes.

2.5 Other views

- Support is expressed for this article.
- This article makes it possible to maintain checks and balances between the Chief Executive and the legislature.

- An important function of the legislature will be to approve the budget. Since a budget has a direct bearing on the interests of the people, it is often a means by which a legislature exercises supervision over the government. On the surface, the budget prescribes a government's administrative expenditure, but it is also a policy report. Thus, the power to approve the budget may be wielded by the legislature as a means of exercising supervision over the Chief Executive.
- The scope under which the Chief Executive shall have to resign is far too narrow. He/she should be allowed to resign of his/her own accord when it is evident that, for whatever reason, he/she has lost the support of the legislature and the people. That is why at such a time there should be a vote of no confidence because it will correctly reflect the true situation. This will allow the Chief Executive to make his/her exit honourably and a replacement to be appointed with the least possible conflict and confrontation.
- The Legislative Council should have the power to determine whether or not the Chief Executive has lost the ability to discharge the functions of his/her office.
- The Chief Executive should be required to resign when the moral grounds are sufficient to warrant resignation, for example, when he/she has been involved in corruption or a criminal offence, or for the reasons prescribed in Paragraph (9) of Article 72.
- The Chief Executive should also be allowed to resign of his/her own accord for personal reasons.
- The Chief Executive should not be required to resign if he/she is willing to sign the original bill in dispute.
- In order to retain his/her position, the Chief Executive might pass a bill without reservation even though he/she knows that it contains loopholes, in which case he/she will not be serving the people wholeheartedly. This will be unfair to the people.
- The Chief Executive will have the power to dissolve the legislature, but the legislature will only have limited power to demand the resignation of the Chief Executive. Also, the legislature is not vested with the power to introduce important bills. Except in the case of the budget, which must be re-introduced to the legislature, the Chief Executive may avoid having to resign by not presenting the originally-rejected bill to the new legislature. Even in the case of the budget (or other important bills), he/she may make some cosmetic changes to the budget and present it to the legislature again without risking the danger of having to resign should the budget

be rejected.

- It would be very damaging to public confidence should such a conflict as mentioned in this article arise between the Chief Executive and the Legislative Council. Even international analysts will not approve of the dissolution of the legislature on these grounds. And affluent democratic countries will deem a chief executive who dissolves the legislature an irrepressible dictator.
- After the resignation of the Chief Executive is accepted by the Legislative Council, the final decision should be made by the Central People's Government.

3. Suggestions

3.1 Deletions

3.1.1 Paragraph (1)

- The words "or other reasons" should be deleted.

3.1.2 Paragraph (2)

- This paragraph should be deleted.

Reason: - If the Chief Executive will not have the power to dissolve the Legislative Council, he/she should not be required to resign because the legislature is dissolved.

- The word "twice" should be deleted.

Reason: - Unless this word is deleted, the power of the Chief Executive will be too great, and the legislature will not be able to check and balance his/her power.

3.1.3 Paragraph (3)

- If the word "twice" in Paragraph (2) is deleted, this paragraph should also be deleted.
- This paragraph should be deleted. (Note 52-1)

Reason: - If the Chief Executive will not have the power to dissolve the Legislative Council, he/she should not be required to resign because the Legislative Council is dissolved.

3.1.4 Paragraphs (2) and (3)

- Paragraphs (2) and (3) should be deleted and replaced by the following: "(2) If the legislature passes a vote of no confidence against the Chief Executive by a two-thirds

majority, the Chief Executive may dissolve the legislature. If the new legislature still passes a vote of no confidence against him/her, the Chief Executive must resign".

- Paragraphs (2) and (3) should be deleted and replaced by the following: "(2) When the Legislative Council passes a vote of no confidence against the Chief Executive, or vetoes a vote of confidence against the Chief Executive."

3.2 Amendments

3.2.1 Overall amendments

- This article should be amended to read: "The Chief Executive of the HKSAR shall have to resign under any of the following circumstances:

(1) When he/she loses the ability to discharge the functions of his/her office due to serious illness or other reasons; or

(2) When, after the Legislative Council has been dissolved because it refused to approve the budget, the new Legislative Council still refuses to pass the budget introduced by the government." (Note 52-2)

- This article should be amended to read: "If the Chief Executive loses his/her ability to discharge the functions of his/her office due to serious illness or other reasons but does not resign of his/her own accord, on a motion jointly initiated by no less than one-quarter of the members of the Legislative Council, an independent investigating committee, to be chaired by the Chief Justice of the Court of Final Appeal, may be established to carry out an investigation. After consulting the relevant medical reports and other information, the investigating committee may introduce a motion in the Legislative Council that the Chief Executive be relieved of his/her duties. If the motion is passed by no less than a two-thirds majority, the Legislative Council may report it to the Standing Committee of the NPC for the removal of the Chief Executive."

Reason: - This provides a means of removing the Chief Executive who fails to discharge his/her duties and does not resign of his/her own accord.

- This article should be amended to read: "The Chief Executive shall have to resign under any of the following circumstances:

(1) When he/she is unable to discharge the functions of his/her office;

- (2) When he/she commits a criminal offence; or
- (3) When a new Legislative Council refuses to pass a budget which the previous Legislative Council refused to pass."

Reason: - The circumstances under which the Chief Executive shall have to resign as prescribed in the original Paragraphs (2) and (3) will lead to political instability and deter members of the Legislative Council from refusing to pass bills the Chief Executive wants to see passed.

3.2.2 Amendments to individual paragraphs

Paragraph (1)

- This paragraph should be amended to read: "When he/she loses his/her ability to discharge the functions of his/her office for any reason".
- A suggested amendment to the way in which the idea of the Chief Executive "losing his/her ability" is expressed. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the English translation.]
- This paragraph should be amended to read: "... due to serious illness, serious dereliction of duty or other reasons".

Paragraph (2)

- This paragraph should be amended to read: "When a vote of no confidence against the Chief Executive is passed by a three-quarters majority of the legislature, the vote should be reported to the Central People's Government which shall approve his/her removal".

Reason: - This amendment is needed to maintain checks and balances.

- The words "a two-thirds majority" should be amended to read "a three-quarters majority".
- The words "a two-thirds majority" should be amended to read "a four-sevenths majority".

Paragraph (3)

- This paragraph should be amended to read: "When, after the Legislative Council has been dissolved because it refuses to approve the budget, the new Legislative Council still refuses to pass the budget introduced by the government".

- The following provision should be added: "When, after the legislature has been dissolved because it passed a vote of no confidence against him/her by a two-thirds majority, the new legislature again passes a vote of no confidence against him/her".
- The following provision should be added: "When the legislature passes a vote of no confidence against him/her by a two-thirds majority."

Reason: - This is necessary to bring about better checks and balances between the Chief Executive and the Legislative Council.

- The following provision should be added: "When, after the legislature has been dissolved because it passed a vote of no confidence against him/her, the new legislature again passes a vote of no confidence against him/her".
- The following provision should be added: "The legislature may pass a vote of no confidence against the Chief Executive by a two-thirds majority and report it to the Central People's Government for a decision. If the Central People's Government does not give its approval, the Chief Executive may dissolve the legislature. However, the Chief Executive must resign if the new legislature again passes a vote of no confidence against him/her."

Reason: - The Joint Declaration states that the executive authorities must abide by the law and shall be accountable to the legislature. However, none of the provisions in Section 1 of Chapter IV measure up to the requirements for maintaining checks and balances. The addition of this provision which gives the legislature the power to pass a vote of no confidence against the Chief Executive is necessary to enable the legislature to play its supervisory role properly.

- The following provision should be added: "When a motion of impeachment based on his/her breach of law or dereliction of duty is passed by a two-thirds majority of the Legislative Council."
- The following provision should be added: "When there is sufficient evidence that he/she is guilty of corruption or dereliction of duty and a motion calling for his/her removal is passed by the majority of the members of the Legislative Council."

- The following provision should be added: "When he/she loses or relinquishes his/her status as a Chinese national having permanent residence in the HKSAR."
- The following provision should be added: "When, he/she 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/her duties by a motion passed by a two-thirds majority of the Legislative Council."

3.4 Other suggestions

- The Chief Executive should be required to resign if he/she signs a bill which is disputed by the Legislative Council.
- The Chief Executive should be required to resign if he/she is guilty of dereliction of duty.
- The Basic Law should authorize suitable persons to establish a committee to define the meaning of "other reasons" when necessary. The committee should be composed partly of members of the Legislative Council.

4. Issues to be clarified

- Who is to determine that the Chief Executive has lost "his/her ability to discharge the functions of his/her office"?
- What is meant by "other reasons"?
- What is to be done if the Chief Executive breaks the law?
- How are administrative mistakes on the part of the Chief Executive to be dealt with? Will he/she be required to resign on these grounds?
- Will the Chief Executive be required to resign if he/she loses the confidence of the Central People's Government? Will the Central People's Government be able to relieve him/her of his/her duties?

Article 53

1. Original text

If the Chief Executive of the Hong Kong Special Administrative Region is not able to discharge his/her duties for a brief period, such duties shall temporarily be assumed by Administrative Secretary, Financial Secretary, Secretary of Justice in this order of precedence.

In the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be selected within six months, and during the period of vacancy, his/her duties shall be assumed according to the provisions of the preceding Paragraph.

2. Views

- The benefit of laying down firm stipulations for the order of precedence officials will have in acting on behalf of the Chief Executive is that the relevant Secretaries will be mentally prepared and the public will have a good idea which Secretary will be their acting Chief Executive when the Chief Executive is not able to discharge his/her duties for a brief period.

- Objection is expressed to this article.

Reasons: - Whoever assumes the duties of the Chief Executive should be elected by the people of Hong Kong, but none of the officials mentioned in this article will be elected.

- There should not be any rigid arrangements as to who should temporarily assume the duties of the Chief Executive.
- The powers and functions of these officials will be very different from those of the Chief Executive.
- These Secretaries will not be familiar with the work of the Chief Executive.
- These Secretaries may not have the ability required.
- A limit should be set on the period for which the post of Chief Executive may remain vacant.
- A new Chief Executive should be selected if the office of Chief Executive remains vacant for six months.

- If the Chief Executive will not be able to discharge his/her duties for the remainder of his/her term of office, a new Chief Executive should be selected.

3. Suggestions

3.1 Amendments

- Paragraph 1 should be amended to read: "When the Chief Executive is not able to discharge his/her duties, his/her powers and duties should be taken on by the President of the Legislative Council, who shall be elected."
- Paragraph 1 should be amended to read: "When the Chief Executive is not able to discharge his/her duties for a brief period, such duties shall temporarily be assumed by the President of the Legislative Council, the Administrative Secretary, the Financial Secretary, or the Secretary of Justice in this order of precedence."
- The words "within six months" in Paragraph 2 should be amended to read "within three months". The circumstances under which the office of Chief Executive may become vacant include: (1) The Chief Executive resigns in accordance with the provisions of Article 52. (2) The Chief Executive is relieved of his/her duties by the Central People's Government in accordance with the provisions of Paragraph (9) of Article 72.
- The titles for heads of government departments should be made uniform.

3.2 Additions

- The following provision should be added at the end of Paragraph 1: "The Chief Executive shall appoint one of these officials to assume such duties."
- The following provision should be added to Paragraph 1: "The Chief Executive may not concurrently serve any political body or engage in the activities of any political body."
- The following provision should be added to Paragraph 1: "The Chief Executive may not purchase public land in his/her own name."

4. Issues to be clarified

- The specific meaning of "the office of Chief Executive becomes vacant" in Paragraph 2 needs clarification.
- Will the "new Chief Executive" referred to in Paragraph 2 start a new term of office or will he/she serve the remainder of the term of office of his/her predecessor?

- The clause "in this order of precedence" may be interpreted in two ways: (1) The Administrative Secretary, the Financial Secretary and the Secretary of Justice will take turns; (2) the duties will be assumed by the Administrative Secretary; if the Administrative Secretary is unable to take on the duties, they will be assumed by the Financial Secretary; and if the Financial Secretary is unable to take on the duties, they will be assumed by the Secretary of Justice. Clarification is therefore needed.



1. Original text

The Executive Council of the Hong Kong Special Administrative Region is an organ for assisting the Chief Executive in policy-making.

2. Views

- An Executive Council should not be established.

Reasons: - The Executive Council will provide a short cut by which people may go straight to the core of power without having to go through elections. It will be able to influence government policies, but will not be required to be accountable or responsible to the Legislative Council.

- The Executive Council of the HKSAR will be an organ for assisting the Chief Executive in policy-making, quite akin to the present Executive Council. At present, the Hong Kong Governor is appointed by Britain. The Governor needs the assistance of local advisers because he is not a Chinese and is not familiar with the local situation. It is stipulated in the constitutional documents of Hong Kong that the senior members of the Executive Council (the senior Chinese representatives) must be consulted on all important matters. However, since it is stipulated in the Basic Law that the Chief Executive of the HKSAR shall be a Chinese national who has resided in Hong Kong for a continuous period of 20 years, he/she will have an intimate knowledge of Hong Kong and the Chinese people. There is thus no need to establish an Executive Council.
- The structure of the HKSAR government should be kept simple.
- The establishment of an Executive Council reflects the policies of a colonial government.
- The residents of the HKSAR will be able to take part in the selection of the Chief Executive and the formation of the HKSAR government. Under the guiding principles of "one country, two systems", "Hong Kong people administering Hong Kong" and "a high degree of autonomy", there is no need to establish an Executive Council.

- The Joint Declaration has made no mention of the establishment of an Executive Council.
- There should not be an Executive Council comprising members who are not elected.
- An Executive Council should be established.

Reasons: - The Executive Council will form part of the executive authorities.

- It will assist the Chief Executive in discharging his/her duties.
- It will serve as a core of power for policy-making.
- As a component of the executive authorities, the Executive Council should share the political responsibilities of the Chief Executive.
- As a component of the government of the HKSAR, the Executive Council should assist the Chief Executive in making policy decisions.
- If the Chief Executive resigns (for whatever reasons), the Executive Council should be dissolved.
- The Executive Council should be accountable to the legislature.
- The Executive Council of the HKSAR will not be elected, yet it will exercise substantial power and will be able to influence the policy decisions of the Chief Executive. In order to retain the good points of the Executive Council of Hong Kong, the establishment of an Executive Council of the HKSAR should be considered, but only as an advisory organ.
- How will the Executive Council be established and what role it will play in the overall political structure is unclear. Its existence will lead to confusion over the powers and responsibilities of the executive authorities and will create unnecessary overlapping in the government structure.

3. Suggestions

3.1 Deletions

- Articles 54, 55 and 56 should be deleted and the Executive Council should not be established. (Note 54-1).

Reasons: - Since the Executive Council will only be an

advisory organ with no actual power, similar in nature to a think-tank for the Chief Executive, there is no need to make specific provisions for it in the Basic Law.

- The Executive Council, whose constitutional status and power are not clearly prescribed, will not be able to effectively check and balance the power of the Chief Executive.
- The fact that members of the Executive Council will be able to make their way to the core of power without going through any democratic process and will be able to influence the formulation of policies without having to account for the decisions will lead to the abuse of power.

3.2 Amendments

- This article should be amended to read: "The Executive Council of the HKSAR is an advisory organ for assisting the Chief Executive in policy-making."
- This article should be amended to read: "... an organ for assisting the Chief Executive in policy-making and in all matters which fall within the Chief Executive's terms of reference."
- A suggested amendment for the title of the Executive Council. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the English translation.]
- This article should be amended to read: "The Executive Council of the HKSAR is an organ for assisting the Chief Executive in policy-making and for mediating between the executive authorities and the legislature."

3.3 Other suggestions

- This article should be amended to provide that the Executive Council shall also be a body for handling administrative appeals as authorized by the laws of the HKSAR.
- The Chief Executive should also be required to consult the Executive Council on personnel matters, in addition to matters prescribed in Article 56.
- If, after the Chief Executive refuses to accept the advice of the Executive Council, the Executive Council still returns the same opinion by a majority of no less than two-thirds, the Chief Executive should be required to accept the majority opinion.

Reasons: - The Executive Council is only required to play the role of an adviser to the Chief Executive. It is stipulated in the Basic Law that the Chief Executive shall consult the Executive Council before making important decisions, introducing a bill to the Legislative Council, enacting subsidiary legislation or dissolving the Legislative Council. However, under the present provision, its functions will be rather nominal because the Chief Executive will not have to accept the majority opinion of the Council, but is simply required to put on record any reasons for not accepting such opinion.

- The suggested amendment will increase the power of the Executive Council to check and balance the power of the Chief Executive and prevent the Chief Executive from abusing his/her power.

- Article 54 should be moved to Section 2: "The Executive Authorities".

Reasons: - If this article is not moved to Section 2, the implication will be that the Executive Council will have great power, will be able to manipulate the government and will not be accountable to anyone.

- If this article is left under "The Chief Executive" section, the Executive Council will not be regarded as part of the executive authorities. Thus it will not be subject to the provisions under Article 64 and will not be required to be accountable to the Legislative Council. Such a situation will not be in accord with the spirit of the Joint Declaration.

- The Executive Council should be part of the executive authorities. It should be accountable to the legislature and share the political responsibilities of the Chief Executive.

4. Issues to be clarified

- The Executive Council will have an important role to play. Does the fact that it is not placed under the executive authorities mean that it will not have to be accountable to the legislature?

- The Executive Council will have considerable influence on the executive and decision-making powers of the Chief

Executive. It is stipulated in the Basic Law that members of the Executive Council shall be Chinese nationals who are permanent residents of the HKSAR, but the same is not required of members of the legislature. Does this imply a difference in their status?

- Will the Executive Council be considered part of the executive authorities, or will it be an advisory organ?

Article 55

香港特別行政區基本法
附件一
第四十條

1. Original text

Members of the Executive Council of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive from among the principal officials of the executive authorities, members of the Legislative Council and public figures. Their term of office and termination of their appointment before their term expires shall be decided by the Chief Executive. The term of office of members shall not exceed that of the Chief Executive who appoints them.

Members of the Executive Council of the Hong Kong Special Administrative Region shall be Chinese nationals who are permanent residents of the Region.

The Chief Executive may invite other persons concerned to sit in at council meetings as he/she deems necessary.

2. Views

2.1 The formation of the Executive Council

- Members of the Executive Council should be appointed by the Chief Executive provided that the Chief Executive is returned by universal suffrage.
- There should not be too many restrictions imposed on the power of the Chief Executive to appoint members of the Executive Council.

Reason: - The Executive Council should be able to select members from a broad cross-section of society.

- The Chief Executive should not have the power to appoint and terminate the appointment of members of the Executive Council.

Reasons: - If the Chief Executive has such power, the political destiny of members of the Executive Council will be completely controlled by the Chief Executive.

- The appointment system is a sign of regression.

2.2 The composition of the Executive Council

2.2.1 Members of the Legislative Council

- The majority of members of the Executive Council should concurrently be members of the Legislative Council.

Reasons: - This will induce better cooperation between the executive authorities and the legislature.

- This will ensure that recommendations made by the Legislative Council will be adopted without encountering too many obstacles.

- This will ensure that the legislature will approve the appropriation of public funds so that the government's policies and plans can be implemented.

- Members of the Legislative Council to be appointed to the Executive Council should be selected by the members from among themselves.

Reason: - This will guarantee the representativeness of Executive Councillors and ensure that they will be accountable to the Legislative Council.

- The Legislative Council should be represented in the Executive Council.

Reasons: - This is necessary for the maintenance of checks and balances.

- This will facilitate better working ties between the executive authorities and the legislature.

- This will enhance coordination between the executive authorities and the legislature and increase the efficiency of the government.

- The proportion of members of the Legislative Council to be appointed to the Executive Council should be clearly laid down.

Reasons: - This will prevent the situation where the majority of members of the executive authorities and the legislature are playing dual roles.

- This will avoid the monopoly of power by a handful of people.

- Suggestions on the proportion of members of the Legislative Council to be appointed to the Executive Council:

(1) No less than three-quarters;

(2) No less than half; and

(3) No more than one-fifth.

- Members of the Legislative Council appointed to the Executive Council should be required to relinquish their duties as legislators.

Reason: - This is necessary for the maintenance of checks and balances between the executive authorities and the legislature.

- Members of the Legislative Council should not be allowed to serve concurrently as members of the Executive Council.

Reasons: - Too many concurrent duties will affect their efficiency.

- There will be a duplication of power if members of the Legislative Council are allowed to serve concurrently as members of the Executive Council.

- Checks and balances between the executive authorities and the legislature will be weakened if this is allowed.

- This is necessary for giving full expression to the separation of executive, legislative and judicial power.

- This is necessary for ensuring that the executive authorities will be accountable to the legislature.

- Public servants should only be accountable to the executive authorities and the Chief Executive.

2.2.2 Principal officials

- The Executive Council should be composed entirely of principal officials.

2.2.3 Public figures

- It should be possible for public figures to be appointed to the Executive Council with the endorsement of over half of the members of the Legislative Council.

- The number of public figures appointed to the Executive Council should not exceed a prescribed proportion.

Reasons: - Such a quota is necessary for guaranteeing the representativeness of the Executive Council.

- Such restrictions are necessary for ensuring that the Chief Executive will not be able to

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- Public figures should not account for more than one-quarter of the total membership of the Executive Council.
- The Chief Executive should not be allowed to directly appoint public figures to the Executive Council.

2.2.4 Members of the Legislative Council and principal officials

- The Executive Council should be composed of principal officials of the executive authorities and members of the Legislative Council. The following are suggestions on their respective numbers:

- (1) Two-thirds of the members should be appointed from among members of the Legislative Council, and one-third should come from among the principal officials.
- (2) One-third should be members of the Legislative Council and two-thirds should be principal officials.
- (3) The proportions of the two groups should be more or less the same.

Reason: - The Executive Council will be similar to a cabinet in nature. Its efficiency will be affected if the voice of the opposition is too strong.

2.2.5 Other issues

- Only elected Legislative Councillors may be appointed to the Executive Council. Those who have served in the Executive Council before 1997 should not be eligible. This will avoid the possible allegation that they represent British interests.
- Executive Councillors should, as the directors of various departments of the HKSAR, assume responsibility for the government's policies in their particular fields. They should sit in on the Legislative Council to answer questions addressed to them by Legislative Councillors, who may pass votes of confidence for or votes of no confidence against them.
- Members of the Executive Council should only include principal officials, members of the Legislative Council endorsed by their colleagues and eminent members of the public endorsed by Legislative Councillors.

2.3 Term of office

- If the term of office is four years for both the Chief

Executive and the Executive Councillors, the term of those appointed by an incumbent Chief Executive towards the last days of his/her office will run well into the term of office of the new Chief Executive. This will give rise to inconveniences.

- It would perhaps be more appropriate if the term of office of the Executive Councillors is to terminate when the term of office of the Chief Executive expires.
- The provision regarding the term of office of Executive Councillors should depend on which alternative detailed in the Annexes is adopted.

2.4 Nationality

- Nationality restrictions on Executive Councillors should be relaxed.

Reasons: - This is necessary for strengthening people's confidence, stopping the brain drain and maintaining Hong Kong's way of life and image as an international port.

- This will boost the morale of those non-Chinese residents or Chinese nationals holding foreign passports who regard Hong Kong as their home.
- It should only be required that Executive Councillors must be permanent residents of the HKSAR. They should not need to be Chinese nationals.

Reason: - This will allow experienced and distinguished expatriates who are permanent residents of Hong Kong to be appointed as Executive Councillors.

- The Basic Law stipulates that members of the Executive Council shall be Chinese nationals. This will mean a considerable departure from the present Executive Council in which people other than Chinese are also allowed.
- It is likely that the Executive Council cannot be formed with no Legislative Councillors joining in.

Reason: - It is stipulated that members of the Executive Council must be Chinese nationals, but the same is not required of members of the Legislative Council.

2.5 Other views

- There is no need to establish an Executive Council.

Reasons: - The Executive Council was established under the policy of a colonial government.

- The Chief Executive should have full powers to appoint principal officials to advise him/her on important policies. There is thus no need to establish an Executive Council which will not be subject to any supervision or control.
- Under the provisions of this article, all members of the Executive Council will be appointed by the Chief Executive. That these appointed members could enter the core of power without going through any democratic process and could influence the decisions of the Chief Executive is akin to allowing a group of "free political luncheon-goers" who have no basis of representation to assist the Chief Executive in his/her policy-making.
- The appointment system ought to be abolished after 1997 when Hong Kong will no longer be a colony. However, considering that this system will enable the Chief Executive to pick his/her own advisers and appropriately subject members of the Executive Council to supervision, its retention should be considered, provided that the Legislative Council consents.
- Under the provisions of Paragraph 1, the replacement of the Chief Executive will lead to a "major reshuffle" in the government. If secretary-level officials have to be replaced every time a new Chief Executive comes into office, the continuity of administration will be seriously affected.
- This article goes against the Joint Declaration.

Reason: - The Joint Declaration stipulates that the executive authorities shall be accountable to the legislature. Under the provisions of this article, however, the Chief Executive will have the power to appoint incumbent members of the executive authorities and incumbent members of the Legislative Council to serve in the Executive Council. This will provide the Chief Executive with an opportunity to control the Executive and Legislative Councils and to engage in dictatorship.

3. Suggestions

3.1 Deletions

3.1.1 This article should be deleted. (Note 55-1)

Reasons: - Since the Executive Council will only be an advisory organ with no real power, similar in

nature to a chief executive's think-tank, there is no need to make specific provisions for it in the Basic Law.

- The Executive Council, whose constitutional status and power are not clearly prescribed, will not be able to effectively check and balance the power of the Chief Executive.
- There is no need to establish another mechanism to check and balance the power of the Chief Executive if he/she is already subject to the effective supervision of the Legislative Council.

3.1.2 Paragraph 1

- The words "members of the Legislative Council and public figures" should be deleted. (Note 55-2)

Reasons: - Members of the Legislative Council should not be able to serve concurrently as members of the Executive Council. (Note 55-3)

- Allowing public figures to be appointed to the Executive Council will prolong the appointment system and deprive others of the opportunity to enter the core of power through elections. (Note 55-4)
- The inclusion of these words goes against the spirit of democracy. (Note 55-5)

- The words "and public figures" should be deleted.

Reasons: - Their deletion is necessary to prevent "closed-door politics". Public figures will be able to reflect their opinions and needs through various government committees or Legislative Councillors.

- The representativeness and accountability of public figures are not guaranteed.
- The term "public figures" is difficult to define and could include just about anyone.

- The sentence "[t]he term of office of members shall not exceed that of the Chief Executive who appoints them" should be deleted.

Reasons: - It is too restricting.

- The term of office of Executive Councillors should be allowed to exceed that of the Chief

Executive who appoints them.

- The reasons for this restriction are not adequate.

3.1.3 Paragraph 2

- This paragraph should be deleted.
- The words "Chinese nationals who are" should be deleted.

Reason: - Persons other than Chinese nationals should also be allowed to serve on the Executive Council.

3.2 Amendments

3.2.1 Overall amendments

- This article should be amended to read: "Members of the Executive Council of the HKSAR shall be appointed by the Chief Executive from among the principal officials of the executive authorities and elected from among the members of the Legislative Council. The size, term of office and detailed working regulations shall be prescribed by law." (Note 55-6)

Reasons: - The Joint Declaration does not make any reference to the establishment and formation of an Executive Council. (Note 55-7)

- We should not allow a group of elite persons and leading businessmen who lack both representativeness and accountability to take part in the administration of the HKSAR. Such a practice is a product of the colonial system. (Note 55-8)
- This article should be amended as above, but retaining the original Paragraph 3. (Note 55-9)
- This article should be amended to read: "Members of the Executive Council of the HKSAR shall be appointed from among the principal officials of the executive authorities and elected from among the members of the Legislative Council. Members elected from among the members of the Legislative Council shall account for one-third of the total number. The Chief Executive may also appoint public figures to serve in the Executive Council."
- This article should be amended to read: "Three-quarters of the members of the Executive Council of the HKSAR shall be appointed by the Chief Executive from among the principal officials of the executive authorities. The termination of their appointment before their term expires shall, if necessary, be decided by the Chief Executive."

The term of office of members shall not exceed that of the Chief Executive who appoints them. The remaining one-quarter of the members shall be elected from among the members of the Legislative Council."

Reasons: - The majority of Executive Councillors should be principal officials of the executive authorities.

- The one-quarter members elected from among the members of the Legislative Council will provide a necessary link between the executive authorities and the legislature and will help supervise the implementation of resolutions adopted by the Legislative Council.

- The term "public figures" should be deleted from this article as they are unlikely to be able to play an appropriate role.

- This article should be amended to read: "The organization of the Executive Council of the HKSAR shall be as follows:

- (1) The Chief Executive (as President);
- (2) The Administrative Secretary, Financial Secretary and Secretary of Justice;
- (3) Members of the Legislative Council appointed by the Chief Executive, who will be elected by the Legislative Councillors from among themselves; and
- (4) Principal policy-making officials appointed by the Chief Executive, who must be endorsed by over half of the members of the Legislative Council."

- This article should be amended to read: "Members of the Executive Council of the HKSAR shall be appointed by the Chief Executive from among the principal officials of the executive authorities and public figures. The size, term of office and detailed working regulations of the Executive Council shall be prescribed by law."

3.2.2 Paragraph 1

- The words "shall not exceed" should be amended to read "may not exceed".

Reason: - The word "shall" is more flexible than the word "may".

3.2.3 Paragraph 2

- The words "Chinese nationals who are permanent residents of the Region" should be amended to read "permanent

residents of the Region".

Reasons: - Non-Chinese nationals who have lived in Hong Kong for years and ethnic Chinese holding foreign passports who wish to return to Hong Kong will not find the provision that members of the Executive Council must be Chinese nationals very encouraging.

- Being a permanent resident should be quite sufficient to qualify a person to serve on the Executive Council. There is no need to require that the person must also be a Chinese national.
- The requirement is not set down for members of the Legislative Council.
- The words "Chinese nationals who are permanent residents of the Region" should be amended to read "residents of the Region".
- The words "Chinese nationals" should be amended to read "ethnic Chinese".

Reason: - It is both understandable and acceptable that members of the Executive Council must be ethnic Chinese. However, many ethnic Chinese in Hong Kong are not Chinese nationals. The nationality restriction will bar many ethnic Chinese with political aspirations from the Executive Council.

3.2.4 Paragraph 3

- The words "may invite other persons concerned to sit in at council meetings" should read "may summon other persons concerned to provide information or professional opinions to the Executive Council".

3.3 Additions

3.3.1 Paragraph 1

- The following provision should be added: "The appointment of eminent members of the public to the Executive Council must be endorsed by more than half of the members of the Legislative Council."

Reasons: - This will guarantee that the HKSAR government and its policies will have the trust and support of the Legislative Council and will help to maintain a high standard of administrative efficiency.

- This will give expression to the spirit of the executive authorities being accountable to the legislature.
- This will promote better cooperation and mutual support between the executive authorities and the legislature.
- This will, through cooperation, maintain the checks and balances between the executive authorities and the legislature.

3.3.2 Paragraph 2

- The words "and who have reached the voting age and meet the requirements stipulated in Article 25" should be added at the end of this paragraph.

3.3.3 Paragraph 3

- The following provision should be added: "However, persons sitting in at council meetings shall not have the right to vote."

3.4 Rearrangement

- This article should not appear under Section 1 of Chapter IV.

Reason: - Section 1 of Chapter IV deals with the Chief Executive. It should not include rules and regulations for the Executive Council.

- This article should be moved to Section 2: "The Executive Authorities". (Note 55-10)

Reason: - If this article is placed under the section on the Chief Executive, the Executive Council will not be subordinated to the executive authorities or be subject to the restrictions of Article 64, which means that it will not have to be accountable to the legislature. This goes against the Joint Declaration. (Note 55-11)

3.5 Other suggestions

- All members of the Executive Council should be directly elected.

Reason: - Under the present practice, all Exco members are appointed. This practice suffers in that it fails to reflect the wishes of the people.

- The HKSAR should adopt a "semi-ministerial" system. As a first step, the ten appointed members of the present

Legislative Council should be replaced by elected members. Eventually, all or most of these elected members should be appointed by the Chief Executive to the Executive Council.

- The Chief Executive should not appoint serving public servants to the Executive Council.
- The method for the formation of the Executive Council and the different proportions of representation should be stipulated.

4. Issues to be clarified

4.1 Term of office

- What is the intention behind the stipulation on "term of office"?
- If "term of office" refers to the term of Executive Council members, will its expiry coincide with that of the Chief Executive? If the Chief Executive resigns or leaves office in mid-term, what is going to happen to the Executive Council members?
- Does the provision on the term of office in this article mean that, regardless of the length of the term of office of the Chief Executive, the term of office of Executive Councillors may not exceed say, 5 or 10 years, or that their term of office may extend beyond the retirement of the Chief Executive?
- The composition, structure and operation of the Executive Council need to be studied and decided upon without further delay.

4.2 Nationality

- Since there are no nationality restrictions on members of the Legislative Council, but it is stipulated that Executive Councillors must be Chinese nationals, does this mean that members of the Legislative Council may not be appointed to the Executive Council?

4.3 Other issues

- Why is it that nothing has been said about elected members of the Executive Council?
- Will the Executive Council as mentioned in this article meet in closed-door sessions?

Article 56

1. Original text

The Executive Council of the Hong Kong Special Administrative Region shall be presided over by the Chief Executive.

Except for the appointment, removal and disciplining of public officers and the adoption of measures in emergencies, the Chief Executive shall consult the Executive Council before making important decisions, introducing a bill to the Legislative Council, enacting subsidiary legislative, or dissolving the Legislative Council.

If the Chief Executive does not adopt a majority opinion of the Executive Council, he/she must put his/her specific reasons on record.

2. Views

- The Executive Council should not be presided over by the Chief Executive.

Reason: - This measure will prevent interference with bills.

- Members of the Executive Council will only be able to play an advisory role and it will be difficult for them to go against the wishes of the Chief Executive.

Reason: - The Chief Executive will only have to put his/her specific reasons on record if he/she does not adopt a majority opinion of the Executive Council.

- If members of the Legislative Council serving on the Executive Council are able to impeach the Chief Executive in the Legislative Council, then the Legislative Council will be able to check and balance the power of the Chief Executive. Under the provisions of this article, however, the Executive Council will only be an advisory body to the Chief Executive and the Chief Executive will have the right not to adopt the advice of his/her advisors.

- The Executive Council will not be very representative as its functions will only be to advise the Chief Executive. The Chief Executive will thus not be accountable to members of the Executive Council.

- Although members of the Legislative Council may serve on the Executive Council, it is unlikely that they will be able to improve the links between the executive

authorities and the legislature.

Reasons: - The Executive Council will not have real power.

- Since Legislative Councillors serving on the Executive Council will be appointed by the Chief Executive, they will not be able to exercise any control over the Chief Executive.
- Since the Executive Council will only be an advisory organ with no real power, similar in nature to the Chief Executive's think-tank, there is no need to make specific provisions for it in the Basic Law.
- The clause "put his/her specific reasons on record" should not give the Chief Executive more reasons to refuse to adopt a majority opinion of the Executive Council. If it does, the collective decision-making power of the Executive Council will be diminished and the Council will become a think-tank of the Chief Executive.
- The provision that the Chief Executive will only have to put his/her specific reasons on record if he/she refuses to adopt a majority opinion of the Executive Council will make the Chief Executive too powerful. The article also fails to make provision for a solution to this problem.

3. Suggestions

3.1 Deletions

- This article should be deleted. (Note 56-1)

Reasons: - The provisions of the present article will enable the appointed members of the Executive Council to influence the decisions of the Chief Executive without having to go through any process of democratic election or account for their action to anyone.

- Since the Chief Executive and principal officials will be subject to the supervision of the elected Legislative Council, there is no need to establish an Executive Council which has no basis of representation.
- The Executive Council referred to in this article lacks definite constitutional status and authority. If the Chief Executive does not adopt a majority opinion of the Executive Council, he/she is only required to put his/her specific reasons on record. This means that the Executive Council will not be in a position to effectively check and balance the power of the Chief Executive. Further, since it has been

decided that the Chief Executive will be subject to the effective supervision of the legislature, there is no need to establish another mechanism to check and balance the power of the Chief Executive. However, on the basis of his/her own needs, the Chief Executive should be able to establish an Executive Council of an advisory nature.

- The words "dissolving the Legislative Council" should be deleted.

Reason: - The Chief Executive should not have the power to dissolve the Legislative Council.

- The words "and the adoption of measures in emergencies" should be deleted.

Reason: - These words may easily be abused because they are general and difficult to define.

- Paragraph 3 should be deleted.

Reason: - All meetings should have minutes.

3.2 Amendments

- The words "important decisions" should be amended to read "government policies".

3.3 Additions

- The words "and submit them to the Legislative Council" should be added at the end of Paragraph 3.

3.4 Rearrangement

- This article should be moved to Section 2 - "The Executive Authorities" - because it involves the work of the Executive Council.

3.5 Other suggestions

- Since the relationship between the Chief Executive and the Executive Council is a very complicated one, the Basic Law should clearly set out their respective responsibilities, powers and functions.
- The Chief Executive should be required to consult the Executive Council on appointment and removal.

4. Issues to be clarified

- Besides assisting the Chief Executive in policy-making, do the powers and functions of the Executive Council also

include "collective leadership"?

- Will the Chief Executive be considered undemocratic if he/she refuses to adopt a majority opinion of the Executive Council?
- Will the requirement that the Chief Executive put his/her specific reasons on record should he/she refuse to adopt a majority opinion of the Executive Council constitute a disguised form of restriction on the powers of the Chief Executive?
- What will happen after the specific reasons for the Chief Executive's refusal to adopt a majority opinion of the Executive Council have been put on record?

Article 57

1. Original text

A Commission Against Corruption shall be established in the Hong Kong Special Administrative Region. It shall function independently and be accountable to the Chief Executive.

2. Views

2.1 The importance of a Commission Against Corruption

- The existing ICAC should not be abolished.
- The achievements and authoritative image of the ICAC have given Hong Kong people great confidence in their government. Some of them are concerned that post-1997 Hong Kong will be affected by those mainland officials who abuse their privileges to practise corruption. They think that the preservation of the ICAC will prevent corruption from infesting Hong Kong again.
- The preservation of the authority of the ICAC has a vital bearing on the overall interests of Hong Kong as it will check corruption and give Hong Kong people confidence in their government.

2.2 The accountability of the Commission Against Corruption

- The Commission Against Corruption should be accountable to the Chief Executive and the people of Hong Kong.
- The Chief Executive will head the executive authorities in terms of both duties and political status. If the Commission Against Corruption which is responsible for exercising supervision over the executive authorities is only required to be accountable to the head of the executive authorities, its independence is bound to be subject to question.
- The ICAC is vested with too much power by law. For instance, certain basic human rights, such as the right to remain silent and the freedom of the press, are sometimes infringed upon. Although these measures were essential for clamping down on corruption, which was infesting the territory at that time, the preservation of these practices will cause alarm.
- As the executive authorities and the Chief Executive are subject to greater supervision and checks and balances following the move towards democracy in Hong Kong's political system, indirect supervision over the Commission Against Corruption should also be strengthened.

2.3 Other views

- The provision that the Commission Against Corruption shall work independently and shall not be accountable to anyone other than the Chief Executive is as good as giving the executive authorities a special tool for suppressing the public as they wish.
- The Commission for Administrative Complaints which will soon be established to handle complaints against government departments should perhaps be asked to handle complaints against the ICAC.
- The Commission Against Corruption will be an internal organ of Hong Kong. Since it will involve neither Hong Kong's constitutional development nor its external affairs, its existence, status, power and organization should be decided by the HKSAR government on its own. There is no need to make provisions for it in the Basic Law, a document which sets out the basic policies and constitutional status of Hong Kong.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reason: - An independent Commission Against Corruption and an independent Commission of Audit should be preserved in the years after 1997. However, provisions in these regards should be prescribed in the laws of Hong Kong rather than in the Basic Law because they come under the internal administration of the HKSAR.

3.2 Amendments

- This article should be amended to read: "The Chief Executive may appoint or remove the Commissioner Against Corruption with the approval of the legislature of the HKSAR. In discharging their functions in accordance with law, the Commissioner Against Corruption and the Commission Against Corruption under him/her shall not be subject to any restriction by way of directive or be subject to control by any person or organ."

Reason: - The Commission Against Corruption should also be subject to some means of control.

- This article should be amended to read: "A Commission Against Corruption shall be established in the HKSAR. It shall function independently without interference from any authority and shall be accountable to the Chief

Executive."

- This article should be amended to read: "The Chief Executive may appoint the Commissioner Against Corruption with the approval of the legislature. The Commission Against Corruption shall function independently without interference from any person or organ."

Reason: - The amended article will enable the Commission Against Corruption to function more independently and to fight corruption with a freer hand.

- The words "shall be established" should be amended to read "shall continue its present functions".

Reason: - The ICAC already exists. However, since this commission enjoys wide powers, it is important to restrict the role of the future ICAC to its present function of fighting corruption.

3.3 Additions

- The following provision should be added: "A Commission Against Corruption, a Commission for Administrative Complaints and other reasonable and necessary commissions shall be established in the HKSAR. They shall function independently without interference and shall be accountable to the Chief Executive."
- Provisions should be made for the establishment of a "Committee for Fighting Corruption" or "Committee of Supervision" to supervise the functions of the Commission Against Corruption. The powers and functions of the Commission Against Corruption should be enlarged to cover investigations into administrative and judicial complaints and into all business associations and mass organizations.

3.4 Other suggestions

- This article should not appear under Section 1 of Chapter IV.

Reason: - Section 1 of Chapter IV deals with the Chief Executive. It should not include the Commission Against Corruption.

- The functions of the existing ICAC, its regulations for fighting corruption and the requirements it places on government officials and civil servants should be detailed in the Basic Law.
- It should be stipulated that the future Commission Against Corruption shall only handle matters related to corruption.

- The Commission Against Corruption shall be responsible for the extradition, trial and punishment of people or senior officials from any other place who are involved in corruption or bribery cases in the HKSAR. Those who commit any offence knowingly shall be punished twice as severely.
- The present provision contradicts the provisions laid down in Articles 79 to 95 (on the organization and functions of the judicial organs). There is already an ICAC in Hong Kong. There is no need to establish a new Commission Against Corruption or any other such government organ.

4. Issues to be clarified

- Are there provisions to ensure that the Commission Against Corruption will still be able to function independently if a corruption case involves high-ranking officials of the Central People's Government and/or high-ranking officials of the HKSAR government?

Article 58

1. Original text

A Commission of Audit shall be established in the Hong Kong Special Administrative Region. It shall function independently and be accountable to the Chief Executive.

2. Views

- The Commission of Audit should be established only after approval has been granted by the Legislative Council and should be accountable to the Legislative Council rather than to the Chief Executive.
- The provision in this article for the establishment of a Commission of Audit contrasts strangely with the promise to maintain the form and functions of the judiciary prescribed in Articles 79 to 95. As an Audit Department is already in existence in Hong Kong, there is no need to establish a Commission of Audit or any other similar government department.
- The Commission of Audit could perhaps be vested with greater power.
- Since the Commission of Audit will be responsible for auditing the revenue and expenditure of the executive authorities, it should be stipulated that the appointment or removal of the Commissioner of Audit by the Chief Executive shall require the approval of the legislature. This is necessary for preventing intervention by the executive authorities.
- The Commission of Audit should be required to annually submit a work report to the Legislative Council of the HKSAR.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reason: - An independent Commission Against Corruption and Commission of Audit should be maintained in the years subsequent to 1997. However, provisions for such should be prescribed in the laws of Hong Kong rather than in the Basic Law because they come under the internal administration of the HKSAR.

3.2 Amendments

- This article should be amended to read: "The Chief Executive of the HKASR may appoint or remove the Commissioner of Audit with the approval of the Supervisory Council."
- The suggested amendment to this article given in "A Collection of Opinions" should be adopted. The suggested amendment reads as follows: "The Chief Executive may appoint or remove the Commissioner of Audit with the approval of the legislature of the HKSAR. In discharging their functions in accordance with law, the Commissioner of Audit and the Commission of Audit under him/her shall not be subject to any restriction by way of directive or be subject to control by any person or organ."

Reasons: - The Commission of Audit should be subject to some means of control.

- The suggested amendment will give the Commission of Audit more autonomy and will enable it to be free from the interference from the Chief Executive, members of the executive authorities and other organs.

4. Issue to be clarified

- What sort of organ will the Commission of Audit be? Will it be similar to the present Audit Department? Why is it to be given a higher status than the Audit Department? The scope of its functions, authority and responsibility should be specified.

1. Views

1.1 Composition and formation

- The Chief Executive should serve concurrently as the head of the executive authorities.
- The executive authorities should be composed of the Chief Executive and all officials at Secretary level.
- Members of the executive authorities should be appointed by the Chief Executive. The Executive Council should be composed of principal officials and public figures. The executive authorities should be accountable to the legislature. Public servants under the principal officials should be responsible for the implementation of policies but should not be allowed to take part in policy-making.
- Members of the legislature should not be allowed to serve as members of the executive authorities.
- For executive officials under the Secretary level, appointment should be based on expertise and they should be respected for their expertise.
- Officials at Secretary level should be returned by general election on a one-person-one-vote basis.

Reason: - This is the only way to choose leaders who can lead the departments and make the most reasonable decisions that accord with the wishes of the people.

- Section 2 should detail the method of formation of the executive authorities and their role.
- Section 2 should include the following four parts: the Chief Executive, the Executive Council, the principal officials and the public service.

1.2 Power and responsibility

- The Chief Executive, the Executive Council and the various government departments will be responsible for deciding and implementing the administrative policies of the HKSAR. As such, they will constitute part of the executive authorities and will be accountable to the legislature in accordance with the Joint Declaration.
- The executive authorities should abide by law and be accountable to the legislature.

- Officials of the executive authorities should be responsible for enforcing the law, reporting on the work of the government and answering queries on taxation and public expenditure.
- Executive power should not be excessive.
- There should be ways of exercising checks and balances on the excessive power of the executive authorities. (Note 4/2-1)
- Members of the executive authorities should have the freedom to debate with the Chief Executive as well as the power to impeach him/her so as to exercise supervision over the government.
- If the electoral system is such that it can guarantee that the Chief Executive elected will be a leader much trusted by the people and knowledgeable about affairs concerning the HKSAR, and that the Chief Executive will be ultimately responsible for government affairs, there will be no need to subject the Chief Executive to unnecessary constraints imposed by members of the executive authorities.

1.3 Qualifications

- The principal officials of the executive authorities must be persons who hold Chinese nationality only and have resided in Hong Kong for a period of 7 years.

Reasons: - Allowing persons of dual nationality to serve as principal officials could result in a conflict of roles.

- Persons of dual nationality may not be able to effectively reflect and safeguard the interests of Hong Kong people.
- The sincerity of persons of dual nationality is questionable.

1.4 Term of office

- The term of office of members of the executive authorities should be 4 years.

2. Issues to be clarified

- What will be the composition of the Executive Council and what powers will it exercise?
- Does this section define the role of the Executive Council?

- Will the Executive Council constitute a part of the executive authorities?
- Will the executive authorities be headed by the Chief Executive and will departments (Department of Administration, Department of Finance and Department of Justice), bureaus, divisions and commissions be subordinate to the executive authorities? If the answer is in the affirmative, where will the Executive Council stand? According to Article 54, the Executive Council of the HKSAR will be an organ for assisting the Chief Executive in policy-making. Does this mean that the Executive Council will be the Chief Executive's "personal" secretary or think-tank?
- Should the relationship between the Executive Council and the Chief Executive be modelled on the relationship between the present Executive Council and the Governor?

Article 59

1. Original text

The government of the Hong Kong Special Administrative Region is the executive authorities of the Region.

2. View

- The government of the HKSAR should be composed of not only the executive authorities but also the legislature and the judicial organs. (Note 59-1)

3. Suggestion

- This article should be deleted. (Note 59-2)

1. Original text

The Chief Executive of the Hong Kong Special Administrative Region is the head of the government of the Region.

Department of Administration, Department of Finance, Department of Justice, bureaus, divisions and commissions shall be established under the government of the Hong Kong Special Administrative Region.

The structure of the government of the Hong Kong Special Administrative Region shall be prescribed by law.

2. Views

- The structure of the HKSAR government should maintain a certain degree of flexibility. There is no need to lay down rigid provisions.
- The structure of the HKSAR government should be prescribed by law. However, care must be taken to ensure that the structure is flexible so that it can be modified from time to time to suit the changing needs of society.
- The Basic Law should not be too cumbersome in its provisions. The Chief Executive and the government organs should have sufficient freedom to decide which departments, bureaus, divisions and commissions should be established. Under certain circumstances, it may not be necessary to have an independent Department of Administration and an independent Department of Finance existing parallel to each other. A single department should suffice. The Chief Executive should not be subject to such constraints.
- The word "law" as used in this article should refer to "laws" proposed by the Chief Executive and passed by the Legislative Council of the HKSAR and not the Basic Law. Before the establishment of the first government of the HKSAR, an ordinance should be enacted to provide guidelines for the organizational structure of the government. This ordinance then may be modified to suit the needs of the Region after the establishment of the HKSAR Legislative Council. This is a matter of some importance in the smooth transition and the operation of the HKSAR.
- This article should be expanded to provide for the establishment of independent commissions such as those prescribed in Articles 57 and 58. For instance, it may be necessary to establish a Commission for Administrative

Complaints.

- The division of the public service into three "departments" for administration, finance and justice does not clearly reflect the present roles of the Chief Secretary, Financial Secretary and Attorney General, nor does it define their respective powers and functions or their relationships. It would seem more appropriate to detail the existing system and to note in general terms the intention that this division of power and responsibility between these three branches will continue.

3. Suggestions

3.1 Deletions

- Paragraph 2 should be deleted.

Reason: - The Basic Law should not go into elaborate details. The Chief Executive and the public service should be left with sufficient freedom to decide which departments, bureaus, divisions and commissions should be established.

3.2 Amendments

- The following suggested amendment detailed in "A Collection of Opinions" should be adopted: "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 the Secretary level); and (3) Members of the Executive Council, including the Chief Executive and principal officials appointed by him."

- This article should be amended to read: "Members of the executive authorities of the HKSAR shall include: (1) The Chief Executive; (2) Principal officials (officials corresponding to the Secretary level) appointed by the Chief Executive, whose appointment will be reported by the legislature to the Standing Committee of the NPC for confirmation; and (3) The Executive Council composed of the Chief Executive and principal officials appointed by him."

Reason: - The various components of the executive authorities should be specified. The article should also note that the executive authorities will be accountable to the legislature and the legislature will be accountable to the Standing Committee of the NPC.

- A suggested change for the Chinese term for "division". [Translator's note: A suggested change in the wording of the Chinese version which will not affect the English

translation.]

3.3 Addition

- The following provision should be added: "The executive authorities of the HKSAR shall establish an Executive Council to assist the Chief Executive in his/her work. The Executive Council shall be an administrative organ of the HKSAR."

3.4 Other suggestions

- It should be specified that the Secretary of Administration, Secretary of Finance and Secretary of Justice will come under the Chief Executive, and the departments and commissions will come under these three Secretaries.

Reasons: - The relationship between the Chief Executive and the Secretary of Administration, Secretary of Finance and Secretary of Justice and the relationship between the three Secretaries and the various bureaus, divisions and commissions are not clearly specified.

- The Chinese titles of "divisions" and "commissions" should be standardized in the Basic Law as "commissions".
- The last paragraph should state clearly that the "law" in question is the laws of the HKSAR.
- If an Executive Council already exists, there is no need to establish an "Executive Council" as proposed in "A Collection of Opinions".

4. Issue to be clarified

- Does the word "law" in the clause "[t]he organization of the HKSAR shall be prescribed by law" refer to laws currently in force or future laws?

Article 61

1. Original text

The principal officials of the Hong Kong Special Administrative Region shall be Chinese nationals who are permanent residents and have ordinarily resided in Hong Kong for a continuous period of 15 years.

2. Views

2.1 Qualifications of principal officials

2.1.1 Nationality

- The principal officials of the executive authorities should be persons who have only one nationality.
- The Basic Law should not yield to any particular group of people by relaxing the nationality restrictions on principal officials, as not that many posts require the incumbent to be a Chinese national.
- The stipulation that principal posts may only be filled by Chinese nationals is too rigid. Although the number of such posts is quite limited (about a dozen), this stipulation will still indirectly affect many mid-ranking public servants. To them, the implication of this article is that they will not be eligible for these posts if they do not relinquish their foreign nationality.
- At present it should not be rigidly stipulated that principal officials will not be allowed to hold dual nationality.

Reasons: - Allowing the holding of dual nationality will attract capable persons who have emigrated overseas to return to serve Hong Kong.

- This will give Hong Kong people greater confidence during the run-up to 1997.
- A ten-year grace period might be considered, during which departmental secretaries should be allowed to hold foreign passports.
- Any person, irrespective of their nationality, whose talents, expertise, skills or integrity will benefit the community of the HKSAR should be given a chance to serve in the HKSAR government. Selection of applicants for official posts should be based on merit and not on the nationality of the individuals concerned.

2.1.2 Period of residence

- Having "resided in Hong Kong for a continuous period of 15 years" and being "a Chinese national who is a permanent resident of the HKSAR" should be allowed, for internal purpose only, to be used as criteria for the selection of principal officials, but these restrictions should not be written into the Basic Law.

Reasons: - The original article will deprive some of the legitimate permanent residents of the HKSAR of the opportunity to be appointed principal officials.

- The original article is not conducive to the selection of persons of the right calibre for principal posts.

- The principal officials should be required to have ordinarily resided in Hong Kong for a continuous period of 20 years.

Reason: - The residence requirement for principal officials should not be shorter than that proposed for the Chief Executive.

- The principal officials should be required to have resided in Hong Kong.
- Hong Kong residents who have worked in Hong Kong for a period of 13 years should be eligible for appointment as principal officials.

2.1.3 Age limit

- There should not be any age limits.
- The avenues for the selection of principal officials should be specified.

2.2 Other views

- Since the role of the principal officials will be different from that of public servants, steps should be taken to prevent the principal officials from evading punishment for policy mistakes by hiding behind their official titles. The principal officials should be selected from among public figures and public servants.
- Incumbent public servants should be required to resign from the public service before becoming principal officials.
- Officials in charge of environmental protection should be regarded as principal officials so that their status will be in keeping with the Environmental Planning Agency which

the Hong Kong Government plans to establish.

- Those principal posts that will need to be reported to and approved by the Central People's Government on the authorization of the Standing Committee of the NPC should be listed in an annex. There should be as few guidelines as possible in order that Hong Kong will be able to truly enjoy "a high degree of autonomy". The provision that the appointment of principal officials will need to be approved by the Central People's Government is contrary to the principle of "a high degree of autonomy".
- The principal officials should be offered fixed terms of office, but there should not be any restrictions on the number of terms they are allowed to serve.
- The term of office of principal officials should be 5 years.

3. Suggestions

3.1 Deletions

- The words "Chinese nationals who are" should be deleted.

Reasons: - Appointment should not be restricted to Chinese nationals.

- These words are intended to exclude Chinese nationals who have obtained foreign passports from the post of Chief Executive and to evade the resultant problem of responsibility and allegiance.

3.2 Amendments

- - The words "Chinese nationals" should be amended to read "ethnic Chinese".

Reason: - It is acceptable and understandable to require that members of the executive authorities be ethnic Chinese. However, since many of the ethnic Chinese in Hong Kong are not Chinese nationals, the inclusion of such a nationality requirement in the Basic Law will make it impossible for many of these ethnic Chinese to serve as members of the executive authorities.

- The clause "Chinese nationals ... 15 years" should be amended to read "Chinese nationals (Hong Kong) who have resided in Hong Kong for a continuous period of 15 years".
- The clause "Chinese nationals ... 15 years" should be amended to read "Chinese nationals who hold only one

nationality, are permanent residents of Hong Kong and have ordinarily resided in Hong Kong for a continuous period of 15 years".

- This article should be amended to read: "The principal officials of the HKSAR shall be Chinese nationals who are permanent residents and have ordinarily resided in Hong Kong for a period of 15 years immediately before assuming office."
- This article should be amended to read: "The principal officials of the HKSAR shall be Chinese nationals who are permanent residents of Hong Kong, proficient in both Cantonese and English and have ordinarily resided in Hong Kong for a continuous period of 15 years."
- The words "15 years" should be amended to read "20 years".
- The words "15 years" should be amended to read "25 years".

Reason: - This will ensure that the Chief Executive will have an intimate knowledge of Hong Kong.

3.3 Additions

- The following provision on the appointment or removal of principal officials should be added: "(1) Nominations for principal officials shall be made by the Chief Executive, endorsed by the legislature and reported to the Central People's Government for appointment. (2) The principal officials may be impeached by the legislature."
- The following provisions should be added: "The principal officials shall exercise the following powers, and functions and bear the following responsibilities:
 - (1) To be in charge of matters relating to government officials in accordance with the guidelines prescribed by law;
 - (2) To implement laws passed by the legislature and put into practice policies already laid down;
 - (3) To exercise the power of drafting bills and to submit the bills to the legislature for examination;
 - (4) To assist the Chief Executive in policy-making;
 - (5) To implement the executive orders issued by the Chief Executive; and
 - (6) To draw up the budgets and final accounts of the HKSAR."
- The following provision should be added: "The HKSAR shall

maintain a neutral public service:

- (1) Definition of public service: The term 'public servants' refers to government officials selected in accordance with the government's guidelines for the appointment and removal of government servants.
- (2) Public servants shall chiefly be responsible for policy implementation. The task of policy-making shall be undertaken by the policy committee as well as by the Chief Executive and principal officials who are charged with political responsibilities.
- (3) The highest level to which public servants of the HKSAR may be promoted shall be the post of 'administrative officers' of various departments. The responsibility of the 'administrative officers' shall be to assist the principal officials in their work. They shall only be responsible for policy implementation and shall not be required to bear political responsibilities."

4. Issues to be clarified

- What is meant by "ordinarily" in the clause "have ordinarily resided in Hong Kong"?
- Does the word "continuous" in the clause "have ordinarily resided in Hong Kong for a continuous period of 15 years" mean that one has not left Hong Kong during this period?
- The 15-year residence requirement is not stipulated in Article 100. Is this really necessary?
- The term "principal officials" should be clearly defined. For instance, it should be indicated whether the term refers to officials at or above the Secretary level.
- It is stipulated that the appointment of principal officials must be approved by the Central People's Government. Does this mean that the Central People's Government will be able to order the transfer of these officials? Will the principal officials be directly accountable to the Central People's Government just as is required of the Chief Executive?

1. Original text

The government of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To formulate and implement policies;
- (2) To manage the administrative affairs specified in Article 14 of this Law;
- (3) To manage the external affairs authorized by the Central People's Government under this Law;
- (4) To draw up and present budgets and final accounts; and
- (5) To draft and introduce bills, motions and subsidiary legislation.

2. Views

2.1 Paragraphs (4) and (5)

- Budgets and final accounts should be presented annually by a particular date, and a fiscal year should be fixed. This article goes even further than Article 15 in that it stipulates who shall manage these affairs. Who is to manage these affairs should be left to the HKSAR to decide as part of the high degree of autonomy promised to Hong Kong. This should not be stipulated in the Basic Law.
- Does this article mean that the principal officials of the HKSAR will have the power to draft and introduce bills, motions and subsidiary legislation without having to be members of the Legislative Council? If this is indeed the intended meaning, it should be so stated in the Basic Law.

3. Suggestions

3.1 Deletions

- Paragraph (1) should be deleted. (Note 62-1)

Reason: - "To formulate and implement policies" should not be part of the powers and functions of the executive authorities.

- Paragraphs (4) and (5) should be deleted.

3.2 Amendments

3.2.1 Overall amendments

- This article should be amended to read: "The HKSAR is vested with executive power and shall manage all administrative affairs on its own in accordance with the provisions of this Law."
- This article should be amended to read: "The executive authorities shall exercise the following powers and functions:
 - (1) To implement the Basic Law and formulate the specific policies relevant to this Law;
 - (2) To implement the laws of the HKSAR;
 - (3) To introduce bills to the legislature; and
 - (4) To introduce budgets and final accounts."

3.2.2 Opening sentence

- The opening sentence should be amended to read: "The executive authorities of the HKSAR shall exercise the following powers and functions:"

3.2.3 Paragraph (1)

- This paragraph should be amended to read: "To implement the policies formulated by the Legislative Council;"
- This paragraph should be amended to read: "To formulate and implement policies under the present legal system;"

3.2.4 Paragraph (2)

- This paragraph should be amended to read: "To manage the administrative affairs specified by this Law;"

3.2.5 Paragraph (3)

- This paragraph should be amended to read: "To draw up and introduce bills as well as motions that do not affect bills introduced by individual members;"
- The words "the Central People's Government" should be amended to read "the NPC".

3.2.5 Paragraph (4)

- This paragraph should be amended to read: "To draw up and introduce budgets and final accounts to the legislature;"

3.3 Additions

- The following proposed addition detailed in "A Collection of Opinions" should be adopted as Paragraph (6): "To

exercise other powers which are necessary and reasonable for carrying out its duties in accordance with the provisions of this Law."

Reason: - This will prevent any inadvertent omissions that could handicap the functioning of the government.

- Objection is expressed to the above-mentioned addition.

Reason: - The proposed addition is a sweeping statement. Besides, the provisions of Paragraphs (1) to (5) are clear enough as they are. There is no need to repeat them.

- The following provision should be added: "To exercise other powers specified in this Law."

Reason: - This will increase administrative flexibility without leading to the abuse of the powers and functions prescribed by this article.

- There should be a provision on the power of the government to control the garrison. This will prevent the garrison from becoming unmanageable.

4. Issues to be clarified

- Is the meaning of this article identical to that of Article 15?

- What is meant by "final accounts" in Paragraph (4)?

Article 63

1. Original text

The prosecuting authority of the Hong Kong Special Administrative Region shall institute criminal prosecutions independently, free from any interference.

2. Suggestions

2.1 Amendments

- The term "prosecuting authority" should be amended to read "Secretary of Justice".

Reason: - Since the Secretary of Justice will be under the executive authorities and will shoulder heavy responsibilities, his/her powers should be as specified in Paragraph (5) of Article 48.

2.2 Additions

- The following provisions should be added as Paragraph 2: "The prosecuting authority shall handle reports on economic crimes and be responsible for investigating such cases free from any interference." As an alternative, the following could be added: "The prosecuting authority shall be responsible for handling and investigating criminal and economic offences free from any interference."
- The following provision should be added: "However, it shall be subject to the restrictions prescribed by law."

2.3 Other suggestions

- Another organ could be established to handle economic offences in this increasingly capitalist society.

3. Issues to be clarified

- Will it be necessary to add the words "other than that prescribed by the law" after the word "interference"?
- The clause "free from any interference" has a very broad meaning. Will the prosecuting authority come directly under the Central People's Government?
- What kind of an organ will the "prosecuting authority" be? Will it be an independent department charged with criminal prosecutions?

1. Original text

The executive authorities of the Hong Kong Special Administrative Region must abide by the law and shall be accountable to the Legislative Council of the Hong Kong Special Administrative Region in the following respects: They shall implement laws passed by the legislature and already in force; they shall present regular reports on their work to the Legislative Council; they shall answer questions raised by members of the Legislative Council; and they shall obtain approval from the Legislative Council for taxation and public expenditure.

2. Views

2.1 Views on the accountability of the executive authorities to the Legislative Council

- The executive authorities should be accountable to the Legislative Council and they should exercise mutual checks and balances. In addition, they should work in coordination and communicate with each other in order to maintain an efficient government. The following views are based on the above guidelines:

(1) In order to enhance better coordination between the executive authorities and the legislature, a policy committee should be established under the Legislative Council, with one-third of its members appointed by the Chief Executive; one-third appointed by the Legislative Council; and one-third invited by the Chief Executive and the legislature from among representatives of relevant professional bodies and individuals. The major function of this committee will be to discuss and review the policies proposed by the principal officials. The policy committee should also be allowed to draft and discuss policies on its own.

(2) Before policies are formulated, various departments of the executive authorities should first consult the policy committee, collate the views collected, draft the bills and submit the bills to the policy committee for examination. The policy committee will then discuss and pass resolutions on any amendments to the bills, and submit the amended bills to the Legislative Council. (Note 64-1)

- The accountability of the executive authorities to the Legislative Council should be expanded so that the Legislative Council will be able to play a more effective supervisory role. The executive authorities should be

composed of the Chief Executive, the Executive Council and other administrative departments of the HKSAR government.

- The principles governing the accountability of the executive authorities should be specified.
- If the colon placed after "in the following respect" was disposed of, the meaning of this article would be even more vague.
- If the Legislative Council is to be given full powers to demand accountability, it should be stipulated in the Basic Law that the Legislative Council shall have the power to exercise supervision over the Executive Council. The public will find their interests seriously infringed upon if the work of the executive authorities is not subject to the supervision of a body which represent their interests. Besides, effective supervision requires more than just speed. It should also be reasonable and rational.
- Objection is expressed to the definition of the executive authorities' "accountability" to the Legislative Council.

Reason: - The executive authorities' accountability to the Legislative Council should be understood as: The principal officials of the executive authorities must have the trust and support of the majority of members of the Legislative Council in order to continue their work.

- This article qualifies the degree to which the executive authorities shall be accountable to the Legislative Council. This contravenes the Joint Declaration which does not restrict or qualify the accountability. The executive authorities should, without restriction, be accountable to the legislature in all aspects of their powers and functions.
- The manner in which the relationship between the executive authorities and the legislature is laid down in this article fails to show any improvement on the existing system. The supervisory power of the future Legislative Council appears particularly frail because the Chief Executive will have the power to refuse to let government officials testify or give evidence on matters of public interest. This, coupled with the provision that members of the Executive Council shall serve as the Chief Executive's advisers but shall not be accountable to the Legislative Council, gives the impression that the principle and spirit of the Joint Declaration have been completely betrayed.

2.2 Scope of accountability

- In addition to answering questions raised by members of the Legislative Council, the executive authorities should also be required to assist the Legislative Council in investigations of special issues. (Note 64-2)

Reason: - The original article seeks to outline the relationship between the executive authorities and the Legislative Council. Although it stipulates that the executive authorities "shall be accountable to the Legislative Council", the accountability is limited to four respects only, which are not sufficient for the Legislative Council to check and balance the power of the executive authorities.

- It should be stipulated that the executive authorities of the HKSAR shall be subject to supervision by the Legislative Council.

2.3 Other views

- This article appears superfluous when read in conjunction with Articles 62 and 72.
- This article fails to take into account violations of administrative rules or of the law by government officials.
- This article denies the possibility of senior officials breaking the law. If this notion is not corrected, the law will appear to be partial.
- The executive authorities and the Legislative Council may handle auditing differently.
- The matter of auditing is omitted from this article.
- This article is in keeping with the Joint Declaration and will make the executive authorities truly "accountable" to the Legislative Council.
- Under the effective supervision of the Legislative Council, the executive authorities will be able to implement policies with greater efficiency and more conscientiously, and thereby be accountable to the people of Hong Kong.
- The word "accountable" as used in this article is too restricted and vague in meaning. The supervisory role of the Legislative Council should be clearly specified so that it will be able to check and balance the power of the executive authorities.
- The word "accountable" as used in this article tends to put emphasis on rather formal accountability in the form

of reports, while the provisions of the article fail to truly manifest the concept of mutual supervision and mutual checks and balances between the legislature and the executive authorities.

3. Suggestions

3.1 Amendments

- This article should be amended to read: "The executive authorities of the HKSAR must abide by the law and shall be accountable to the Legislative Council of the Region. They shall: (1) implement laws; (2) present regular reports on their work to the Legislative Council; (3) be subject to supervision by the Legislative Council; (4) answer questions raised by members of the Legislative Council and be subject to or assist in investigations on special issues by the Legislative Council; and (5) obtain approval from the Legislative Council for taxation and public expenditure and be subject to supervision by the Legislative Council in respect of public expenditure."
(Note 64-4)

Reason: - The scope of responsibility detailed in the original article is too limited and does not promise true accountability. (Note 64-5)

- The proposed amendment detailed in "A Collection of Opinions" should be adopted.

Reasons: - That amendment will enable the Legislative Council and the executive authorities to better check and balance each other's power.

- The amendment will give expression to the political principle that the HKSAR is to enjoy a high degree of autonomy.

- This article should be amended to read: "The executive authorities of the HKSAR must abide by the law and shall be accountable to the Legislative Council of the Region. They shall implement laws passed by the Legislative Council and already in force; present regular reports on their work to the Legislative Council; answer questions raised by members of the Legislative Council; be subject to or assist in investigations by ad hoc groups established by the Legislative Council; obtain approval from the Legislative Council for taxation and public expenditure and be subject to supervision by the Legislative Council in respect of taxation and public expenditure."

Reasons: - The Joint Declaration states that the executive authorities shall be accountable to the legislature. In other words, the legislature

should have the power to call the executive authorities to account. Under the provisions of the original article, however, the executive authorities will only be obliged to answer questions raised by members of the Legislative Council. Other powers that should be considered part of the supervisory powers of the Legislative Council are not recognized. Thus the meaning of the word "accountable" as used in this article is very narrow indeed.

- The legislature should have the power of investigation and the power of impeachment. If necessary, the legislature should be allowed to establish an investigating committee to handle related matters.

- This article should be amended to read: "The executive authorities (including the Chief Executive and officials at various levels) of the HKSAR must abide by the law and shall be accountable to the Legislative Council of the Region. They shall implement laws passed by the Legislative Council and already in force, present regular reports on their work to the Legislative Council, answer questions raised by members of the Legislative Council, and obtain approval from the Legislative Council for taxation and public expenditure. The president of the Legislative Council shall be elected by members of the Council from among themselves."

- This article should be amended to read: "The executive authorities must abide by the law and shall be accountable to the Legislative Council in the following respects: (1) implementing laws passed by the Legislative Council and already in force; (2) presenting regular reports on their work to the Legislative Council; (3) answering questions raised by members of the Legislative Council; and (4) obtaining approval from the Legislative Council for taxation and public expenditure."

- This article should be amended to read: "The executive authorities of the HKSAR must abide by the law and shall be accountable to the Legislative Council of the Region in the following respects: (1) implementing laws passed by the Legislative Council and already in force; (2) presenting regular reports on their work to the Legislative Council; (3) being subject to supervision by the Legislative Council; (4) answering questions raised by members of the Legislative Council and being subject to or assisting in investigations on special issues by the Legislative Council; (5) obtaining approval from the Legislative Council for taxation and public expenditure and being subject to supervision by the Legislative Council on public expenditure; and (6) delivering to the Legislative Council confirmations and directives issued by

the Central People's Government or Standing Committee of the NPC."

Reasons: - This will highlight the power of the Legislative Council to exercise supervision over the Chief Executive.

- This will give clearer expression to the accountability of the Chief Executive to the Legislative Council.

- The opening sentence should be amended to read: "The executive authorities of the HKSAR must abide by the basic laws and"

- The opening sentence should be amended to read: "The executive authorities of the HKSAR, including the Chief Executive and officials at various levels, must abide by the law and"

- The term "executive authorities" in the first sentence should be replaced with the term "government" in order to conform to the wording of Article 59.

- This article should be amended to read: "The executive authorities ... accountable to the Legislative Council of the Region. They shall implement laws...."

Reasons: - The words "in the following respects" will unnecessarily restrict the accountability of the executive authorities.

- The tasks detailed after "in the following respects" will all have to be done by the executive authorities in any case. Besides, the Executive Council should not be accountable to the Legislative Council alone.

- This article should be amended to read: "The executive authorities ... accountable to the Legislative Council of the Region. They shall implement laws"

Reason: - The accountability of the executive authorities to the legislature is too restricted.

- The words "already in force" should be replaced with "already valid".

Reason: - This amendment takes into consideration the invalidation of a law in force that contravenes the Basic Law.

3.2 Additions

- The clause "they shall accept investigation by the

Legislative Council and shall testify and give evidence before the Legislative Council" should be added after "answer questions raised by members of the Legislative Council".

Reason: - The clause "answer questions raised by members of the Legislative Council" is not specific enough. In actual operation, it will be very difficult for the Legislative Council to effectively exercise supervision over the government simply on the strength of this provision.

- The clause "and be subject to supervision by the Legislative Council in respect of public expenditure" should be added at the end of this article.
- The following provision should be added: "The executive authorities shall be subject to supervision by the Legislative Council and committees under the Legislative Council and shall provide information."
- The clause "they shall assist the Legislative Council in investigations on special issues" should be added.
- The clause "they shall be subject to or assist in investigations on special issues by the Legislative Council."
- Supervision by the Legislative Council should cover "public expenditure" as well.
- The following provision should be added: "Government officials must testify and give evidence before the Legislative Council except in matters which are deemed by the courts to be outside the jurisdiction of the HKSAR."
- The clause "they shall be subject to investigations conducted by special investigation teams established by the Legislative Council in connection with administrative errors" should be added.

3.3 Other suggestions

- Unless the scope of "supervision" is specified, the clause "be subject to supervision by the legislature" proposed in "A Collection of Opinions" should not be added to this article.
- The provisions following the clause "and shall be accountable to the legislature of the HKSAR in the following respects" should be deleted.

Article 65

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1. Original text

The establishment of advisory bodies under the executive authorities of the Hong Kong Special Administrative Region shall be maintained.

2. Views

- Support is expressed for this article because the establishment of advisory bodies will be very helpful in solving problems.
- This article should not prevent residents of the HKSAR from dissolving advisory bodies if they deem the dissolution of such bodies necessary.
- This article only provides that advisory bodies shall be maintained. The provisions of this article should also apply to the various independent management bodies, such as the Housing Authority, the Hospital Authority and similar bodies which will be established by the future HKSAR government.
- This article will create obstacles for future administrative officials. While advisory bodies may indeed play a useful role, they will become quite useless under an efficient legislature.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reason: - This article will put the Chief Executive in a straight-jacket because these advisory bodies, though useful, will not really be necessary if the legislature can discharge its functions to everyone's satisfaction.

- Section 5 of Chapter IV should be deleted.

3.2 Amendments

- This article should be amended to read: "The executive authorities shall establish advisory bodies."

Reason: - At present, the executive authorities have the power to establish advisory bodies. If the establishment of advisory bodies is deemed to be an important feature of Hong Kong's political system, this article should be amended as above.

- This article should be amended to read: "The government of the HKSAR shall establish policy advisory bodies and regional advisory bodies. The power to establish advisory bodies shall be specified by law."

Reasons: - The "advisory system" employed by the present Hong Kong Government relies on a well-organized and extensive advisory network to collect opinions and formulate and modify policies.

- The "advisory system" is a notable feature of the Hong Kong Government. It should be enshrined in law.

- This article should be amended to read: "The previous system of advisory bodies established by the legislature shall be maintained and developed."

Reason: - The establishment of advisory bodies is important because through these advisory bodies, the policy-makers have access to advice from all quarters. Thus, this system should be maintained and developed in the future political structure.

3.3 Other suggestion

- The powers of the present City and N.T. Administration should be enlarged and the duties of the district officers should be increased. The present mutual-aid committees should be renamed residents' committees. Residents will then be able to submit their views to their district officers through these committees. In this way, it will be possible for their views to be forwarded to the government without having to go through advisory bodies. This will also help economize on government expenditure.

1. Views

1.1 Qualifications of members of the legislature

1.1.1 Length of residence

- Specific provisions should be made.
- The length of residence of potential legislators should be no less than 15 years.
- The President of the Legislative Council should have resided in Hong Kong for no less than 15 or 20 years.

1.1.2 Nationality

- Members of the legislature should be permanent residents of Hong Kong who are Chinese nationals. Holders of foreign passports should not be eligible for election.

Reasons: - If restrictions on nationality are relaxed, the legislature of the HKSAR will be likely to be made up predominantly of foreign nationals and thus become an organ which is influenced, even controlled, by people of foreign nationality, even though the HKSAR will be under Chinese sovereignty. If this situation ever takes place, the possession and exercise of sovereignty by the Chinese will only be nominal and will not have substantive guarantees.

- If the Legislative Council discusses policies or bills which clash with foreign interests (such as anti-protectionist bills), members holding foreign nationality will be confronted with the problem of allegiance and a clash of interests.

- The Legislative Council, as a state organ and an organ of power of the HKSAR, will play a decisive role in the legislative work of the HKSAR as well as in the supervision of government administration. Members of such an organ should not be non-Chinese.

- When Hong Kong residents who are holders of foreign passports become members of the legislature,

(1) there will be conflicts in their pledging allegiance to the Chinese government;

(2) even when they have pledged allegiance to Hong Kong, they are prone to ignore the interests of Hong Kong people because they will be able to leave any time they want.

- In order to widely solicit opinions, persons who hold foreign nationality should be entitled to become members of the Legislative Council but on the proviso that they can only attend meetings as observers with the right to speak but with no right to vote.
- There should not be any rules on the nationality of members of the legislature.

1.1.3 Other issues

- Members of the Legislative Council should have the following qualifications:
 - (1) They must be Chinese nationals who are permanent residents of the HKSAR;
 - (2) They must have ordinarily resided in Hong Kong for a continuous period of 20 years;
 - (3) They must have a clean criminal record;
 - (4) They must not have triad connections;
 - (5) They must not have undesirable habits;
 - (6) Their personal conduct must accord with the moral code of Chinese society.
- A candidate must be nominated by at least 100 persons.
- Requirements as regards nominators of candidates for legislature seats:
 - (1) They must be legal residents of Hong Kong;
 - (2) They must have a clean criminal record;
 - (3) They must not have triad connections;
 - (4) They must not be close relatives of those they are nominating.
- The code of conduct for members of the Legislative Council:
 - (1) Once elected, they should be required to resign from their former posts (or take unpaid leave) so that they will be able to devote themselves to their tasks until their term of office expires.

Reasons: - This will ensure that members will not be torn between their private and public duties.

- This will prevent members of the legislature from using their capacity as legislators to seek personal gains.

(2) Before assuming office, they will have to make public their entire assets and source of total family income.

Reason: - This will prevent corruption.

(3) They should not have any connections with private firms.

Reason: - This will prevent any possible influence on their legislative decisions.

1.2 Composition

- Attention should be paid to how representative the members of the Legislative Council will be.

- To ensure the full reflection of all views, it is necessary to insist that members of the legislature come from different strata of society.

- The future legislature should have no more than two sources of members.

- The Chief Executive and the heads of various government departments should be ex-officio members of the legislature.

Reason: - Since bills are introduced by government departments, it will greatly facilitate the operation of the legislature if persons in charge of these departments are themselves members of the legislature.

- The current system is one where Legislative Councillors are appointed as members of the Executive Council. In future, it is possible that all members of the Legislative Council will be directly elected, and that they will likely exercise much greater powers and functions. They will most probably agree on matters already agreed upon by the Executive Council. However, if the current system is maintained and, should there be dissension over such matters when they are submitted to the Legislative Council, Legislative Councillors who are concurrently Executive Councillors will find themselves in a dilemma.

- Some Legislative Council seats should be reserved for public servants.
- Government officials should not be members of the Legislative Council. Officials of executive departments should be allowed to sit in on Legislative Council meetings so that they may introduce bills, answer queries and take part in debates, but they should not have the right to vote.
- Only ex-officio members should be concurrently appointed as members of the Executive and the Legislative Councils. Other channels should be devised to achieve better communications between the two councils.
- Principal government officials should be allowed to attend Legislative Council meetings as observers so that they may answer queries. Since they will not be councillors, they should not have the right to vote on decisive issues.
- Since there will not be any ex-officio members after 1997, those who are concurrently members of the executive authorities and the legislature may be relied on to ensure the smooth and effective running of the legislature.
- The size of each legislature should be based on the number of HKSAR residents who have the right to vote in the general election. There should be one member for every 10,000 voters.
- The membership of the Legislative Council should be worked out on the basis of one member for every 100,000 residents.

1.3 Term of office

- The term of office should be four years.
- There should not be any restrictions on serving consecutive terms.
- According to the suggestions detailed in the Draft Basic Law, elections for the Chief Executive and the Legislative Council will only coincide once every 20 years. To avoid a possible vacuum, elections should be held every two years for half the number of seats of the Legislative Council.

1.4 Authority

1.4.1 - The present provisions violate the Joint Declaration.

- Many of the provisions in the Draft Basic Law will put the future legislature in a strait-jacket, prohibiting it from being an independent organ in accordance with the spirit

of the Joint Declaration.

- The Joint Declaration states that "the legislative power of the HKSAR shall be vested in the legislature of the HKSAR", but the provisions of the Draft Basic Law fail to give expression to this principle.

1.4.2 Legislative power

- There are advantages of having a legislature that is more powerful than the executive authorities.
- The Basic Law should state that legislative power will be vested in the legislature. This will ensure that the HKSAR will be vested with legislative power.
- The legislature should have complete and truly independent legislative power, the power of investigation and the power of impeachment. This will enable it to supervise the work of the executive authorities and make the latter accountable to it.

1.4.3 Power of impeachment and supervision

- It should be stated that the legislature will have the power to impeach principal officials of the government (such as the Financial Secretary and the Chief Secretary).

Reasons: - This will enable the legislature to play its supervisory role.

- Hong Kong is a place where there is complete freedom of speech.
- This will give expression to democracy and freedom.
- This will ensure that the principal officials will shoulder their responsibilities and accept criticism.
- This will maintain a balance of power.
- The legislature should have the power to supervise the executive authorities and should have the power to impeach the head and principal officials of the executive authorities.
- The power of the Chief Executive is too great, as he will have the power to dissolve the Legislative Council. The Legislative Council, as an organ that represents public opinion, should be vested with similar power.
- On the principle that the operation of the executive authorities should not be affected, the legislature must

be able to effectively supervise the work of the executive authorities.

- Provided that the efficiency of the Legislative Council will not be too adversely affected, efforts must be made to ensure checks and balances between the executive authorities and the legislature.
- The Legislative Council should be a legislature vested with real power.
- Under the present government, which is an "executive-led" administration, the Legislative Council only has limited control over the Executive Council. The Legislative Council of the future HKSAR government should be an organ capable of exercising supervision over the executive authorities on behalf of the public.
- The Chief Executive is, under the present provisions, vested with too much power. The Legislative Council should be given an equal degree of power in order to maintain checks and balances between the executive authorities and the legislature.
- Under the present provisions, as the power of the legislature has been slashed, it will have difficulty in exercising checks and balances over the power of the Chief Executive and the executive authorities.
- The power of investigation of the legislature has not been given the necessary protection. Vested only with the power to question the executive authorities, the legislature will only have a limited ability to check and balance the power of the executive authorities.
- Under the present legislative procedures, bills are passed by the Legislative Council after three readings. The maintenance of this practice will allow residents of the HKSAR to be aware of the contents of the bills and be able to state their views. In the Draft Basic Law, however, the passage of bills or motions will just require the votes of more than half of the members of the Legislative Council who are present, while the rules of procedure of the Legislative Council will be established by the council on its own. Nothing has been said about consultation. It is feared that the future Legislative Council will adopt the legislative procedure of the NPC, in which case bills or motions will be passed after one reading and the public will not be informed of the contents beforehand.

1.5 Other views

- Residents of the HKSAR should have the power to criticize the president and members of the Legislative Council, as well as its policies, without fear of prosecution.

- Satisfaction is expressed as to the quorum required to hold meetings and pass bills and for the appointment and removal of members.

2. Suggestions

2.1 Additions

- The following provision should be added: "Members of the Legislative Council of the HKSAR shall be Chinese nationals who are permanent residents of Hong Kong and who have ordinarily resided in Hong Kong for a continuous period of 15 years."
- The following provision should be added: "Members of the Legislative Council of the HKSAR shall be Chinese nationals who are permanent residents of the Region."

2.2 Other suggestions

- The Legislative Council should comprise about 12 seats.
- The number of seats of the Legislative Council should be increased to 160.

Reason: - This will prevent the council from becoming an organ in which a few people exercise great power.

- Remuneration for members of the Legislative Council should not be higher than that paid to the Legislative Councillors at present. It should be quite sufficient just to pay them travelling expenses and attendance fees.
- A suggested change for the name of the legislature. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the English translation.]
- The name of the legislature should be standardized.
- The names "Legislative Council" and "Executive Council" should continue to be used.
- There should be an upper house and a lower house inside the Legislative Council.
- The Standing Committee of the NPC should approve the bills passed by the Legislative Council provided that such bills do not contravene the Basic Law. This will prevent excessive interference in the legislative power of the HKSAR by the Central Authorities.

3. Issues to be clarified

- It has been noted that members of the Executive Council and principal officials must be Chinese nationals, but that the nationality requirements on members of the Legislative Council are more flexible. Is there any special significance in this arrangement? Does this mean that members of the Legislative Council have a lower status or are less important than members of the Executive Council and principal officials?

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1. Original text

The Legislative Council of the Hong Kong Special Administrative Region is the legislature of the Region.

2. Views

- The meaning of this article is clear enough. The two alternatives detailed in "A Collection of Opinions" are unnecessary and should not be adopted.
- A view on the Chinese term for "legislature". [Translator's note: A view concerning the wording of the Chinese version which will not affect the English translation.]

3. Suggestions

3.1 Amendments

- A suggested change in the name of the legislature. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the English translation.]
- A suggested change in the name of the legislature. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the English translation.]

3.2 Additions

- The words "of the government" should be added after the word "legislature".
- The following provision should be added as Paragraph 2: "The legislative power of the HKSAR is vested in the legislature of the HKSAR."

4. Issues to be clarified

- Is Note 5, which stipulates an English translation of the name of the legislature, really necessary? If so, why is it that English translations are not stipulated for the names of other organs?

Article 67

1. Original text

The Legislative Council of the Hong Kong Special Administrative Region shall be constituted by a combination of direct and indirect elections.

The specific methods for forming the Legislative Council are prescribed in Annex II: "Methods for Constituting the Legislative Council of the Hong Kong Special Administrative Region."

The methods for forming the Legislative Council provided in Annex II may be modified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. Such modifications shall require the endorsement of a two-thirds majority of the members of the Legislative Council of the Region and the consent of the Chief Executive, and shall be submitted to the Standing Committee of the National People's Congress for approval.

2. Views

2.1 A combination of direct and indirect elections.

- "A combination of direct and indirect elections" is not a healthy system.
- Certain categories of professionals might be barred from the Legislative Council if "a combination of direct and indirect elections" is adopted. In this way, the Legislative Councillors will not be all-round.
- When the Joint Declaration was promulgated, people understood "elections" to mean direct elections or that every one shall have the right to vote and the right to be elected. All other interpretations will make people lose faith and feel cheated, and think that the Joint Declaration has been violated. What the people of Hong Kong have accepted is a Legislative Council constituted by "elections" not by "a combination of direct and indirect elections".
- The word "elections" actually covers both direct and indirect elections. There is no need to specify that it will be "a combination of direct and indirect elections" because all elections will probably be direct elections in the next century.
- In specifying that the legislature shall be constituted by "a combination of direct and indirect elections", the present article rules out the possibility of a 100%

popular election.

- Support is expressed for the constituting of the Legislative Council by "a combination of direct and indirect elections".

Reason: - "A combination of direct and indirect elections" is more in keeping with the actual situation.

- To avoid confusion, there should not be too many different forms of election.
- "A combination of direct and indirect elections" may be treated as one form of election and be specified in an annex, but it should not be provided for in the main text of the Basic Law.

2.2 On gradual and orderly progress

- The present provision has not clearly indicated the direction of "gradual and orderly progress".
- It should be stated that the method for forming the Legislative Council will be reviewed from time to time in order to provide a constitutional basis for political development.
- From the legal point of view, the provision "in accordance with the principle of gradual and orderly progress" is vague and difficult to define. And so, it will have to be defined by the Standing Committee of the NPC. However, the concept of democracy is understood differently under the socialist and the capitalist systems. Some say that socialist democracy is democracy in the broadest sense and some consider consultation to be one form of democracy. It is feared that the political structure of the HKSAR will head in the direction of socialist democracy.
- In order to avoid a confidence crisis, a specific provision should be stipulated rather than adhering to the principle of gradual and orderly progress.
- The meaning of the principle of "gradual and orderly progress" should be defined and the direction of progress should be indicated. If democracy is the goal, it should be so stated.

2.3 Paragraph 3

- The legislature should have full power to decide on the method for forming the Legislative Council, just as it should have the power to pass legislation. Thus, if a motion to modify the method for forming the Legislative Council is endorsed by a two-thirds majority of the members of the Council, the Chief Executive should be

required to effectively implement the modified procedures.

Reason: - Modifications endorsed by a two-thirds majority of the members of the Legislative Council should not require the consent of the Chief Executive because the view is already fairly unanimous.

- Endorsement by a two-thirds majority is reasonable, but the consent of the Chief Executive and the approval of the Standing Committee of the NPC are quite unnecessary.
- If modifications are endorsed by a two-thirds majority of the members of the Legislative Council and have the consent of the Chief Executive, the Standing Committee of the NPC should not withhold approval, provided that such modifications do not go against the Joint Declaration.
- The provision on "the consent of the Chief Executive" implies that the Chief Executive will be able to refuse to give consent to modifications endorsed by the legislature.
- The Chief Executive should not have the power to veto modifications endorsed by the legislature, for this will be a violation of the principle of democracy.
- The procedure for modification is so stringent that modifications will be no easier than amendment of the Basic Law.
- Objection is expressed to the stipulation that modifications shall require the consent of the Chief Executive. The legislature should have full power to decide its own method of forming the Legislative Council.

2.4 Other views

- There is no guarantee that the political structure will develop normally because it has not been stipulated that the method for forming the Legislative Council will be subject to review from time to time.
- Provision has not been made to enable the HKSAR to handle the matter of election to the Legislative Council in a flexible way.
- An excessively technical reading into the word "elections" is hardly a solid basis for trust.
- If the final objective is democracy, the initial election procedure as stipulated in the present article is extremely conservative. Such a slow pace of political development is a cause for concern.

3. Suggestions

3.1 Overall amendments

- This article should be amended to read: "The Legislative Council of the HKSAR shall be constituted by elections. ... and in accordance with the principle of gradual and orderly progress. However, no less than half of the members of the first Legislative Council should be returned by direct popular election. From the term of the third Legislative Council, all members should be returned by direct popular election."

- This article should be amended to read: "The Legislative Council of the HKSAR shall be constituted by elections.

"The specific methods for forming the Legislative Council are prescribed in Annex II: "Methods for Constituting the Legislative Council of the HKSAR".

The methods for forming the Legislative Council provided in Annex II may be modified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. No modification shall reduce the proportion of members returned by popular direct election. All modifications shall require the endorsement of a two-thirds majority of the members of the Legislative Council and the consent of the Chief Executive, and shall be submitted to the Standing Committee of the NPC for approval."

- This article should be amended to read: "The Legislative Council of the HKSAR shall be constituted by elections, the guiding principle being direct elections."

Reason: - Words like "a combination of direct and indirect elections" precludes the possibility of having a Legislative Council which is completely constituted by direct elections.

- This article should be amended to read: "The Legislative Council of the HKSAR shall be democratically and popularly elected by the people of Hong Kong."

- This article should be amended to read: "The Legislative Council of the HKSAR shall be returned by direct election on a one-person-one-vote basis."

- Paragraphs 2 and 3 should be amended to read: "Directly elected members shall account for no less than 25% of members of the legislature in 1997, and shall be steadily increased to 50% within 15 years of the establishment of the HKSAR.

"Other modifications may be made with the endorsement of a two-thirds majority of the members of the Legislative Council and the consent of the Chief Executive. Such

modifications shall be submitted to the Standing Committee of the NPC for endorsement."

3.2 Amendment of individual paragraphs

3.2.1 Paragraph 1

- The phrase "a combination of direct and indirect elections" should be deleted. (Note 67-1)

Reasons: - This will render the future HKSAR government unable to handle the matter of election in a flexible manner.

- The meaning of this term is too vague. The word "elections" already includes both direct and indirect elections.
- The phrase precludes the possibility of returning members of the Legislative Council by either one of these forms of election.
- "A combination of direct and indirect elections" is just a temporary form to be used in the transition from the present undemocratic society to a highly democratic society after 1997 (or a considerably distant date thereafter).
- With the people becoming more and more aware of their civil rights, the general public is now in favour of direct elections.
- This provision is a violation of the Joint Declaration.
- This provision sets limits to the development and modification of the method for forming the Legislative Council, for Hong Kong may eventually reach a stage where "fully-fledged direct elections" will be suitable in every aspect.
- This paragraph should be amended to read: "The Legislative Council of the HKSAR shall be constituted by direct elections on a one-person-one-vote basis."
- This paragraph should be amended to read: "... shall be constituted by popular elections."

Reason: - "A combination of direct and indirect elections" will hamper the future development of democracy.

- The term "a combination of direct and indirect elections" should be amended to read "direct elections".

3.2.2 Paragraph 3

- This paragraph should be deleted.

Reasons: - The method for forming the Legislative Council should be stipulated in Annex II.

- There should be a basis for the evolution and development of forms of election.

- The phrase "and the consent of the Chief Executive" should be deleted.

Reasons: - No Chief Executive will want to see his authority restricted or the appointment of his designated successor complicated.

- Endorsement by a two-thirds majority of the members of the Legislative Council should be sufficient to over-rule a veto by the Chief Executive.

- This paragraph should be amended to read: "The method for forming the Legislative Council provided in Annex II may be reviewed every five years and modified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress...."

Reason: - The addition of the clause "reviewed every five years" will provide a constitutional basis for political development.

- This paragraph should be amended to read: "The method for forming the Legislative Council provided in Annex II may be modified in the light of the actual situation in the HKSAR and in accordance with the cardinal principle of gradual and orderly progress towards a democratic and open political structure. Such modifications shall require a joint motion by one-tenth of the members of the Legislative Council, the endorsement of two-thirds of the members of the Council, and the consent of the Chief Executive, and shall be submitted to the Standing Committee of the NPC for approval."

Reason: - The direction in which the method for forming the Legislative Council is to be modified is too indistinct. The future Legislative Council should develop towards a democratic and open society.

- This paragraph should be amended to read: "... If this method has to be modified, a new method shall be jointly proposed by two-thirds of the members of the Legislative Council, and a decision on whether it will be adopted will

be made by all the voters through a referendum, and shall finally be submitted to the Standing Committee of the NPC for approval."

- This paragraph should be amended to read: "The method for forming the Legislative Council provided in Annex II, which has as its objective the development of universal and democratic participation by residents, may be modified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress...."
- This paragraph should be amended to read: "... gradual and orderly progress. All members shall be popularly elected during the third to fifth terms of the Legislative Council...."
- The last clause of this paragraph, "and shall be submitted to the Standing Committee of the NPC for approval", should be amended to read "and shall be submitted to the Standing Committee of the NPC for the record".

Reason: - The legislative power of Hong Kong will be greatly restricted if such modifications have to be approved by the Standing Committee of the NPC.

- The words "towards universal suffrage" should be added after "gradual and orderly progress".

Reason: - A direction should be indicated for "gradual and orderly progress".

- The following provision should be added at the end of this paragraph: "If the motion on modification is vetoed by the Chief Executive, it shall be further discussed by the Legislative Council. If the proposed modification is again endorsed by a two-thirds majority of the members of the Legislative Council, it shall be submitted to the Standing Committee of the NPC for approval."
- The clause "in accordance with the principle of gradual and orderly progress" should either be deleted or written into the Preamble or an annex.
- Paragraph 3 should be moved to Annex II.

4. Issue to be clarified

- This article stipulates that the Legislative Council shall be constituted by a combination of direct and indirect elections. Does this mean that there will not be universal suffrage in the HKSAR after 1997?

* Please refer to the section on "Annex II" in this Report

or Consultation Reports on the question of the political structure for views and suggestions regarding the methods for forming the Legislative Council.

Article 68

1. Original text

The term of office of members of the Legislative Council of the Hong Kong Special Administrative Region shall be four years.

2. Views

- Support is expressed for a four-year term of office.
- The term of office of members of the Legislative Council should be identical to that of the Chief Executive.

Reasons: - In future, the Chief Executive, members of the Legislative Council, members of district organizations, Hong Kong deputies to the NPC, members returned by functional constituencies and members of the nomination committee for the Chief Executive may all be popularly elected. A longer term of office will avoid excessive campaigning within the same year.

- This will strengthen coordination and cooperation between the Chief Executive and members of the Legislative Council.
- If the term of office of legislators is different from that of the Chief Executive there will be times when an incoming Chief Executive may not be able to count on the support of the Legislative Council, as the legislators may owe loyalty to the previous Chief Executive. It would be more workable if the terms were the same.

3. Suggestions

3.1 Amendments

- This article should be amended to read: "The term of office of members of the Legislative Council of the HKSAR shall be five years."
- This article should be amended to read: "The term of office of members of the Legislative Council of the HKSAR shall be three years."
- This article should be amended to read: "Members of the Legislative Council may serve no more than three terms, at the end of which they shall step down of their own accord and may not seek re-election."

- Reasons: - This will avoid the situation where some members monopolize the office for life. Other people should have an opportunity to make their contribution.
- The Legislative Council will need fresh blood to improve its operations.
 - This will make the operation of the Legislative Council more fair.
 - This will encourage more people to participate in government affairs and will ensure constant rejuvenation of the Legislative Council.

3.2 Other suggestion

- When the term of office of Legislative Councillors is extended from three years to four in 1991, the term of office of the Regional and Municipal Councillors and District Board members should also be extended to four.

4. Issues to be clarified

- Are the people of Hong Kong opposed to a three-year term of office? If they are not, why has a four-year term been proposed?
- The term of office of the Chief Executive will be five years, but the term of office of members of the Legislative Council will only be four years. How can the Chief Executive be a member of the Legislative Council?

1. Original text

If the Legislative Council of the Hong Kong Special Administrative Region is dissolved by the Chief Executive in accordance with the provisions of this Law, it shall be reconstituted by election within three months as prescribed by Article 67 of this Law.

2. Views

- This provision will give the Chief Executive excessive power.
- A three-month vacuum will seriously affect the supervision of the Chief Executive by and the normal operation of the legislature.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reasons: - The Chief Executive should not have the power to dissolve the legislature.

- Objection is expressed to the provision prescribed in Article 50 that the Chief Executive will have the power to dissolve the legislature. With such objection, this article has no basis.

3.2 Amendments

- The period within which the Legislative Council be reconstituted by election should be shorter.
- Two months are quite sufficient to arrange re-election.
- A new Legislative Council should be established within four to six weeks of dissolution.
- When the Legislative Council is dissolved, the Chief Executive should also resign.
- The dissolution of the Legislative Council by the Chief Executive should be in accordance with the provisions of Articles 50 and 51 in Chapter IV.

1. Original text

Alternative 1:

The president of the Legislative Council of the Hong Kong Special Administrative Region shall be elected from among the members of the Legislative Council.

The president of the Legislative Council of the Hong Kong Special Administrative Region shall be a Chinese national of no less than 40 years of age, who is a permanent resident of the Region and has ordinarily resided in Hong Kong for a continuous period of 20 years.

Alternative 2:

The Chief Executive shall concurrently be the president of the Legislative Council of the Hong Kong Special Administrative Region.

2. Views

2:1 - Support is expressed for Alternative 1. (Note 70-1)

Reasons: (1) The relationship between the executive authorities and the legislature:

- This alternative will be able to achieve the separation of legislative, executive and judicial powers.
- This alternative will provide the necessary conditions for maintaining checks and balances between the executive authorities and the legislature.
- This alternative will ensure that the executive authorities be accountable to the legislature.

(2) The relationship between the Chief Executive and the president of the Legislative Council:

- This alternative will help avoid any confusion or contradiction between the role of the Chief Executive and that of the president of the Legislative Council.
- This alternative will enable the Chief Executive to devote more time to the administration of the territory.

- The Chief Executive should only attend Legislative Council meetings to explain issues and answer queries.
- This alternative will enable the president of the Legislative Council to remain neutral in the handling of affairs.

(3) Influence on the Legislative Council:

- A president thus elected will have the support of the majority of the members.
- A president thus elected will have the support and backing of the members. This will enable him or her to preside over legislative meetings and affairs in an unbiased manner.
- A president thus elected will be both representative and authoritative. This will increase the efficiency of the Legislative Council as a whole.
- This provision will give expression to the independence of the Legislative Council.

(4) Other reasons:

- Most people object to or do not support the present colonial practice whereby the Governor is concurrently the President of the Legislative Council. Thus, the Chief Executive of the HKSAR should not be allowed to serve concurrently as the president of the Legislative Council. (Note 70-2)
- This alternative is more suited to Hong Kong.
- This alternative is more democratic.
- This alternative is more desirable than Alternative 2.
- It is appropriate to require that the president of the Legislative Council be a Chinese national.

2.2 - Alternative 2 is not suitable.

Reasons: (1) Relationship between the executive authorities and the legislature:

- This alternative violates the principle of checks and balances between the executive

authorities and the legislature.

- This alternative violates the principle laid down in the Joint Declaration that the executive authorities shall be accountable to the legislature.
- This alternative violates the principle of the separation of powers.
- The legislature should have the power to supervise the work of the Chief Executive or the executive authorities.
- This alternative will turn the political structure into one which is led by the executive authorities, and one where there will be no effective checks and balances.

(2) The role of the Chief Executive:

- This alternative will result in confusion, conflict or contradictions in the role played by the Chief Executive.
- This alternative will result in an expansion in the authority of the Chief Executive. He not only will be able to manipulate the decisions made by the executive authorities, but will also be able to influence the discussions and activities of the Legislative Council.
- Under this alternative, the Chief Executive will have complete control over the Legislative Council.
- This alternative will pave the way for the emergence of a dictator.
- Since the Chief Executive will have to spend time at Legislative Council meetings, he will not be able to handle his administrative duties efficiently.
- The Chief Executive will find himself in an awkward position when he has to exercise his power to dissolve the Legislative Council or when members of the Legislative Council return a vote of no confidence against him.
- In a modern political structure and with the help of modern science and technology, the Chief Executive will be able to have full knowledge of what happens in the Legislative

Council without himself having to be the president of the Legislative Council. (Note 70-3)

(3) Other reasons:

- Such a political structure is unlikely to have the approval or support of the public as it retains much of the heavy colonial undertone of the present administration.
- When the Chief Executive is unable to discharge his duties, the president of the Legislative Council should be able to take over. Thus, Alternative 2 is not desirable.

2.3 - Support is expressed for Alternative 2.

Reasons: - This alternative will prevent excessive elections.

- If the Chief Executive is directly elected on a one-person-one-vote basis, Alternative 2 should be adopted as it will avoid the trouble of having to hold re-elections.
- This alternative will help minimize confrontational politics.
- This alternative will prevent conflicts between the executive authorities and the legislature.
- This alternative will bring about better relations between the Chief Executive and the legislature.
- This alternative will increase the efficiency of the executive authorities and the legislature.
- This alternative will enable the Chief Executive to exercise his authority and ensure the smooth operation of the government.
- Under this alternative, the Chief Executive will be able to have a personal understanding of how members of the Legislative Council feel and where the problems lie.
- There is nothing wrong with the Chief Executive concurrently serving as president of the Legislative Council. If the Chief Executive may not concurrently serve as president of the Legislative Council, he will have to submit his work report to the Legislative Council in

writing.

- Alternative 1 is unacceptable as it deprives other legitimate permanent residents of Hong Kong of their political rights.

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2.4 Other views

2.4.1 Views on the age requirement in Alternative 1:

- Support is expressed for the spirit of Alternative 1, with the proviso that there should not be any restrictions on age. (Note 70-4)

Reason: - Whether one has reached 40 years of age or not is of no significance, but election of the president from among the members themselves will help prevent the situation where one person has to play dual roles in the executive authorities and the legislature.

- Since neither appointed nor elected members of the Legislative Council will be required to meet the prerequisites of having reached 40 years of age and having ordinarily resided in Hong Kong for 20 years, there is no reason why the president of the Legislative Council who is to be elected from among the members themselves will have to meet this age requirement. Moreover, under the provisions of Article 25, permanent residents of Hong Kong who have reached the age of 21 will have the right to stand for election.

2.4.2 Views on the requirements set out in Alternative 1 for the president of the Legislative Council

- These requirements will make the election of the president of the Legislative Council impossible.

Reason: - Since there is no provision in the Basic Law which stipulates that members of the Legislative Council must be Chinese nationals, it is possible that the future Legislative Council will be composed entirely of people who are not Chinese nationals. If this is the case, it will not be possible for these members to elect the president from among themselves.

- The requirements on the age, length of residence and nationality of the president of the Legislative Council will deprive some members of their right to stand for election and consequently create factional conflicts within the Council. Moreover, if the elected members do not measure up to these requirements themselves, it will be impossible for them to elect the president from among themselves.

2.4.3 Should Alternative 1 be accepted:

- (1) The following provision should be added: "The Chief Executive shall be a member of the Legislative Council".
- (2) The Chief Executive should be required to attend Legislative Council meetings to answer queries.

2.4.4 Alternative 1 is acceptable provided that the president of the Legislative Council will only serve as "the speaker" whose role will be to regulate the meetings of the Legislative Council. The legislature should not endeavour to produce a president who will act against the Chief Executive, for this will lead to rivalry and chaos. If Alternative 1 is to be adopted, the term "president" should be amended to read "speaker".

3. Suggestions

3.1 Deletions

- The clause "and has ordinarily resided in Hong Kong for a continuous period of 20 years" should be deleted.

Reason: - The requirements for the presidency of the Legislative Council are too harsh.

- The clause "of no less than 40 years of age" should be deleted.

Reasons: - The Chief Executive elected will naturally be the most ideal person in terms of age, experience, education, and so on. There is no need to specifically require that he/she must have reached 40 years of age.

- Having reached 40 years of age should not be a prerequisite.

- Paragraph 2 of Alternative 1 should be deleted.

Reason: - If similar requirements are not set on members of the Legislative Council, a situation may arise in which no one will qualify to run for election to the presidency.

3.2 Amendments

3.2.1 Overall amendments

- This article should be amended to read: "The president of the Legislative Council of the HKSAR shall be elected from among the members of the Legislative Council."

- This article should be amended as suggested above, but with the following addition: "The president of the Legislative Council of the HKSAR shall be a Chinese national who is a permanent resident of the HKSAR."

Reason: - In this way, the president will have the support of the members, and this will facilitate the operation of the Legislative Council. The Chief Executive should not be allowed to serve concurrently as the president of the Legislative Council, for this will result in conflict between his two roles and will adversely affect the checks and balances between the executive authorities and the legislature.

- This article should be amended to read: "The president of the Legislative Council of the HKSAR shall be nominated by the Legislative Council and returned by direct election. The post must be filled by a person who has reached 40 years of age and who is not an expatriate."
- This article should be amended to read: "The president of the Legislative Council shall be elected from within the Legislative Council. The president shall resign if a vote of no confidence is passed against him or her by more than three-quarters of the members of the Legislative Council."

3.2.2 Alternative 1

- Paragraph 2 should be amended to read: "The president of the Legislative Council of the HKSAR shall be a physically and mentally healthy Chinese national between 40 and 75 years of age, who is a permanent resident of the Region and has ordinarily resided in Hong Kong for a continuous period of 20 years."

The clause "a Chinese national ... who is a permanent resident of the Region" in Paragraph 2 should be amended to read "a Chinese national born in Hong Kong ... who is a permanent resident of the Region".

Paragraph 2 should be amended to read: "... of no less than 40 years of age, who ... has ordinarily resided in Hong Kong for a continuous period of 20 years before taking up office."

Paragraph 2 should be amended to read: "The president of the Legislative Council of the HKSAR shall be a Chinese national of the HKSAR who is a permanent resident of the Region."

Reason: - If the president of the Legislative Council is elected from among the members of the Council, the person elected should be someone who is both

capable and resourceful. The appointment of such a person should not be restricted by factors such as age or length of residence.

3.2.3 Alternative 2

- This alternative should be amended in such a way as to indicate that membership of the Legislative Council should not be a prerequisite for election to the presidency. Indeed, it would be better if he is not such a member so that he would not be suspected of using his position as president to promote the interests of his own constituency.

3.3 Addition

Alternative 1:

- The following provision should be added: "The president of the Legislative Council shall be required to resign all those posts with pay or remuneration held when he or she assumes office."

4. Issues to be clarified

- Will the president of the Legislative Council be returned by direct elections, or will he or she be appointed by Beijing?
- Will members of the Legislative Council have to be Chinese nationals who are permanent residents of the HKSAR?

1. Original text

The president of the Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To preside over meetings;
- (2) To decide on and control the agenda;
- (3) To decide on the time and duration of meetings;
- (4) To call special meetings during the recess; and
- (5) Other powers and functions as prescribed in the rules of procedure of the Legislative Council.

2. Views

2.1 Overall views

- The powers and functions of the president of the Legislative Council as prescribed in the present article cover too wide a range. Power should be divided more equally to avoid mistakes.
- Paragraphs (2), (3) and (4) give the president of the Legislative Council too much power. Actually, Paragraphs (1) and (5) alone will give him/her sufficient and reasonable power. (Note 71-1)
- The job of the president of the Legislative Council will be to see to it that the Council functions efficiently. There is thus no need to vest the post with too much power. The powers and functions prescribed in Paragraphs (2) to (4) should be agreed upon by the members of the Legislative Council.
- Deciding on the agenda, the time and frequency of meetings as well as the rules of procedure should be a power shared by all members of the Legislative Council and not one exclusively exercised by the president of the Legislative Council. (Note 71-2)
- The present provisions confer too much power on the president of the Legislative Council. The powers and functions of the president should be restricted to those prescribed in the rules of procedure. He/she should not have the power to decide on the agenda, and the time and frequency of meetings. (Note 71-3)
- The power of the president of the Legislative Council

should be limited to that necessary to ensure the smooth running of meetings.

Reason: - Paragraph (10) of Article 48 confers on the Chief Executive the power to judge whether or not a motion concerns government expenditure.

- Since the provisions under Paragraphs (2) and (3) are covered by the "rules of procedure" detailed in Article 74, the agenda and time of meetings should be handled in accordance with those rules.

2.2 On Paragraph (2)

- Support is expressed for this paragraph.
- The Chief Executive should not be allowed to decide on the agenda for Legislative Council meetings.

Reason: - If the president of the Legislative Council is elected from among the members of the Legislative Council, and the Chief Executive has the power to decide on the agenda, a situation will arise in which legislative power will be subject to interference from the executive.

- The agenda should be jointly proposed by members of the Legislative Council, compiled by the secretary, and decided on and controlled by the president.
- If a motion is initiated by no less than one-fifth of the members of the Legislative Council, the president should be required to put the said motion on the agenda. This will avoid giving the president too much control over the agenda.

2.3 Paragraph (4)

- Special meetings are meetings summoned during the recess where special needs arise. To expedite things, the president should have the power to call such meetings.
- To prevent favouritism on the part of the president, members of the Legislative Council should also have the power to call special meetings during the recess. In practice, the motion should be jointly initiated by one-tenth of the members. If a motion has the support of so many people, the matter must be urgent and of public concern.

2.4 Paragraph (5)

- Members of the Legislative Council should be able to lay down, by the casting of votes, other powers and functions to be prescribed in the rules of procedure.

3. Suggestions

3.1 Deletions

- Paragraph (2) should be deleted.

Reason: - The agenda should be decided on by the Chief Executive. The power to "control the agenda" is already included in the provisions under Paragraph 1.

- Paragraph (3) should be deleted.

Reasons: - The time and duration of meetings should be prescribed by law.

- The power to decide on the frequency, agenda and time of meetings should be exercised by the members, not exclusively by the president. The president's duty should simply be to preside over meetings in accordance with the rules of procedure laid down by all the members.

- Paragraph (5) should be deleted.

Reason: - The powers and functions mentioned here are already covered by the rules of procedure.

- Paragraphs (2) and (3) should be deleted.

- Paragraphs (2), (3) and (4) should be deleted. (Note 71-4)

Reasons: - The agenda should be proposed by the members, compiled by the secretary and controlled by the president.

- These powers should be vested in the legislature as a whole. The president should not be vested with too much power.

3.2 Amendments

3.2.1 Overall amendments

- This article should be amended to read: "The president of the Legislative Council of the HKSAR shall summon and preside over meetings in accordance with the rules of procedure of the Legislative Council. The adoption and amendment of the rules of procedure of the Legislative Council shall require the endorsement of the majority of the members of the Legislative Council."

- The term "president of the Legislative Council" should be amended to read "speaker of the Legislative Council".

3.2.2 Individual paragraphs

Paragraph (1)

- The words "decide on" should be deleted. (Note 71-5)

Reason: - Deciding on the agenda should be the responsibility of the whole Legislative Council, not an exclusive power of the president. (Note 71-6)

- This paragraph should be amended to read: "The president shall preside over meetings in accordance with the rules laid down by the members of the Legislative Council."

Paragraph (2)

- This paragraph should be amended to read: "To regulate the details of the agenda".

Reason: - The speaker of the Legislative Council should not be allowed to approve the agenda. The agenda should be compiled by several persons (including some members), while the speaker's duty should be to regulate the agenda and allocate time for each item.

- This paragraph should be amended to read: "To formulate and control the agenda after consulting members who are present at the meeting". (Note 71-7)

Paragraph (3)

- This paragraph should be amended to read: "To decide, together with members who are present at such meetings, on the time and duration of meetings." (Note 71-8)

Paragraph (4)

- The following provision should be added: "The president must summon a meeting if it is requested by one-tenth of the members".

3.3 Additions

- The following provision should be added: "To be responsible for the implementation of the rules of procedure and for casting deciding votes".

- The following provision should be added: "The speaker of the Legislative Council shall be impartial and shall not have the right to vote".

3. Other suggestions

- Paragraph (2) should be retained. However, it should be stipulated that a preparatory meeting should be held for members to discuss the agenda.
- The powers and functions prescribed in Paragraph (4) should not be exercised exclusively by the president. It should be stipulated that special meetings may be called if the motion is tabled by a given number of members. This suggestion may also be incorporated into Paragraph (5). (Note 71-9)
- The other powers and functions prescribed in the rules of procedure as mentioned in Paragraph (5) should include the power to call special meetings during the recess. (However such meetings must be attended by two-thirds of the members.)

4. Issues to be clarified

- Is Paragraph (2) intended to give the president absolute power of veto over requests for additional items to be placed on the agenda?
- The "other powers and functions" mentioned in Paragraph (5) should be specified.

Article 72

1. Original text

The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To enact, repeal or amend laws in accordance with the provisions of this Law and legal procedures;
- (2) To examine and approve budgets and final accounts submitted by the executive authorities;
- (3) To approve taxation and public expenditure;
- (4) To hear and debate on the work reports of the Chief Executive;
- (5) To raise questions on the work of the executive authorities;
- (6) To hold debates on any issue concerning public interests;
- (7) To endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Justice of the High Court;
- (8) To receive and deal with complaints from Hong Kong inhabitants; and
- (9) In the event of serious breach of law or dereliction of duty by the Chief Executive, an independent investigating committee, to be chaired by the Chief Justice of the Court of Final Appeal, on the motion initiated jointly by one-fourth of the members of the Legislative Council and passed by the council, may be established to carry out investigations and to report its findings to the council. If the committee considers the evidence sufficient, the council may pass a motion of impeachment with a two-thirds majority and report it to the Central People's Government for decision.

2. Views

2.1 Overall views

- The powers and functions of the Legislative Council should be prescribed in the rules of procedure of the Legislative Council.
- A powerful legislature will not necessarily give rise to

party politics.

Reason: - Even if the legislature is vested with very little power, party politics may still develop if some of the seats are filled by direct elections.

- Under the present system, the Legislative Council does not have legislative power. It is simply an advisory body through which the Governor exercises his legislative power. The Legislative Council of the HKSAR should not be someone's advisory body. It should be vested with true legislative power in order to give expression to democracy.
- The Legislative Council should have the following powers of supervision over the government:
 - (1) Power of query: Members of the Legislative Council should have the power to query the Chief Executive and principal officials, and those queried should be obliged to provide answers.
 - (2) Power of investigation: The Legislative Council should have the power to conduct investigations into the actions of the government and to summon witnesses before the Legislative Council to give evidence which will be put on the record.
 - (3) Power to cast a vote of no confidence: The Legislative Council should be able to initiate a vote of no confidence against the government.
- Under the present article, the Legislative Council will have too little power to supervise the work of the executive authorities. The Legislative Council will not have the power to impeach or remove principal officials, and will only be able to impeach the Chief Executive, but not remove him from office. This will restrict the power of supervision of the Legislative Council and will make it impossible to maintain checks and balances between the legislature and the executive authorities.
- The Basic Law should provide for the establishment of a "ministerial system", and such a provision should be included in the present article which lays down the powers and functions of the legislature. As the switch to the ministerial system is an important decision, it should not be implemented unless it is endorsed by a two-thirds majority of the members of the legislature.
- The powers and functions of the Legislative Council should include the power to set up standing committees and ad hoc committees for the purpose of investigating the work of the executive authorities or examining special issues.

- A policy committee should be established to discuss and review policies proposed by principal officials. This committee should be able to draft policies on its own and carry out discussion.
- Provision should be made in the rules of procedure for standing committees and ad hoc committees of the legislature.

2.2 Views on individual paragraphs

2.2.1 Paragraph (1)

- The Legislative Council should have the power to enact, repeal or amend laws, but it must first secure the consent of the executive authorities. The public should be extensively consulted beforehand on important issues. For administrative convenience, motions for the amendment of laws should be initiated by the executive authorities.
- The Legislative Council should be able to introduce bills, and pass and amend laws. It should also be able to propose bills that do not involve public expenditure. If the bills involve public expenditure, prior consent in writing should be obtained from the Chief Executive.

2.2.2 Paragraph (2)

- Since the Legislative Council will have the power to examine and approve budgets, the executive authorities should accept the supervision of the legislature on the use of public funds. This will be in keeping with the Joint Declaration.
- The executive authorities should take the accounts of the previous year as reference when discussing budget bills with the legislature.

Reason: - This will ensure the continuity of government operations.

- The Legislative Council should have the power to amend budgets and final accounts. (Note 72-1)

Reason: - It is not sufficient just to be able to raise questions on these matters.

- There is no provision for disapproving final accounts.
- The Chief Executive should not have the power to dissolve the Legislative Council merely because the latter refuses to approve a budget.
- The Legislative Council should be responsible for

approving budgets and final accounts proposed by the government. Legislation which approves budgets should not stipulate new items of taxation and expenditure. The government should be sufficiently independent to be able to implement its own administrative policies. The Legislative Council should be able to openly inquire about the budgets of various departments.

2.2.3 Paragraph (4)

- The Legislative Council should have the power to carry out investigations and to hear testimony. (Note 72-2)

2.2.4 Paragraph (5)

- Under the present paragraph, the Legislative Council lacks the power to effectively check the mistakes or policy errors of the executive authorities.
- The legislature should have the power to examine the work of the executive authorities.

2.2.5 Paragraph (7)

- This is another power beyond that of legislation. The present Legislative Council also has this power. The national assemblies of other countries also have this power.
- The legislature should have the power to appoint and remove officials and judges and report the appointment or removal to the Central People's Government for ratification. This is an expression of the principle that the executive authorities are accountable to the legislature, and the legislature is accountable to the Central Authorities.
- Judges should only be appointed or removed with the prior consent of the legislature.

2.2.6 Paragraph (8)

- How this power and function will relate to the proposed Commissioner for Administrative Complaints should be specified here.

2.2.7 Paragraph (9)

- Support is expressed for this paragraph.
Reason: - With this provision it will be possible to effectively monitor the work of the executive authorities.

- This paragraph is unacceptable.

Reason: - The impeachment will be recommended on basis of the findings of a small group of people (the investigating committee) chaired by the Chief Justice who will not be democratically elected by the people of the HKSAR.

- The procedures for impeachment and removal are inappropriate. The principle should be that the higher the position, the more stringent the requirements. However, it is inappropriate to stipulate that the removal of the Chief Executive or a member of the Legislative Council must be supported by a given percentage of the Legislative Council because this is tantamount to asking members of the Legislative Council to decide their own fates.
- The scope of powers and functions within which the Legislative Council will be able to supervise the Chief Executive is not clearly stated.
- The complicated procedures should be simplified. If there is sufficient evidence that the Chief Executive is guilty of serious breach of law or dereliction of duty, the matter should be reported to the Central People's Government for decision.
- The procedures for indictment and passing a motion of impeachment are too complicated and unreasonable.
- The power of and possibility for the Legislative Council to pass an impeachment motion are too small.
- The power of the Chief Executive is too great as the legislature will neither have the power to cast a vote of no confidence against him/her nor request that the Central Authorities remove him/her from office. The role of the legislature in exercising checks and balances on the executive is thus lost.
- The legislature should have the power to return a vote of no confidence against the Chief Executive as a means of exercising checks and balances on the power of the executive.
- The legislature should have the power to remove the Chief Executive in addition to the power to pass a motion of impeachment against him/her.
- It should be stated that the Legislative Council may propose a motion of no confidence against any principal official and report this to the Central Authorities for the removal of that official. Motions of no confidence should be an important means through which the legislature

exercises checks and balances on the power of the Chief Executive and principal officials.

2.3 Power of impeachment

- The power of the Legislative Council to maintain effective checks and balances will be inadequate in the face of serious breach of law or dereliction of duty by the Chief Executive or by principal officials appointed by the Chief Executive. If the Chief Executive or a principal official is indeed guilty of such offences, the case should be heard in accordance with civil procedures. However, the Legislative Council should be allowed to set up an independent investigating committee and carry out investigation at its own discretion. Under the provisions of the Draft Basic Law, it will not be easy to impeach the Chief Executive.
- Impeachment should also be possible for serious policy slips or administrative errors.
- It is not desirable for the Legislative Council to be only able to impeach the Chief Executive. It should also be able to impeach principal officials.

Reasons: - Paragraph (9) says nothing about the power to impeach principal officials. (Note 72-3)

- The present article may be considered a distortion of democracy.
- The suggested amendment will increase the supervisory power of the legislature.
- Unless it is able to impeach the principal officials, the legislature will not be able to effectively supervise the work of the executive authorities.
- At present, officials are able to question any relevant policies at Exco and Legco meetings. Although Hong Kong has not yet reached the stage of complete democracy, members of various councils and boards are able to impeach the president or other principal officials for improper acts or errors.
- This will ensure that power is not abused.
- The legislature should be able to exercise its power of impeachment independently and should not be required to set up an investigating committee or report the matter to the Central Authorities for decision.

2.4 The role of the Central Authorities

- An indictment against the Chief Executive should be brought in accordance with the directives and decision of the Central Authorities, and any resultant resignation should be confirmed by the Central Authorities.
- It will be more appropriate if an impeachment against the Chief Executive has to be approved by the Central People's Government beforehand and reported to the NPC for the record.
- If a motion of impeachment against the Chief Executive or any principal official nominated for appointment by him/her is passed, it must be reported to the NPC.
- The Central Authorities should have the power to remove the Chief Executive any time during his term of office.
- In order to ensure that the future HKSAR government will be able to function efficiently, the Chief Executive must be vested with substantial power so that he will be in a position of authority. However, there must be adequate checks and balances. Since the Central Authorities will have the power to appoint the Chief Executive, they should also have the power to remove him/her from office.
- The Central Authorities will be able to exercise their power in removing the Chief Executive from office only if the latter is found guilty of serious breach of law and a motion of impeachment has been passed by a two-thirds majority of the members of the Legislative Council.
- The yardstick by which the faults of the Chief Executive are to be measured should be fixed impartially by the Standing Committee of the NPC and members of the legislative and judicial organs.

3. Suggestions

3.1 Powers and functions

- The Legislative Council of the HKSAR should be able to exercise the following powers and functions:
 - (1) Legislative power--including the power to introduce bills, and pass and amend laws. Members of the legislature should be able to introduce individually bills that do not involve public expenditure. If a bill introduced involves public expenditure, prior approval should be obtained from the Chief Executive.
 - (2) Financial power--including the power to decide on budgets submitted by the executive authorities, the power to vote on budgeted taxes and expenditure, and the power to openly inquire into the budgets of

various departments. The Director of Audit should be nominated by the Chief Executive, but the nomination will have to be endorsed by the legislature.

- (3) Power of supervision. The legislature should have the power to address enquiries to the Chief Executive and the principal officials, and the government should be obliged to answer queries addressed to it. The legislature should also have the power to conduct investigations into the work of government departments and summon witnesses to provide information and evidence.
- (4) Power of impeachment. If the Chief Executive or a principal official is found guilty of breach of law or serious dereliction of duty, on a motion initiated jointly by one-quarter of the members of the legislature, an investigating committee may be established under the legislature to carry out investigation. The investigating committee should be chaired by the Chief Judge of the Court of Final Appeal of the HKSAR. If the investigating committee considers the evidence sufficient, a motion of impeachment may be initiated in the Legislative Council. The passage of a motion of impeachment should require the endorsement by a two-thirds majority of the members of the legislature and be reported to the Central Authorities for removal of the Chief Executive or the official concerned.
- (5) The establishment of ad hoc groups. It should be possible to establish ad hoc groups to study matters of public concern and to give advice to members of the legislature and the executive authorities.
- (6) Election of the speaker (president) of the legislature. The speaker, elected from among members of the legislature, should preside over meetings of the legislature and implement the rules of procedure. As a rule, the speaker should not have the power to vote on issues. However, when the votes for and against the issues are tied, he should be able to cast the deciding vote.
- (7) To give consent to the appointment or removal of principal judges in accordance with the provisions of the Basic Law.
- (8) To endorse international agreements signed in the name of "Hong Kong, China" and to apply them by way of legislation.
- (9) To elect one-third of the members of the policy committee from among its own ranks.

(10) To exercise jointly with the Chief Executive, the power to appoint and remove one-third of the members of the policy committee.

(11) To approve the principal officials nominated by the Chief Executive.

3.2 Suggestions on individual paragraphs

3.2.1 Paragraph (1)

- This paragraph should be amended to read: "To enact laws in accordance with legal procedures or as required by emergency situations;"

Reason: - The condition "in accordance with legal procedures" is restrictive in terms of time and procedures.

3.2.2 Paragraph (2)

- This paragraph should be amended to read: "To approve budgets and final accounts;"

- This paragraph should be amended to read: "To examine and approve budgets in accordance with bills submitted by the executive authorities, and to make the necessary budgetary reductions;"

Reason: - The legislature should have the power to make budget cuts to prevent the squandering of public funds and to prevent budget deficits.

- This paragraph should be amended to read: "To examine and approve budgets ... if they are considered to be appropriate;"

- The following provision should be added: "Amendments shall be restricted to reductions in budgeted expenditure." (Note 72-4)

Reason: - Approving budgets submitted by the executive authorities is a very important function. The legislature should not have the power to compel the government to increase budgeted expenditure in any particular area. Otherwise the government will be unable to make ends meet. However, it should have the power to make budget cuts in order to avoid the squandering of public funds.

- The following provision should be added: "The Legislative Council may reduce public expenditure proposed by the executive authorities."

Reason: - The legislature should have the right to ensure that the government does not over-spend public funds. This is the current practice.

3.2.3 Paragraph (3)

- This paragraph should be amended to read: "To approve public expenditure and enact appropriate legislation on tax matters at times it deems fit;"

3.2.4 Paragraph (4)

- This paragraph should be amended to read: "To hear, and when necessary question, the work reports and progress of the executive authorities;"
- This paragraph should be amended to read: "To hear, debate and review the work reports...;". If a work report is found objectionable by two-thirds of the members of the Legislative Council, the Chief Executive should be required to make the necessary amendments or resign in accordance with the procedures prescribed in Article 50.

3.2.5 Paragraph (5)

- This paragraph should be amended to read: "To examine and raise questions on the work of the executive authorities;"

Reasons: - This will facilitate the monitoring of the executive authorities by the legislature.

- The original provision leaves much to be desired.
- There should be no limitations placed on the scope of the legislature's monitoring functions.
- This paragraph should be amended to read: "To examine and raise questions on the work of the executive authorities, and to summon government officials to testify and give evidence on matters that are outside the jurisdiction of the HKSAR;"
- This paragraph should be amended to read: "To raise questions on the work of the executive authorities and, where necessary, to establish investigating committees and make public the findings of such committees;"

Reason: - The power of the Legislative Council will be too limited if it may only raise questions on the work of the executive authorities. The Legislative Council will find itself in a passive position and unable to carry out its monitoring functions effectively as much will

depend on the cooperation of the Chief Executive and his officials.

- This paragraph should be amended to read: "To raise questions on the work of the executive authorities, and to establish standing committees and ad hoc committees. The legislature and its committees shall have the power to summon relevant persons to testify and give evidence;" (Note 72-5)
- The clause "and shall have the power to summon the persons concerned to testify and give evidence" should be inserted.

3.2.6 Paragraph (6)

- The clause "and may establish an investigating committee to carry out investigation" should be added.

3.2.7 Paragraph (7)

- This paragraph should be deleted.

Reason: - The judiciary should be independent from the legislature, just as it should be independent from the executive authorities. Thereby a judge will be able to make his judgment independently without threat or influence. If this paragraph is not deleted, it is feared that the legislature will abuse its power.

- This paragraph should be amended to read: "To give assent to and endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Justice of the High Court".
- The appointment and dismissal of the "Auditor-General" should be included in this provision.

Reason: - The appointment and removal of the Auditor-General should also be endorsed by the Legislative Council.

3.2.8 Paragraph (8)

- This paragraph should be deleted.

Reasons: - This paragraph repeats the contents of Paragraph (13) of Article 48.

- There will be operational complications if the legislature is to receive and deal with complaints from inhabitants.
- This paragraph goes beyond the scope of

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- This paragraph should be amended to read: "To receive any complaints from Hong Kong residents and to ensure that the appropriate executive bodies deal with such matters properly;"
- This paragraph should be amended to read: "To receive any complaints from Hong Kong inhabitants and to ensure that the executive authorities of the government deal with such complaints correctly;"

3.2.9 Paragraph (9)

- Alternative 1 for this paragraph in "A Collection of Opinions" should be adopted. (Note 72-6)

Reasons: - This paragraph does not adequately define the powers to be given to the HKSAR legislature.

- There should be a provision stating that the HKSAR legislature shall have the power to make laws for the peace, order and good government of the HKSAR. This formula is well-known in Hong Kong and will be clearly understood in defining the powers of the legislature.
 - The suggested alternative will give better expression to the provision of the Joint Declaration which states that "the executive authorities shall abide by the law and shall be accountable to the legislature".
 - The legislature should have sufficient power to monitor the Chief Executive so that it will be alarmed should there be a serious dereliction of duty or a mistake in policy-making.
 - The power of the Chief Executive is too great. The Legislative Council should have a say in deciding such matters.
- Alternative 2 in "A Collection of Opinions" should be adopted.
 - Alternative 2 in "A Collection of Opinions" should be adopted, but with the following amendment to the last sentence: "If the committee considers ..., the legislature may pass a motion of impeachment ... and report it to the Standing Committee of the NPC for decision and for confirmation of the resignation handed in by the Chief Executive."
 - Alternative 2 in "A Collection of Opinions" is

unacceptable.

Reason: - The requirement of a three-quarters majority is too stringent and will make it less probable that a Chief Executive will be impeached for breach of law or dereliction of duty.

- This paragraph should be amended to read: "In the event of serious breach of law or dereliction of duty, serious negligence or policy errors by the Chief Executive (or any principal officials), a motion of impeachment may be jointly initiated by one-quarter of the members of the Legislative Council."

Reason: - The scope of impeachment is not clearly defined as it only covers serious breach of law or dereliction of duty. The present provision does not include negligence or policy errors, and fails to define what constitutes "dereliction of duty". Even if the Chief Executive has been at fault, the Legislative Council will not be able to remove him/her from office. Further, under the present provision, the Chief Executive alone may be impeached. The Legislative Council will not be able to effectively monitor the work of the executive authorities if it may not impeach principal officials.

- This paragraph should be amended to read: "If the Chief Executive is alleged to be guilty of serious breach of law or dereliction of duty, an investigating committee chaired by the Chief Judge of the Court of Final Appeal shall be established with the procedures of the committee stipulated fairly and properly. If there is sufficient evidence in the committee's report to establish a charge against the Chief Executive, the Legislative Council may pass a motion of impeachment with majority endorsement and report it to the Central People's Government for decision. When the motion to establish an independent investigating committee for this purpose is passed by a sufficient majority, the Chief Executive shall be suspended from duty until the investigating committee finds him/her innocent, the motion of impeachment is blocked by the Legislative Council, or the Central People's Government decides against his/her dismissal."

- The phrase "with a three-quarters majority" in Alternative 2 for this paragraph in "A Collection of Opinions" should be amended to read "with a two-thirds majority".

- Breach of law and dereliction of duty should be dealt with separately. If the Chief Executive is found guilty of serious breach of law, the Legislative Council may pass a motion of impeachment and report it to the Central People's Government without further investigation. If the

Chief Executive is suspected of serious dereliction of duty, investigations should be carried out in accordance with the provisions prescribed in the present paragraph. If there is sufficient evidence, the Legislative Council may pass a motion of impeachment with a two-thirds majority.

- The passage of a motion of impeachment should require the support of half of the members of the Legislative Council.

Reason: - The requirement of a two-thirds majority is too stringent.

- The amendment suggested in Alternative 1 for this paragraph in "A Collection of Opinions" should be adopted, but the passage of a motion of impeachment should require the support of half of the members of the Legislative Council.
- The passage of a motion to establish an investigating committee to look into serious breach of law or dereliction of duty by the Chief Executive should require the support of one-third of the members of the legislature.
- This paragraph should be amended as suggested above, but the words "or serious errors in the discharge of his/her functions" should be added after "dereliction of duty".
- The Chief Executive should be suspended from duty during any period of investigation.
- The clause "[i]f the committee considers ... with a two-thirds majority" should be deleted.
- With a three-quarters majority, the Legislative Council may pass a motion of no confidence against the Chief Executive and require his/her resignation, with the formal approval the Central People's Government.
- The paragraph should be amended as suggested above, but with the following addition: "There will be no need to dissolve the legislature when the Chief Executive resigns of his/her own accord."
- If the Chief Executive has committed serious errors and a motion to censure him/her is passed by a two-thirds majority of the Legislative Council, he/she should be required to resign.
- The paragraph should be amended to read: "If the Chief Executive is guilty of dereliction of duty or serious breach of law, when a vote of no confidence is passed by two-thirds of the members of the Legislative Council, he/she shall be asked to resign and the matter shall be

submitted to the Central People's Government for examination and decision."

- This paragraph should be amended as suggested above, but with the additional provision that the motion must be endorsed by no less than one-quarter of the members of the Legislative Council and that the casting of votes must be carried out within three days of the initiation of the motion.
- This paragraph should be amended to read: "The legislature may pass a vote of no confidence against the Chief Executive or any principal official with a three-quarters majority on a motion jointly proposed by one-quarter of the members of the legislature. It shall report the matter to the Central People's Government for the dismissal of the Chief Executive or the official concerned."
- This paragraph should be amended to read: "The executive authorities shall not have the power to dissolve the legislature. The legislature shall have the power to impeach the Chief Executive or any principal official. Once a motion of impeachment is passed, it shall be reported to the Central Authorities for the dismissal of the Chief Executive or the official concerned." (Note 72-7)

3.3 Amendments to individual phrases in Paragraph (9)

- The phrase "and passed by the council" should be deleted.
- The word "serious" should be deleted from the phrase "serious breach of law".
- The words "and report it to the Central People's Government for decision" should be deleted.
- The first sentence should be amended to read: "If the Chief Executive is alleged to be guilty of serious breach of law or dereliction of duty, an independent investigating committee shall be established to look into"
- The last clause "and report it to the Central People's Government for decision" should be amended to read:
 - (1) "If the Chief Executive refuses to resign of his own accord after being impeached, the Legislative Council shall be dissolved. If the new Legislative Council again passes a motion of impeachment with a two-thirds majority, the Chief Executive shall have to resign. The motion of impeachment shall be reported to the Central People's Government for the record", or

(2) "The Chief Executive shall thereupon be required to resign, and the president of the Legislative Council shall recommend that the Standing Committee of the NPC rescind his/her appointment", or

(3) "A report shall thereupon be submitted to the Central People's Government requesting the dismissal of the Chief Executive or the principal official concerned."

- The last sentence should be amended to read:

(1) "... sufficient, the council may, with a two-thirds majority, initiate a motion calling for the dismissal of the Chief Executive and the motion shall be voted on by all legal voters of Hong Kong. If the motion is passed by more than two-thirds of the voters, the Chief Executive shall be dismissed, and a new Chief Executive shall be elected in accordance with the method prescribed in this Law."

(2) "... sufficient, the council may, with a two-thirds majority, pass a motion of impeachment and the Chief Executive or the principal official concerned shall be dismissed by the Central People's Government."

Reason: - A breach of law by the Chief Executive or principal officials will make the government of the HKSAR suffer serious consequences. Thus, it is considered appropriate that the officials concerned will be impeached after investigation and a motion has been passed by a two-thirds majority of the Legislative Council.

- The last sentence should be amended to read:

(1) "... the council may pass a motion of impeachment with a three-quarters majority and report it to the Central People's Government for dismissal of the Chief Executive."

Reasons: - A two-thirds majority is an insufficient majority.

- After a motion of impeachment is passed, it should be reported to the Central People's Government for "dismissal" of the Chief Executive rather than for "decision".

- The word "decision" does not manifest the high degree of autonomy of the HKSAR and will bring about conflicts between the Central and local authorities.

(2) "... a motion of impeachment may be passed by the council with a two-thirds majority and be reported to

the Central People's Government for decision."

Reason: - The meaning is clearer in this amended version.

(3) "... the council shall have the power to pass a motion of impeachment with a two-thirds majority, or even initiate a motion of dismissal, and report it to the Central People's Government."

- The word "decision" should be amended to read "decision on dismissal".

Reason: - There will be undesirable consequences if the Chief Executive is not dismissed after a two-thirds majority of the Legislative Council has passed a motion to impeach him/her.

- The word "decision" should be amended to read "dismissal".

Reason: - Since the "decision" to be made by the Central People's Government will be on dismissal, it will be more precise to replace the word "decision" with "dismissal".

- The phrase "jointly initiated by one-quarter of the members" should be amended to read "one-third of the members".

- The phrase "with a two-thirds majority" should be amended to read "with a three-quarters majority".

- The phrase "with a two-thirds majority" should be amended to read "by half of the members".

- The words "or other principal officials" should be added after "the Chief Executive" in Paragraph (9). (Note 72-8)

Reasons: - A distinction should be made between mistakes made by the Chief Executive and those made by the principal officials, in order that the Chief Executive will not become a scapegoat. The legislature will be able to better perform its monitoring functions if it may impeach the principal officials as well. (Note 72-9)

- The legislature should have greater power, or it will not be able to check and balance the power of the executive authorities or perform its monitoring functions effectively.

- The legislature should have the power to impeach any senior administrator.

- It will be both unfair and lop-sided if the

legislature only has the power to impeach the Chief Executive.

- The provision that only the Chief Executive, but not the principal officials, will be subject to impeachment leaves much to be desired. More often than not, mistakes are made by officials. Thus, principal officials should also be subject to impeachment as a result of their mistakes.
- As the executive authorities will have wide-ranging powers and abundant resources, abuse or transgression of power on their part will be difficult to detect. Thus the legislature must have sufficient power of investigation and review to effectively make the executive authorities accountable.

3.4 Additions

- The following provision should be added: "With a motion initiated by one-third of the members and passed by two-thirds of the members, the Legislative Council may record a vote of no confidence against the Chief Executive and report it to the Central People's Government for decision."
- The following provision should be added: "To investigate and review the work and activities of the executive authorities and to establish ad hoc committees to exercise powers and functions assigned by the Legislative Council."
- The following provision should be added: "To establish standing committees and ad hoc committees."
- The following provision should be added: "The legislature shall have the power to summon government officials or any persons concerned to testify and give evidence."

Reasons: - This will give better expression to the stipulation in the Joint Declaration that "the executive authorities shall abide by the law and shall be accountable to the legislature".

- This will give the legislature greater power to exercise checks and balances on the authority of the Chief Executive and enable the legislature to more effectively carry out its monitoring and review functions.
- The following provision should be added: "The Legislative Council may summon the officials concerned to testify and give evidence. Except in defence, foreign affairs or internal security matters, the Chief Executive shall not

prevent the officials concerned from testifying and giving evidence if the summons has been endorsed by two-thirds of the members of the council."

- The following provision should be added: "To call the executive authorities to account."

Reason: - This will better accord with the Joint Declaration.

- The following provision should be added: "To review the report submitted by the Auditor-General."

Reason: - In order to be consistent with the proposal in Articles 58 and 62 (4), it will be more appropriate for the Legislative Council of the HKSAR to examine the report of the Auditor-General.

- The following provision should be added at the end of the article: "The Central People's Government shall, without delay, notify the Legislative Council of its decision and action on the motion of impeachment."

- The following provision should be added: "Other powers which are necessary and reasonable for carrying out its functions in accordance with the provisions of this Law." (Note 72-10)

- The following provision should be added: "Other powers as required by circumstances."

Reason: - This will prevent the inadvertent omission of the appropriate functions of the legislature.

- The following provision should be added: "To make arrangements, based on confirmation by the Central People's Government or the Standing Committee of the NPC, for the appointment or removal of the Chief Executive, principal officials or judges of courts at different levels, and to pass matters as directed by the Standing Committee of the NPC."

- The following provision should be added: "A vote of no confidence against the Chief Executive must be initiated by one-quarter of the members and passed by two-thirds of the members of the Legislature Council. The Chief Executive may dissolve the Legislative Council subsequent to a vote of no confidence against him/her. If a second vote of no confidence on the same matter is initiated by one-third of the members and passed by two-thirds of the members of the new Legislative Council, the Chief Executive shall be required to resign."

- The following provision should be added: "The power to

nominate the Chief Executive."

- The following provision should be added: "To nominate principal officials through the Chief Executive."

- The following provisions should be added:

"(10) To approve or veto nominations of principal officials made by the Chief Executive;

(11) The legislature may pass a vote of no confidence against principal officials guilty of serious dereliction of duty. If passed by two-thirds of the members present, a vote of no confidence against the official concerned may be recorded and submitted to the Central People's Government for dismissal of such an official;

(12) To establish ad hoc committees to monitor and coordinate the work of various departments under the executive authorities;

(13) To establish investigating or hearing committees and summon members of the executive authorities, government officials and members of the public to testify and give evidence; and

(14) To disqualify members of the legislature in accordance with this Law."

- The following provisions should be added after Paragraph (6):

"(7) To investigate and review the work and activities of the executive authorities;

(8) To establish ad hoc committees to exercise the powers and functions assigned by the Legislative Council;"

Reason: - This will make it clear that the Legislative Council will have the power to conduct investigations and the power to establish ad hoc committees for the exercise of other powers and functions.

- The following provision should be added before Paragraph (9): "To pass a vote of no confidence against the Chief Executive or veto a vote of confidence in the Chief Executive in accordance with the provisions of this Law;"

3.5 Other suggestions

- The Chief Executive should have the power to "decide in accordance with security and public interest considerations whether or not government officials or

other government personnel responsible for public affairs should testify and give evidence before the Legislative Council". However, by virtue of the "Power and Privileges Act", the present Legislative Council is vested with this power. The Joint Declaration promises that the existing laws of Hong Kong shall be maintained unless they contravene the Basic Law, but this power is not included in the powers and functions prescribed for the legislature in the Draft Basic Law.

- The Legislative Council should have the authority to hold hearings on important matters and the authority to subpoena principal officials, leaders of industry and other members of the public to testify and assist with the investigations.
- With a motion passed by half of the members, the Legislative Council may summon officials of various government departments and government personnel responsible for public affairs to give evidence before the Legislative Council. In accordance with security and public security considerations, the Chief Executive should have the power to exempt the persons concerned from testifying before the Legislative Council. However, if a resolution is again passed by a two-thirds majority of the Legislative Council, the Chief Executive should not be allowed to exercise his power of veto.
- If a matter which falls within the scope of autonomy of the HKSAR is endorsed by the Legislative Council, the Chief Executive should implement it. The Legislative Council may request the government officials concerned or government personnel responsible for public affairs to testify or give evidence before the council.

4. Issues to be clarified

4.1 Paragraphs (5) and (6)

- What will happen after "debate" and "raising questions"? Will the matter be left at that or will it be reviewed?

4.2 Paragraph (7)

- If the Legislative Council is to be responsible for "endorsing" the appointment and removal of the judges of the Court of Final Appeal, the meaning of the word "endorse" needs to be clarified. Too powerful a legislature will upset the balance between the three branches of power.

4.3 Paragraph (9)

- What is meant by "serious"?

- Does it mean that breaches of law and dereliction of duty will not be dealt with if they are not serious?
- Does it mean that the Chief Executive will be able to exercise his privileges and be exempt from prosecution if the breaches of law are not serious?

1. Original text

Alternative 1:

Members of the Legislative Council of the Hong Kong Special Administrative Region may, in accordance with the provisions of this Law and legal procedures, individually or jointly introduce any bills. However written consent of the Chief Executive is required before the following three kinds of bills are introduced:

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

Alternative 2:

Members of the Legislative Council of the Hong Kong Special Administrative Region may, in accordance with the provisions of this Law and legal procedures, introduce bills. Bills which do not relate to public expenditure or public policies may be introduced individually or jointly by members of the council.

2. Views

2.1 Supporting views

- Support is expressed for Alternative 1.

Reasons: - Paragraph (1) is absolutely essential. As an organ representative of public opinion, the Legislative Council should not have the power to introduce bills relating to public revenue and expenditure. When such bills are introduced by the executive authorities, the Legislative Council should only move that the proposed expenditure be reduced or approved, but should not recommend increases. Otherwise Hong Kong will be turned into a welfare state.

- The contents of Paragraphs (2) and (3) mainly fall within the scope of the day-to-day functions of the executive authorities. In order to ensure administrative efficiency, the executive authorities should have autonomy in these areas and the Legislative Council should only play a supervisory role.

- Basically the Legislative Council may introduce any bill, but the consent of the Chief Executive should be required for certain bills. The present provisions are reasonable and unlikely to interfere with or affect the operation of the government.
- Support is expressed for Alternative 2.

- Reasons:
- This will ensure that financial planning and government policies will not be altered at the whim of the members of the Legislative Council.
 - This is the current practice and is easy to carry out.
 - This will allow members of the Legislative Council to exercise their power of control fully and to introduce bills free from any restrictions.
 - Paragraphs (2) and (3) under Alternative 1 cover too wide a scope.

2.2 Opposing views

- Objection is expressed to Alternative 1.

- Reasons:
- It entails too many restrictions.
 - As Paragraphs (2) and (3) cover just about all areas, the Legislative Council will be reduced to total passivity and will not be in a position to introduce any bill that relates to government policies. In this way, it will not be able to exercise checks and balances on the executive authorities. In order to ensure good coordination between the executive authorities and the legislature, ad hoc committees whose task is to introduce bills should be established under the Legislative Council and these committees should work in coordination with their counterparts under the executive authorities.
 - The right to pass bills relating to these three areas is essential for monitoring the work of the executive authorities. It will only restrict the monitoring capacity of the legislature if such bills may not be introduced without the consent of the Chief Executive.
 - The power of the members of the Legislative Council to introduce bills will be restricted

if the "written consent of the Chief Executive is required".

- Objection is expressed to Alternative 2.

Reasons: - It rules out completely the introduction of bills relating to public expenditure or public policies by individual members of the Legislative Council.

- The meaning of "public expenditure" and "public policies" is unclear and may be construed in such a way that it restricts the power of members of the Legislative Council to introduce bills in the majority of areas.
 - This alternative is contradictory to the other provisions of the Basic Law.
 - The structure, powers and functions of the government and its relationship with the Legislative Council are detailed in Articles 60, 62 and 64.
 - Bills introduced by members of the Legislative Council may affect the structure and operation of the government. Also, the government's policy of maintaining stability will be affected if the legislature is allowed to intervene in the activities of the executive authorities.
 - Nothing has been said about which department will be responsible for introducing bills relating to public expenditure and public policies.
- Objection is expressed to both Alternatives 1 and 2.

Reasons: - Members of the Legislative Council should have the power to introduce bills individually or jointly. However, bills relating to public expenditure and public policies should be jointly proposed by no less than one-tenth of the members of the Legislative Council in order to prevent the rash introduction of bills with financial implications.

- The Legislative Council should have the power to introduce the type of bills mentioned in Paragraphs (1) to (3) in Alternative 1.
- Both alternatives restrict the power of the Legislative Council to introduce bills on important matters.

- They deprive the Legislative Council of the power to introduce bills and handle financial matters, a restriction which violates the principle of establishing a power center to check and balance the power of the government.
- Both alternatives will reduce the Legislative Council into a rubber stamp with no real power.
- Alternative 1 imposes too many restrictions on the power of members of the Legislative Council to introduce bills, as virtually all bills fall within the scope of those mentioned in Paragraphs (1) to (3). The restrictions under Alternative 2 are not much different. (Note 73-1)
- Both alternatives stipulate that bills relating to public expenditure, public policies, and the structure and operation of the government will require the written consent of the Chief Executive. This in fact implies that all laws will require the consent of the Chief Executive, for there is rarely any bill that does not relate to financial matters and the structure and operation of the government.
- These two alternatives deprive the Legislative Council of the power to introduce bills. Alternative 1 restricts the freedom and independence of the Legislative Council to introduce most kinds of bills as it stipulates that bills relating to three areas will require the consent of the Chief Executive. Alternative 2 is lacking in democratic qualities as it restricts the scope of bills to be introduced by the Legislative Council. (Note 73-2)
- Reference should be made to the existing system, under which individual members may introduce any bills except those relating to public expenditure.

2.3 Other views

- The power to introduce bills relating to expenditure as mentioned in this article should be exercised exclusively by the executive authorities rather than shared with the legislature.
- The power of the Legislative Council to introduce bills will be very limited.

- The Legislative Council should not be restricted from introducing bills relating to government policies. (Note 73-3)
- If bills relating to revenue, public expenditure, government policies or the structure and operation of the government are not be allowed to be introduced in the Legislative Council in accordance with legal procedures, it will greatly affect the welfare of the people.
- The power of the Legislative Council will be subject to too many restrictions if members of the council will not be allowed to introduce bills relating to public expenditure, public policies and the structure and operation of the government. Requiring that everything be passed unanimously by a show of hands is a distinctively Communist practice, one which Hong Kong people will find difficult to accept.
- The term "government policies" covers too wide an area.

3. Suggestions

3.1 Deletions

3.1.1 The entire article should be deleted.

Reason: - This is a vestige of the colonial system.

3.1.2 Alternative 1

- Paragraph (2) should be deleted. (Note 73-4)

Reasons: - This paragraph imposes too many restrictions, as practically all bills are concerned with government policies.

- This paragraph will restrict the effective monitoring of the government by the Legislative Council.

- Paragraph (2) should be deleted. However, Paragraph (3) may be retained, for the executive authorities are considered to be more familiar with matters relating to finance and the structure and operation of the government than the Legislative Council. Members of the Legislative Council will be playing a dual role if they are allowed to unnecessarily intervene in administrative matters.

3.1.3 Alternative 2

- This alternative should be deleted.

- The words "and public policies" should be deleted.

3.2 Amendments

3.2.1 Overall amendments

3.2.1.1 Any bills

- This article should be amended to read: "Members of the Legislative Council of the HKSAR may introduce any bills individually or jointly."
- This article should be amended to read: "Members of the Legislative Council of the HKSAR may introduce bills in accordance with the provisions of this Law and legal procedures."
- This article should be amended to read: "Any bills may be introduced by the Chief Executive or through joint endorsement by no less than ten members of the Legislative Council."

Reason: - The power of members of the Legislative Council to introduce bills should not be restricted by the provisions stipulated in the two alternative proposals for this article.

3.2.1.2 Bills relating to expenditure

(A) The written consent of the Chief Executive should be required for such bills

- This article should be amended to read: "Members of the Legislative Council may, in accordance with the provisions of this Law or legal procedures, introduce bills individually or jointly. Bills relating to government revenue or expenditure, or the structure or operation of the government shall require the written consent of the Chief Executive. Bills relating to government policies shall be jointly introduced by no less than one-fifth of the members of the Legislative Council."

Reasons: - This will prevent excessive restrictions being imposed on the terms of reference and powers of the Legislative Council.

- This will increase the monitoring power of the public over important policy decisions made by the government.

- This article should be amended to read:

"(1) Members of the Legislative Council may individually or jointly introduce any bills which do not relate to expenditure.

(2) The introduction of bills relating to revenue or expenditure shall require the prior written consent of the Chief Executive."

- This article should be amended to read: "Members of the Legislative Council of the HKSAR may introduce bills in accordance with the provisions of this Law or legal procedures. Bills which do not relate to public expenditure may be introduced individually or jointly by members of the Legislative Council. The introduction of bills relating to public expenditure shall require the written consent of the Chief Executive."
- This article should be amended to read: "Members of the Legislative Council of the HKSAR may, in accordance with the provisions of this Law or legal procedures, individually or jointly initiate any bill. However, bills relating to revenue or expenditure or the structure of the government shall require the prior written consent of the Chief Executive."

(B) Bills should be jointly introduced by a given proportion of members of the Legislative Council

- Support is expressed for the suggestion detailed in "A Collection of Opinions", which urges that bills relating to public expenditure or public policies should be jointly proposed by no less than one-tenth of the members of the legislature, and that the prior written consent of the Chief Executive should not be required.

Reasons: - In this way members of the Legislative Council will be vested with genuine legislative power.

- This will ensure that bills will be introduced prudently.
- This will ensure that bills introduced at the Legislative Council will have the support of a given number of legislators.
- Members of the Legislative Council should have the power to introduce bills without being required to obtain the consent of the Chief Executive.
- This will enable the Legislative Council to function more effectively and flexibly.
- The power to initiate bills relating to financial matters should be vested in the Legislative Council. As a means of checking and balancing the power of the executive authorities, the Chief Executive, as the head

of the executive authorities which handle government expenditure, should not be allowed to decide on whether certain motions may be initiated.

- This article should be amended to read: "Members of the Legislative Council of the HKSAR may, in accordance with the provisions of this Law or legal procedures, individually or jointly introduce bills. However, bills relating to public expenditure must be jointly introduced by no less than one-tenth of the members of the Legislative Council." (Note 73-5)

Reasons: - There should not be too many restrictions on the power of members of the Legislative Council to introduce bills.

- This will prevent the imposition of restrictions on the functions of the legislature.

- Members of the Legislative Council should be able to introduce bills in accordance with public needs rather than simply serve as rubber stamps of the government.

- This article should be amended to read: "Members of the Legislative Council may, in accordance with the provisions of this Law or legal procedures, individually or jointly introduce bills. However, bills relating to public expenditure must be jointly introduced by no less than one-tenth of the members of the Legislative Council and must not involve funds in excess of the total budgetary outlay for the current year."

Reasons: - This will prevent the imposition of too many restrictions on legislative power.

- If the present provision is retained, the legislature will not be able to enact laws in the light of public needs.

- This article should be amended to read: "Members of the Legislative Council of the HKSAR may, in accordance with the provisions of this Law or legal procedures, individually or jointly introduce bills. However, bills relating to public expenditure must be jointly introduced by no less than one-third of the members of the Legislative Council."

- This article should be amended to read: "Members of the Legislative Council of the HKSAR may, in accordance with the provisions of this Law or legal procedures, individually or jointly introduce bills. However, the following two kinds of bills must be jointly introduced by

no less than one-seventh of the members of the Legislative Council:

- (1) Bills relating to public expenditure; and
- (2) Bills relating to public policies."

- This article should be amended to read: "The power of the HKSAR to introduce legislative bills is vested in the Chief Executive and members of the Legislative Council. However, bills or amendments proposed by members of the Legislative Council may not involve the introduction of new taxes, or result in a reduction of government revenue or an increase in or addition to expenditure."

Reasons: - This provision, while ensuring that both the Chief Executive (government) and members of the Legislative Council are vested with the power to introduce bills, will restrict the power of the latter to introduce bills relating to government revenue and expenditure.

- This will ensure that the government will have sufficient independence to pursue its own administrative policies.

- This will give the government the necessary priority in the power to introduce bills of legislation.

3.2.2 Amendments to individual provisions

3.2.2.1 Alternative 1

- This alternative should be amended to read: "Members of the Legislative Council ... or jointly introduce bills. Unless jointly introduced by one-tenth of the members of the Legislative Council, the written consent of the Chief Executive is required before the following three kinds of bills are introduced...."

Reason: - This will avoid any violation of the Joint Declaration.

- This alternative should be amended to read: "Members of the Legislative Council of the HKSAR may, in accordance with the provisions of this Law or legal procedures, individually or jointly introduce bills, provided that such bills do not involve the structure or operation of the government. However written consent of the Chief Executive is required before the following three kinds of bills are introduced:

- (1) Bills relating to revenue or expenditure;

(2) Bills relating to government policies (further, such bills will have to be jointly endorsed by no less than one-quarter of the members of the Legislative Council); and

(3) Bills relating to the structure and operation of the government."

3.2.2.2 Alternative 2

- The provision "written consent of the Chief Executive is required ... are introduced" should be amended to read "the following three kinds of bills must be jointly introduced by no less than one-tenth of the members of the Legislative Council".
- The phrase "written consent" should be amended to read "consent".

3.2.3 Other suggestions

- Bills relating to public expenditure should be required to be jointly introduced by a given number of members (perhaps 10) of the Legislative Council.
- Bills relating to increases in public expenditure should be required to be jointly introduced by no less than one-tenth of the members of the Legislative Council and to have the written consent of the Chief Executive, in order to prevent the situation where the government is forced to increase its expenditure.
- Members of the Legislative Council should have the power to introduce any bills without any form of consent from the Chief Executive.

Reasons: - The legitimate rights of members of the Legislative Council should not be restricted by administrative means.

- The power of the Legislative Council to introduce bills relating to government policies will be constrained if the Chief Executive has the power to refuse to sign any bill.
- Under the present provisions the power of the Chief Executive will be too great.
- Individual members of the Legislative Council should have the power to introduce any bill in accordance with the provisions of the Basic Law and legal procedures.
- All bills should be introduced by government officials sitting on the Legislative Council and, in order to maintain checks and balances between the executive

authorities and the legislature, the decisions to accept or amend these bills should have to be passed by the majority of the members of the council.

- The Legislative Council should have the power to introduce the three kinds of bills mentioned in this article. If necessary, it should be stipulated that bills may be introduced if endorsed by a given proportion (say, two-thirds) of the members of the Legislative Council, but that the Chief Executive will be able to put forward counter-proposals and initiate discussions.
- It should be required that the departments or organizations concerned be consulted and that bills be examined by the legislative departments before they are introduced in the Legislative Council.

Reason: - Not all members of the Legislative Council are legal experts.

- The Chief Executive should be required, when introducing administrative bills in the Legislative Council, to provide accompanying written comments and information so that the bills passed will be better substantiated and more readily enforceable by the executive authorities.

4. Issues to be clarified

- What is meant by "bills relating to government policies" in Paragraph (2)?
- What is meant by "bills relating to the structure and operation of the government" in Paragraph (3)?

Article 74

1. Original text

The quorum for the meeting of the Legislative Council of the Hong Kong Special Administrative Region shall be no less than half of its members.

Unless otherwise provided for in this Law, the passage of any bill or motion in the Legislative Council of the Hong Kong Special Administrative Region requires the votes of more than half of its members present.

The rules of procedure of the Legislative Council shall be established by the council on its own, but they should not contravene this Law.

2. Views

- The quorum for meetings of the Legislative Council should be no less than half of its members as stipulated in the present provision.
- As Legislative Council meetings will be of immense significance and will have far-reaching influence, it is only reasonable that more than half of the members should be present in order to form a quorum. Further, members who are regularly absent from meetings should be subject to disciplinary action to be decided jointly by members of the Legislative Council.
- It should be stipulated that Legislative Council meetings will be conducted openly.

3. Suggestions

3.1 Amendments

- Paragraph 1 should be amended to read: "The quorum for meetings of the Legislative Council of the HKSAR shall be no less than four-fifths of its members."
- Paragraph 1 should be amended to read: "Unless otherwise provided for in this Law, the quorum for meetings of the Legislative Council of the HKSAR may be less than half but no less than one-third of its members."
- Paragraph 1 should be amended to read: "The quorum for meetings of the Legislative Council may be less than half but no less than one-third of its members."

Reason: - It will not be easy to call a meeting if the quorum requirement is set too high.

Reasons for objecting to the suggested amendment:

- Stipulating a quorum requirement of one-third of the members of the Legislative Council will undermine the confidence of the general public in the work of the legislature.
- This will also give rise to the concern that proceedings conducted by a small number of members will not necessarily protect the interests of society.
- This may result in unfairness and poor representation.
- Paragraph 1 should be amended to read: "The quorum for meetings of the Legislative Council of the HKSAR shall be no less than three-quarters of its members."
- This article should be amended to read: "The quorum for meetings of the Legislative Council of the HKSAR shall be no less than three-quarters of its members. Unless otherwise provided for in this Law, the passage of any bill or motion in the Legislative Council requires supporting votes from more than half of the members present. The rules of procedure of the Legislative Council shall be established by the council on its own, but they should not contravene this Law."

Reason: - The Legislative Council will be the supreme legislative organ of the HKSAR. A quorum of only half its members will be seen as insufficient.

4. Issue to be clarified

- Will there be any provisions for the re-constitution of the Legislative Council and for the continuation of essential business in the event of more than half of the members becoming incapacitated, for example by epidemic, acts of God, terrorist attack, etc.?

1. Original text

A bill passed by the Legislative Council of the Hong Kong Special Administrative Region takes effect only after it is signed and promulgated by the Chief Executive.

2. View

- This article does not cover the current practice by which the Governor is empowered to give immediate legal effect to bills on tax increase pending their passage in the Legislative Council under the "Public Revenue Protection Ordinance" to prevent tax evasion.

3. Suggestions

3.1 This article should be deleted.

3.2 Amendments

- This article should be amended to read: "A bill passed by the Legislative Council of the HKSAR takes effect only after it is signed and promulgated by the Chief Executive. If the Chief Executive does not sign the bill in question within one month of its passage, and does not return it to the Legislative Council for reconsideration in accordance with the provisions of Article 49 of this Law, the said bill shall automatically take effect. The executive authorities shall then promulgate that bill forthwith."
(Note 75-1)
- This article should be amended to read: "A bill passed by the Legislative Council of the HKSAR shall take effect only if it is signed and promulgated by the Chief Executive within one month of its passage. If the Chief Executive refuses to sign the bill, it shall be handled in accordance with Article 49 of this Law."
- This article should be amended to read: "A bill passed by the Legislative Council of the HKSAR takes effect only after it is signed and promulgated by the Chief Executive. If the Chief Executive does not sign the bill in question within three months of its passage and does not exercise his power of veto in accordance with Article 49 of this Law, the said bill shall automatically take effect. The executive authorities shall then promulgate that bill forthwith."
- This article should be amended to read: "A bill passed by the Legislative Council of the HKSAR takes effect only after an equally binding English version is available and after the bill is signed and promulgated by the Chief

Executive."

3.3 Additions

- The following provision should be added: "The bill shall automatically take effect if it is not signed or vetoed within one month of its passage."
- The following provision should be added: "If the bill is not signed, it shall take effect within one month."

Article 76

1. Original text

Members of the Legislative Council of the Hong Kong Special Administrative Region shall not be legally liable for speeches made at meetings of the council.

2. Views

- Acts of members of the Legislative Council which shall be free from legal liability should include submitting documents to the Council and casting votes at the Council.
- The present provision originates from the "Legislative Council (Powers and Privileges) Ordinance". Since it is already stipulated in the Basic Law that laws currently in force shall continue to be so, there is no need to lay special emphasis on this provision. Doing so will only arouse unnecessary misgivings.

1. Original text

Members of the Legislative Council of the Hong Kong Special Administration Region shall not be subject to arrest when attending or on their way to a meeting of the Legislative Council.

2. View

- Objection is expressed to this article.

Reasons: - All people, including the Chief Executive and government officials, should be subject to legal sanctions. Judgment should be made in the light of the seriousness of the offence.

- The provision that members of the Legislative Council shall not be subject to arrest on their way to a meeting of the council is puzzling.

3. Suggestions

- The phrase "on their way to" should be amended to read "on their way to and from".

- Certain procedures should be specified. For instance, when a member of the Legislative Council is subject to arrest or search, the public security department should provide an explanation to the Legislative Council for the record. Such an explanation should not affect the validity of the arrest or search warrant, and the cases should only be heard within the council and should not be made the subject of a public debate.

Reason: - This will give members of the Legislative Council greater protection without creating special prerogatives.

1. Original text

The president of the Legislative Council shall declare that a member of the council is no longer qualified to serve under any of the following circumstances:

- (1) When he/she loses the ability to discharge the functions of his/her office due to serious illness or other reasons;
- (2) When he/she is absent from meeting for three consecutive months without the consent of the president of the Legislative Council;
- (3) When he/she loses or renounces his/her status as permanent resident of the Hong Kong Special Administrative Region;
- (4) When he/she is bankrupt or fails to pay debts in defiance of a court ruling;
- (5) When he/she is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the Hong Kong Special Administrative Region and is relieved of his/her duties by a motion passed by two-thirds of the members present at a meeting of the Legislative Council; or
- (6) When he/she is censured for misbehaviour or breach of oath by a vote of two-thirds of the members present at a meeting of the Legislative Council.

2. Views

2.1 Overall views

- This provision is dangerous as it may lead to the emergence of a dictatorial regime.

Reasons: - The majority faction in the legislature could take advantage of this provision to stifle the voice of the opposition or drive the minority faction out of the council.

- Members of the Legislative Council will be elected by the people. If they are incompetent, they will not be re-elected.
- As seen from Paragraphs (1) to (5), the legislature will have little power to exercise checks and balances on the executive authorities.

- There should be provisions on what is to be done with a vacant seat under this Article.

2.2 Views on individual paragraphs

2.2.1 Paragraph (2)

- This clause is too harsh, for it is possible that a member is absent for an important reason.

2.2.2 Paragraph (3)

- This paragraph need to be stipulated in the Basic Law in order to protect the status of permanent residents of the HKSAR.

2.2.3 Paragraph (4)

- This paragraph should not be included.

Reason: - Members of the Legislative Council should not be disqualified on the grounds of his financial status.

- Members of the Legislative Council should be allowed to keep their seats after they have gone bankrupt.
- This paragraph should be amended as it contradicts what is taught in civic education and gives the false impression that being poor is worse than being sentenced to imprisonment.

2.2.4 Paragraph (5)

- It should be specified that judgment will be made on the basis of the seriousness of the offence rather than on the duration of imprisonment. As for a "criminal offence", it will be necessary to take into consideration the seriousness of the offence, because even traffic violations are "criminal offences".

2.2.5 Paragraph (6)

- The term "breach of oath" sounds vague.
- The court should be able to take action against members who have committed a "breach of oath". As an oath will presumably have been made before an officer of the court, its breach may be considered contempt of court.
- The term "misbehaviour" sounds vague.

Reasons: - Members of the Legislative Council could easily be branded as having "misbehaved".

- If a member has misbehaved and been charged with a criminal offence, he/she will be dealt with in accordance with the provisions of Paragraph (5). There will be no need for him/her to be censured by the Legislative Council.
- "Misbehaviour" is a subjective concept. A member returned by election should not be dismissed on account of the personal views of other members. Such cases should be dealt with in accordance with common codes prescribed in the rules of procedure.
- Any dismissal of a member of the Legislative Council for "misbehaviour" should be reviewed and approved by the court or the Chief Executive as a way to convince the public of the fairness of the action.
- The terms "misbehaviour" and "breach of oath" should be defined. Ad hoc groups should be established to review any such matters before a motion of censure is submitted to the Legislative Council.

3. Suggestions

3.1 Suggestions on individual provisions

3.1.1 The first sentence should be amended to read: "Under any of the following circumstances during a member's term of office, the president of the Legislative Council shall declare that a member of the council is no longer qualified to serve:"

3.1.2 Paragraph (1)

- The following provision should be added: "He/she shall be relieved of his/her duties only after a motion to this effect has been passed by two-thirds of the members present at a meeting of the Legislative Council."

3.1.3 Paragraph (2)

- This paragraph should be amended to read: "Except on account of sickness, when he/she is absent from meetings for three consecutive months without the consent of the president of the Legislative Council."
- This paragraph should be amended to read: "When he/she is absent from meetings for three consecutive months without the consent of the president of the Legislative Council and a motion to relieve him/her of his/her duties is passed by two-thirds of the members present at a meeting of the Legislative Council."

Reason: - The additional provision that the member shall

only be relieved of his/her duties when a motion has been passed by the Legislative Council will limit the power of the president of the council to act at his/her own discretion.

- The term "president" should be amended to read "speaker".
- The circumstances detailed in Paragraph (2) constitute a "serious dereliction of duty", the specific definition of which should be prescribed in the rules of procedure.
- The phrase "three consecutive months" should be amended to read "three consecutive sittings".

3.1.4 Paragraph (3)

- This paragraph should be amended to read: "When he/she loses or renounces his/her status as permanent resident of the HKSAR or as Chinese national."

Reason: - The offices of Chief Executive, principal officials and Legislative Councillors, being positions that give expression to China's sovereignty over Hong Kong, should be filled by Chinese nationals.

- This paragraph should be amended to read: "When he/she loses or renounces his/her status as a "Chinese national" who is a permanent resident of the HKSAR."

Reason: - Members of the Legislative Council should be "Chinese nationals".

3.1.5 Paragraph (4)

- This paragraph should be amended to read: "When he/she fails to pay debts in defiance of a court ruling."

Reason: - Bankruptcy should not affect a member of the Legislative Council in discharging his/her duties.

3.1.6 Paragraph (5)

- The words "one month" should be amended to read "three months".

Reason: - This will make the provision less stringent.

- This paragraph should be amended to read: "When he/she is convicted of either a criminal or commercial offence within or outside the HKSAR."

- This paragraph should be amended to read: "When he/she has committed a serious criminal offence."

- The word "two-thirds" should be amended to read "half".

Reason: - If a member of the Legislative Council who has committed a criminal offence fails to obtain the support of half of the members of the council, he/she should not be allowed to continue to participate in the law-drafting process. This is the only way to ensure the dignity of the law.

- The phrase "and sentenced to imprisonment for one month or more" should be deleted.

Reasons: - If a person is sentenced to imprisonment, he must be a criminal. The duration of imprisonment should not be used as a basis for determining whether that member should be relieved from his/her duties.

- Since members of the Legislative Council will be responsible for enacting and amending laws, they should be relieved of their duties if they have been sentenced to imprisonment. It should not be required that a motion to this effect be passed by two-thirds of the members.

3.1.7 Paragraph (6)

- This paragraph should be amended to read: "When he/she is censured for misbehaviour or breach of oath by a vote of two-thirds of the members of the Legislative Council after he/she has been dealt with by the impeachment and investigation procedures prescribed in Paragraph (9) of Article 72 and the investigation committee has considered the evidence sufficient to establish the charge against him/her."

Reason: - The meanings of the terms "misbehaviour" and "breach of oath" are rather vague. To be on the safe side, the procedures for the passage of motions of impeachment should be adopted.

- This paragraph should be amended to read: "When he/she is censured by a vote of two-thirds of the members of the Legislative Council."

Reason: - If evidence shows that a person has committed perjury, he/she will be punished by law. Besides, breach of oath is not easy to define.

- This paragraph should be deleted.

3.2 Additions

- The following provision should be added: "Prior to declaring that a member of the Legislative Council is no longer qualified to serve, certain procedures must be completed. The president of the Legislative Council shall appoint an ad hoc group to look into the matter. If there is a prima facie case, the case shall be put to a vote by the members of the Legislative Council. He/she shall be dismissed only if the motion is passed by two-thirds of the members of the council."
- The following provision should be added: "A member of the Legislative Council shall have to resign from the council if he/she is appointed to the Executive Council or appointed as a principal official of the executive authorities. Likewise, if a member of the Executive Council or principal official of the executive authorities is appointed to the Legislative Council, he/she will have to resign from his/her original post."

Reasons: - This will provide more opportunities to capable persons.

- This will prevent the conflict of roles.

- This will help check and balance the power of the executive authorities.

- The following provision should be added: "When a member is declared no longer qualified to serve, re-election should be carried out without delay in accordance with the current practice."

3.3 Other suggestions

- Article 78 should be incorporated into Article 71.

Reason: - Such incorporation will produce a more comprehensive provision.

- To avoid possible disputes in all such cases, a disciplinary committee should be established under the Legislative Council. The committee will report its findings to the council and the president of the council shall only declare that a particular member is no longer qualified to serve after a motion has been passed by at least two-thirds of the members.
- After a motion that a certain member be declared no longer qualified to serve has been initiated, an independent investigating committee chaired by a judge should be established by the Legislative Council. The investigating committee should report its findings to the council and the matter will be put to vote only if the report considers the evidence sufficient.

4. Issues to be clarified

- The matter of how vacancies in the legislature are to be filled should be addressed in this article, in Annex II or in an electoral law.
- How will one lose or renounce one's status as a permanent resident of Hong Kong? What legal procedures will be involved?
- There are no stipulations in respect of the qualifications required of members of the Legislative Council, but Article 78 details the circumstances under which these members will be disqualified. What is the reason for this?
- What will be the procedures for initiating motions under Paragraph (6)? Will there be separate legislation on this?

1. Views

1.1 Overall views

- Support is expressed for the provisions in this section.
- The provisions in this section are acceptable.

1.2 On judicial independence

- Judicial independence must be guaranteed.
- Judicial independence should not be subject to administrative interference.
- The HKSAR judiciary should enjoy absolute independence and should not be subject to the influence of political factors.
- Sino-Hong Kong judicial relations are spelt out in Articles 94 and 95. It is not acceptable that the future Hong Kong courts will be subject to supervision by the Supreme People's Court. It has already been stipulated that the Standing Committee of the NPC shall have the power to supervise the courts of Hong Kong. A judicial link between the courts of the two places will deprive Hong Kong of its judicial independence and thus jeopardise the "one country, two systems" policy.
- Hong Kong's judiciary should be completely independent and free from intervention by the Central Authorities.
- Except in defence and foreign affairs, the courts should have jurisdiction over all legal proceedings and should not be subject to any restrictions or limitations.

Reason: - The spirit of a high degree of autonomy cannot be guaranteed if the HKSAR will not be able to enjoy absolute judicial independence.

- As judicial independence is of primary importance, the Basic Law should clearly stipulate that the HKSAR will have the power to interpret the Basic Law as well as the power of final adjudication.
- The HKSAR judiciary should be completely independent of the government. Selection by an independent commission composed of judges from the Court of Final Appeal of the HKSAR may be an appropriate method for the appointment of judges of the courts of the HKSAR.

Reason: - This is necessary for balancing the extensive

- Members of the judiciary should not be regarded as public servants in order to ensure judicial independence.

Reasons: - The independence of judicial organs might be affected if salaries for members of the judiciary have to be drawn from the coffers of the executive authorities.

- Members of the judiciary are now paid according to the civil service pay scale. The lacklustre salary presently offered has been a contributing factor to the brain drain.

1.3 The power of final adjudication

- The HKSAR should have its own Court of Final Appeal.

Reason: - This will save the time and money of those making appeals and will be beneficial to those who are unfit to travel or have financial difficulties.

- The future Court of Final Appeal should have absolute independence.
- The power of final adjudication of the HKSAR should be vested in the Supreme People's Court of China. A judicial commission should be established under the Supreme People's Court to handle appeals after judgments have been rendered by the HKSAR Court of Appeal. The decision of the judicial commission should be final.
- There must not be any supervisory body over the Court of Final Appeal. If there is, the Court of Final Appeal will not have the power of final adjudication.

1.4 The existing judicial system

- It is difficult to know if the future judiciary will follow the existing practice in Hong Kong with regard to case law, common law, and so on, or if it will have to follow whatever guidelines observed in China. The judiciary would change its nature completely if the latter were to be the case.
- The term "common law jurisdiction" used in Articles 81, 83 and 91 is used on the assumption that the HKSAR will continue to be a common law jurisdiction. However, this will not work even under the "one country, two systems" concept.
- The Chinese government should consult with the British government in order to learn from the strong points of the

latter's legal system. These qualities should then be incorporated into the system of and criteria for lawyers as required by social changes. In this way the interests of lawyers who are qualified to practice law under the British government will be taken care of.

- The Basic Law should not categorically state that the laws currently in force shall remain unchanged after 1997.

Reasons: - If this is stipulated, capital punishment will be impossible.

- According to the trial procedure under the English legal system, the judge only listens to the defence put forth by the lawyers without investigating the truth. This method is not desirable.
- The judicial organs should work in accordance with the principles of moral integrity, impartiality and equality.
- At present, Hong Kong's legal and judicial systems are controlled by a handful of people. The HKSAR should afford equal protection to those who are discriminated against under the present legal and judicial systems.
- The judicial concept that the respect one enjoys before the law may vary according to one's status must be discarded because it is unfair to the general public.
- The practice of emphasizing prima facie evidence at the expense of the underlying truth must be changed.
- The existing Supreme Court, High Courts, Court of Appeal, district courts, magistracies, juvenile courts and "other courts" should be retained. When required by specific conditions, the HKSAR should set up an independent court to handle legal proceedings or advise the government. Coroner's courts, land tribunals, small claims tribunals and labour tribunals should also be retained.
- The laws currently in force should be preserved wherever possible.
- The present provisions in respect of the pay, allowances, benefits and conditions of service for members of the judiciary are too vague. Rather than retaining these provisions and amending them later, it will be more sensible to delete them from the Basic Law now.

1.5 The language of the law

- The Chinese language should be used in the documents and reports of the judiciary. Legal proceedings should also be conducted in Chinese.

- The laws currently in force should be translated into Chinese and published in the newspapers so that the public will be able to understand them.

1.6 The judicial organs

- The Central People's Government should introduce legislation to enable Hong Kong residents or organisations to establish a "legal-aid department" or an "ombudsman's office" of the HKSAR on their own. This body should receive authorisation directly from the Central Authorities.
- A legal body should be established by the public upon examination and approval by the Central Authorities. It should be named the "Ombudsman's Office" or "Legal-aid Department", and composed of members of the legal profession and of social and legal research institutions. It should be able to work independently, carry out investigations and lodge appeals on behalf of the victims. In cases where it considers careful investigation is necessary, the defeated party shall bear all costs incurred prior to the final ruling.

1.7 Judges

- Judges of Hong Kong should be appointed by the Chief Executive and their appointment should be confirmed by the legislature.
- It should be stipulated that non-permanent residents may also be appointed as judges. This will ensure the quality of members of the judicial organs and strengthen links with the judicial systems of other countries.
- Judges of the Court of Final Appeal should be Chinese nationals.

Reason: - In this way the national pride of the Chinese people will not be hurt.

- The stipulation on "endorsement of the Legislative Council" in Articles 88 and 89 is intended as an additional safeguard and should be retained.

1.8 Capital punishment

- The future law should provide for capital punishment. However, it should be based on local morals and ethics rather than on mainland practices. Capital punishment (suspended and summary death sentence) should be provided for in the Basic Law.

Reasons: - When sovereignty reverts to China in 1997, Hong

Kong should no longer follow Britain's practice in renouncing capital punishment.

- As public order in Hong Kong is rather bad, severe punishment should be available as a deterrent.

1.9 Other views

- All records and duplicates of such records held by private concerns or companies should be considered commercial secrets. If these records are examined or peeped at without authorization, the offenders should be treated as commercial spies and be held liable to compensation or be sentenced to imprisonment.
- How will it be possible to give expression to China's sovereignty if foreign nationals may be appointed as "judges" or other "members of the judiciary"? In short, it should be stipulated that all posts within the public service be filled by Chinese nationals. However, foreign nationals may be permitted to practise law in Hong Kong if they have passed the qualifying examinations.
- The provisions in this section should be substantially amended. Judicial independence should not be sacrificed on account of historical factors. While the provisions in Article 90 are acceptable for the time being, there is no need to retain Article 91. Section 4 under Annex I to the Joint Declaration only states that the HKSAR "may also employ British and other foreign nationals as advisers to government departments". The Basic Law should therefore not include this provision which humiliates the country.
- The Basic Law should confirm the status and function of lawyers' bodies and their relations with judicial organs.
- The judiciary should be vested with the power of constitutional review, independent judicial power and the power of final adjudication.

2. Suggestions

2.1 Amendments

- Articles 85 and 86 should be merged to read: "Trial by jury shall be practised in the courts of the HKSAR. In criminal or civil proceedings, the principle of the rule of law under the common law shall be applied."

Reasons: - This will avoid the use of such policy-related terms as "maintained" and "previously applied".

- The "principle of the rule of law under the common law" includes prompt and fair trial for

the accused; subjecting the police to appropriate judicial regulation in taking statements; protecting those arrested and those awaiting trial; providing legal aid to those who cannot afford to hire lawyers; and the exemption from legal liabilities if the act is perpetrated prior to its prohibition by the criminal law. Such a provision is preferred to the clause under Article 86, which simply stipulates "the rights previously enjoyed by the parties to the proceedings shall be maintained".

- Paragraph 2 of Article 80 and Article 82 should be deleted, and Article 80 should be amended to read: "The Court of Final Appeal, the High Court, district courts, magistrates' courts and other special courts are established in the HKSAR. The High Court comprises the Court of Appeal and the Court of the First Instance. The structure, powers and functions of the courts of the HKSAR at various levels shall be prescribed by law."

Reason: - The provision in Paragraph 2 of Article 80 is basically covered by Articles 83, 84, 85 and 86. There is no need to repeat it.

- Articles 87, 88 and 89 should be merged into one article with a number of paragraphs.

2.2 Addition

- The following provisions should be added: "Cases of a purely commercial nature, including those involving major international or national interests, shall be under the jurisdiction of the courts of the HKSAR."

Reasons: - This will give expression to the "independent judicial power and power of final adjudication" stipulated in the Joint Declaration.

- This will ensure the judicial independence and effective operation of HKSAR courts.

3. Issues to be clarified

- What constitutes a crime?
- At present, a person may go to London to appeal against the decision of the Supreme Court. Where can he appeal to in future if he does not accept the ruling of the HKSAR courts?
- At present, not everyone is equal before the law or the judiciary irrespective of his or her financial status. In the years after 1997, where can a victim turn if he wants

to get a fair hearing?

- If the legal and judicial concepts of the Central Authorities contradict those of Hong Kong, how will the Central Authorities resolve such contradictions?
- Will Hong Kong people be extradited to China for violation of mainland laws subsequent to 1997? Will there be any safeguards against such an eventuality?
- If a person is arrested in Hong Kong under mainland law, will the Hong Kong courts have jurisdiction to hear the case? Who will interpret that law? Will it be the Hong Kong courts? Or will they be required to ask the NPC for an authoritative opinion?
- What yardstick will Hong Kong use in respect of matters considered to be "state secrets"?
- At present, the maximum penalty in Hong Kong is life imprisonment. Ordinary prisoners are not subject to inhuman torture. On the mainland there are all kinds of punishments and the oppression is tremendous. Will Hong Kong people be subjected to the same punishments in future?
- Will senior mainland officials and the People's Liberation Army be immune from the jurisdiction of Hong Kong courts in future?

Article 79

1. Original text

The courts of the Hong Kong Special Administrative Region at various levels are the judicial organs of the Region, exercising the judicial power of the Region.

2. Suggestion

- This article should be amended to read: "The courts of the HKSAR at various levels are the judicial organs of the Region, exercising the judicial power, power of judicial interpretation and power of constitutional review of the Region."

1. Original text

The court of Final Appeal, the High Court, district courts, magistrates' courts and other special courts are established in the Hong Kong Special Administrative Region. The High Court comprises the Court of Appeal and the Court of First Instance.

The judicial system previously in practice in Hong Kong shall be maintained except for those changes consequent upon the establishment of the Court of Final Appeal in the Hong Kong Special Administrative Region.

2. View

- Whatever the situation, there must never be any reservations about the establishment of the Court of Final Appeal in the HKSAR because it is the key to and symbol of maintaining judicial independence and integrity.

3. Suggestions

- The following provision should be added at the end of Paragraph 2: "The current language of the judiciary shall not be changed."
- The Court of Final Appeal should be established in Hong Kong.

Reasons: - This will ensure that Hong Kong people will be able to administer Hong Kong.

- If it is established in Beijing, the time of hearing will be delayed because of the distance.

- An organ which monitors the work of the Court of Final Appeal should be established in Beijing.

Reason: - The existing judicial system fails to afford adequate protection to local residents whose fate is left at the mercy of local officials.

1. Original text

The power of final adjudication of the Hong Kong Special Administrative Region is vested in the Court of Final Appeal in the Region, which may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal.

2. View

- Objection is expressed to this article.

Reason: - The implication of this article, that foreign judges may sit on the Court of Final Appeal, is unacceptable to a sovereign state.

3. Suggestions

- This article should be amended to read: "The courts of the HKSAR shall exercise judicial power independently and free from any interference. However, whether or not the courts have exercised jurisdiction in excess of that prescribed by this Law shall be a matter for the Standing Committee of the NPC to decide. Members of the judiciary are immune from legal actions in respect of their judicial functions."

- This article should be amended to read: "The power of final adjudication of the HKSAR is vested in the Court of Final Appeal of the Region. The Chief Judge and judges of the Court of Final Appeal shall be Chinese nationals who are permanent residents of Hong Kong. The Court of Final Appeal may, as required, invite judges from other common law jurisdictions to sit on the Court of Final Appeal, provided that they only serve as consultants or advisers and do not exercise any power of final adjudication."

Reasons: - National sovereignty and dignity will be violated if foreign judges are allowed to try Chinese nationals or other persons on Chinese soil.

- Hong Kong should be able to produce its own judges for the Court of Final Appeal and other courts.

Article 82

1. Original text

The structure, powers and functions of the courts of the Hong Kong Special Administrative Region at various levels shall be prescribed by law.

2. Suggestion

- This article should be amended to read: "The structure, ... shall be prescribed by the law of the HKSAR."

Article 83

1. Original text

The courts of the Hong Kong Special Administrative Region decide cases in accordance with the laws applicable in the Region as prescribed in Article 17 of this Law and may refer to precedents in other common law jurisdictions.

2. Views

- The words "may refer to precedents in other common law jurisdictions" are ambiguous. This article should expressly stipulate those places whose common law will be binding on the courts of the HKSAR and those places whose common law is to be used for reference only and will not be legally binding.
- Reference to Article 17 is superfluous here.
- Except for cases relating to defence and foreign affairs, the courts of Hong Kong should have jurisdiction over all cases that fall within the scope of the high degree of autonomy of the HKSAR, including cases relating to the executive acts of the Central People's Government and the HKSAR, and even cases involving Central organs and their personnel which are within the jurisdiction of Hong Kong.

3. Suggestions

- This article should be amended to read: "The courts of the HKSAR decide cases in accordance with the laws applicable in the Region as prescribed in Article 17 of this Law. Cases relating to the executive acts of the Central People's Government stipulated in Article 18 of this Law as well as cases involving organs of power of the Central People's Government and their staff (including those mentioned in Articles 13 and 21 in Chapter II) shall all fall within the jurisdiction of Hong Kong courts."
- The clause "may refer to precedents of other common law jurisdictions" should be amended to read: "may refer to precedents of other common law jurisdiction in so far as they conform to the customs and practices of the Chinese people."

4. Issue to be clarified

- Is it perhaps necessary to note that precedents created in Hong Kong prior to 1997 and those created after 1997 will carry equal effect?

1. Original text

The courts of the Hong Kong Special Administrative Region exercise judicial power independently and free from any interference. Members of the judiciary are immune from legal action in respect of their judicial functions.

2. Views

- Support is expressed for this article.
- Objection is expressed to the suggested amendment for this article in "A Collection of Opinions".

Reason: - The proposed supervision by the Standing Committee of the NPC over the courts of the HKSAR will seriously prejudice judicial independence. Moreover, the Standing Committee is not bound to observe the principle of stare decisis. It may depart from precedents, thus impairing legal certainty. The exercise of excess jurisdiction should be corrected by reversal on appeal or overruling in the courts of the HKSAR, not by supervision by the Standing Committee of the NPC.

- Views on the provision that members of the judiciary should be immune from legal action in respect of their judicial functions:

(1) This provision is unfair to other people.

(2) The meaning is ambiguous.

(3) The NPC will have to be consulted for further clarification.

- In cases which do not directly involve his personal affairs, the Chief Judge of the Court of Final Appeal should be responsible for final rulings, thereby ensuring the judicial independence and high degree of autonomy of the HKSAR. In cases which involve his personal affairs, this function should be carried out by the Standing Committee of the NPC.

3. Suggestions

3.1 Amendments

- This article should be amended to read: "The courts of the HKSAR exercise judicial power independently and free from any interference. However, whether or not the courts

have exercised jurisdiction in excess of that prescribed by this Law shall be a matter for the Standing Committee of the NPC and the legislature of Hong Kong to decide."

- This article should be amended to read: "The courts of the HKSAR shall conduct their proceedings, including arbitration functions and other judicial proceedings, free from any interference. Members of the judiciary are immune from legal action in respect of their judicial functions."

3.2 Additions

- The following provision should be added: "However, whether or not the courts have exercised jurisdiction in excess of that prescribed by this Law shall be a matter for the Standing Committee of the NPC to decide."

Reason: - This will keep members of the judiciary in rein.

- The clause "but whether or not the courts have exercised jurisdiction in excess of that prescribed by this Law shall be a matter for the Standing Committee of the NPC to decide" should be added after "free from any interference".

Reason: - This will bind members of the judiciary.

- The words "including all members of the Executive and Legislative Councils" could be added after "[t]he courts of the HKSAR".

Article 85

1. Original text

The principle of trial by jury previously practised in Hong Kong shall be maintained.

2. No views or suggestions have been expressed on this article.

Article 86

1. Original text

In criminal or civil proceedings in the Hong Kong Special Administrative Region, the principles previously applied in Hong Kong and the rights previously enjoyed by the parties to the proceedings shall be maintained.

2. Views

- Although this article stipulates that the principles previously applied in Hong Kong in criminal or civil proceedings and the rights previously enjoyed by the parties to the proceedings shall be maintained, this is not adequate to safeguard the rights of Hong Kong people in this respect.
- The rights and principles referred to in this article should be clearly spelt out rather than left in their present abstract form. They could be specified in the text or in an annex.

3. Suggestions

3.1 This article should be deleted.

3.2 Amendment

- This article should be amended to read: "In criminal or civil proceedings in the HKSAR, the principles applied in Hong Kong and the rights enjoyed by the parties to the proceedings shall be maintained."

3.3 Addition

- The following provision should be added at the end of the present article: "Persons who have been lawfully arrested shall be entitled to a fair trial by an open, impartial and independent judicial organ without delay. Any such person shall be presumed innocent until convicted by an impartial and independent judicial organ." (Note 86-1)

3.4 Rearrangements

- The present article should be deleted and the following provision should be added at the end of Article 42 in Chapter III: "In criminal proceedings in the HKSAR, the principles previously applied in Hong Kong and the rights previously enjoyed by the parties to the proceedings shall be maintained. Every person shall be presumed innocent until he/she is convicted by an impartial and independent judicial organ."

Reasons: - Although this article stipulates that the principles previously applied in Hong Kong and the rights previously enjoyed by the parties to the proceedings shall be maintained, this is not adequate to safeguard the rights enjoyed by Hong Kong people in this respect under the International Covenant on Civil and Political Rights.

- The suggested amendment will prevent the abuse of power for personal vengeance or for other purposes and will ensure that residents will be able to truly enjoy their rights.
 - The present article should be moved to Chapter III as it in fact concerns the rights of residents.
 - The "principles" and "rights" referred to in this article should be spelt out in an annex.
4. Issues to be clarified
- The "principles" referred to in this article should be specified.
 - The "rights" referred to in this article should be specified.

1. Original text

Judges of the courts of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive acting in accordance with the recommendation of an independent commission composed of local judges, persons from the legal profession and other eminent persons.

2. Views

- The composition and functions of the "independent commission" should be based on the following principles:
 - (1) It should be chaired by the Chief Justice.
 - (2) Office holders of the executive authorities and the legislature, including the Secretary of Justice, should not be allowed to serve as members of the commission.
 - (3) Recommendations made by this commission should require the endorsement of all its members.
 - (4) The Chief Executive should be required to accept the commission's recommendations on the appointment of judges.
- Recommendations must be backed by the majority although unanimous endorsement should not be required.
- The method of forming this commission should be specified to avoid possible disputes. (For instance, nominations may be made by organizations such as the Bar Association in fixed proportions, or members may be elected by these organizations through internal ballots.) The commission should be composed of between 10 and 20 members. Nominations for judges should have to be unanimously endorsed by members of the commission in order to guarantee the moral integrity and qualities of the nominees.
- The commission should not have too many members.
- Under the principle of "one country, two systems", judges should not have any political stand or political affiliations, since judicial and political affairs are to be separated.
- The appointment of judges by the Chief Executive should require clearance by the legislature.

Reason: - This will ensure judicial independence and prevent the situation where judges are manipulated by the Chief Executive.

- The appointment of judges should be reported by the legislature, not by the Chief Executive, to the Standing Committee of the NPC for confirmation.

Reason: - This will ensure that the executive authorities will be accountable to the legislature, while the legislature will be accountable to the Central Authorities.

- Provisions should be made for the financial independence of, or for special appropriations to, the judicial organs.

Reason: - This will ensure that the judicial organs will be financially independent of the executive authorities.

- It is inadvisable to include registrars of all grades in the public service payroll.

Reason: - Under the "Judicial Service Commission Ordinance", the office of registrar is considered a judicial post although it handles both judicial and executive duties.

- As it is the top post in the judiciary, the office of the Chief Judge of the Court of Final Appeal should be filled by a Chinese national.

3. Suggestions

3.1 Amendments

- This article should be amended to read: "Judges of the courts of the HKSAR shall be recommended unanimously by an independent commission composed of local judges, persons from the legal profession and other eminent persons, appointed by the Chief Executive and endorsed by the legislature, and their names shall be reported by the legislature to the Standing Committee of the NPC for confirmation of appointment."
- This article should be amended to read: "Judges of the courts of the HKSAR shall be appointed by the Chief Executive on the recommendation of an independent commission of no fewer than 12 members, comprising local judges, the Chief Justice, persons from the legal profession and other eminent persons."
- This article should be amended to read: "Judges of the HKSAR shall be recommended by an independent commission composed of local judges, persons from the legal

profession and other eminent persons from among those Chinese nationals who are permanent residents of the HKSAR."

Reasons: - It will be a violation of state sovereignty and national dignity to have foreign judges sit on the bench for the trial of Chinese nationals or other persons on Chinese soil.

- There must be people in Hong Kong who are capable of performing the duties of judges of the Court of Final Appeal and other courts.

3.2 Other suggestion

- This article should be merged with Articles 88 and 89 to form an article with paragraphs.

Reason: - These three articles concern the appointment and removal of judges.

4. Issue to be clarified

- What is meant by "local judges"?

1. Original text

A judge of a court of the Hong Kong Special Administrative Region may be removed for inability to discharge the functions of his/her office, or for misbehaviour, by the Chief Executive acting in accordance with the recommendations of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of no fewer than three local judges.

The Chief Justice of the Court of Final Appeal in the Hong Kong Special Administrative Region may be investigated for inability to discharge the functions of his/her office, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of no fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures provided for in this Law.

2. View

- Expressions like "inability to discharge the functions of his/her office" and "misbehaviour" leave much to be desired. Specific reasons should be laid down.

3. Suggestions

3.1 Deletion

- The term "Chief Justice of the Court of Final Appeal" should be deleted.

3.2 Additions

- The following provision should be added: "This tribunal shall decide its own rules and procedures in accordance with the principle of impartiality."
- The following provision should be added: "All magistrates shall be appointed by the Chief Justice and removed when there is sufficient reason for such removal."

3.3 Other suggestions

- This article should be merged with Articles 87 and 89 to form an article with paragraphs.

Reason: - These three articles concern the appointment and removal of judges.

- As it is the most senior post of the judiciary, the office

of Chief Justice should be filled by a Chinese national.

- A judicial arbitration committee should be established.

Reason: - This will prevent the reoccurrence of another Carrion affair.

- The qualifications stipulated in Article 25 should be applicable here.

Article 89

1. Original text

In addition to the procedures prescribed in Articles 87 and 88 of this Law, the appointment and removal of judges of the Court of Final Appeal and the Chief Justice of the High Court in the Hong Kong Special Administrative Region shall be made by the Chief Executive with the endorsement of the Legislative Council of the Region and reported to the Standing Committee of the National People's Congress for the record.

2. Views

- Under the principle of separation of powers, the "endorsement of the Legislative Council" should not be required.
- In order to maintain judicial independence in Hong Kong, the appointment or removal of the judges of the Court of Final Appeal and the Chief Justice of the High Court should not be required to be reported to the Standing Committee of the NPC for the record.
- Regardless of whether or not the endorsement of the Legislative Council shall be required, the Chief Executive should not be vested with so much power. Actually, Article 88 has already provided for the disciplinary review of the actions of the Chief Justice. Thus, any action beyond the selection and appointment of the Chief Justice should be seen as an attempt by the executive authorities and the legislature to control the judiciary and as a violation of judicial independence.

3. Suggestions

3.1 Amendment

- This article should be amended to read: "In addition to the procedures prescribed in Articles 87 and 88, the appointment or removal of the judges of the Court of Final Appeal and the Chief Justice of the High Court in the HKSAR, who shall enjoy life tenure, shall be made by the Chief Executive with the endorsement of the Legislative Council of the Region and reported to the Standing Committee of the NPC for the record."

Reason: - Life tenure will protect the judges from the unnecessary influence of the Chief Executive or the legislature and protect the spirit of separation of powers.

3.2 Addition

- The following provision should be added at the end of this article: "The reporting to the Standing Committee of the NPC for the record shall not affect the appointment or removal of the judges of the Court of Final Appeal or the Chief Justice of the High Court."

3.3 Other suggestions

- This article should be merged with Articles 87 and 88 to form an article with paragraphs.

Reason: - These three articles all concern the appointment and removal of judges.

- Since they are the most senior posts in the judicial organs, the offices of judges of the Court of Final Appeal and the chief judge of the High Court should be filled by Chinese citizens.
- The removal of judges of the Court of Final Appeal and the Chief Justice of the High Court of the HKSAR should require the endorsement of no less than two-thirds of the members of the Executive Council.
- Where possible, the appointment of the Chief Justice should be based on the recommendation of the outgoing Chief Justice. In any case, the appointment of judges of the Court of Final Appeal and the High Court should require the approval of a special review board and persons appointed to these courts should have been a judge, barrister or solicitor for at least 20 years.

1. Original text

The previous system of appointment and removal of members of the judiciary other than judges of the Hong Kong Special Administrative Region shall be maintained.

2. View

- The HKSAR will not be established until zero hour on 1 July 1997. Prior to this, the Hong Kong government will remain a government under British rule, and the so-called previous system of appointment and removal will not be that of the HKSAR.

1. Original text

Judges and other members of the judiciary of the Hong Kong Special Administrative Region shall be chosen by reference to their judicial and professional qualities and may be recruited from other common law jurisdictions.

2. Suggestions

2.1 Amendments

- This article should be amended to read: "Judges and other members of the judiciary of the HKSAR shall be chosen according to their judicial and professional qualities. Judges with the power of adjudication must be appointed from among those Chinese nationals who are permanent residents of Hong Kong, while members of the judiciary who serve as consultants or advisers may be recruited from other common law jurisdictions."
- The word "shall" should be replaced with "must" to avoid vagueness.
- Suggested addition of a relative pronoun in the Chinese version. [Translator's note: A suggested change in the wording of the Chinese wording which will not affect the English translation.]

2.2 Other suggestion

- The qualifications stipulated in Article 25 should be applicable here.

Article 92

1. Original text

Judges and other members of the judiciary serving in Hong Kong before the establishment of the Hong Kong Special Administrative Region may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.

2. Suggestions

- The expression "pay, allowances, benefits and conditions of service" should be rewritten as "pay, allowances, benefits, conditions of service and increments" so as to make allowance for the factor of inflation.
- The phrase "other members of the judiciary" should be amended to read "other public servants serving in the judicial organs".

Reason: - The term "members of the judiciary" used in this article should include public servants other than members of the judiciary.

3. Issue to be clarified

- What is meant by "no less favourable than before"?

Article 93

1. Original text

The Hong Kong Special Administrative Region shall pay to judges and other members of the judiciary who retire or leave the service in compliance with regulations as well as to those who have retired or left the service before the establishment of the Hong Kong Special Administrative Region, or to their dependents, 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.

2. Suggestion

- This article should be deleted.

Reason: - Article 101 applies to all public servants. Although the present judiciary is an independent department with an independent pay scale, it is still part of the public service.

3. Issue to be clarified

- What is meant by "no less favourable than before"?

1. Original text

The judicial organs of the Hong Kong Special Administrative Region may, through consultation and in accordance with law, maintain judicial relations with those of other parts of the country, and they may render assistance to each other.

2. Views

- This article fails to address the question of cross-border crimes. If the purpose of holding consultations is to find an answer to this question, there will be no need for a Basic Law since such a practice is against the principle of ruling cases in accordance with law.

- Does "render assistance to each other" include extradition? If so, the following conditions must be fulfilled:

(1) There must be a prima facie case.

(2) The laws of Hong Kong must not be violated.

3. Suggestions

- It should be stipulated that the "judicial organs of the HKSAR" shall be responsible for maintaining judicial relations with other parts of the country.

- There are no extradition arrangements between China and Hong Kong at present. Special provisions should be made in the Basic Law on how such matters will be dealt with in the years subsequent to 1997.

4. Issue to be clarified

- Is the extradition of mainland criminals to China and vice versa included in this article?

1. Original text

With the assistance or authorization of the Central People's Government, the government of the Hong Kong Special Administrative Region may make appropriate arrangements with foreign states for reciprocal judicial assistance.

2. View

- The government of the HKSAR should be able to negotiate with foreign states on reciprocal judicial assistance without having to seek the advice of the Central People's Government.

Reason: - The HKSAR should be able to exercise a high degree of autonomy and enjoy independent judicial power.

3. Suggestions

- This article should be amended to read: "With the assistance or authorization of the Central People's Government, the HKSAR may, in times of need, make"
- The term "the Central People's Government" should be amended to read "the NPC".

OVERALL COMMENTS ON SECTION 5 OF CHAPTER IV

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1. Views

1.1 District Boards

- The District Boards should be retained although modifications should be allowed in terms of their organizational structure.
- The District Boards should only have consultative functions, otherwise their powers and functions will be confused with those of the executive authorities and the legislature.
- The District Boards should be "district organizations which are not local organs of political power".
- The status, and powers and functions of District Boards should be upgraded. In future they should be responsible for district legislative work and for supervising the day-to-day running of district administrative organs.

1.2 The Regional and Urban Councils

- The two councils should be abolished.

Reason: - The future District Boards should be constituted by elections. Each District Board should elect two members to form two organizations, one for urban areas and one for the New Territories. These organizations will be responsible for territory-wide cultural, recreational, and public health matters.

- If the two councils are retained, their powers and functions should be confined to the provision of "services in such fields as culture, recreation and environmental sanitation".
- After 1997, the Urban Council and the Regional Council should continue to play a very important role in their fields of responsibility, and their role should in no way be played down in the future HKSAR political structure.

1.3 Other views

- Support is expressed for this section.
- The provisions in this section are acceptable.
- The provisions in this section are oversimplified and should be replaced by more elaborate provisions.

- The Basic Law should not detail the powers and functions, and composition of the District Boards.

Reasons: - The District Boards are not local organs of political power. They mainly function as consultative bodies and should act with great flexibility.

- There is no need to have the structure of the District Boards spelt out in the Basic Law since it is not mentioned in the Letters Patent, Royal Instructions or any other existing constitutional documents.
- The provision that the powers and functions of the district organizations and their composition shall be prescribed by the laws of the HKSAR rather than by the Basic Law implies that the Urban Council, the Regional Council and the District Boards might be reorganized, or even abolished, in future.
- This section confuses the functions of the Urban and the Regional Councils with those of the District Boards.
- A two-tier structure should be adopted for Hong Kong's future political system.
- The jurisdiction of district administration should be expanded in future.
- The District Boards, the Urban and the Regional Councils, and organs of district administration, consultation and so on should be retained.
- If the term of office of Legislative Councillors is to be extended from 3 years to 4 years as of 1991, that of members of the two Councils and the District Boards should also be extended to 4 years.
- The District Offices should be developed into district administrative organs.
- The word "may" should not be used as the key word in any sentence. Otherwise the implication will be that the two Councils and the District Boards "may" or "may not" be retained.
- In order to ensure the smooth transfer of administrative duties, District Offices and District Boards should be established in the present 19 districts. The District Offices should come directly under an Administrative Services Bureau. The Urban Council and the Regional Council should be merged. The Urban Services Department should be responsible for the execution of resolutions made by the Urban Council, which will also come under the

Reason: - The provisions in this section are oversimplified and give the impression that the administrative structure is unstable and lacks an organizational framework. This section also makes no mention of the powers, functions and jurisdiction of the Secretary for Administration, nor the organizational structure of district administration.

- Members of district organizations, including the District Boards and the Urban and the Regional Councils, should be returned by district general elections. Those candidates who win the highest number of votes will be returned as board or council members and the chairmanship should go to the person who wins the highest number of votes.
- Candidates for offices of district organizations should be persons of Chinese nationality who hold:
 - (1) Degrees granted by local universities; or
 - (2) Diplomas granted by tertiary institutions; or
 - (3) Degrees granted by overseas universities.

2. Suggestions

- As the contents of Articles 96 and 97 are repetitive, they should be merged by adding the following provision to the present Article 96: "and their composition shall be as prescribed by law".
- This section should be incorporated into Article 65. There is no need to make separate provisions for advisory bodies, the executive authorities, the District Boards and the two Councils.

1. Original text

District organizations which are not local organs of political power may be established in the Hong Kong Special Administrative Region, to be consulted by the government of the Region on district administration and other affairs, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation.

2. Views

2.1 "District organizations which are not local organs of political power"

- If "district organizations which are not local organs of political power" are to be responsible for providing services in such fields as culture, recreation and environmental sanitation, they will have to be vested with some measure of administrative power, which will be a violation of the provisions of this article.
- In its present context, "district organizations which are not local organs of political power" seems to refer to the existing Urban Council, Regional Council and District Boards. However, the Urban and the Regional Councils are vested with some measure of decision-making and administrative powers and have certain political influence. The District Boards are also in a position to influence the government in the policies to be adopted. Hence, they are, in a broad sense, district organizations which are local organs of political power.
- The meaning of "district organizations which are not organs of political power" is unclear.
- The present provision could curtail the powers of the Urban and the Regional Councils.

2.2 Wording

- The wording is oversimplified.
- District organizations not only fall within the scope of autonomy but should work alongside the legislature, the Chief Executive and the entire future HKSAR government. The Basic Law should not stipulate rigid provisions in this regard and greater flexibility should be allowed.
- The wording of this article is rather peculiar and reads like a directive. Devolution of district administration into the hands of district residents is a matter of the

HKSAR's autonomy and ought not concern the Central Government or the Basic Law. It should not matter whether the HKSAR allows district organizations to be consultative, advisory or executive in nature provided they create the environment the residents desire.

2.3 Other views

- If the term of office of Legislative Councillors is extended from 3 years to 4 years as of 1991, that of members of the two Councils and the District Boards should also be extended to 4 years.
- Article 3 of the Constitution of the People's Republic of China says: "The division of powers and functions between the central and local state organs is guided by the principle of giving full play to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities." This provision can be paraphrased to cover the Hong Kong situation.
- Hong Kong, Kowloon and the New Territories should not be treated as three separate administrative units. The Hong Kong and Kowloon Regional Office and the New Territories Regional Office should be amalgamated to form a Department of Administration.

3. Suggestions

3.1 Deletion

- The words "which are not district organs of political power" should be deleted.

Reason: - The present provision will harm the existing structure of the Urban and Regional Councils. It is important that the District Boards be allowed to play a more important role in district administration.

3.2 Amendments

- The present article should be amended to read: "The HKSAR may establish district organizations which will, as prescribed by law, be consulted by the government of the HKSAR and provide services in the fields of culture, recreation, environmental sanitation and district administration as well as in other fields in accordance with law."
- This article should be amended to read: "The HKSAR may establish district organizations and district advisory organs. The district organizations shall be responsible for providing services in such fields as culture, recreation and environmental sanitation. The district

advisory organs shall be responsible for advising the government of the HKSAR on the welfare of district residents and on district administration."

- This article should be amended to read: "The HKSAR may establish a number of district organizations which, as local organs of power, shall be responsible for providing services in such fields as culture, recreation and environmental sanitation."

Reason: - The status and continuity of District Boards have already been guaranteed in Article 65 under Section 2 of this Chapter. They should not be placed on a par with district organizations that will exercise actual administrative power.

- This article should be amended to read: "District organizations may be established and consulted on all matters. When the government of the HKSAR deems that it is appropriate, they shall also be responsible for providing services in such fields as culture, recreation and environmental sanitation."

Reason: - The clause "which are not local organs of political power" should be deleted because it does not accord with the second half of Article 96. The District Boards should, when the time is ripe, be developed to such an extent that they will be able to take over the services outlined in this draft provision.

3.3 Additions

- The following clause should be added: "the existing district administrative structure should be retained".
- The following provision should be added: "District organizations shall be appropriately vested with decision-making power in respect of local affairs."

3.4 Other suggestions

- The term "district organizations which are not local organs of political power" should be defined. This will ensure that the District Boards and the Urban and Regional Councils are not considered to be local organs of political power. If they were to be so considered, it would obstruct them in carrying out their functions in the administering of local affairs.
- This article should be rewritten to provide for the municipal government rather than district organizations and to allow as much flexibility as possible so that the HKSAR may work out on its own what form the future municipal government will take. There should also be a

certain degree of development on the basis of the present system.

- The present Urban and Regional Councils, whose functions overlap, should be amalgamated under a new Urban Council or Urban Administrative Department. This will save taxpayers' money.

4. Issues to be clarified

- In what way will this article ensure that the policies of Hong Kong will not be changed?
- Does "local organs of political power" refer only to the executive and/or legislative organs of the HKSAR, or does the term refer to other organs?

1. Original text

The powers and functions of the district organizations and their composition shall be prescribed by law.

2. Views

- This provision is oversimplified.
- They do not need to be prescribed by law.

3. Issues to be clarified

- What does the "law" mentioned in this article refer to?
- The legislature shall be responsible for the enactment of laws, including laws regarding the powers and functions of district organizations as well as their composition. Will the legislature be held responsible should problems arise?

OVERALL COMMENTS ON SECTION 6 OF CHAPTER IV

1. Views

1.1 Public servants

1.1.1 Relations with the principal officials

- A clear line of demarcation should be drawn between the administrative and operational functions of the executive authorities. The administrative branch should include the Chief Executive and the principal officials appointed by him, while the operational branch should be comprised of public servants. Public servants should be promoted on the merits of their abilities and experience and should not be affected by changes in the government.
- The appointment of principal officials should be treated as political appointments. In other words, such officials should be nominated by the Chief Executive and their names be reported to the Central Authorities for appointment. Their removal should also be reported by the Chief Executive to the Central Authorities.
- Unless nominated by the Chief Executive-designate, the term of office of principal officials should not extend beyond that of the incumbent Chief Executive.
- Since the appointment of principal officials will depend on nomination by the Chief Executive, who will be selected by a political process, the principal officials should be accountable to the voters through the Chief Executive.
- Principal officials should not be selected from public servants, to avoid the situation where the political and administrative functions of such officials might conflict.

Reasons: - Allowing principal officials to be selected from the ranks of the public service will preclude public servants from the attainment of political neutrality and professionalism. A public service system will ensure the stability and continuity of the government.

- Principal officials will have political responsibilities to fulfil. However, the "non-political" status of public servants will prevent such appointees from engaging in the political activities required if they are to fulfil their political responsibilities. This incompatibility will be detrimental to the effective operation of the system.
- A politicized public service will create

uncertainty among public servants as to their role and imbalance in their work. Further, such a system will not be able to effectively respond to the demands of society for political developments.

- At present, civil servants are also involved in policy-making. This political role is a product of the colonial political structure. It would be difficult if the future public servants were to continue playing this role.
- The roles of principal officials and public servants are very different. Principal officials will be expected to speak in defence of government policies, while public servants will only be responsible for their implementation.
- If the Chief Executive does not follow the established guidelines in promoting senior administrative officers to be principal officials, the rules of promotion will be broken and the morale of public servants will be dampened. This will be seen as an attempt to slight the senior public servants and deprive them of opportunities for advancement. On the other hand, if the Chief Executive respects the guidelines of promotion and nominates senior administrative officers to be principal officials, he will not be free to choose those who share his political views as principal officials. This also contradicts the principle that public servants should be politically neutral and should not be replaced subsequent to changes in the government.
- As assistants to the Chief Executive, principal officials should hold political views similar to those held by the Chief Executive. Thus, when appointing principal officials, the Chief Executive will naturally take into consideration the political views of the candidates rather than simply base his decision on professional qualifications, experience and abilities. If principal officials are to be selected from the ranks of public servants, this will go against the provisions of Article 102 of the Draft Basic Law.
- When principal officials who are responsible for deciding policies make wrong decisions that affect social stability, the Legislative Council will not be able to do anything other than to hope that the executive authorities

will put these erroneous policies to right on their own, or hope that the executive authorities will hold the relevant official responsible. This is because the Legislative Council will not have the power to remove principal officials. Further, if principal officials will be public servants and their appointment will be administrative rather than political in nature, they should not, theoretically speaking, have to bear political liabilities. Hence, the Legislative Council should be vested with the power to cast a vote of no confidence against the principal officials so that it will be able to effectively exercise supervision over the latter.

- It is undesirable to insist that principal officials must be public servants, which is the case under the present colonial system. Principal officials shall be responsible for deciding policies. The maintenance of their public servant status will only mean that if these principal officials make mistakes they will be able to protect themselves through their public servant status and thus will not fear dismissal.
- If public servants become politicians, it is likely that they will provoke disputes. This will lead to the collapse of the public service and affect stability and prosperity.

1.1.2 Relationship with the legislature

- Public servants should be elected to the future legislature to ensure a stable and efficient administration after 1997.

Reasons: - The 183,000-strong public service is the most powerful political force in the territory and should have a clear role in the future legislature.

- Pushing public servants towards political neutrality would create political antagonism and further dampen morale. It would also be a drastic change from the present system.
- Since a strong executive-led government is a must in the run-up to 1997, public servants should play an increasing political and administrative role.
- There is no alternative political force that

can replace public servants and maintain the role of the government.

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- Given that there are growing signs that the participation of elites in politics has waned, a stable and coherent political force is unlikely to emerge and take over the role of public servants in the near future.
- An efficient administration requires a political arena in which senior public servants can discuss government policies with elected political leaders and reach consensus.
- Public servants who sit on the legislature should be able to retain their government posts.

1.1.3 Relationship with the executive authorities

- To sustain the achievements made by Hong Kong, the first two Chief Executives subsequent to 1997 should be selected from the ranks of the public service.
- To prevent unnecessary disturbance after 1997, public servants should play an important role in the HKSAR government structure (at least in the first few terms of government).

Reason: - Democratically-elected members of the legislature may not have acquired a good understanding of the workings of the government and public service structure by 1997.

- In order that they will not be subject to the control of the legislature, principal officials should only be required to be accountable to the Chief Executive.

Reason: - The views of members of the legislature may slow down the efficiency of public servants.

1.2 The definition of principal officials

- The definition given for principal officials in the Draft Basic Law is very vague. In addition to the equivalent of the existing Chief Secretary, Financial Secretary, Attorney General, their deputies, as well as directors of various bureaus who will be vested with the power to decide policies, the term will also apply to heads of strictly administrative departments, such as the Commissioner of Police, Commissioner of External Affairs, Commissioner Against Corruption and Director of Audit. This lack of a clear-cut and objective criterion is not conducive to carving out a unique role for the principal officials.

- Under the provisions of Article 100, foreign nationals will not be eligible for appointment as senior officials of departments, bureaus, divisions or commissions. Article 60 details neither the names of the various departments, bureaus, divisions and commissions nor the relationship between these offices, while Article 100 only stipulates that the responsible persons of certain departments will have to be permanent residents of Hong Kong. There is thus inconsistency between the two articles.

1.3 Relationship with politics

- Public servants should be "apolitical". While principal officials who are "political appointees" may be replaced when a new Chief Executive takes office, public servants in general should maintain their independence and should not attach themselves to any political force.
- Public servants should be politically neutral and therefore should not be deciding policies or be politically accountable.
- Public servants basically do not wish to see Hong Kong turn into a very politicized society. If politics reigns supreme, the public service structure will be dealt a serious blow.
- Public servants should not be allowed to take part in politics.

Reasons: - Their participation in politics will affect the present public service system and confuse the role of public servants.

- Such restriction is necessary to prevent political parties from infiltrating into the public service system.
- As representatives of trade unions, public servants should be able to stand for election in labour constituencies, but they should not be able to run for posts in direct elections.
- Current career bureaucrats should only act as the government's civilian officials, whose role is to provide advice and to implement policies.

1.4 Other views

- Allowing public servants to take part in politics will be a continuation of the appointment system under colonial rule.
- The crux of the unresolved issue of the relationship among

the executive authorities, the legislature and the Legislative Council lies in the question of whether or not principal official posts should be held by semi-political public servants (career administrative officers) or by political appointees (non-career, limited tenure individuals, ex-public servants included). If this question can be resolved, a number of other issues, such as conflict between the Executive and the Legislative Councils and the presence of political parties, will be resolved and will dissipate naturally in the political life of the HKSAR. The public service will also benefit from having clear policies to work with, policies which will not be bent when it is expedient to do so.

- There are too many policy provisions in this section, making the HKSAR vulnerable to intervention by the Central Authorities.
- The relationship between all government workers of the HKSAR (including judges of the law courts) and the government of the Region shall be one between employees and an employer.
- The fact that a whole section is devoted to public servants seems to suggest that they constitute a major component of Hong Kong. This is unfair to the other strata of society. Hence, provisions in respect of public servants should be detailed in an annex.
- The provisions in this section are acceptable.
- This section will ensure that the future HKSAR government will attach importance to the services provided by public servants.
- The Hong Kong Government is continuously amending its regulations in respect of pensions for public servants. This is worthy of attention as it may lead to a financial crisis in the post-1997 government.
- Public servants have little confidence in the future administrative and personnel management systems. They also feel that this section of the Basic Law offers little in the way of a guarantee for their professional status. Further, they do not have much faith in the guarantees that the system will not change and have doubts about the administrative structure and its effectiveness.
- The welfare benefits provided to public servants should be secured through negotiations between associations or unions of public servants on the one hand and the executive authorities and the legislature on the other.
- As Hong Kong has all along been a society run entirely by public servants, the right of residents to vote will have

a great impact on them. If political reform does not accord well with the public service, the latter might completely collapse.

- Regardless of which political model is adopted after 1997, it will not be to the advantage of Hong Kong people if it seriously affects the capacity of public servants to function independently.
- Public servants should not have prerogatives or abuse their power to engage in illegal activities. Those who have committed crimes should be punished according to law.
- The Basic Law should detail regulations concerning rewards and punishments for public servants in order to improve the attitude of some public servants towards their work.
- Public servants who shoulder administrative responsibilities should relinquish all their personal business obligations and duties during their term of office.

2. Suggestions

2.1 Additions

- The following provision should be added: "Public servants may take no-pay leave in order to stand for elections to councils or boards. As soon as a public servant becomes a member of a council or board, he/she shall be required to resign from the public service."
- The following provision should be added: "When vacancies arise in the public service, priority will be given to candidates holding local passports over those who have the same qualifications and experience, but hold foreign passports."

Reason: - Under the present system, the Hong Kong Government does not afford adequate protection to the interests of local residents. When there is a vacancy in the public service, the Government may favour a candidate holding a foreign passport (although he/she may be of Chinese origin) over other local candidates who have the same qualifications and experience because the former has overseas experience.

2.2 Other suggestions

- This section should stipulate that the future HKSAR will maintain a high-quality, stable public service structure.

Reason: - This is an important factor for maintaining stability and prosperity.

- It should be stipulated that public servants will have the right to vote and to stand for election and that they may organize unions.

Reason: - These are fundamental civil rights.

- Without violating the law or the terms of their employment, public servants should be able, in their personal capacity or as union members, to join groups or meetings and express personal or union views on public affairs.
- An independent public service commission should be set up to handle the recruitment of public servants.
- It should be stated that Hong Kong public servants will only work and serve in the HKSAR. They should not be transferred to work outside the HKSAR unless they are really willing to be so transferred.
- The types of public servants and their titles should be detailed in the Basic Law.
- Matters regarding members of the police force should be separately detailed in this Law.

Reason: - Although members of the police force are public servants, they are different in the sense that as law-enforcement personnel and members of an armed service, they have the ability to stage a coup. The benefits and conditions provided to the police force have all along been handled separately from those provided to other public servants. Provisions in respect of the police force may include the scope of its duties, limitations as regards its arms equipment, a clause prohibiting its members from interfering in politics and from torturing criminals or illegal immigrants, and conditions under which they may be disarmed.

- The contingent of auxiliary and unofficial "public servants" should be disbanded before 1997 to avoid the waste of manpower and cut down on extra expenditure.

Reason: - There are many auxiliary forces at the disposal of the Hong Kong Government at present. These include the Royal Hong Kong Auxiliary Police, the Royal Hong Kong Regiment, the Civil Aid Services, the Auxiliary Medical Services, and the Royal Hong Kong Auxiliary Air Force, whose members are mainly public servants serving on a part-time basis. This arrangement is a waste of manpower, adds to government expenditure and

consequently increases the tax burden on the public.

- Brief reference should be made to the following issues:
 - (1) Expatriates in the HKSAR public service;
 - (2) Permanent residence and nationality;
 - (3) Definition of public servants and their role; and
 - (4) Aspects of employment, conditions of service, promotion and payment of pensions as mentioned in Articles 98 to 100.
- If the Security Bureau will not form part of the garrison and its work will not differ much from that of the Police Commission, it should be incorporated into the police force as an independent security unit directly accountable to the Commissioner of Police.

3. Issues to be clarified

- The apparent contradiction between "may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before" in Article 99 and "except for any provisions for privileged treatment of foreign nationals" in Article 102, needs clarification.
- Will government officials of the HKSAR be able to maintain political neutrality?
- Will expatriate public servants have to apply for Chinese nationality before they can become Chinese nationals?
- How will future leaders of the Central Authorities deal with the difference in status between Central and Hong Kong officials?
- Will people who are appointed by the government to serve on the advisory bodies be considered public servants or public functionaries?
- Nothing has been said in this section about the future prospects of employees of subvented bodies. Will they be entitled to benefits no less favourable than before as will the public servants after 1997?
- What kind of organ will the Security Bureau be? In what way will it differ from the present Security Branch and the Police Department? What aspects of security will it be responsible for?
- How will the Security Bureau be formed?

Article 98

1. Original text

Public servants serving in all government departments of the Hong Kong Special Administrative Region must be permanent residents of the Region, except where otherwise provided for in Article 100 of this Law and except for those below a certain salary point as prescribed by law.

Public servants must be dedicated to their duties and be responsible to the government of the Hong Kong Special Administrative Region.

2. Views

- This article will guarantee the localization of the public service of the HKSAR.
- No expatriate should be allowed to serve as a public servant (not even as a street-cleaner). They should only be allowed to serve as advisers.
- This article goes further than the Joint Declaration in that it stipulates that public servants must be permanent residents. Although the requirements for permanent residents have been stated in Article 23, there is confusion as to under which classification particular individuals will qualify for permanent residence.
- The provision in Paragraph 2 goes without saying, and it is not known what legal effectiveness such a stipulation can have. The omission of this provision should be considered.
- Paragraph 2 of this article is unnecessary because it is covered by Articles 102 and 103.

Reason: - Public servants naturally must be dedicated to their duties and be responsible to the government of the HKSAR. It is not necessary to state this in the Basic Law for this is something that is implicit to the employment of any person in any organization.

- Public servants should also be responsible to the public.
- The main clause and the conditional clauses of Paragraph 1 are contradictory.

Reasons: - The posts mentioned in Paragraph 1 of Article 100 are subject to two requirements, namely that candidates must be Chinese nationals and permanent residents of the HKSAR. It is

therefore wrong to use the words "except for" because it will mean that candidates for these posts do not necessarily have to be "permanent residents of the HKSAR.

- The exception here refers to Paragraph 2 of Article 100.
- The conditional clauses of this Article should read "... except where otherwise provided for in Paragraph 2 of Article 100."

3. Suggestions

3.1 Amendments

- Paragraph 1 of this article should be amended to read: "Public servants serving in all government departments of the HKSAR must be permanent residents of the Region and shall be responsible to the government of the Region, except where otherwise provided for in Article 100 of this Law and except for those below a certain salary point as prescribed by law."
- Paragraph 1 of this article should be amended to read: "Public servants serving in all government departments of the HKSAR must be permanent residents of the Region, except where otherwise provided for in Article 100 of this Law and except for those below a certain grade as prescribed by law."

Reason: - The same salary point occurs in many different grades. Since public servants will be entitled to their annual increments, they will surpass the designated salary point after a number of years.

- Paragraph 2 of this article should be amended to read: "Public servants must be dedicated to their duties and be responsible to the government of the HKSAR. They may not engage in strikes or industrial actions which may affect administrative operations."
- Paragraph 2 of this article should be amended to read: "Public servants must be dedicated to their duties and be responsible to their work unit and the government of the HKSAR."
- Paragraph 1 of this article should be amended to read: "Public servants ... must be Chinese nationals (Hong Kong),...."
- The term "permanent residents of the Region" should read "permanent Chinese nationals" so that the subsequent conditional clauses will have a meaning. Furthermore, the

original term could refer to Chinese nationals, expatriates and stateless persons.

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3.2 Deletions

- The words "dedicated to their duties" should be deleted. The government of the HKSAR could enact regulations concerning the service of public servants and subject those who are not "dedicated to their duties" to disciplinary action. There is thus no need to include such a provision in the Basic Law.
- Paragraph 2 should be deleted and Paragraph 1 should be amended in such a way as to conform with the spirit of the Joint Declaration.
- The words "and except for those below a certain salary point as prescribed by law" should be deleted.

3.3 Additions

- The following provision should be added to Paragraph 2: "They should also make a conscious effort to protect and safeguard the right of Hong Kong residents to live in peace."

3.4 Other suggestions

- The responsibilities mentioned in this article should be detailed in an annex or discussed after the period of transition.

Reason: - Heads of small districts or departments should be responsible to their work units, whereas those of large districts or departments should share their responsibilities.

- It should be stipulated that foreign nationals may also serve as public servants.

4. Issue to be clarified

- Article 24 states that Hong Kong residents shall be equal before the law, but under the provisions of this article, non-permanent residents will not be allowed to serve as public servants. Are these two provisions not contradicting each other?

Article 99

1. Original text

Public servants serving in all Hong Kong government departments, including the police department, before the establishment of the Hong Kong Special Administrative Region, may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.

2. Views

- This article is welcomed.

Reason: - It is in line with the guarantees given to public servants at the time of the signing of the Joint Declaration.

- Support is expressed for this article. However, it is doubtful whether the Central People's Government will implement this policy for 50 years without making any changes. The government should provide more services so that the public will have greater confidence in it.
- The meaning of the words "no less favourable than before" is vague. The article only stresses that the pay and benefits provided to public servants before the establishment of the HKSAR will be guaranteed after the Region is established, but says nothing about similar guarantees after 1997.
- The government should take the initiative to narrow the gap between the highly-paid and the low-paid public servants. The salary paid to public servants should be readjusted step by step according to the ratio of 15:1.
- There should not be any drastic changes in the conditions of service and retirement benefits to be provided to public servants. Any proposed changes should be clearly stipulated.
- It is true that due to various special factors and social conditions, there is great disparity between local public servants and mainland cadres at all levels in terms of their pay and benefits. However, one should not ignore the fact that the Chinese authorities may strive to change, reduce or even eradicate such a disparity.
- The pay and conditions of service presently offered to public servants should be maintained, while the unreasonable gap which now exists between local and expatriate public servants should be eliminated.

- In future, pay rises for government employees should not be calculated on a percentage basis. (The present method will only result in polarization and directly affect working morale.)
- The difference between each grade on the government payroll should not exceed HK\$500. (At present, the difference in pay between grades may be thousands of dollars. This is unfair.)

3. Suggestions

3.1 Amendments

- This article should be amended to read: "Public servants serving in all Hong Kong government departments 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."

Reason: - There is no point in making special reference to public servants serving in the police department.

- This article should be amended to read: "Public servants serving in all Hong Kong government departments before the establishment of the HKSAR may all remain in employment and retain their seniority, while their previous pay, allowances, benefits and conditions of service will be guaranteed at a level no less favourable than before and gradually improved."

- The term "police department" should read "disciplinary services". Alternatively, the article may be amended to read: "Public servants serving in all Hong Kong government departments before the establishment of the HKSAR"

- The term "police department" should be amended to read "police force".

Reasons: - The main concern of this article is public servants, not departments.

- The use of the term "police force" will provide an assurance to the public that the police force and their services will be maintained and will not be replaced by the PLA.

- The words "may all remain in employment" should be amended to read "shall all remain in employment".

Reason: - The change in wording is felt to be necessary because the word "may" does not give a sense of security, but then of course the continued employment of these public servants will be

subject to the decision of the principal officials appointed.

- The words "may all remain in employment" should be amended to read: "shall all remain in employment".

Reason: - This will show that all public servants shall remain in employment.

- The words "pay, allowances, benefits and conditions of service" should be amended to read: "pay, allowances, benefits, conditions of service and increments".

Reason: - Such a change is necessary in order to make allowance for the factor of inflation.

- This article should be amended to read: "Public servants ... conditions of service no less favourable than on the last day of colonial administration."

Reason: - The word "before" is unclear and gives no indication of time. It can be any time before 1997.

3.2 Additions

- The following provision should be added at the beginning of this article: "The public service structure of the HKSAR shall be stable and of high quality."
- The words "and such pay, allowances, benefits and conditions of service shall be improved" should be added after "with pay, allowances, benefits and conditions of service no less favourable than before".

Reason: - This will help avert recent trends to cut benefits for public servants.

3.3 Other view

- It should also be stated that appropriate adjustments will be made in respect of pay, allowances, benefits and conditions of service as living standards improve.

4. Issues to be clarified

- What is meant by "no less favourable than before"?
- This article stipulates that benefits and conditions of service will be no less favourable than before. Will it be a violation of this provision if, in future, public servants will no longer be able to send their children to study in the U.K. at government expense, or if Hong Kong people who do not hold foreign passports and are recruited in the U.K. will not be eligible for travelling allowance

when they go back to the U.K. for vacation?

- Will the "no less favourable than before" provision also apply to public servants recruited after the establishment of the HKSAR?
- What is meant by the word "before"?
- Why is it necessary to make special reference to the police department?

Article 100

1. Original text

The government of the Hong Kong Special Administrative Region may employ British and other foreign nationals previously serving in the public service in Hong Kong, or those holding permanent identity cards of the Region to serve as public servants at various levels, but only Chinese nationals among permanent residents of the Region can fill the following posts: the Secretary and Deputy Secretaries of Departments, Directors of Bureaus, Commissioner Against Corruption, Director of Audit, Deputy Directors for Security and for Civil Service, Commissioner and Deputy Commissioners of Police, Commissioner and Deputy Commissioners of External Affairs, Commissioner of Immigration and Inspector General of Customs and Excise.

The government of the Hong Kong Special Administrative Region may also employ British and other foreign nationals as advisers to government departments and, when there is need, may recruit qualified candidates from outside the Region to professional and technical posts in government departments. These foreign nationals shall be employed only in their individual capacities and shall be responsible to the government of the Region.

2. Views

2.1 On the requirement that principal officials must be Chinese nationals

- The nationality requirement should be relaxed on a discretionary basis. People other than Chinese nationals should be allowed to serve as deputy heads of certain departments, especially if the posts require professional or technical know-how.

Reason: - The Joint Declaration only stipulates that posts at Secretary level must be filled by permanent residents who are Chinese nationals.

- There is no need to specifically stipulate that these posts will have to be filled by Chinese nationals.

Reasons: - Such a provision will be unfair to permanent residents of the HKSAR who are not Chinese nationals.

- Deletion of this provision will give expatriate public servants more opportunities for advancement, which in turn will enable them to work with greater enthusiasm and peace of mind.

- The inclusion of this provision will bar persons of the right calibre from important posts.
- While expression must be given to China's sovereignty, appointment of principal officials should also be based on people's ability.
- The large-scale privatization of government departments will result in a situation where the local people will have difficulty running the privatized departments. The present article, which restricts the appointment of foreign nationals to senior posts in the public service, contradicts the provisions of Article 24, which states that all Hong Kong residents shall be equal before the law.
- Only the posts of Chief Secretary, Financial Secretary and Secretary for Security should be restricted to Chinese nationals. All other posts should be open to British and Chinese officers, in both theory and practice.

Reasons: - This article implies greater restriction on posts available to non-Chinese nationals than was originally mooted in the Joint Declaration.

- The notion of nationality taking precedence over ability or seniority to an administrative service that is justifiably proud of its record in according equal and fair treatment to all members regardless of race, colour or creed is repellent.
- The HKSAR will have inherent dangers if it has a large body of disaffected, frustrated and demoralized expatriate public servants within the upper echelons of its government.
- The notion of nationality taking precedence over ability could only serve to seriously undermine the esprit de corps of the service, create disunity between British and Chinese officers and ultimately work against the efficiency of the government machine.
- This requirement goes against what is stipulated in the Joint Declaration. According to the Joint Declaration, the requirement that the appointee be a Chinese national should be limited to the 18 Secretary posts and the Commissioner of Police. The only possible addition should be deputies who need to act as Secretaries in the legislature. It would be foolish to exclude well-educated overseas Chinese from such posts simply because they hold a nationality other than Chinese nationality.

- Except for the Chief Executive and the president of the legislature, there is no need to require that principal officials or members of the legislature must be permanent residents of the HKSAR who are Chinese nationals.
- Principal officials should be considered as separate from the public service structure.
- Under the principles of employing people according to their merits and of maintaining the status of Hong Kong as a cosmopolitan city, it is an act of racial discrimination to require that all principal officials be Chinese nationals.
- The restriction on nationality should apply only to Secretaries. The Director of Audit, Commissioner of Immigration, Inspector General of the Customs and Excise and some of the Deputy Secretaries should not be bound by this rule.
- The post of Deputy Director for Civil Service may be filled by a foreign national.

Reason: - There will be expatriate public servants in the public service and it will be more appropriate to have a foreign national serving as the Deputy Director for Civil Service.

- The post of Deputy Director for Civil Service cannot be filled by a foreign national, just as a similar post in the United States cannot be filled by a Russian.
- The point that foreign nationals need not be barred from the posts of Deputy Secretary for Civil Service, Commissioner of Immigration and Inspector General of Customs and Excise may be considered.

Reason: - This will ensure the administration of Hong Kong by Hong Kong people.

- It should be stipulated that the posts of directors and deputy directors of all government departments, including the posts of Deputy Director for Civil Service, Commissioner of Immigration and Inspector General of Customs and Excise, shall be filled by local people.

Reasons: - This will ensure the administration of Hong Kong by Hong Kong people.

- This will rid the government of the HKSAR of any tinge of colonialism.
- The post of Director for Correctional Services should be upgraded to Secretary level and filled by a Chinese

Reasons: - Having a Chinese national as head of this department will boost staff morale and enhance communication between staff and inmates. The policies adopted by a Chinese Director for Correctional Services will also better accord with the needs of a Chinese society and help attain the objectives of correctional services in modern times.

- The role and function of the Department of Correctional Services and the military training received by its staff are similar to those of the police force. Hence, this Department should be ranked higher than the Immigration Commission and the Customs and Excise Administration.
- It should be stipulated that the post of Director of Education shall be filled by a Chinese national.
- The fact that the term "Chinese national" is not clearly defined will directly affect the appointment of expatriate public servants to principal posts.

2.2 Discussion on "advisers"

- There is no need to create "advisory" posts that will be more senior in rank than department heads within the structure of various government departments.

Reason: - The creation of such posts will adversely affect the operation of the administrative departments.

- Whether or not the government of the HKSAR will need to preserve such professional and technical posts and employ foreign nationals to serve as advisers should be decided in accordance with future needs and the availability of suitable local candidates.
- The government of the HKSAR should have the power to recruit professional and technical advisers. The Chief Executive should not be required to report such appointments to the Central People's Government.

2.3 Other views

- The names of the government departments mentioned in this section are not consistent. Amendments should be made to avoid confusion.
- The government organs should be amalgamated at an appropriate time to put an end to overlapping structures which may be detrimental to administration and control.

For example, the Commission Against Corruption should be able to handle complaints against public servants and economic and commercial crimes.

- The provisions of this article are too cumbersome.
- Greater flexibility should be allowed.
- This article goes against the principle of "Hong Kong people administering Hong Kong" and renders it impossible for Hong Kong people to appoint officials on their merits, since all senior posts will have to be appointed by the Central Authorities, who may not have the slightest ideas about the abilities of the appointees.
- Some teachers are public servants and there are foreign nationals teaching in Hong Kong.

3. Suggestions

3.1 Deletions

- This article should be deleted.

3.1.1 Paragraph 1

- This paragraph should be deleted.

Reason: - This paragraph falls within the scope of personnel policy.

- The words "Chinese nationals" should be deleted.

Reason: - Posts in the executive authorities should not be restricted to Chinese nationals.

- The terms "Commissioner Against Corruption", "Director of Audit", "Commissioner of Immigration" and "Inspector General of Customs and Excise" should be deleted from this paragraph.

3.1.2 Paragraph 2

- The words "British and other foreign nationals" should be deleted.

- The words "British and other foreign nationals" should be amended to read "foreign nationals".

Reasons: - There is no need to highlight the word "British".

- Vestiges of British colonial rule should not be retained in a Chinese law.

- After 1997, the British will be "foreign nationals". The Joint Declaration uses the words "British and other foreign nationals" because in that agreement concluded between the Chinese and the British Governments, the British are not considered foreign nationals. As far as the Joint Declaration is concerned, the term "foreign nationals" refers to third nationals other than the British and the Chinese. Such clarification was necessary at the time of the signing of the agreement, but after 1997 anyone other than the Chinese will be a foreign national, and the British will be no exception.

3.2 Amendments

- This article should be amended to read: "Except for the posts of Secretary and Deputy Secretaries of Departments, ... and Inspector General of Customs and Excise, which can only be filled by Chinese nationals among permanent residents of the HKSAR, the government of the HKSAR may employ British and other foreign nationals previously serving in the public service in Hong Kong or those holding permanent identity cards of the Region to serve as public servants at various levels."
- This article should be amended to read: "The government of the HKSAR may employ non-Chinese nationals holding permanent identity cards to serve as public servants at various levels, except as heads of departments at Secretary level and deputy heads of certain principal departments, and to take up posts other than those prescribed by law."

3.2.1 Paragraph 1

- This paragraph should be amended to read: "The government of the HKSAR may employ British and other foreign nationals previously serving in the public service in Hong Kong or those holding permanent identity cards of the Region to serve as public servants at various levels, but only a Chinese national who is a permanent resident of the Region may fill the post of Commissioner of Police."

Reason: - Public servants discussed under Section 6 are executive officers of the government. Their role and function are different from those of principal officials (heads of departments at secretary or bureau levels), who will be political appointees. Principal officials should have to be Chinese nationals who are permanent residents of the HKSAR, but public servants at various levels should be employed on their merits regardless of their nationality.

The post of Commissioner of Police should be the only exception because Annex I to the Joint Declaration states that this particular post cannot be filled by a Briton or any other foreign national.

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- The clause "British and other foreign nationals" should be amended to read: "Chinese nationals (Hong Kong) holding British National (Overseas) travel documents and Hong Kong residents".
- The clause "but only Chinese nationals among permanent residents of the Region can fill the following posts" should be amended to read: "but only Chinese nationals who are fluent in Cantonese and English and are permanent residents of the Region can fill the following posts".
- The words "Chinese nationals" should be amended to read "ethnic Chinese".

Reason: - It is both understandable and acceptable that officials of the executive authorities should be ethnic Chinese. However, since many ethnic Chinese in Hong Kong are not Chinese nationals, persons of the right calibre may be denied their opportunities for advancement if the words "Chinese nationals" are used in this paragraph.

3.2.2 Paragraph 2

- The clause "British and other foreign nationals" should be amended to read: "foreign nationals and people from mainland China".

Reason: - If advisers have to be employed from outside the Region, people from mainland China who are equally equalified should also be considered. Otherwise we will be accused of discriminating against our own people.

- The clause "British and other foreign nationals" should be amended to read: "people holding permanent identity cards of the Region".
- The words "foreign nationals" in the last sentence should be amended to read "people".

3.3 Additions

- The following provision should be added at the end of Paragraph 1: "Non-Chinese national permanent residents previously serving in the public service, who would have been eligible to hold these posts had the requirement that these holders be Chinese national permanent residents not been introduced, shall be considered favourably if they

wish to become Chinese nationals, and shall continue to be employed in equivalent-level posts or shall be compensated for loss of promotion prospects."

- Suggested addition of a full-stop in the Chinese version and amendment of the word "but". [Translator's note: Suggested change in the wording of the Chinese version which will not affect the English translation.]
- The following provision should be added: "No foreign national employed may become involved in the political affairs of the Region."

Reason: - This provision will prevent dissident foreign nationals from engaging in confrontational politics.

- The following provision should be added at the end of Paragraph 2: "They shall also have to respect the directives issued or measures adopted by the Central People's Government."
- The term "judges of the Court of Final Appeal" should be added after the words "the Secretary and Deputy Secretaries of Departments".

Reason: - Chinese national judges will be able to give due consideration to the interests of both China and Hong Kong.

- A suggested change in the Chinese titles of the Commissioner of Police, Commissioner of External Services and Commissioner of Immigration. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the English translation.]

3.4 Other suggestions

- This article should be amended in such a way as to allow the HKSAR government to appoint foreign nationals to administrative posts below the level of principal Secretary/Director/Commissioner.

Reason: - This will allow foreigners with rich experience to contribute their expertise in the efficient administration of the public service.

- This article needs to be rewritten to allow for changes in executive titles and positions from time to time. For instance, the position of Commissioner for Administrative Complaints may eventually be added.
- Amendments should be made in order to accord with the spirit of the Joint Declaration.

- A suggested amendment to standardize the official titles of Commissioner of Audit, Commissioner of Police and Commissioner of External Affairs. [Translator's note: Suggested change in the wording of the Chinese version which will not affect the English translation.]
- It should be stipulated that the government of the HKSAR will give priority to local candidates when they are equally qualified as are foreign candidates.
- The term "Chinese nationals" used in the context of this article should be properly defined, perhaps in an annex rather than in the main text of the Basic Law.

4. Issues to be clarified

- Is it really necessary to impose restrictions on the posts of Commissioner of Immigration and Inspector General of Customs and Excise, which are not secretary level positions?
- Why is it that foreign nationals will not be allowed to serve under the executive authorities or be appointed to ordinary civilian posts?
- The posts of Commissioner Against Corruption and Director of Audit should not be filled by non-Chinese nationals, but why should other posts also be subject to such restrictions?
- The term "Chinese nationals" requires clarification. Under this article, it is not clear whether "Chinese nationals" refers only to holders of Chinese (HKSAR) passports and excludes those Hong Kong residents who are ethnic Chinese but who hold British National (Overseas) passports.
- The article stipulates that top officials must be Chinese nationals who are permanent residents of the HKSAR. In Hong Kong, some locally-born Chinese people have British nationality indicated on their identity cards. What will their nationality be? Will they be eligible to fill these posts?
- The term "Chinese nationals" has not been clearly defined. If a person born in Canada to ethnic Chinese parents who are Hong Kong residents holding Canadian passports, will he or she be considered a Chinese national or a foreign national?
- What is meant by the word "previously"?
- What is meant by "professional and technical posts"?
- Does the term "Directors of Bureaus" also include the

Directors of the Bureau for Security and the Bureau for Civil Service?

- This article makes no mention of the Director for Security or the Director for Civil Service. Was this a careless omission? Should the two posts be added?

1. Original text

The government of the Hong Kong Special Administrative Region shall pay to public servants who retire or leave the service in compliance with regulations as well as to those who have retired or left the service in compliance with regulations before the establishment of the Hong Kong Special Administrative Region, or to their dependents, 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.

2. Views

- Satisfaction is expressed for the promise contained in this article in respect of public servants who retire or leave the service. However, it should include the stipulation that their pensions will be appropriately adjusted with the rise in living standards.
- This article stipulates that the gratuities and benefits due to retired public servants will be guaranteed but does not state where the money will come from. This is not a sufficient guarantee to reassure those presently serving in the public service.
- Pensions should not be paid to retired public servants employed from abroad and who have subsequently left Hong Kong.

Reason: - Since these public servants will no longer be subject to payments of Hong Kong tax, the people of Hong Kong should not be obliged to pay them any money. Besides, paying these people pensions is a measure that has a heavy colonial tinge.

- A public servant manual which clearly sets out the relevant regulations should be prepared before the handover on 1 July 1997.

3. Suggestions

3.1 Amendment

- This article should be amended to read: "The government of the HKSAR shall be responsible for the necessary expenses, including pay, all benefits and pensions payable to public servants."

3.2 Addition

- The term "free medical service" should be added and the article should be amended to read "... allowances, benefits and free medical service".

4. Issues to be clarified

- What is meant by "no less favourable than before"?
- In the case of retired public servants who have emigrated or expatriate public servants who have returned to their country of origin, how will the HKSAR ensure that pensions be paid "on terms no less favourable than before" bearing in mind the fluctuating exchange rates?
- What is the intention of paying pensions to expatriate public servants who have served in various colonies around the world before working for the Hong Kong Government? How will the provision "no less favourable than before irrespective of their nationality or place of residence" be put into practice in calculating pensions? What does this provision mean?

Article 102

1. Original text

The appointment and promotion of public servants shall be on the basis of their 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 their appointment, pay and conditions of service, shall be maintained, except for any provisions for privileged treatment of foreign nationals.

2. Views

- This article will render certain aspects of the present system of employment and dismissal of public servants no longer applicable after the establishment of the HKSAR.
- If the exception in this provision refers to a possible withdrawal of the quarters and return air fares provided for expatriates, then it is very petty and totally unnecessary. It not only destroys the initial intention of allowing expatriates to work in Hong Kong after 1997, but also makes it very difficult for the future HKSAR government to compete with the private sector for suitable expatriates, as private companies will undoubtedly offer such benefits.
- This article may not be feasible.

Reasons: - Privileged treatment constitutes an extremely important element in the expatriates' terms and conditions of service.

- Article 99 has specifically promised that terms and conditions of service will be maintained at a level "no less favourable than before".
- The Hong Kong Government made certain guarantees and assurances that benefits would not be tampered with or reduced after 1997.
- Foreign nationals in the public service should not be given privileged treatment. At present our local senior public servants are already earning more than their counterparts in Western Europe, and the local terms of employment should already be attractive enough to overseas applicants. The present distinction between local and expatriate terms of employment in the public service should be discontinued after 1997, except perhaps in very special cases.
- The recruitment of public servants should be open to the

public on a competitive basis.

- The existing aspects of privileged treatment should be detailed so that they may be abolished at an early date. This will prevent disputes.

3. Suggestions

3.1 Amendments

- This article should be amended to read: "The appointment and promotion of public servants shall be on the basis of the entry requirements for individual posts as well as the experience and ability of the persons involved. Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service shall be maintained, except for any provisions for privileged treatment of foreign nationals. The government of the HKSAR shall establish a public service commission as a special organ responsible for handling independently such matters as the employment, discipline, pay and conditions of service of public servants."
- This article should be amended to read: "The government of the HKSAR may, on its own and in accordance with the system currently in force and the requirements and needs for specific posts, promote public servants on the basis of their qualifications, experience and ability."
- The words "shall be maintained" should be amended to read "shall be maintained or improved".
- The words "Hong Kong's previous system" should be amended to read "Hong Kong's traditional system".

Reason: - The amended version is more appropriate as there are many previous systems.

- The word "treatment" should be amended to read "employment".

Reason: - Many expatriate public servants cannot reconcile themselves to the apparent contradiction between "no less favourable than before" in Article 99 and "except for any provisions for privileged treatment of foreign nationals" in Article 102.

- Suggested amendment for the pronoun "their" in the Chinese version. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the English translation.]

3.2 Additions

- The clause "except in special cases and with the consent of the Legislative Council" should be added at the end of this article.

Reason: - There are occasions where a very experienced professional person is required. Sometimes only a few qualified individuals are available in the world and thus such an individual can in effect dictate his/her own terms. If it is absolutely necessary to recruit such an individual (to be decided by the Legislative Council), then privileged treatment will have to be offered.

- The clause "and they shall not be discriminated against or be subjected to unfair treatment on account of their political or ideological views, financial status or social background" should be added after "on the basis of their qualifications, experience and ability".
- The words "and improved in the light of actual conditions" should be added after "shall be maintained".
- The clause "and save for any improvement and enhancement of the public service system" should be added at the end of this article.

Reason: - The original article is stale and inhibits the healthy development of the public service system and structure.

- The following provision should be added at the end of this article: "The above-mentioned system may be developed and improved by the government of the HKSAR in the light of actual conditions and in accordance with law for the purpose of improving the efficiency and quality of public service."

Reason: - Public servants will find this provision very encouraging.

3.3 Other suggestion

- The system of employment, discipline, and so on for the public service should be detailed in an annex. It should be stipulated in this article that the system as detailed in the annex shall be maintained. In this way, it will not be necessary to amend the Basic Law in future when a need to change the public service system arises.

4. Issue to be clarified

- In Part IV of Annex I to the Joint Declaration the term "save for any provisions providing privileged treatment for foreign nationals" is used. In this article, however, it reads "except for any provisions for privileged

treatment of foreign nationals". This needs clarification and definition. The significance of the change in wording should also be explained.

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1. Original text

The Chief Executive, principal officials, members of the Executive Council and of the Legislative Council, judges of courts at all levels and other members of the judiciary in the Hong Kong Special Administrative Region must be sworn in according to law when assuming office.

2. View

- This article may give rise to confusion, as some of the personnel mentioned (such as members of the Executive and the Legislative Councils) may not be public servants.

3. Suggestions

3.1 Deletion

- This article should be deleted.

Reasons: - This article has nothing to do with public servants.

- The Chief Executive, principal officials, members of the Legislative Council, judges and other members of the judiciary do not form part of the public service although their offices are public offices. Thus, matters regarding their swearing-in should not be stipulated in this section. This will avoid any confusion over the definition of public servants.

- Whether or not protocol details such as swearing-in ceremonies should be prescribed in the Basic Law is a matter of debate.

3.2 Amendments

- This article should be amended to read: "The Chief Executive, principal officials, members of the Executive Council and of the Legislative Council, judges of courts at all levels and other members of the judiciary must be sworn in according to law when assuming office. Their oath shall include a pledge of allegiance to the HKSAR of the People's Republic of China and a pledge to be honest and to dedicate themselves to their duties."

- This article should be amended to read: "The Chief Executive, principal officials, members of the Executive Council and of the Legislative Council, judges of courts at all levels, members of the judiciary and arbitrators connected with the judiciary must be sworn in according to

law when assuming office."

3.3 Addition

- The clause "and pledge allegiance to the HKSAR" should be added at the end of this article.

3.4 Rearrangements

- This article should not be included in this section.

Suggestions: - This article should be placed in the chapter on General Principles.

- The relevant provisions should be incorporated into the sections on the legislature and executive authorities.
- The provisions should be incorporated into the relevant chapters and sections.
- The provisions of this article should appear at the very beginning or end of this chapter (not Section 6). For instance, they might appear under a Section 7: Other Matters.

Reasons: - This article belongs, by its nature, to the General Principles.

- Members of the legislature and judges of courts are not public servants.
- The future Chief Executive and members of the future Executive and Legislative Councils will not necessarily be public servants.
- This article should not be placed under the General Principles as suggested in "A Collection of Opinions" but should be left where it is.

4. Issue to be clarified

- The meaning of "sworn in according to law" is not clearly defined. Clarification should be given.

1. Views

1.1 Supporting views

- Support is expressed for the articles in this chapter.

con- The economic provisions can guarantee that the present economic standard will be maintained.

con- The efforts to maintain the existing economic system evident in this chapter are much appreciated.

- Many articles in Chapter V are copied word for word from the economic provisions in the Joint Declaration. This is the appropriate thing to do, since the provisions in the Joint Declaration are the result of Sino-British negotiations over a long period of time. If these provisions are not included in the Basic Law, the British would have misgivings or raise objection even if the Chinese endorsed their omission.
- Articles 130 to 141 are taken from Annex I to the Joint Declaration. Further discussion of these is unnecessary.

1.2 Reservations

con- Objection is expressed to the articles in this chapter because they will prevent the HKSAR government from attaining a better distribution of resources and building a society with greater social justice through financial policies.

- The economic provisions are self-contradicting as they seek to increase the powers and functions of the HKSAR government (Articles 109, 112, 113, 117, 123 and 124) on the one hand and attempt to limit the power of the HKSAR government on the other (Articles 105, 107, 110 and 122).
- At present, the Hong Kong Government has the power to restrict the development of various interest groups. This power is not provided for in the Basic Law. On the other hand, some measures which are conducive to the development of these interest groups are prescribed in the Basic Law as part of the powers and functions of the government. The HKSAR government will therefore be in danger of violating the Basic Law when it exercises some of its powers and functions. This could lead to the downfall of the government. However, the government will not be able to function properly if some of its decision-making power is taken away.
- The economic provisions put too much emphasis on the

interests of certain sectors. This is not conducive to boosting the confidence of investors.

- The detailed economic provisions will help maintain the confidence of local and foreign investors in the long-term development of Hong Kong. However, many key terms in the provisions cannot measure up to the more stringent requirements of economics. Certain principles also appear to be contradictory. These will lead to difficulties in the implementation of government policies.
- The provisions do not give due attention to the principle of social justice. They do not even mention the deficient social security system and public housing policy which are currently in force. Most major developed countries adopt economic policies aimed at the even distribution of wealth as a major measure for maintaining social stability.
- Under the provisions of this chapter, the HKSAR government must strive to maintain a fiscal balance while practising a low-tax policy. It is not easy to achieve both objectives.
- This chapter does not provide for the overall economic development of the HKSAR. It only provides for policies on various aspects without giving any attention to their overall coordination. This could produce undesirable results.
- The main objective of the economic provisions is to affirm that the spirit of the capitalist system will continue. The present Draft Basic Law gives priority to preserving the policies practised in Hong Kong over the past few decades. It does not adequately safeguard the above-mentioned spirit.
- The present chapter contains many policy provisions, but the government's policy of non-intervention is not mentioned.
- This chapter mistakes the government's moral obligations for its powers and functions (as in the case of Articles 123, 124 and 134). This will only create troubles for the government and will not bring any actual benefits.
- This chapter imposes a lot of restrictions on the future government in the economic sphere. It is biased towards industry and commerce under the pretext of maintaining prosperity, and does not provide for other social policies. It should be completely revised so as to maintain the confidence of Hong Kong people.

1.3 Other views

- In the handling of economic matters, flexibility is

essential. The Basic Law should give the HKSAR government greater autonomy. The greater the autonomy the better.

- The Basic Law should make a point of upholding the following principles in order to maintain the present economic system:
 - (1) An efficient government pursuing a stable political system.
 - (2) Free trade and free enterprise.
 - (3) Unrestricted scientific and technological supplies.
- The preservation of the laissez-faire policy should be noted in Chapter V. The government should continue to practise a low-tax policy. On financial and monetary matters, the government should exercise stronger supervision to prevent economic crises.
- The HKSAR should be allowed to develop its economy on its own. There should be as little intervention as possible from the Central People's Government.
- Except for banning the monopolization of enterprises, the government should not interfere with the free operation of the economy. This policy accounts for the uniqueness and success of Hong Kong.
- The HKSAR government should not borrow to further the cause of welfare.
- Many of the provisions in Chapter V are related to external affairs. It is doubtful how the HKSAR government will be able to exercise autonomy in handling relations with foreign countries (such as the conclusion of treaties with foreign countries and the implementation of such treaties) while the Central Authorities will be responsible for its foreign affairs.
- To bring about economic prosperity in the HKSAR, Hong Kong has to be given a high degree of autonomy politically. The Chinese government must, as far as possible, maintain the confidence of Hong Kong people in the economy of Hong Kong and preserve the internationalized feature of the Hong Kong economy.

2. Suggestions

2.1 Deletion

- Articles 105, 107, 108, 109, 113, 123 and 124 should be deleted.

Reason: - Some of the provisions are rather obvious and

there is no need to repeat them; some are policy provisions which should not be included in this chapter; and some of the economic policies have to be modified from time to time to keep abreast of the current scene and therefore should not be provided for in the Basic Law.

2.2 Amendments

- (Hong Kong is a small open economy, with foreign trade as its economic life blood.) It is thus suggested that the order of the various sections in Chapter V be rearranged and that the following be placed at the beginning of this chapter. Section 1 is to have seven articles, the first three of which are new. The following is the proposed contents of Section 1:

Article 1 - The HKSAR shall practise a capitalist economic system. The government of the HKSAR shall formulate policies for economic development on its own.

Article 2 - The government of the HKSAR shall continue to practise a free trade policy, including allowing the free flow of goods and capital.

Article 3 - The HKSAR may establish mutually beneficial economic relations with other countries and regions. Investments from outside the Region shall be protected by law.

Article 4 - The HKSAR shall remain a free port. The government of the HKSAR shall not impose any tariff unless otherwise prescribed by law. (The original Article 118, with the addition of the words "government of the".)

Article 5 - The HKSAR shall be a separate customs territory. The HKSAR may, using the name "Hong Kong, China", participate in relevant international organizations and international trade agreements, including preferential trade arrangements such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles. (The original Article 119.)

Article 6 - Export quotas, tariff preferences and other similar arrangements, which are obtained by the HKSAR or which were obtained and remain valid, shall be enjoyed exclusively by the Region. (The original Article 120.)

Article 7 - The government of the HKSAR may issue its own certificates of origin for products manufactured locally in accordance with prevailing rules of origin. (The original Article 121, with the addition of the words "government of the".)

With this rearrangement, the articles on economic development policies will include policies regarding industry, commerce and other aspects relevant to economic development, such as human resources and labour. They also highlight the capitalist economic system. The present Draft Basic Law only makes brief reference to the preservation of the existing capitalist system under Article 4 in Chapter I: "General Principles". This amendment not only resolves the conflicts and plugs the loopholes in these articles but also gives expression to Section VI of Annex I to the Joint Declaration, which says that "[t]he HKSAR shall maintain the capitalist economic and trade systems previously practised in Hong Kong. The HKSAR government shall decide its economic and trade policies on its own".

- Paragraph 2 of Article 119, Articles 120, 131 and 132, as well as Articles 135 to 140 should be moved to Chapter VII, the chapter on "External Affairs". Other articles should be rewritten as the following four articles:

- (1) The HKSAR shall practise a capitalist economic system. The government of the HKSAR shall decide its economic and trade policies on its own.
- (2) The HKSAR shall be a free port. Tariffs shall not be imposed unless otherwise prescribed by law.
- (3) The HKSAR shall be a separate customs territory. The government of the HKSAR shall issue certificates of origin for products manufactured locally.
- (4) The government of the HKSAR shall, on its own, formulate policies regarding the development, management and use of land. Land leases shall be prescribed by law.

The major amendment to the Draft Basic Law as suggested above is the replacement of policies for specific trades and professions with policies for economic development.

- Sections 1 and 2 of Chapter V should be rewritten in order to separate legal provisions from policy provisions.

Only the following articles should be written into the text of the Basic Law:

Section 1: Public Finance and Taxation (3 articles)

The original Article 104 - "The HKSAR shall have independent finances. The HKSAR shall use its financial revenues exclusively for its own purposes, and they shall not be handed over to the Central People's Government."

The original Article 106 - "The HKSAR shall practise an

independent taxation system. The Central People's Government shall not levy taxes in the HKSAR."

The original Article 108 - "The types of taxes, the tax rates and tax exemptions in the HKSAR shall be prescribed by law."

Section 2: Money and Finances (5 articles)

The original Article 110 should be amended to read: "The HKSAR shall practise free and open monetary and financial systems in accordance with legal provisions."

The original Article 113: "The government of the HKSAR shall safeguard the free operation of the financial business and financial markets and shall regulate and supervise them in accordance with law."

The original Article 114: "The Hong Kong dollar, as the legal tender in the HKSAR, shall continue to circulate and remain freely convertible."

Paragraphs 1 and 3 of the original Article 115: "The authority to issue Hong Kong currency shall be vested in the government of the HKSAR. The system regarding the issue of Hong Kong currency shall be prescribed by law."

"The government of the HKSAR may authorize 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 object of maintaining the stability of the currency."

The original Article 116 - "The Exchange Fund of the HKSAR shall be managed and controlled by the government of the Region, primarily for regulating the exchange value of the Hong Kong dollar."

All policy provisions in Sections 1 and 2 should be placed in an annex.

- Economic provisions could be grouped under the following three major categories: (1) The division of power between the Central Authorities and the HKSAR in respect of economic matters; (2) Major principles guiding future economic policies; and (3) Major economic policies. The text of the Basic Law should only include provisions which fall under the first and second categories. Policy provisions coming under the third category should be placed in an annex.
- The essentials of Hong Kong's economic system should be laid down in the text of the Basic Law. Other features can be defined in the form of by-laws.

The following principles, which are contributing factors to Hong Kong's major economic success over the past few decades and which will, it is believed, continue to play a decisive role in the foreseeable future, should be written into the Basic Law:

- (1) Rights of property ownership (including those relating to acquisition, use, disposal, inheritance and compensation for the lawful deprivation of such property, should be protected by law and shall not be subject to infringement. The specific details should be prescribed by law.
 - (2) Except for certain public undertakings, all trades and professions should be open to free competition.
 - (3) The freedom of employment enjoyed by residents of Hong Kong should remain unchanged.
 - (4) Hong Kong currency should remain freely convertible.
 - (5) Free flow of capital into and out of Hong Kong should be allowed.
 - (6) Free trade policies should be practised.
 - (7) Hong Kong's status as a free port should be maintained.
 - (8) Hong Kong should maintain its status as a separate customs territory and enjoy separate export quotas and should have the authority to issue certificates of origin.
 - (9) Hong Kong should continue its low-tax policy.
- Articles 121 and 124 should be deleted as they contain no substantive meaning. They should be replaced with the following article: "The government of the HKSAR shall create the necessary conditions and take appropriate steps to promote the development of various economic sectors."

2.3 Additions

- This chapter should also include the following provisions:
- (1) Ownership of private property shall be protected and the system of public ownership will not be practised.
 - (2) Resources shall be distributed by market forces.
 - (3) A high degree of competition shall be maintained and monopoly shall be opposed.
 - (4) Freedom of the person and the rule of law shall be maintained. Only when there are adequate safeguards under the rule of law will economic activities operate most efficiently in the market.

- The HKSAR, as a separate customs territory which will enjoy an independent status in international trade negotiations, should have its own system of registration and management of intellectual property rights and copyrights. This should be provided for in the Basic Law.

Reasons: - In view of the future changes and the future role of Hong Kong under Chinese sovereignty, it is necessary to institute an industrial property rights system well before 1997. This system must be comparable to the best of its kind in the world in terms of efficiency and actual effect.

- As Hong Kong is fast developing into an important centre for technological transfer in the economic development of South China, the provision of technical services is expected to play an important part in the development of Hong Kong.
- Hong Kong's continued economic success depends on the absence of restrictions on technological supplies. After 1997, it is possible that Hong Kong will be subject to the restrictions imposed by COCOM. With this in mind, it is suggested that:
 - (1) The Central People's Government should allow Hong Kong to conduct trade in its own name and should not require it to use the name "Hong Kong, China" under whatever circumstances.
 - (2) In addition to being a separate customs territory (Article 119), the HKSAR should also have the power to prohibit the transfer of products which are subject to COCOM restrictions to other places, including China. Accordingly, Article 119 should be amended to read: "The HKSAR shall be a separate customs territory and shall have the power to prohibit the transfer of products to other independent customs territories."
 - (3) A credible and internationally recognized organization should be established to protect intellectual property rights. The protection of achievements in scientific and technological research, patents, discoveries and inventions prescribed in Articles 146 and 147 is not adequate. The future HKSAR government must take steps to establish the above-mentioned organization.
- Provisions on the protection of intellectual property rights should be added.

Reasons: - This will attract overseas businessmen and product designers to come to Hong Kong.

- This will maintain the confidence of Hong Kong manufacturers in investment. At present, Hong Kong manufacturers have developed an ability to design their own products. Concerned as they are that the laws of the future HKSAR will not afford them the relevant protection, some of them have transferred their holding company to countries where intellectual property rights are protected, so that they can claim compensation should their new designs be pirated.
- The following provision should be added: "The government of the HKSAR shall create the necessary environment and take appropriate steps to promote the development of the various economic sectors in Hong Kong."
- There should be a provision on the establishment of a China-Hong Kong commercial arbitration centre.

Reason: - Many overseas businessmen who are not familiar with or do not accept the Chinese legal system may want to do business with China through the HKSAR. The establishment of such a commercial arbitration centre on the basis of the company law practised in Hong Kong will give these overseas businessmen greater confidence in investing in China.

- There should be a provision restricting the scale of Chinese-funded organizations based in Hong Kong.

Reason: - In recent years, Chinese-funded organizations have mushroomed in Hong Kong to compete with the local private enterprises because they have strong financial backing. While private ownership is the cornerstone of Hong Kong's market economy, if this trend continues, the system of state ownership could end up becoming the framework of the economy and the nature of Hong Kong's economy would undergo a fundamental change.

- While Article 105 is worthy of support, it is feared that such a conservative policy will result in a cut in social welfare and therefore lead to social unrest in times of economic depression. Hence, the following provision should be added: "Under special circumstances, the Central People's Government may act as a guarantor for foreign loans secured by the government of the HKSAR."
- The following provision should be added: "The government of the HKSAR shall, on its own, formulate policies regarding finance, industry and other trades."

Reason: - This addition is necessary because Articles 109, 123 and 124 are ambiguous and do not provide the necessary environment or conditions to encourage and promote the development of various trades and professions.

- It should be clearly stipulated that the HKSAR shall have its own patent and trademark registration and copyright systems.

Reason: - As an independent customs territory and an entity in international trade, it is important that Hong Kong should have such registration systems.

- Hong Kong's prosperity depends on free trade and free enterprise. This basic trait of Hong Kong's economic system should be enshrined in the Basic Law.
- It should be stipulated that the HKSAR government shall have the power to secure foreign loans.
- It should be stipulated that the HKSAR government shall have the power to conclude agreements on the avoidance of double taxation.
- There should be a provision on the establishment of an industrial bank to protect the growth of industrial investment.

Reason: - Since the Hong Kong Government has never given any positive encouragement to industrial investment, industrial loans have never played an important part in banking. In 20 years' time, industrial investment will become a weak link in finance.

- In order that the capitalist system may remain unchanged for 50 years, it should be clearly stipulated in the Basic Law that land leases shall be protected and that private assets may be privately owned and freely traded.
- In view of the growth in land transport between China and Hong Kong and the fact that there are already sections on shipping and civil aviation, a section on land transport should be added. This section should cover the questions of vehicles entering and departing the HKSAR, road management and the powers and functions of the Transport Department.
- A section on "Mass Communications" should be added. It should be stipulated in this section that the HKSAR government shall formulate its own communications policies to ensure the effective utilization and monitoring of atmospheric wave bands and public communications networks

and that local establishments will have major control over them.

- It should be stipulated that when purchasing the materials required, the future HKSAR government and public utilities should give preference to Hong Kong products. This will save taxpayers' money and show recognition of taxpayers rights.
- Words like "must", "should" and "may" should be added.

Reason: - The wording used in this chapter is too neutral in places. Some of the provisions sound more like statements and do not appear to be legally valid.

2.4 Rearrangements

- Articles 126 to 128, which concern land leases during the run-up to 1997, should not appear in the main text of the Basic Law. These provisions should be included in the Supplementary Provisions under Chapter X, otherwise they will ruin the integrity of the Basic Law.
- The following articles in Chapter V should be moved to Chapter VII, the chapter on "External Affairs": Paragraph 2 of Article 119, Article 120, Article 130, Article 132, and Articles 135 to 140.

2.5 Merging

- Articles 104 and 106 should be merged.
- Articles 109 to 113 should be merged to read: "The type of policies regarding currency, finance, foreign exchange, flow of capital, and so on to be practised in the HKSAR shall be decided in a democratic way by the people of Hong Kong in the light of social and economic conditions."

2.6 Other suggestion

- If the provisions in the Chapter on Political Structure can ensure that the various strata and sections of society will be able to arrive at a consensus on the political structure, the economic provisions will only need to outline the main principles.

3. Issues to be clarified

- Should the executive authorities of the HKSAR fail to follow the policy provisions for any reason, to whom shall they be accountable and be required to give explanation?
- In the Basic Law it is stipulated that the issue of currency shall be backed by a reserve fund. This

provision seems to contradict the provision of "maintaining a basic balance between total budgetary revenues and expenditure". Which of these two provisions shall prevail?

- After the establishment of the new government, will the properties owned by citizens under the old administration be recognized by law? Will they be able to cash their bank deposits for the amount of money that they are worth after the establishment of the new government?

4. Views on the policy provisions in Chapter V

4.1 The following articles are considered policy provisions:

Section 1: Articles 105 and 107

Section 2: Whole section

Section 3: Whole section

Section 4: Whole section

Section 5: Articles 126 to 128

Section 6: Whole section

Section 7: Whole section

4.2 Views

4.2.1 Supporting views

- The present economic system, especially with respect to the distribution of resources, should be detailed. Specific details on the utilization of resources by the Hong Kong Government, such as the annual economic growth rate and the expenditure on education and welfare, should be given.

Reason: - This will prevent the future government from becoming ultra-capitalist or ultra-socialist and will ensure the continuation of the existing system.

- There is nothing wrong with the inclusion of policy provisions in the Basic Law, since the Chinese Constitution and the Japanese Constitution also contain policy provisions.

4.2.2 Reservations

- The economic provisions tend to freeze the existing economic situation. This is impractical. The HKSAR government must have the power to decide its own policies

and the room for manoeuvre. Such flexibility is needed because economic conditions are changing constantly.

- Policy provisions will only destroy Hong Kong's existing free economy and turn it into a planned economy.
- A unique feature of the Hong Kong economy is that it is subject to international economic changes. If policies are enacted as laws, the HKSAR government will not be in a position to adapt itself to changes and any such moves will become acts in contravention of the law.
- Policy provisions should not be placed side by side with legal provisions. Policies should only be taken as the objectives.
- The Basic Law should set out the principles to be observed. Policy provisions should be dealt with separately in the form of an annex, which will be subject to amendment in the light of changing circumstances. This will give the HKSAR government the flexibility it needs.
- Since the HKSAR government has been promised a high degree of autonomy, it should have the power to formulate policies on its own. Hence, Chapter V should only contain the basic policies laid down in the Joint Declaration. All policy provisions should be deleted.
- Important policy provisions, such as Article 4, should be retained.
- It has been suggested that policy provisions should be placed in an annex designated for policies, but this is not recommended for economic provisions.

Reason: - Economic policies are subject to changes in the social and economic environment. Frequent amendments to the annex on policies will dampen the confidence of investors. What investors want are a sound legal system, the rule of law rather than the rule of man, and free competition rather than monopoly by the government or enterprises.

- Some of the policy provisions (such as Articles 105 and 107) are too detailed. They should not be included in an annex on policies even if it is decided that such an annex should be added.
- There are two kinds of constitutions. In democratic countries of the West, constitutions are enacted to restrict the actions of the government and to prevent its powers from growing out of proportion and thereby infringing upon the rights and freedoms of the people. In communist countries, constitutions usually confer certain

powers on the government and set out the objectives and ideals to be achieved. The Draft Basic Law seems to be a hybrid of these two essentially different kinds of constitutions. It attempts to restrict the actions of the government (such as by Article 105 and 107) on the one hand and sets out many objectives (such as Articles 123, 124, 145 and 152) on the other. This is unreasonable. There are many such examples in Chapters V and VI.

- The wording of the policy provisions in this chapter is often ambiguous.

OVERALL COMMENTS ON SECTION 1 OF CHAPTER V

1. Views

1.1 Supporting views

- Support is expressed for the provisions in this section.

Reason: - They will safeguard Hong Kong's economic development and prosperity.

- The provisions in respect of public finance and taxation detailed in this section are similar to the policies currently in force. There should not be any trouble achieving a smooth transition if the HKSAR can refer back to policies implemented before its establishment.

1.2 Opposing view

- The HKSAR government should not be required to maintain a balanced budget and practise a low-tax policy and other such policies.

Reason: - The practice of these policies will hinder the HKSAR government in its attempts to achieve a more balanced distribution of resources and bring greater social justice through the implementation of fiscal policies. The government has the duty to ensure that women will not lose their freedom to seek employment or the opportunity to demonstrate their ability because they have to look after their children or the weak and feeble at home. This can be done through policies designed to provide more nursery and domestic help services.

2. Suggestions

- Except for Article 104, all provisions in Section 1 should be deleted and replaced with the following two articles:

(1) "The HKSAR shall deal on its own with financial matters, including the allocation of its financial resources and drawing up its budget and final accounts. The HKSAR shall report its budgets and final accounts to the Central People's Government for the record."

(2) "The HKSAR shall practise an independent taxation system. The types of taxes, tax rates and tax reductions and exemptions shall be prescribed by law. The Central People's Government shall not levy taxes in the HKSAR."

- It should be stipulated that "[t]he HKSAR shall deal on its own with financial matters, including the allocation of its financial resources and drawing up its budgets and final accounts."

Reason: - According to the Joint Declaration, the HKSAR shall deal on its own with financial matters.

- Fiscal policies should not be provided for in this Section.

Reason: - Relevant provisions have already been made in other chapters of the Draft Basic Law. For instance, Article 15 stipulates that the HKSAR shall "deal on its own with financial matters", Article 62 states that the HKSAR government shall have the power "to draw up and present budgets and final accounts", and Article 72 states that the HKSAR Legislative Council shall have the power to examine and approve budgets and final accounts, to "approve taxation and public expenditure" and to raise questions.

- In order to protect Hong Kong's status, it should be stated in the Basic Law that the HKSAR shall have the power to conclude tax treaties with other countries, and that treaties concluded by the Central People's Government will not apply in Hong Kong for 50 years.
- The following provision should be added at the end of Section 1: "In special circumstances, such as natural or man-made calamities, or force majeure, which result in a financial crisis in the HKSAR, the Central People's Government shall have the responsibility to help the HKSAR overcome its difficulties."

1. Original text

The Hong Kong Special Administrative Region shall have independent finances.

The Hong Kong Special Administrative Region shall use its financial revenues exclusively for its own purposes, and they shall not be handed over to the Central People's Government.

2. Views

2.1 Supporting views

- Support is expressed for this article.

Reasons: - This article gives expression to the high degree of autonomy.

- It is vital for the HKSAR to have independent finances.

- This provision must be retained as it is taken from the Joint Declaration.

2.2 Opposing views

- It will be very difficult for Hong Kong to achieve complete financial independence.
- This provision contradicts the principle of "measuring expenditure by revenues" stipulated in Article 105.

3. Suggestions

3.1 Amendments

- This article should be amended to read: "The government of the HKSAR shall allocate and use its financial revenues on its own. The surpluses shall be kept as reserve and shall be disposed of by the government of the HKSAR."

Reason: - The expression "shall use its financial revenues exclusively for its own purposes" in the Chinese version could be interpreted as using up all revenues.

- This article should be amended to read: "The HKSAR shall have independent finances and shall draw up its budgets and fiscal policies on its own."

- The last clause of Paragraph 2 should be amended to read:

"while a token 0.01 percent of its tax revenue shall be handed over to the Central People's Government."

- The clause "[t]he HKSAR shall use its financial revenues exclusively for its own purposes" should be amended to read: "The financial revenues of the HKSAR shall belong to the government of the Region."
- This article should be amended to read: "The HKSAR shall have independent finances and its financial revenues shall not be handed over to the Central People's Government."

3.2 Additions

- The following provision should be added: "The accounts of the government of the HKSAR shall be audited annually by the Auditor-General.

"The audited accounts of the government of the HKSAR and the report thereon by the Auditor-General shall be examined by the Legislative Council."

- The following provision should be added: "Public enterprises in the HKSAR shall abide by the principle of not hindering the operation of private enterprises."

3.3 Other suggestions

- The HKSAR government should hand over 3% of its total tax revenues to the Central People's Government. Should the HKSAR government be in financial difficulties, it may negotiate with the Central People's Government for a reduction or exemption.

Reason: - This will give expression to the administrative relationship between the Central People's Government and the HKSAR government.

- China is in need of a full-scale reconstruction programme as it has been hit by natural disasters such as droughts and earthquakes year after year. Hong Kong should not look on with folded arms. It should hand over 30% of its gross income to the Central People's Government each year.

- The HKSAR should have the duty to pay tax to the Central People's Government.

Reasons: - Hong Kong will be a part of China. While the Central People's Government has the responsibility to defend the HKSAR, the HKSAR should be required to pay tax to the Central People's Government. There is no precedent in China where a regional government does not pay tax to the Central People's Government.

- Handing over part of its tax revenues and bearing its own military expenditure will not contradict the principles of "a high degree of autonomy" and "one country, two systems".
- It should be stated and guaranteed that the Central People's Government will offer its assistance should the HKSAR be hit by economic instability or faced with financial crisis.

4. Issues to be clarified

- It is stipulated that the HKSAR shall have independent finances. Will the Central People's Government offer its assistance if the HKSAR experiences financial difficulties?
- It is stipulated that the HKSAR shall use its financial revenues exclusively for its own purposes. What exactly is meant by "its own purposes"?

Article 105 .

1. Original text

The government of the Hong Kong Special Administrative Region shall follow the principle of measuring expenditure by revenues in drawing up its budget.

The government of the Hong Kong Special Administrative Region shall, over a number of fiscal years taken as a whole, maintain a basic balance between total budgetary revenues and expenditure.

In principle, the rate of increase of the budgetary revenues and the expenditure of the HKSAR shall not exceed that of the gross domestic product over a number of fiscal years taken as a whole.

2. Views

2.1 Supporting views

- Support is expressed for this article.

Reason: - This will act as minimal and basic safeguard for Hong Kong residents and businessmen, as this will render it impossible for those in power to secure huge foreign loans, thus shifting the burden onto the people.

- This article should be retained for it is an underlying principle of public finance in Hong Kong.

- Support is expressed for Paragraphs 2 and 3.

Reason: - These two paragraphs will leave the government ample leeway in its fiscal policies. Their fundamental spirit will help maintain the confidence of the business sector.

- Support is expressed for the provision that the HKSAR government shall follow the principle of keeping expenditure within the limits of revenues.

Reasons: - This principle will be in keeping with the future needs of the HKSAR.

- This principle will prevent the government from practising a high-tax policy which will drain the pockets of the residents and discourage investors. It will also enable the HKSAR to maintain its prosperity.

- This article will provide appropriate checks and balances

between the executive and the legislative branches of the HKSAR. In a popularly-elected political structure, the government tends to budget for a deficit because it will be able to win more support by not increasing the tax burden of the people. One way to rectify this political tendency is to prescribe by law that budgets must be balanced.

- Support is expressed for the policy of maintaining a balance between total budgetary revenues and expenditure.
- It is believed that the growth in Hong Kong's industry and commerce will generate sufficient revenue to cover the increase in government expenditure and maintain economic equilibrium.
- This article provides for a certain degree of flexibility.

Reason: - The phrase "over a number of fiscal years" will provide the government with adequate flexibility.

2.2 Opposing views

- Objection is expressed to this article.

Reasons: - The practice of these policies will prevent the HKSAR government from attempting to achieve a more rational distribution of resources and greater social justice.

- According to this article, the HKSAR government will not be allowed to budget for deficits. This will limit the ability of the government to expand its organizational structure. It indicates that the Central People's Government is wary of the unlimited expansion of the future HKSAR government, as this will challenge the authority of the Central Authorities.
- This article limits the power of the HKSAR government in issuing bonds and securing foreign loans.
- Under this article, the growth of activities with no short-term economic returns (such as social welfare) will be subject to the growth of activities with short-term economic returns (such as industry and commerce). Hence, this article will impose unnecessary restrictions on the long-term social investment projects of the HKSAR.
- The executive authorities and the legislature will be able to provide adequate safeguards for

- The intention of this article is good, but the provisions will be difficult to implement.
- This article goes against the principles of "a high degree of autonomy" and "one country, two systems" and will take away the power of the HKSAR government to formulate its own policies. This power should be vested entirely in the HKSAR and its legislature.
- This article goes against the Joint Declaration which stipulates that the HKSAR shall dispose of its financial resources on its own.
- This article appears to be an economic bill of rights which limits the fiscal power of the government. But in fact, it is an economic bill of rights aimed at protecting the monopolistic status of the business sector in Hong Kong.
- If required, budget deficits should be allowed in order to take care of the necessary outlays for social welfare, public health, education and infrastructure, to stimulate the economy and to maintain balanced economic growth.
- The underlying principle of this article contradicts the principle of independent finances. The fact is that most developed countries have budget deficits.
- The maintenance of "a basic balance" between total budgetary revenues and expenditure cannot be a permanent practice. A government needs to manipulate public expenditure to stimulate or dampen the economy. For example, between 1983 and 1984, the Hong Kong Government resorted to this means to bail Hong Kong out of its economic recession.
- Although it stipulates "over a number of fiscal years", it is still undesirable, since the government may still need to adjust its budget for a certain fiscal year to balance the previous fiscal years' accounts. Such an adjustment may not be suitable to the economic environment at the time.
- Strictly speaking, any budget may be balanced by adding the accounting terms "credit balance" or "debit balance". The inclusion of such a provision in the Basic Law will only encourage this "manipulative" financial accounting technique.
- Some people are in favour of providing for the maintenance of a basic budget balance in the Basic Law and give as their justification the fact that the state constitutions of the US also contain similar provisions. However,

their argument cannot be established for the following reasons:

- (1) Unlike the HKSAR, a state government does not have independent finances. The federal government and the state government share some of the tax revenues. Also, in addition to providing some essential public services, the federal government is required to offer assistance to the state government when the need arises. Thus, a state government is not rigidly limited by the provisions laid down in the state constitution.
 - (2) In most states, it is laid down in their constitutions that citizens have the power to decide matters concerning taxation or public expenditure (including approving new taxes and setting the ceilings for tax rates and expenditure) by referendum. The Basic Law does not give the residents of the HKSAR the same power.
 - (3) The federal government is responsible for the stabilization and redistribution of wealth, while a state government is responsible for the distribution of most of its own resources. The HKSAR government, however, is responsible for all financial matters. This restricts the ability of the HKSAR to stabilize financial activities and redistribute wealth.
 - (4) As seen from the experience of the United States, economic provisions in the state constitutions have no substantive effect. A state government can easily bypass these provisions and control the budget.
- The state government of California encountered difficulties when implementing the provisions on balancing the budget and on restricting tax rates. This shows that it is unrealistic to demand an absolute balance of revenue and expenditure. Leeway should be allowed in terms of the number of years within which such a balance is to be achieved.
 - In the past, all budgets of the Hong Kong Government were budgets with a deficit. Surpluses were only ascertained after the accounts had been closed at the end of a fiscal year. Under the provisions of this article, the government will be violating the Basic Law if it puts forward such a budget.
 - An absolute balance between expenditure and revenues cannot be attained. "Balanced budgets" should mean budgets that can eventually produce surpluses, as is the case at present.
 - This article is included because local industrialists and

businessmen are keen to prevent the possible occurrence of "free luncheons", which could result in electioneering, and because they wish to protect the existing good investment environment. However, an article like this which is biased towards investors cannot achieve the above-mentioned objectives.

- This article restricts the development of social services. Expenditure on social welfare and services is essential and should be increased with GNP growth. It should not be reduced or done away with arbitrarily. (Note 105-1)
- At present, Hong Kong is in the process of developing into a capital- and technology-intensive economy. Budget deficits are crucial at this stage.

2.3 Views on the wording

- The meaning of maintaining "a basic balance between total budgetary revenues and expenditure" is vague.
- If the criteria for interpreting the phrase "over a number of fiscal years" are not specified, problems will arise.
- The wording of this article is vague and it should be rewritten by economists.

3. Suggestions

3.1 Deletions

- The entire article should be deleted. (Note 105-2)

Reasons: - It is impractical and will not work.

- It is a policy provision, not a legal provision.
- Such a policy should not be laid down in the Basic Law. The Financial Secretary should have the power to decide on the appropriate policy in the light of the actual conditions.
- There is no need to include such a provision in the Basic Law, since local government officials have relatively abundant financial management experience.
- Such phrases as "maintain a basic balance" and "over a number of fiscal years" should be deleted.

Reasons: - Policy provisions should not be written into the Basic Law which is legally binding.

- Many of these expressions are not legal terms.

- This article should be amended to read: "The HKSAR shall on its own deal with financial matters, including the allocation of its financial resources and drawing up its budgets and final accounts. The HKSAR shall report its budgets and final accounts to the Central People's Government for the record." (Note 105-3)

Reasons: - The present article is a rigid policy provision which will make the HKSAR's policies less flexible.

- The wording used in the present article is vague.

- The present article could easily lead to disputes.

- The present article goes against the Joint Declaration as it attempts to impose restrictions on the HKSAR government.

- This article should be amended to read: "The government of the HKSAR shall draw up budgets on its own."

Reasons: - The original text is detailed but vague and could easily lead to disputes.

- The original text imposes too many restrictions on the financial flexibility of the HKSAR.

- Under the principle of "keeping expenditure within the limits of revenues", the HKSAR government will not be able to rely on budget deficits to pull through difficult periods, such as when it does not have enough tax revenues to finance infrastructure projects and other services.

- It should be stipulated that revenues and expenditure should be balanced and that their growth rates must not exceed a certain percentage of the GNP.

- This article should be amended to read: "The government of the HKSAR shall have the freedom and power to select a fiscal policy to suit the needs prevailing at the time."

Reasons: - The principle of "keeping expenditure within the limits of revenues", which means that all revenues collected must be spent, may not be appropriate in some situations.

- Maintaining a basic balance between total

- The term "over a number of fiscal years" is too vague. How long does it mean?

- The HKSAR government should follow the principle of maintaining budget surpluses. If this cannot be done, a budget deficit should only be allowed once every three or four fiscal years. Furthermore, the deficit should not be allowed to exceed 40%-45% of the aggregate surplus accumulated over the last 3 consecutive fiscal years.
- It should be stipulated that expenditure in each fiscal year may exceed the revenues by 2% at maximum. A budget deficit may be allowed in the next fiscal year. However, there should be an adequate surplus in the fiscal year after that to cover the deficit of the first fiscal year, and in the fourth fiscal year to cover the deficit in the second fiscal year.

Reason: - It is too restrictive to require an absolute balance of revenue and expenditure.

- It should be stipulated that when there is a budget surplus, it should be deposited with a reserve fund. When there is a budget deficit, appropriations should be made from this reserve fund.
- This article should be amended to read: "The government of the HKSAR shall adopt prudent policies in respect of taxation, expenditure and revenue, and shall strive to arouse the initiative of individuals and enterprises, champion social justice and promote economic development."

Reason: - The above is a principle which every government under the capitalist system should follow.

- This article should be amended to read: "If there is a need for extra public spending, the Standing Committee of the NPC may, after consulting the Committee for the Basic Law, approve any proposals for additional revenue or expenditure."

3.3 Other suggestions

- This article should be placed in an annex.

Reason: - Budgetary policy requires adjustments from time to time to cope with changes in the economic environment. Paragraphs 2 and 3 of this article will impose restrictions on the HKSAR government in its operations.

- Since this article is a policy provision, it should be

separated from the text and placed elsewhere, but should not be completely omitted. The power of interpretation and amendment of this article should be vested in the HKSAR government.

Reasons: - This is a basic policy which has been practised for a long time by the Hong Kong Government. It has popular support and should not be arbitrarily deleted.

- The power of interpretation and amendment of policy provisions should be vested in the HKSAR government to ensure flexibility.

- If this article is not deleted, it should be treated as a guideline rather than a legal provision.

- The meaning of "a number of fiscal years" should be left for the HKSAR Legislative Council to decide.

3.4 Suggestion on Paragraph 1

- The clause "shall follow the principle of measuring expenditure by revenues" should be deleted.

Reason: - Some countries have put into practice the Keynesian economic theories by increasing their expenditure and using budget deficits to boost economic growth in times of recession.

3.5 Suggestions on Paragraph 2

- This paragraph should be deleted.

Reasons: - The provision proposed is just a subjective wish. The principle has already been clearly set out in Paragraph 1.

- A government can only measure its revenues by expenditure, that is, it can only increase or decrease tax rates or other fees according to its expenditure. In a modern society, public expenditure, such as that on the civil servants' payroll, education, and the maintenance of public order, are mostly fixed. It is impossible to measure expenditure by revenues unless the budget starts from scratch every year.

- Paragraph 2 should not be included in the text of the Basic Law. Rather, it should be placed in an annex for policy provisions.

Reason: - This paragraph only serves to explain Paragraph 1. Besides, it is only a policy guide.

- This paragraph should be amended to read: "The government of the HKSAR shall maintain a basic balance between total budgetary revenues and expenditure, except in times of economic recession."
- This paragraph should be amended to read: "The government of the HKSAR shall maintain a basic balance between total budgetary revenues and expenditure. A deficit not exceeding 5 percent of the total budgetary expenditure may be allowed in any one fiscal year."

3.6 Suggestions on Paragraph 3

- Paragraph 3 should be deleted.

Reasons: - At present, the rate of increase of tax revenue is much higher than the rate of economic growth. The provision on tax revenue in the Basic Law will make it necessary for the HKSAR government to fundamentally change its tax policy.

- Since the appropriateness of the provisions in this paragraph is still subject to debate by economists, such a provision should not be included in the Basic Law.
- As it is already stipulated in Paragraph 1 that a basic balance between revenues and expenditure shall be maintained, Paragraph 3 is not really necessary.
- In Hong Kong, GNP figures are usually released at least two years after the year in question. If the HKSAR government is going to do the same, it will most probably be inclined to base its budgets on conservative estimates. Taking into account the economic cycle of boom and recession, if a budget is drawn up on the basis of the economic growth trend two or three years ago, it is likely that expenditure will be tightened during economic recovery but increased when recession sets in. Such a strategy of increasing public expenditure will prove detrimental to economic development and will reduce the flexibility in the operation of the future HKSAR government, so much so that it will not be able to react rationally to actual changes in society.
- Does "the rate of increase of budgetary revenues and expenditure" in Paragraph 3 refer to the estimate made by the Financial Secretary or the actual figure? If the latter is the case, Paragraph 3 is unrealistic, bearing in mind the financial history of Hong Kong and the technical

constraints involved, and should therefore be deleted.

- No government can guarantee that the projected GNP growth rate will be realized, much less that the requirements stipulated in Paragraph 3 will be fulfilled.
- The GNP may not be a good indicator. During a recession, the GNP may register negative annual growth rate. Under such circumstances, the people will demand more social welfare. Any compulsory cut in public spending at times like this will probably lead to social unrest.
- The rate of increase of budgetary revenues and expenditure and that of GNP can easily be manipulated in the course of computation. Thus, such a provision serves no real purpose.
- No restrictions should be imposed on the growth rate of the HKSAR's budgetary revenues and expenditure.
- The provision in Paragraph 3 will result in a contraction of the public sector. This goes against the expressed wish to maintain an efficient government.
- This article attempts to encapsulate a philosophy of financial management which successive Financial Secretaries have elaborated in their Budget Speeches in the past. This is brave, but foolish. According to the present draft, government expenditure will be frozen at around 16% of the local GNP, even though it has at times in the past risen well beyond this percentage. It would be far better to make a more general reference to adopting a fiscal policy in line with past practice.
- This paragraph should be amended to read: "Growth in the local GNP should be kept within the range of average GNP growth over a number of years (say five years)."

Reason: - The future growth rates should not be taken as the criterion as they will be difficult to forecast and will easily be subject to "artificial adjustments".

4. Issues to be clarified

- What is meant by "measuring expenditure by revenues"?
- What is a "basic balance"?
- Will amendments be made to the provision requiring the maintenance of "a basic balance" if deficits occur?
- What is meant by "over a number of fiscal years"?

1. Original text

The Hong Kong Special Administrative Region shall practise an independent taxation system.

The Central People's Government shall not levy taxes in the Hong Kong Special Administrative Region.

2. Views

- This article does not state clearly that the HKSAR government shall have the power to levy taxes on its residents and on income earned in the Region, and to levy taxes in other appropriate situations.
- This article is in fact taken from Paragraph 3 (8) of the Joint Declaration and Paragraph 2, Section V of Annex I to the Joint Declaration. No further discussion is therefore required.
- It should be stipulated that apart from the Central People's Government, other authorities and regional governments shall also be prohibited from levying taxes in the HKSAR.
- It is felt that the exemption from tax payments to the Central People's Government to be enjoyed by the HKSAR is an excessive privilege.

3. Suggestions

- The following provision should be added: "Other authorities and regional governments shall also be prohibited from levying taxes in the HKSAR."
- This article should be amended to read: "One ten-thousandth of the rates collected shall be handed over to the Central People's Government as tax."

Reasons: - As the Central People's Government will be responsible for Hong Kong's defence and foreign affairs, Hong Kong should be required to pay tax.

- The HKSAR should pay tax to the Central People's Government just like any other province or city, more so since Hong Kong is better off than these places in terms of economic development.
- This article should be merged with Article 108 to read: "The HKSAR shall have an independent taxation system. The

types of taxes, the tax rates and tax exemptions shall be prescribed by law. The Central People's Government shall not levy taxes in the HKSAR."

Article 107

1. Original text

The Hong Kong Special Administrative Region shall continue to practise a low tax policy.

2. Views

2.1 Supporting views

- This article should be kept because Article 108 guarantees that the HKSAR government will be able to act with flexibility.

- Support is expressed for a low-tax policy.

Reasons: - This policy is an important factor for attracting foreign investment.

- This policy will guarantee Hong Kong's prosperity.

- This will prevent the government from squandering public money.

- Except for breaking enterprise monopolies, the government should not, by whatever means, interfere with the free operation of the economy. This policy is unique to Hong Kong and a key to its success.

- The taxation system is an important policy. It is reasonable to stipulate in the Basic Law that a low-tax policy will be practised.

- A low-tax policy can attract foreign investment and encourage the concentration of local capital. It can also limit the increase of government expenditure and impose constraints on possible government intervention. There is also a general tendency in the Western world to lower tax rates. It is a wise decision to include this article in the Basic Law.

- Within the capitalist framework, working capital tends to flow into areas with high profits and low tax rates. At present, inter-bank transactions account for 90% of the total transactions in Hong Kong's foreign exchange market. If the rumour that the present low-tax system is going to be changed becomes a reality, such transactions will definitely take place elsewhere. Hence, this article should not be deleted.

- Support is expressed for this article in principle.

However, the policy of maintaining a balanced budget could lead to tax increases, thus making it impossible to practise a low-tax policy.

2.2 Opposing views

- The meaning of "low tax policy" is vague and is unlikely to be legally binding.
- This article is only a policy guideline, not a legal provision.
- Whether or not this article is included is of no consequence as the word "low" is hard to define.
- This article imposes unnecessary restrictions on the future government. These policies should be formulated by the government of the HKSAR in the light of the prevailing situation.
- This article goes against the Joint Declaration, which states that the HKSAR government shall dispose of its financial resources on its own.
- Hong Kong is attractive to taxpayers because it has a simple taxation system. If the "low-tax policy" is stipulated here, the government will be forced to readjust its tax allowances or introduce new taxes when it needs to increase revenue. This will have undesirable effects.
- The word "continue" expresses approval of the existing low-tax policy. It implies that the existing taxation system will be regarded as the standard or the ceiling after 1997 to prevent the future government from implementing significant tax reforms. This indicates a mistrust of the HKSAR government.
- Sometimes heavy taxation is necessary. For instance, Hong Kong's licensing fees for motor vehicles are now higher than those of many countries.
- As society progresses and GNP grows and demand for social welfare and security increases, low tax rates simply will be unable to generate sufficient revenue to pay for comprehensive social welfare. (Note 107-1)
- This article is included because local industrialists and businessmen are keen to prevent the possible occurrence of "free luncheons", which would result in electioneering, and because they wish to protect the existing excellent investment environment.
- This article is designed to protect the interests of the upper classes. However, Hong Kong's taxation system needs to be reformed in order that the goal of promoting social

prosperity and redistributing social wealth can be achieved.

- It is said that foreign investors will transfer their funds elsewhere if it is not stated in the Basic Law that the HKSAR shall practise "a low-tax policy". This assumption is incorrect. As indicated by research findings, investors consider political stability, an efficient administration, a sound legal system, high-quality labour and good infrastructure to be more important than economic inducements and a low-tax policy. The situation in Singapore is a case in point.
- The future government will probably have to adopt indirect taxation as a means of maintaining a low-tax policy. The Basic Law should not include a provision which will compel the HKSAR government to adopt an indirect taxation system.
- This article will enable the present unfair taxation system to continue. The present system of taxation needs to be reformed. For instance, income tax should be reduced in order to lighten the tax burden of the middle class and professionals, while profits tax should be increased.
- It is no use simply stating in the Basic Law that "a low-tax policy" shall be practised. Tax burden also depends on the types of tax and tax exemptions.
- Article 105 should be taken as the guideline when considering the implementation of a low-tax policy. Otherwise, the HKSAR government might raise the tax rates substantially so as to maintain a balance between revenue and expenditure.

3. Suggestions

3.1 Deletions

- This article should be deleted. (Note 107-2)
- Tax rates should be adjusted in accordance with the economic conditions of society.

Reasons: - The existence of Article 105 obviates the need for this article.

- The existence of Article 108 obviates the need for this article.

- The clause "shall be prescribed by law" in Article 108 should be viewed as a procedural definition, and not as a safeguard for the freedom to be enjoyed by the HKSAR government

in terms of taxation. This article is a policy provision and is more important than Article 108.

- This article fails to give a clear definition of the word "low" and will cause the future HKSAR government unnecessary trouble.
 - There is no need to stipulate that a low-tax policy shall be practised as it is already being practised in Hong Kong.
 - The word "continue" could force the HKSAR government to accept the tax rates in 1997 as the upper limit, whatever the tax rates are at that time.
 - Policy provisions should not be included in the Basic Law, which is a legal instrument.
 - This article is not written in legal language.
 - No government can guarantee the implementation of a low-tax policy.
 - If the HKSAR government fails to implement the low-tax policy, it might be accused of violating the Basic Law. This is very dangerous.
- It is difficult to determine exactly what contributes to Hong Kong's economic success. South Korea and Taiwan both enjoy economic prosperity in spite of their high tax rates. There is thus no need to make special provisions for a "low-tax policy".

3.2 Amendments

- This article should be amended to read: "The government of the HKSAR shall adopt prudent policies in respect of tax, expenditure and revenue and shall strive to arouse the initiative of individuals and enterprises, champion social justice and promote economic development."

Reason: - The above is a principle which every government under the capitalist system should follow.

- This article should be amended to read: "The HKSAR shall practise a productive and progressive system of taxation."

Reason: - The word "low" is only a comparative adjective.

- This article should be amended to read: "The HKSAR shall continue to practise a tax policy that can maintain the

economic competitiveness of Hong Kong."

Reason: - The expression "a low-tax policy" is only a relative concept. It is also vague in meaning.

- The taxation system should be prescribed in greater detail and in more specific terms. For instance, it could be stipulated that "the tax rate shall be fixed at 18% and shall remain unchanged for 50 years". This will put the minds of investors at rest.
- This article should be amended to read: "The HKSAR shall continue to have tax rates lower than its neighbouring countries."

Reason: - There is no way of judging how "low" tax rates are unless there is an object of comparison.

- This article should be amended to read: "The government of the HKSAR shall continue to adhere to the principle of a low-tax policy."
- This article should be amended to read: "The government of the HKSAR shall formulate taxation policies on its own."
- This article should be amended to read: "The HKSAR shall deal on its own with financial matters, including the allocation of its financial resources and drawing up its budgets and final accounts. The HKSAR shall report its budgets and final accounts to the Central People's Government for the record." (Note 107-3)
- The word "continue" should be deleted or words like "when necessary" should be added to give the government greater flexibility.
- Clauses such as "shall be decided by the HKSAR on its own" should be added.
- In order to define the word "low", the following provision should be added: "The tax rates shall, in principle, be lower than 20%."

3.3 Other suggestions

- Policy provisions should not be included in the text of the Basic Law. They should be placed in an annex which is not legally binding.

Reason: - This will allow the HKSAR government greater flexibility with its policies, safeguard the stability and prosperity of Hong Kong and give Hong Kong people greater confidence.

- In foreign countries, there are also cases where legislation has been introduced to restrict excessive taxation. In such legal provisions, concrete and complicated formulae for the determination of tax rates are usually laid down. They seldom simply stipulate that "a low-tax policy" shall be practised. Although this practice of foreign countries has its advantages and disadvantages, it can still serve as reference.

4. Issues to be clarified

- What is meant by "a low-tax policy"? What is the criterion?
- Will the stipulation that the HKSAR government shall practise a "low-tax policy" affect the government's active role in the economy? Will it affect the economic development of society?
- Will the "low-tax policy" continue to be implemented even if the HKSAR government suffers from deficits?
- This article only stipulates that "a low-tax policy" shall be practised. Have questions like the method of taxation in the years subsequent to 1997 and whether the tax revenue will be able to cover a huge expenditure been taken into consideration?
- Will the government be able to increase indirect taxes, thus increasing the people's tax burden, in order to maintain a balance between revenue and expenditure?
- Which particular type of tax does this article refer to?
- Is "a low-tax policy" a contributory factor in the maintenance of the status quo in Hong Kong and therefore in keeping with the spirit of the Joint Declaration?

1. Original text

The types of taxes, the tax rates and tax exemptions in the Hong Kong Special Administrative Region shall be prescribed by law.

2. Views

- Support is expressed for this article.
- The "law" referred to in this article should be based on the existing policies in respect of the types of taxes, the tax rates and tax exemptions.

3. Suggestions

3.1 This article should be deleted.

3.2 Amendment

- This article should be amended to read: "The types of taxes, the tax rates and tax exemptions in the HKSAR shall be prescribed by law. The HKSAR shall deal on its own with financial matters, including disposing of its financial resources and drawing up its budgets and final accounts. The HKSAR shall report its budgets and final accounts to the Central People's Government for the record."

3.3 Additions

- The following provision should be added: "The introduction of any new taxes or any increase in tax rates shall require the endorsement of two-thirds of the members of the Legislative Council."
- The following provision should be added: "When there are budget surpluses, people should be exempt from income tax and taxes on foodstuffs should be reduced."

Reason: - This will improve the living standard of the general public.

- The following provision should be added: "The principle to be adopted in prescribing such policies shall be that the initiative of individuals and corporate bodies will not be affected and that the policy will be conducive to economic stability."
- It should be stated whether the "law" referred to in this article shall be enacted by the Central People's Government or by the local legislature.

3.4 Other suggestion

- This article should be merged with Article 106 to read:
"The HKSAR shall practise an independent taxation system. The types of tax, the tax rates and tax exemptions in the HKSAR shall be prescribed by law. The Central People's Government shall not levy taxes in the HKSAR."

4. Issues to be clarified

- What does the word "law" refer to in this article?
- The government should act in accordance with law in any case. Is this article really necessary?

1. Views

1.1 Supporting views

- Support is expressed for the articles in this section.

Reason: - They can guarantee the economic development and prosperity of Hong Kong.

- All the provisions contained in this section are basic constituents of Hong Kong's financial and monetary systems. They are drafted in accordance with the Joint Declaration and will be conducive to the maintenance of Hong Kong's status as an international financial centre. They will also provide Hong Kong people with greater financial freedom.

1.2 Other views

- The "low-tax policy" stipulated in Article 107, the provision that the HKSAR government shall "create conditions and take measures" for the maintenance of the status of the HKSAR as an international financial centre in Article 109 and the provision that the HKSAR shall "safeguard the free flow of all capital within, into and out of the Region" in Article 112 are all biased towards the interests of the capitalists. In defining the economic commitments of the HKSAR government, these provisions have in fact laid down the financial policies of the future government.
- The main problem with Section 2 is repetitiveness. Also, some of the provisions are vague and others inflexible. For instance, repetition is found in Articles 112 (free flow of capital within, into and out of the Region) and 113 (free operation of financial business and financial markets).

2. Suggestions

- Articles 110 to 114 should be deleted and replaced by the following article: "The government of the HKSAR shall practise free and open financial policies. No exchange control policies and no restrictions on the free flow of capital within, into or out of the Region shall be applied."
- The HKSAR should exercise some form of exchange control to prevent a massive flow of capital (a certain percentage of the M1 in Hong Kong) into or out of the Region. The pegged exchange rate, negative interest rate and other similar measures currently practised in Hong Kong should

be abolished. There should be stronger control over speculation in the foreign exchange, gold, securities, futures and property markets.

- Articles 110, 113, 114 and 115 should be merged to read:
"The HKSAR shall continue to practise free and open monetary and financial policies and shall not apply exchange controls. Markets for foreign exchange, gold, securities and futures shall continue to operate. The government of the HKSAR shall safeguard the free flow of capital within, into and out of the Region and safeguard the free operation of financial business and financial markets. The Hong Kong dollar, as the legal tender in the HKSAR, shall continue to circulate and remain freely convertible. The new and old Hong Kong dollars shall have the same value. The authority to issue Hong Kong currency is vested in the government of the HKSAR. The government of the HKSAR may authorize 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 object of maintaining the stability of the currency."

(Note: The Hong Kong dollar may be dealt with separately in another article by merging the original Articles 114 and 115.)

1. Original text

The government of the Hong Kong Special Administrative Region shall create conditions and take measures for the maintenance of the status of the Hong Kong Special Administrative Region as an international financial centre.

2. Views

- This article should be retained.

Reason: - This article will determine whether or not Hong Kong's economic prosperity can be maintained. And since it is also contained in the Joint Declaration, it would therefore be inappropriate to delete the article.

- It is both appropriate and necessary to maintain the status of the HKSAR as an international financial centre.
- Although this provision could affect the flexibility of the HKSAR government, it should be retained because a free and open economy is crucial to Hong Kong's existence.
- It is unrealistic to impose such a responsibility on the HKSAR government because the status of an international financial centre is a competitive one. If for reasons such as legislative changes or increased efficiency through the expansion of scale, another area becomes more attractive, there is nothing that the HKSAR government can do. The status of Hong Kong as an international financial centre cannot be unilaterally guaranteed by the HKSAR government.
- Many problems will arise if it is desired that Hong Kong should remain an international financial centre even without the necessary conditions. The financial industry will only be sustained by ever-growing production and trade. Otherwise there will just be speculation and the irrational utilization of scarce resources.
- This article is just an optimistic remark made in time of economic prosperity. It does not provide any contingency guidelines for serious economic recessions.
- This article is devoid of meaning and is not a legal provision.
- There is no need to stipulate in the Basic Law that the HKSAR shall maintain the status as an international financial centre. Such a status will come naturally with

the continued implementation of existing financial policies.

- The following prerequisites must be fulfilled if this article is to be realized:
 - (1) The monetary and financial management systems should be prescribed by laws which are in conformity with international standards and are objective.
 - (2) No exchange control should be applied (Article 111).
 - (3) The Hong Kong dollar must be stable (Article 116 will provide the necessary safeguards).
 - (4) There must be a low-tax policy (Article 107).
 - (5) There must be an open financial market (Article 113).
 - (6) There must be far-sighted and comprehensive economic analyses and trend.
- Hong Kong must continue to practise free and open monetary and financial policies if its status as an international financial centre is to be maintained.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reason: - This article turns a moral obligation of the government into a responsibility. This will cause the government unnecessary trouble and will not bring Hong Kong's financial industry any substantial advantages.

- Such wording as "create conditions and take measures" should be deleted.

Reasons: - These words are not found in Paragraph 1, Section VII under Annex I to the Joint Declaration.

- These expressions, together with the provisions of Article 111, will give the financial industry and the four financial markets too special a status.

3.2 Amendments

- The following amendment could be considered: "The government of the HKSAR shall provide the legislation and the economic environment necessary for the maintenance of

the status of the HKSAR as an international financial centre."

- This article should be amended to read: "The government of the HKSAR shall create conditions necessary for the maintenance of the status of the HKSAR as an international financial centre."
- This article should be amended to read: "The government of the HKSAR shall create the environment and conditions necessary for the maintenance of the status of the HKSAR as an international financial centre."

Reasons: - The Basic Law should not promise that the government will take measures to guarantee the development of a particular sector.

- A financial centre is constantly developing, it simply cannot be maintained.
- This article should be amended to read: "The government of the HKSAR must continue to create conditions to help the HKSAR maintain and develop its status as an international financial centre."
- This article should be amended to read: "The HKSAR shall maintain the status of Hong Kong as an international financial centre."
- This article should be amended to read: "The HKSAR shall continue to maintain its status as an international financial centre."
- The clause "the maintenance of the status as an international financial centre" should be amended to read "necessary for the continuous development of the HKSAR as an international financial centre".

Reason: - The word "status" does not imply any specific conditions and therefore does not convey a sense of necessity.

3.3 Addition

- The following provision should be added: "When a financial or monetary crisis emerges in the HKSAR, the Central People's Government shall take immediate measures to provide overall and substantial support."

3.4 Other suggestion

- This article should not be written into the Basic Law. It should be placed in an annex.

1. Original text

The Hong Kong Special Administrative Region shall continue to practise free and open monetary and financial policies. Its monetary and financial systems shall be governed by law.

2. Views

- The provision in the second sentence that the monetary and financial systems of the HKSAR shall be governed by law is acceptable because the wording is more flexible and will allow reforms.
- At present, the issuing of the Hong Kong dollar and the fixing of the interest rate and the exchange rates are not "free and open". Then, how will such policies continue to be so?
- The contents of Articles 109 to 113 are included here.
- "Free and open financial policies" is theoretically sound. But if the word "monetary" is inserted, it will be debatable. In fact, the Hong Kong Government has realized that its financial policies in recent years have been much too loose, and thus causing economic instability. It has therefore decided to impose tight control to regulate such policies. It is difficult to say whether these financial policies will still be referred to as "free and open" in the future. As monetary policies are closely related to financial policies, for instance, too large an expansion in credits and loans will create financial instability, how to make these two kinds of policies coordinate with each other is a task much too difficult to be fulfilled by the simple expression "free and open". As the two kinds of policies are based on different concepts and have different objectives, unless very professional terminology is used, putting them together will give rise to problems.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reason: - It imposes too many restrictions on the HKSAR government.

- The first sentence is a policy provision, and should therefore be deleted.

- The expression "continue to" is not really necessary. As the financial industry is fast-changing, provisions should be written in such a way as to allow greater flexibility. Another thing is that while financial policies can be "free and open", monetary policies cannot. Central banks and monetary control authorities all over the world are striving to control the money supply in their countries or regions so as to ensure its stable growth and to prevent runaway inflation and production decline. In this connection, there is no such thing as "free and open".

- This article should be amended to read: "The HKSAR shall have the power to enact legislation concerning monetary and financial policies on its own. The monetary and financial systems of the HKSAR shall be prescribed by law."

Reason: - It is too stringent to prescribe that the HKSAR shall continue to practise "free and open monetary and financial policies".

- This article should be amended in accordance with the wording used in the Joint Declaration: "The HKSAR may decide its monetary and financial policies on its own."

- This article should be amended to read: "The monetary and financial systems of the HKSAR shall be prescribed by law."

- The first sentence of this article should be amended to read: "The government of the HKSAR shall formulate monetary and fiscal policies on its own."

Reason: - The present article is very ambiguous. The expression "free and open" is not an appropriate descriptive term unless clarification is provided in professional terminology. The suggested amendment will enable the future government to cope with contingencies. This is very important.

- The last sentence of this article should be amended to read: "The monetary and financial systems shall be governed by this principle."

- This article should be amended to read: "The government of the HKSAR shall formulate the monetary and financial systems on its own."

Reasons: - These are matters of policy which cannot be prescribed by law.

- It is unrealistic to lay down monetary and

financial policies in the Basic Law. Such policies should be decided by the HKSAR government in the light of the actual situation.

3.3 Other suggestions

- The provision "[t]he HKSAR shall continue to practise free and open monetary and financial policies" should be written into a policy annex.
- High-calibre technicians should be recruited to print and mint Hong Kong currency. The HKSAR should also join international investigating bodies as a safeguard against currency forgery and to consolidate the financial base.

Article 111

1. Original text

No exchange control policies shall be applied in the Hong Kong Special Administrative Region. Markets for foreign exchange, gold, securities and futures shall continue.

2. Views

2.1 Supporting views

- Support is expressed for this article.

Reason: - It will increase the confidence of investors and facilitate the free flow of goods and capital within, into and out of the HKSAR.

- This is a policy which accords with the current trend.
- The Hong Kong Government does not exercise any exchange control and, unlike in China and Taiwan, foreign exchange can be freely bought and sold in the territory. If this article is not included, there is no guarantee that the economy will continue to prosper.
- If Hong Kong's financial market operates normally in the 50 years after the establishment of the HKSAR, foreign exchange control will not be necessary. Besides, this provision is clearly stated in the Joint Declaration, and therefore should not be deleted.
- Although there was foreign exchange control in Hong Kong before 1972, no one would welcome it under the present circumstances. The deletion of this article will shake people's confidence and even cause panic. Besides, this provision is taken from the Joint Declaration, and therefore should not be deleted.

2.2 Opposing views

- It is unrealistic not to exercise exchange control.

Reason: - Several decades ago, there was a Foreign Exchange Control Bureau in Hong Kong and permission was required to remit foreign exchange out of the territory. At present, there is no need to exercise foreign exchange control because Hong Kong earns more foreign exchange than it spends. Control will be necessary if more foreign exchange is spent than earned. The present stringent provision will only cause embarrassment to the future

- The provision "[n]o exchange control shall be applied" deserves more careful consideration as it lacks flexibility and will put the HKSAR government in an inactive position.

2.3 Other views

- The markets must be under supervision.
- Neither the Chinese nor the English version of this article reflect the current situation, that is, open but controlled markets.

3. Suggestions

3.1 Deletions

- The sentence "[m]arkets for foreign exchange, gold, securities and futures shall continue" should be deleted.

Reason: - Such a specific provision will limit future financial development.

- The sentence "[n]o exchange control shall be applied in the HKSAR" should be deleted.

Reason: - During the run-up to 1997 and for a few years thereafter, there is likely to be foreign exchange speculation due to political changes (including short-term international hot money and the emigration of Hong Kong people). The present provision will turn the HKSAR government into a lame duck, unable to do anything about the above-mentioned situation.

3.2 Amendments

- This article should be amended to read: "The government shall have the power to issue licences for foreign exchange, gold, securities and futures."

Reasons: - This implies that the government will have the power to set up the relevant exchanges and the right to suspend their licence to operate.

- There may be circumstances where foreign exchange control will be necessary.

- Whether or not "markets for foreign exchange, gold, securities and future shall continue" is really a matter for the HKSAR government to decide.

- The word "etc." should be added at the end of the article so that the provision will be the same as that in Paragraph 3 (7) of the Joint Declaration.

Reason: - Markets for other types of commodities should also be allowed to continue.

- This article should be amended to read: "The HKSAR shall allow all commodity and financial markets to continue."
- This article should be amended to read: "The government of the HKSAR shall continue to allow markets for foreign exchange, gold, securities, and futures to operate."
- This article should be amended to read: "The government of the HKSAR shall continue to allow markets for foreign exchange, gold, securities and futures to operate. No foreign exchange control policies may be applied without the endorsement of a two-thirds majority of the Legislative Council."

Reason: - Foreign exchange control is sometimes inevitable. Foreign exchange control was in fact practised for many years after World War II and was only stopped in recent years.

- This article should be amended to read: "In principle, no foreign exchange control policies shall be applied in the HKSAR. Markets for foreign exchange, gold, securities and futures shall continue. In cases of emergency, markets for foreign exchange, gold, securities and futures may be closed temporarily with the consent of three-quarters of the members of the Legislative Council, three-quarters of the members of the Executive Council and the Chief Executive."

Reason: - The Basic Law should not stipulate that foreign exchange control policies will not be applied in the HKSAR because foreign exchange transactions might have to be subject to control or stopped under special circumstances.

- The word "applied" should read "adopted".

3.3 Additions

- The term "commodity market" should be added.
- If the term "foreign currency" is added to the article, it might overlap with "foreign exchange". Further discussion is necessary. From the experience gained in the October 1987 stock market crash, the government should at least reserve the power to intervene in respect of the Hang Seng Futures Index, as a measure of contingency and as a means of safeguarding the overall interests.

- The term "foreign currency" should be added to the list of markets presented in the article.

Reason: - The foreign currency market is one of the avenues by which Hong Kong people make money and it is the existence of this market that makes Hong Kong a financial centre.

3.4 Other suggestions

- This article should not be included in the Basic Law. It should be placed in a policy annex.
- This article should be merged with Article 112 to read: "No foreign exchange policies shall be applied in the HKSAR. The free flow of capital within, into and out of the Region shall be protected. Markets for foreign exchange, gold, securities and futures shall continue."

4. Issues to be clarified

- Does this article mean that in case of another market crash which compels the Joint Stock Exchange to suspend transaction, the government must intervene and order it to carry on its business?
- Is the present pegged exchange rate not a kind of foreign exchange control? If it is not, why does the government not allow the Hong Kong dollar to float?
- Under the provisions of the Basic Law, will new markets be allowed to do business in Hong Kong in future?

Article 112

1. Original text

The government of the Hong Kong Special Administrative Region shall safeguard the free flow of all capital within, into and out of the Region.

2. View

- Support is expressed for this article.

2.1 Other view

- It is assumed that the reference to "free flow of capital within, into and out of" the HKSAR will permit a direct flow of capital between the HKSAR and foreign countries, rather than from the HKSAR to a foreign country by way of another part of China.

3. Suggestions

3.1 Deletion

- This article should be deleted.

Reason: - This article turns the government's moral obligation into its responsibility. This will cause the government unnecessary trouble and will not bring Hong Kong's financial industry any substantial advantages.

3.2 Amendments

- This article should be amended to read: "The HKSAR shall safeguard the free flow of all legitimate capital into and out of the Region."

Reason: - This will prevent the free flow of illegitimate assets.

- The word "safeguard" is inappropriate because it has too broad a meaning. It should be replaced by "maintain".

3.3 Other suggestion

- This article should not be included in the Basic Law. It should be placed in an annex for policy provisions.

1. Original text

The government of the Hong Kong Special Administrative Region shall safeguard the free operation of financial business and financial markets and shall regulate and supervise them in accordance with law.

2. Views

- Support is expressed for this article. The provision of this article can be regarded as proof of the principle of "a high degree of autonomy".
- This article is difficult to enforce.

3. Suggestions

3.1 This article should be deleted.

Reasons: - This article turns the government's moral obligation into its responsibility and will cause the government unnecessary trouble without bringing Hong Kong's financial industry any substantial advantages.

- Article 4 in Chapter I of the Draft Basic Law already stipulates that "the existing capitalist system and way of life shall not be changed". The policy of safeguarding freedom and exercising supervision stipulated in this article is just common sense and does not need to be specified.

3.2 Amendments

- The following provision should be written into the text of the Basic Law: "The government of the HKSAR shall regulate and supervise businesses and the financial markets." The following provision should be included in a policy annex: "The government of the HKSAR shall safeguard the free operation of financial business and the financial markets."
- This article should be amended to read: "The government of the HKSAR shall formulate and implement the necessary supervisory regulations and safeguard the free operation of financial business and the financial markets."
- The expression "free operation" should read "legitimate operation" or "lawful operation".

Reason: - This will prevent the free operation of

- This article should be amended to read: "The government of the HKSAR shall maintain the free operation of financial business and the financial markets, and shall regulate and supervise them in accordance with this principle."

Reason: - The amended provision clearly shows that the government will maintain the system of free operation and will regulate and supervise the operation of financial business and the financial markets through laws which are formulated in accordance with this principle. This is the intended meaning of the original text.

4. Issue to be clarified

- This article only requires the HKSAR government to safeguard the free operation of financial business and to regulate and supervise the sector in accordance with law. However, it does not require the government to formulate appropriate policies to promote, coordinate and encourage the development of the financial sector. Why is it that one task is stressed at the expense of the other?

Article 114

1. Original text

The Hong Kong dollar, as the legal tender in the Hong Kong Special Administrative Region, shall continue to circulate and remain freely convertible.

2. Views

2.1 Supporting views

- Support is expressed for this article.
- Support is expressed for the provision that the Hong Kong dollar shall be freely convertible.

2.2 Opposing views

- It is inappropriate to stipulate that the Hong Kong dollar shall be freely convertible.

Reason: - Whether or not the Hong Kong dollar should be freely convertible cannot be decided unilaterally by Hong Kong.

- This provision is only an optimistic projection for an ideal economic environment and fails to provide contingency plans for economic recessions.
- The meaning of this article is ambiguous. It does not tell us in relation to which foreign currency the Hong Kong dollar shall be freely convertible?

2.3 Other views

- The following provision is perhaps more appropriate than the present one: "The exchange rates of the Hong Kong dollar and the other major freely convertible foreign currencies should be stable." However, the above provision can only be taken as a guiding principle for the HKSAR government and should not be regarded as its duty because it is not something that the HKSAR government can guarantee on its own.
- The Hong Kong dollar should be freely and directly convertible into foreign currencies and should not have to be first converted into the mainland Chinese currency before it can be converted into foreign currencies.
- The Hong Kong dollar should bear a Chinese symbol and the name of Hong Kong.

Article 115

香港
基本法
條文
匯編

1. Original text

The authority to issue Hong Kong currency shall be vested in the government of the Hong Kong Special Administrative Region. The system regarding the issue of Hong Kong currency shall be prescribed by law.

The issue of Hong Kong currency shall be backed up by a reserve fund of no less than 100 per cent freely convertible foreign currency.

The government of the HKSAR may authorize 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 object of maintaining the stability of the currency.

2. View

- It may not be appropriate for the HKSAR to issue Hong Kong currency on its own.

2.1 On Paragraph 2

2.1.1 Supporting views

- The provision on a reserve fund is understandable.
- The provision regarding "a reserve fund of no less than 100 per cent" of the issued currency is reasonable.

Reasons: - Hong Kong has had a reserve fund of more than 100 per cent of the issued currency before and the Hong Kong dollar has always been very stable.

- By preventing the indiscriminate issue of Hong Kong currency, this provision can check inflation and maintain international confidence in the Hong Kong dollar.

2.1.2 Opposing views

- It is doubtful whether a reserve fund of no less than "100 per cent" is necessary.
- This paragraph will impose too many restrictions on the currency issue system. Under free competition, a country should be able to maintain a steady supply of money even without a 100 per cent reserve fund.

- The provision on a "100 per cent" reserve fund is not compatible with the present situation. It should be explained clearly why such a reserve fund is needed.
- It is not stipulated in any of the existing relevant ordinances that the issue of Hong Kong currency must be backed up by a freely convertible foreign currency reserve fund. As it is already stipulated in Paragraph 3 that any issue of currency shall be soundly based and that the arrangements for such issue are consistent with the object of maintaining the stability of the currency, it is doubted whether the provision on a reserve fund is necessary.
- The provision in Paragraph 2 is aimed at maintaining the confidence of other countries in the Hong Kong dollar. However, it is feared that the Hong Kong dollar will be subject to the influence of foreign currencies if such confidence is based on a foreign currency reserve fund.
- Precious metals can also be a type of reserve.
- As the acceptability of a certain currency is more closely related to the wealth of that particular region, it is doubted whether the provision on a reserve fund is necessary.
- The provision in Paragraph 2 lacks flexibility.

2.1.3 Other views

- The international credibility of the Hong Kong dollar is an important issue. It cannot be guaranteed by a 100 per cent reserve fund. Rather, it is determined by factors such as trade and the political, economic and social systems.
- Since the "foreign currency" mentioned in Paragraph 2 is unspecified, it is assumed that the HKSAR shall be completely free to choose the kind of foreign currency to hold as its reserve fund.
- Hong Kong cannot guarantee unilaterally that its currency will be convertible into foreign currencies. Some countries may have objections to the conversion of Hong Kong currency into their currency.
- The requirement for a "100 per cent" foreign currency reserve fund is a policy provision.
- The clause "backed up by a reserve fund of 100 per cent freely convertible foreign currency" implies that the HKSAR must look after its own economy.

2.2 On Paragraph 3

- It should be required that the currency-issuing banks be China-funded. If they are foreign banks, they shall be subject to the supervision of the Bank of China.

Reason: - This will prevent the situation where Hong Kong will lose its economic jurisdiction and also prevent the currency-issuing entity from falling into the hands of foreigners.

- Prudence must be exercised in deciding which bank will issue the new Hong Kong currency.

2.3 Other views

- The international credibility of Hong Kong currency is a cause for worry because the Renminbi is still not accepted internationally and therefore cannot support the Hong Kong dollar.
- This article carries more or less the same meaning as Article 105 (the principle of measuring expenditure by revenues).

3. Suggestions

3.1 Amendments

- Paragraph 1 should remain in the main text of the Basic Law and be amended to read: "The authority to issue Hong Kong currency shall be vested in the government of the HKSAR."

Paragraph 2 should be placed in a policy annex and amended to read: "The system regarding the issue of Hong Kong currency shall be prescribed by law."

Paragraph 3 should remain in the main text of the Basic Law.

- This article should be amended to read: "The government of the HKSAR may, without being influenced by any government, make its own decision in authorizing 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 object of maintaining the stability of the currency."
- This article should be amended to read: "The authority to issue Hong Kong currency shall be vested in the government of the HKSAR. The government may authorize the Central Bank or designated banks to issue Hong Kong currency in accordance with regulations. The issue of Hong Kong

currency shall be backed up and secured by a reserve fund of no less than 100 per cent freely convertible foreign currency."

- Hong Kong currency should be issued by the government rather than by banks.
- The provision on a reserve fund in Paragraph 2 should be amended to read: "no less than 100 per cent freely convertible currency of the same value."

Reason: - The original provision is unrealistic. Let us take the Exchange Fund as an example. As it needs to buy and sell Hong Kong currency from time to time to stabilize the exchange rate with the US dollar, it will be impossible to maintain a 100 per cent reserve fund in Hong Kong or foreign currency. (Besides, it is yet unknown whether the reserve fund will be completely in Hong Kong currency or foreign currency).

- Paragraph 2 should be amended to read: "The issue of Hong Kong currency shall be backed up by an adequate reserve fund of freely convertible foreign currency."

Reason: - The word "adequate", which also covers the meaning of "100 per cent", makes the provision flexible enough to allow the authorities to make other necessary arrangements to float the Hong Kong dollar once again. In actual practice, the future government will be able, in response to changes in the pegged exchange rate, stipulate by law at any time that a 100 per cent reserve fund shall be required.

- The contents of this article should be decided by the HKSAR government on its own.

Reasons: - These are policy issues and should not be laid down as legal provisions.

- It is impractical to make provisions on these matters in the Basic Law at this moment. These matters should be decided by the HKSAR government in the light of the actual situation.

3.2 Additions

- The following provision should be added: "Policies regarding the issue of currency and related laws shall be ultimately decided by the government of the HKSAR."

Reason: - In order to give expression to Chinese sovereignty and the sacrosanct nature of the

Basic Law, Hong Kong currency should be issued by the People's Bank of China. However, considering the sensitivity of this issue, the above provision is therefore proposed.

- The following provision should be added: "The reserve fund system may be modified with the consent of two-thirds of the members of the legislature."
- Established and financially-sound local banks with headquarters in Hong Kong might be designated as currency-issuing banks. Alternatively, the present currency-issuing banks might be authorized to continue to perform this function.
- The following provision should be added: "The reserve fund for the issue of Hong Kong currency should be decided with reference to the practices of the International Monetary Fund."

Reason: - This suggestion takes into consideration the status of Hong Kong as an international financial centre.

3.3 Other suggestion

- This article should be merged with Article 114 to read: "The Hong Kong dollar shall be the legal tender in the HKSAR. The authority to issue Hong Kong currency shall be vested in the government of the Region."

4. Issues to be clarified

- It is stipulated in this article that the issue of Hong Kong currency shall be backed up by "a reserve fund of no less than 100 per cent freely convertible foreign currency". Does this mean that the reserve fund will be in Hong Kong currency, but may be converted into foreign currency?
- What currency is the "freely convertible foreign currency" referred to in this article?
- Why should the reserve fund be held in foreign currency?
- Will the reserve fund be held exclusively in foreign currency?
- Does the "reserve fund" mentioned in this article refer to the Exchange Fund which backs up the Hong Kong dollar at present?

1. Original text

The Exchange Fund of the Hong Kong Special Administrative Region shall be managed and controlled by the government of the Region, primarily for regulating the exchange value of the Hong Kong dollar.

2. Views

- Support is expressed for this article.

Reasons: - This article is compatible with the Joint Declaration.

- This provision is a precondition for maintaining the status of the HKSAR as an international financial centre.

- Opposition is expressed to this article.

Reasons: - This article is a policy provision, as it stipulates that the Exchange Fund shall be primarily for regulating the exchange value of the Hong Kong dollar.

- The exchange value of the Hong Kong dollar to the US dollar can be regulated through the buying and selling of the Hong Kong dollar. If the Exchange Fund mentioned in this article is part of Hong Kong's foreign exchange reserve, the flexibility of the above-mentioned practice will be adversely affected.

- The HKSAR government should be answerable to the public in its management of the Exchange Fund.

3. Suggestions

3.1 Deletion

- The clause "primarily for regulating the exchange value of the Hong Kong dollar" should be deleted in order to give the government greater flexibility in this matter.

3.2 Amendment

- This article should be amended to read: "The Exchange Fund of the HKSAR shall be managed and controlled exclusively by the government of the HKSAR, primarily for regulating the exchange value of the Hong Kong dollar, and shall not be subject to the foreign exchange control exercised by the Central People's Government."

3.3 Additions

- The following provision should be added: "The profit and loss and balance of the Exchange Fund shall be announced annually in the legislature together with the budget to facilitate public supervision."
- The following provision should be added: "An annual report on the Exchange Fund shall be submitted to the Legislative Council. The report shall include its management development and assets."

Reasons: - The Exchange Fund is the property of the public. Hence, the government should be answerable to the public in this matter.

- Public disclosure of the assets of the Exchange Fund will help alleviate speculative pressure on the Hong Kong dollar.
 - This provision will strengthen public confidence in the government's ability to manage public finance.
 - It is the practice of all advanced countries to make public the assets managed by their central banks.
- The following provision should be added: "The Exchange Fund shall be used exclusively in the HKSAR."

3.4 Other suggestions

- In view of the enormous amounts involved and the fact that the ownership of this Exchange Fund has not been indicated, the following provision should be added: "If the Exchange Fund is partially or totally liquidated (and the funds transferred to other government accounts), all assets of the Fund shall be used exclusively in the HKSAR in the interests of the residents of the Region."
- It should be indicated whether or not the Exchange Fund will belong to and be used exclusively by the HKSAR and be stated that it shall not be handed over to the Central People's Government.

OVERALL COMMENTS ON SECTION 3 OF CHAPTER V

1. Suggestions

- The heading of this section should read "External Economic Relations".

Reason: - In addition to trade, this section also deals with other economic relations.

- Sections 3 and 4 should be merged under the heading "The Economic System and External Economic Relations". This heading also appears in the Joint Declaration in the Explanatory Notes to Section VI.
- The following provision should be added to Section 3: "Provinces and cities should not establish business representative offices (such as trading companies) in Hong Kong, to avoid the monopolization of trade between Hong Kong and these provinces and cities."

2. Issues to be clarified

- If China is accepted as a signatory of GATT, will Hong Kong be allowed to conclude regional agreements on free trade with other parts of China under Article 24 of GATT?
- What restrictions will Hong Kong, as an independent customs territory, be subject to when it exports goods to other parts of China?
- At present, the restrictions of COCOM (an international pact which restricts the export of advanced technology to communist countries) apply to China but not to Hong Kong. Where will the HKSAR stand in this matter?

Article 117

1. Original text

The Hong Kong Special Administrative Region shall continue the policy of free external trade and free external economic relations.

The government of the Hong Kong Special Administrative Region shall safeguard the free movement of goods, intangible assets and capital.

Investments from outside the Region shall be protected by law.

2. Views

2.1 Supporting views

- Support is expressed for the provision that investments from outside the Region shall be protected by law.
- Free trade must be maintained because it is a major contributing factor in Hong Kong's prosperity and stability.

2.2 Opposing views

- "Free trade" may be feasible during economic booms, but it is not an invariable practice.
- The second paragraph has mistaken the government's moral obligations for its duties. This will only create problems for the government, and will not bring any actual gains.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reason: - This article will only weaken Hong Kong's initiative and destroy one of the contributing factors to Hong Kong's success. The example of Singapore may serve as reference.

- Hong Kong has all along encouraged and protected domestic investments (that is, not investments from outside the Region). There is no need to make specific provisions in this regard in the Basic Law, for this will give the impression that the HKSAR government is favouring a particular type of investment.
- Provisions like "shall safeguard the free movement of

intangible assets" and "investments from outside the Region shall be protected by law" should be deleted.

Reason: - These provisions are totally unnecessary and impractical.

3.2 Amendments

- This article should be amended to read: "The government of the HKSAR shall formulate and implement systems and regulations for free external economic and trade relations, safeguard the free movement of goods, intangible assets and capital within, into and out of the Region, and protect investments from outside the Region."
- This article should be divided into the following two articles: "The government of the HKSAR shall continue the policy of free trade, including the free movement of goods and capital." "The HKSAR may establish economic relations of mutual benefit with other countries and regions. Investments from outside the Region shall be protected by law."
- Paragraph 1 should be amended to read: "The government of the HKSAR shall continue the policy of free trade and free external economic relations."

Reason: - The original text could easily give the impression that there will not be any free internal trade.

- The word "policy" in Paragraph 1 should read "principle".
- The words "intangible assets" should read "assets".
- The last paragraph should be amended to read: "Domestic investment and investment from outside the Region shall be protected by law."
- The last paragraph should be amended to read: "All investment shall be protected by law."

Reasons: - "Investments from outside the Region" implies that domestic investment will not be protected.

- It is difficult to define "investments from outside the Region".
- The present provision will encourage locally-registered companies to move their bases overseas.
- The term "all investment" includes both foreign investment and joint ventures.

3.3 Additions

- The following provision should be added: "The government of the HKSAR shall formulate policies regarding ... on its own."

Reasons: - These are policy issues and cannot be prescribed by legal provisions.

- It is unrealistic to lay down monetary and financial policies in the Basic Law. Such policies should be decided by the HKSAR government in the light of the actual situation.
- The clause "including foreign investment" should be added after "[i]nvestments from outside the Region" in Paragraph 3.

Reason: - Under the "one country, two systems" concept, investment from outside the Region may be interpreted as investment from other parts of China. The additional clause will protect foreign investments.

3.4 Rearrangements

- This article should be placed in an annex.
- The protection of foreign investment should be dealt with separately. The relevant provision could perhaps be placed after Article 6.

3.5 Other suggestions

- This article should make reference to the provision in Article 6 to illustrate the kind of protection which will be extended to investment from outside the Region.
- The extent of protection to be extended to investment from outside the Region should be specified.
- It should be stated clearly that the government shall apply the same kind of policies regarding taxation, licensing, bidding and contracts to businesses funded by capital from outside the Region and local enterprises. It may be further stipulated that the same treatment shall be accorded to Taiwan-funded enterprises.
- Domestic investment should enjoy the same protection as that given to investment from outside the Region. There should not be any distinction between the two.
- Paragraphs 1 and 2 should be retained.

4. Issues to be clarified

- Regarding the safeguarding of the free movement of goods, intangible assets and capital, are drugs and weapons also included?
- If the PRC government decides to stop all trade activities with a particular country for defence or foreign affairs reasons, will Hong Kong businessmen still be allowed to trade with that country?

Article 118

1. Original text

The Hong Kong Special Administrative Region shall remain a free port.

The Hong Kong Special Administrative Region shall not impose any tariff unless otherwise stipulated by law.

2. Views

- Support is expressed for the provisions in this article.

Reasons: - Hong Kong's status as a free port is an indispensable factor in Hong Kong's economic success.

- The status of the HKSAR as a free port is both important and necessary as it will give investors greater confidence.

- This article is self-contradictory because tariffs are not imposed in free ports.

3. Suggestions

- This article should be deleted.

- This article should be amended to read: "The government of the HKSAR shall safeguard the status of Hong Kong as a free port and shall allow free import, export, entrepot trade and re-export. In general, no tariffs or preferential tariffs shall be imposed."

- Paragraph 2 should be amended to read: "Tariffs shall be imposed in accordance with regulations."

Reason: - Tariffs constitute part of a government's tax revenue. As an entrepot for goods from all over the world, Hong Kong relies a great deal on the collection of tariffs.

- Paragraph 1 should be amended to read: "Except under special circumstances or otherwise stipulated by law, the government of the HKSAR shall not impose any tariffs against this principle and shall continue to uphold the principle of Hong Kong as a free port."

- The following provision should be added: "The government of the HKSAR shall formulate ... on its own."

Reasons: - These are policy issues and cannot be prescribed by legal provisions.

- It is unrealistic to lay down monetary and financial policies in the Basic Law. Such policies should be decided by the HKSAR government in the light of the actual situation.

- The term "free port" should be defined.

4. Issue to be clarified

- What kinds of goods are subject to tariffs in accordance with law? The meaning of the clause "stipulated by law" is unclear and needs further clarification.

1. Original text

The Hong Kong Special Administrative Region shall be a separate customs territory.

The Hong Kong Special Administrative Region may, using the name "Hong Kong, China", participate in relevant international organizations and international trade agreements, including preferential trade arrangements, such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles.

2. Views

- Support is expressed for this article.

Reasons: - This article allows the HKSAR to participate in relevant international organizations and international trade agreements as an independent customs territory.

- This article allows the HKSAR to participate in relevant international organizations and international trade agreements.

- Agreements concluded by "Hong Kong, China" with foreign countries should not have anything to do with agreements concluded by "China" with foreign countries, and they should not affect each other.

3. Suggestions

3.1 Amendments

- This article should be amended to read: "The HKSAR shall maintain its status as an independent customs territory and may, using the name "Hong Kong, China", participate in the General Agreement on Tariffs and Trade, arrangements regarding international trade in textiles and other related goods, as well as relevant international organizations and international trade agreements and arrangements, including preferential trade arrangements."
- The term "Hong Kong, China" should read "Hong Kong".

3.2 Addition

- Another article should be added to stipulate that the HKSAR government shall have the power to levy relevant tariffs.

3.3 Other suggestions

- The term "separate customs territory" is not familiar to the people of Hong Kong. An explanatory note should be provided or, alternatively, a more commonly-used term should be adopted.

- It is stipulated in this article that the HKSAR may "participate in relevant international organizations and international trade agreements, including preferential trade arrangements, such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles." This provision lacks coherence and is difficult to understand. It should be rewritten.

Article 120

1. Original text

Export quotas, tariff preferences and other similar arrangements, which are obtained by the Hong Kong Special Administrative Region or which were obtained and remain valid, shall be enjoyed exclusively by the Region.

2. Suggestions

2.1 Deletions

- This article should be deleted.
- A suggested deletion of three characters in the Chinese version. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the translation.]

2.2 Amendments

- This article should be amended to read: "Tariff preferences and other similar arrangements, which are obtained or have already been obtained by the HKSAR, shall be enjoyed exclusively by the Region. If a foreign government combines its quota for Hong Kong with that for China, the quota originally enjoyed by the HKSAR shall be retained in full by the HKSAR."
- This article should be amended to read: "Export quotas, tariff preferences and other similar arrangements, which are obtained by the HKSAR or which were obtained and remain valid, shall be enjoyed exclusively by the Region. If a foreign government combines its trade preferences and quotas for the HKSAR with those for China, the Chinese government shall return to the HKSAR all the quotas assigned to the Region, and any increases or reductions in these preferences and quotas shall be allocated to the Region proportionally."
- This article should be amended to read: "Export quotas, tariff preferences and other similar arrangements, which are obtained by the HKSAR or which were obtained and remain valid, shall be enjoyed exclusively by the Region. If a foreign government combines its trade preferences and quotas for the HKSAR with those for China, China shall return to the HKSAR all the quotas assigned to the government of the HKSAR, and any increases or reductions in these preferences and quotas shall be allocated to the Region proportionally."

Reasons: - This will ensure that the HKSAR will be able to enjoy all its export quotas and tariff

preferences.

- This will ensure that the Central Authorities will allocate the export quotas fairly.
- While the manner in which the export quotas and tariff preferences are to be divided is an issue to be resolved between China and the HKSAR, for practical operation, it will be necessary to find out how foreign countries are going to handle their quotas for China and the HKSAR. Thus, agreements must be concluded with the major countries before 1997.
- This article should be amended to read: "Export quotas, tariff preferences and other similar arrangements, which are obtained by the HKSAR or which were obtained and remain valid, shall be enjoyed exclusively by the Region. If a foreign government combines its trade preferences and quotas for the HKSAR with those for China, China shall return to the HKSAR all the preferences and quotas assigned to the Region in accordance with the original proportions and types, regardless of whether the HKSAR shall fully utilize them, and any increases or reductions in these preferences and quotas shall be allocated to the Region proportionally."
- This article should be amended to read: "Agreements concluded between Hong Kong and importing countries before the establishment of the HKSAR shall remain valid, and textile export quotas, tariff preferences and other similar arrangements which are subsequently obtained shall be enjoyed exclusively by the HKSAR. Should a country place its textile import quota for the HKSAR under a general quota for the government of the PRC, all the quotas originally assigned to the HKSAR, together with whatever additions, shall be enjoyed by the HKSAR."
- This article should be amended to read: "Export quotas, tariff preferences, the transfer and application of high technology and other similar arrangements, which are obtained by the HKSAR or were obtained and remain valid, shall be enjoyed exclusively by the Region. The Central People's Government shall not enjoy or share any of the related benefits and obligations."

Reason: - At present, high-technology products in the world are not allowed to be sold to "communist" countries. Since high technology will be the lifeline of the HKSAR in its international operations, it is necessary to ensure, both in legal provisions and in practice, that high-technology products supplied by foreign countries will be used exclusively by the HKSAR and will not be transferred to "communist

countries". This will guarantee that the HKSAR will be able to maintain its prosperity and stability.

- This article should be amended to read: "Export quotas, tariff preferences and other similar arrangements, which exist and remain valid, shall be enjoyed exclusively by the HKSAR."
- This article should be amended to read: "Quotas originally assigned by parties to the Multi-fibre Agreement and the General Agreement on Tariffs and Trade shall continue to be enjoyed and used by the HKSAR. If a foreign government combines the quotas of the HKSAR with those of the PRC, all the quotas originally assigned to the HKSAR shall continue to be enjoyed by the HKSAR. Any increases or reductions in the quotas offered by these governments shall be allocated to the HKSAR proportionally."

2.3 Other suggestions

- The rights and obligations involved in the transfer of advanced technology should be enjoyed and borne by Hong Kong.
- Many Hong Kong exporters of textile products and garments feel that this article should be expressed in more specific terms in order to ensure that Hong Kong will be able to enjoy its present share of export quotas after 1997.

Article 121

1. Original text

The Hong Kong Special Administrative Region may issue its own certificates of origin for products manufactured locally in accordance with prevailing rules of origin.

2. Views

- Support is expressed for this article.

Reason: - This article will allow the HKSAR to continue to issue certificates of origin for products manufactured locally and will further safeguard Hong Kong's status as an independent trade area.

- This article lacks substantial meaning and is difficult to implement.

3. Suggestions

3.1 Deletion

- This article is too minor to be included in the Basic Law.

3.2 Amendment

- The words "government of the" should be added before the term "HKSAR".

OVERALL COMMENTS ON SECTION 4 OF CHAPTER V

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1. Views

- The economic provisions in the Basic Law tend to favour the business sector at the expense of other sectors. The policy provisions regarding the various trades in Section 4 will become the latent causes of conflict of interest between different social strata in future.
- Section 4 contains three articles elaborating the policies of the HKSAR government regarding industry, commerce and other trades. There are many meaningless phrases in these articles, such as "free and open policies", "shall create the necessary environment and conditions for encouraging...", and "shall formulate appropriate policies to promote and co-ordinate the development of ...". As these phrases do not carry any significant meaning, they are just a waste of printing space.

2. Suggestions

- Articles 122 to 124 should be deleted.

Reasons: - Article 15 already grants the HKSAR government adequate power to deal with affairs concerning industry, commerce and various trades.

- Articles 122, 123 and 124 cover all trades in Hong Kong. It is both unrealistic and not feasible for the government to promote all trades.

- Section 4 should be put at the beginning of Chapter V as Section 1 and entitled "The Operation of Business and the Development of Various Trades". It should include the following two articles:

"The government of the HKSAR shall safeguard the free operation and competition of business and shall regulate and supervise these activities in accordance with law."

"The government of the HKSAR shall create the necessary environment and conditions for promoting and coordinating the development of all trades and shall encourage the growth of new trades."

Reasons: - To show that the HKSAR government has definite policy guidelines to follow in both micro-economic (with respect to individual businesses) and macro-economic (with respect to trades) development.

- The proposed amendment takes into consideration

the reality of capitalism, allow enough room for free operation and show an understanding of the needs of modern economies.

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諮詢
委員會

- The proposed amendment is much more precise than the original text as it provides an appropriate degree of intervention, control and supervision while promising to create the necessary environment and conditions for development.
- The following article should be added after Article 123:
"The HKSAR shall safeguard trademarks, copyrights and patents. The HKSAR shall establish a commercial arbitration body to mediate conflicts of interests in the more complicated sectors. The powers and functions of this body shall be prescribed by law. The HKSAR shall control underground economic activities and maintain the normal economic activities in society."
- It should be stipulated that Hong Kong manufacturers wishing to move their factories to other Chinese provinces and cities shall be required to obtain permits from both the Chinese and the Hong Kong authorities.

Reason: - This provision is necessary because more and more factories are moving to the mainland to exploit the cheap labour there. This will affect the employment and livelihood of Hong Kong people as well as the prosperity and stability of Hong Kong.

- The following article should be added before Article 122:
"The HKSAR shall recognize and permit the existence of capitalist exploitation. The government shall encourage and promote the progressive development of production relations in a capitalist environment on the bases of reciprocity and mutual benefit."

Reason: - There is an inherent contradiction in the promotion and protection of capitalism by a communist party. To avoid conflict and achieve mutual benefit and reciprocity, it is necessary to stipulate in the Basic Law that production relations in a capitalist environment will be protected and encouraged.

- Other than public utilities, no monopolized enterprises shall be allowed in the HKSAR. All public utilities should be managed by a supervisory system endorsed by the Legislative Council.
- In order to protect and support Hong Kong's commercial and industrial development, China-funded companies should exercise self-restraint in terms of the scale and

diversification of their operations. Their investment should primarily focus on high-technology industries and serve the needs of the "four modernizations".

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3. Issue to be clarified

- The heading of Section 4, "Industry, Commerce and Other Trades", is not very appropriate. It does not indicate which trades are covered, and which are not.

Article 122

1. Original text

The Hong Kong Special Administrative Region shall practise free and open policies regarding industry, commerce and other trades.

2. Views

2.1 Supporting view

- Support is expressed for this article.

Reason: - It can be regarded as a manifestation of the principle of "a high degree of autonomy".

2.2 Reservations

- The meaning of this article is unclear.

Reason: - Hong Kong is not practising free and open policies at present. More and more ordinances have been enacted to regulate environmental pollution, objectionable trades and labour. Also, some government concerns have been privatised (e.g., the Kowloon-Canton Railway Corporation).

- This article should be considered a policy provision and not a legal provision.

Reasons: - As its meaning is ambiguous, it cannot be legally binding.

- This will put the future HKSAR government in a predicament as to what to do.

- The courts will have difficulty judging whether the government has acted in contravention of the Basic Law. If the matter is left to the Standing Committee of the NPC to decide, any interpretation provided by the Standing Committee will be criticized as intervening in the affairs which fall within the scope of the HKSAR's "high degree of autonomy".

- This article requires careful deliberation.

Reasons: - Hong Kong is not practising completely free and open policies. There are in fact many examples to indicate the contrary. For instance, foreigners are not allowed to take up employment freely in the territory; a special licence is required for the import of rice; and

foreign investors are not allowed to own more than 50% of the shares of television broadcasting stations. This article will have far-reaching repercussions and more careful deliberation is required.

- This article contradicts Articles 123 and 124, which imply increased government involvement in industrial development.
- Whether the Hong Kong Government is actually practising free and open policies is subject to debate. Thus, this article is not in keeping with the spirit of the Joint Declaration.

3. Suggestions

3.1 Deletions

- It is suggested that this article be deleted.

Reasons: - This is a policy guideline, not a constitutional provision.

- Phrases like "free and open policies" are extremely ambiguous. They are not precise economic concepts.
- Since it is already stated in Articles 117 and 118 that the economy of the HKSAR will be of an "open type", this article is superfluous.
- Policies which contributed to success in the past may not be suitable in the future. The Basic Law should not over-stress the importance of the industrial and commercial sectors, as this will be unfair to other sectors.
- The Basic Law should not include provisions which show preference for particular trades.
- This provision is not mentioned in the Joint Declaration.

3.2 Amendments

- This article should be amended to read: "The HKSAR shall practise free and open policies regarding industry, commerce and other trades and shall safeguard the legitimate interests of all investors."
- The words "government of the" should be inserted before "HKSAR".
- This article should be amended to read: "Policies

regarding industry, commerce and other trades shall be formulated by the government of the HKSAR on its own."

Reasons: - These are policy issues and cannot be prescribed by legal provisions.

- It is unrealistic to lay down these policies in the Basic Law. Such policies should be decided by the HKSAR government in the light of actual conditions.

3.3 Additions

- The following article should be added before this article: "The HKSAR shall recognize and permit the existence of capitalist exploitation. The government shall encourage and promote the progressive development of production relations in a capitalist environment on the bases of reciprocity and mutual benefit."

Reason: - There is an inherent contradiction in the promotion and protection of capitalism by a communist party. Thus it is necessary to note such exploitative relations in the section of the Basic Law on industry and commerce and affirm the antagonism in the production relations in a capitalist environment.

- The provision "and the principle of non-intervention shall be observed" should be added.

3.4 Other suggestions

- The phrase "free and open policies" should be defined.
- The provision in this article that the HKSAR shall practise free and open policies regarding industry, commerce, and other trades should also apply to external affairs because many of these trade activities involve concluding agreements and negotiating with foreign countries.
- Industrial and commercial institutions funded by the state should be subject to the same kind of regulations and restrictions as do local industrial and commercial enterprises. They should not be given special favours or privileges simply because they are state institutions.
- The HKSAR government should not be required to practise "free and open policies". Rather, it should be stipulated that the HKSAR government shall positively implement prudent policies aimed at promoting industrial development.

- "Free and open policies" can be interpreted as policies which are against monopoly and promote free competition. They can also be interpreted as a continuation of the present policy of positive non-intervention. Which is the correct interpretation?

Article 123

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1. Original text

The government of the Hong Kong Special Administrative Region shall create the necessary environment and conditions for encouraging industrial investment, technological progress and the development of new industries.

2. Views

2.1 Supporting views

- It is a good idea to specify these matters clearly.

Reason: - This will safeguard the confidence of Hong Kong people.

- This will provide a guideline for the formulation of government policies.

2.2 Reservations

- All investments (including those in the service industry) have always been encouraged in Hong Kong. Hence there is no need to put special emphasis on industrial investment in the Basic Law. This will only diminish one of Hong Kong's factors of success -- self-motivation.

- This article needs re-consideration because it is only a policy guideline, not a legal provision.

Reasons: - It will put the future HKSAR government in a predicament as to what to do:

- The courts will have difficulty determining whether the government has acted in contravention of the Basic Law.

- If the interpretation of such a policy provision is left to the Standing Committee of the NPC, any interpretation provided by the Standing Committee will be criticized as intervening in affairs which fall within the scope of the HKSAR's "high degree of autonomy".

- This article implies the implementation of "industrial policies". It will increase the probability of government intervention in the operation of the market, leading to an increase in government spending. Under the restrictions of low tax rates, it is unfair and improper to ask the government to subsidize a particular industry.

- This provision is unreasonable. The government may fail to fulfil the requirements laid down in this article due to limited financial resources or other reasons and it should not be penalized for this.
- Reference to the HKSAR's responsibility for "creating the necessary environment and conditions for encouraging ..." is unnecessary. In any case, this provision ignores the equally, if not the more, important responsibility of the PRC not to interfere in the affairs of the HKSAR. Any such intervention will undermine the confidence of investors and render the HKSAR government's efforts futile.
- This article may provide a basis for various trades to demand direct subsidies from the government.
- The meaning of the terms "environment and conditions" is ambiguous.
- Any government will create the necessary environment and conditions for encouraging industrial investment, technological progress and the development of new industries. However, a wise government will also take into consideration the needs of the other sectors and may find it necessary to employ its funds for other purposes, thus affecting its commitment to provide the necessary environment and conditions.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reasons: - If the government bans or restricts certain obsolete or objectionable trades, it will be sued by these parties for violating the Basic Law.

- This article is only an internal policy, not a legal provision.
- The Basic Law should not provide privileged treatment to particular trades.
- To include such a provision may be viewed as an act of favouritism because what the provision sets down is in fact the duty of the government.
- This provision is not consistent with the present policy of positive non-intervention.
- There is no need to include such a provision in

- This provision is not mentioned in the Joint Declaration.
- This article contradicts Article 122. The presence of these two articles will pose a serious threat to the principle of "positive non-intervention".
- This could easily result in a situation where certain trades are favoured.

3.2 Amendments

- This article should be amended to read: "The government of the HKSAR shall create the necessary environment and conditions and appropriately deploy the resources of society for encouraging the development of industry, commerce and other trades, for technological progress as well as for the development of new industries."
- This article should be amended to read: "The government of the HKSAR shall create the necessary environment and conditions for promoting industrial development, including the development of the manufacturing industry, and shall expedite technological progress and develop new industries."

Reason: - In conformity with the provisions of Article 32, the government should pay attention to and shoulder the responsibility of promoting the continued development of industries (including the manufacturing industry) in Hong Kong.

- This article should be amended to read: "The government of the HKSAR shall continue to formulate appropriate policies for encouraging industrial investment, technological progress and the development of the manufacturing and the service industries."
- This article should be amended to read: "The HKSAR shall continue to practise a policy of free trade and free enterprise regarding industry, commerce and other trades."
- This article should be merged with Article 124 to read: "The government of the HKSAR shall formulate appropriate policies to promote and co-ordinate the development of finance, manufacturing, construction, commerce, tourism, real estate, transport, services, agriculture, fishery and other trades, as well as to create the necessary environment and conditions for encouraging investment, technological progress and the development of new

industries..

3.3 Addition

- It should be stated that "the HKSAR shall decide on its own" all those matters mentioned in this article.

Reasons: - These are policy issues and cannot be prescribed by legal provisions.

- It is unrealistic to lay down these policies in the Basic Law. Such policies should be decided by the HKSAR government in the light of the actual situation.

3.4 Other suggestion

- This article should be written in an annex for policy provisions.

Article 124

1. Original text

The government of the Hong Kong Special Administrative Region shall formulate appropriate policies to promote and co-ordinate the development of various trades such as commerce, tourism, real estate, transport, public utilities, services, agriculture and fishery.

2. Views

2.1 Opposing views

- This article only pays attention to some trades and neglects the others.
- This provision is unreasonable. The government may fail to fulfil the requirements laid down in this article due to limited financial resources or other reasons and it should not be penalized for this.
- During the drafting process, representatives of many trades and professions came forward to fight for the interests of their respective sectors. Those sectors which were not represented might be adversely affected. This article, which commits the future government to the task of promoting a specific number of trades, puts too heavy a responsibility on the HKSAR government.
- This article needs re-consideration because it is only a policy guideline, not a legal provision.

Reasons: - It will put the future HKSAR government in a predicament as to what to do.

- The courts will have difficulty determining whether the government has acted in contravention of the Basic Law.

- If the interpretation of such a policy provision is left to the Standing Committee of the NPC, any interpretation provided by the Standing Committee will be criticized as intervening in affairs which fall within the scope of the HKSAR's "high degree of autonomy".

- This article lacks substantial meaning and is difficult to implement.

- The meaning of "appropriate policies" is unclear.

2.2 Other view

- This article may provide a basis for various trades to demand direct subsidies from the government.

3. Suggestions

3.1 Deletion

- This article should be deleted.

Reasons: - Article 15 already grants adequate power to the HKSAR government to deal with affairs concerning these matters.

- Expressions like "appropriate policies", "promote" and "co-ordinate" reflect the worship of an omnipotent government. They go against the traditional spirit of the Hong Kong economy and are not conducive to Hong Kong's stability as they will give politicians an excuse to fight for their vested interests.
- The Basic Law should not promise that measures will be taken to encourage the development of certain trades. Also, there is bound to be omission no matter how carefully the list is prepared.
- This is a policy provision. Its inclusion in the Basic Law will affect the ability of the HKSAR government to cope with contingencies, such as an over-heated economy.
- This provision does not carry any substantial meaning.
- This provision goes against the principle of "positive non-intervention".
- There is no need to include such a provision in a constitutional instrument such as the Basic Law because all responsible governments regard this as their duty.
- This provision is not mentioned in the Joint Declaration.

3.2 Amendments

- This article should be amended to read: "The government of the HKSAR shall formulate appropriate policies to promote and co-ordinate the development of commerce, tourism, real estate, transport, public utilities, services, agriculture and fishery as well as the development of industry and various other trades."

Reasons: - The government should formulate a long-term industrial policy.

- Industry is the economic mainstay of society.

3.3 Additions

- The clause "when required" should be inserted after "[t]he government of the HKSAR shall...".

Reason: - This will avoid possible contradiction between Articles 122 and 124.

- The following provision should be added: "The formulation of these policies shall be based on the principle of non-infringement of the right of residents and their descendants to enjoy a safe and healthy environment."

- The modifiers "sea, land and air" should be inserted before the term "transport".

Reason: - To indicate that transport by cargo ships and barges will also be covered.

- It should be stated that "the HKSAR shall decide on its own" all those matters mentioned in this article.

- It should be stated that the relevant policies "shall be formulated by the HKSAR on its own".

Reasons: - These are policy issues and cannot be prescribed by legal provisions.

- It is unrealistic to lay down these policies in the Basic Law. Such policies should be decided by the HKSAR government in the light of the actual situation.

- The following provision should be added: "If special need arises, the government of the HKSAR shall take special and emergency measures to apply controls on everyday consumption."

Reason: - In the past, Hong Kong has resorted to emergency measures such as rent control and food and water rationing to tide over difficult periods.

3.4 Other suggestions

- This article should be placed in an annex.

- The word "co-ordinate" implies intervention. Appropriate amendment is necessary to do away with the suggestion of intervention.

- In the Chinese version, the list of trades ends with the Chinese equivalent of the phrase "and so on". This is felt to be unclear and clarification is suggested. [Translator's note: A suggestion on the wording of the Chinese version which will not affect the English translation.]

4. Issues to be clarified

- The term "co-ordinate" is employed in this article. Does this term imply that the HKSAR government might intervene in the development of commerce, tourism, real estate, transport, public utilities, services, agriculture and fishery?
- How will the HKSAR government treat those trades which are not listed in this article?

OVERALL COMMENTS ON SECTION 5 OF CHAPTER V

1. Views

- Section 5: "Land Leases" is taken from Annex III to the Joint Declaration. No further discussion is necessary.
- Section 5: "Land Leases" is precisely and concisely written and is therefore a desirable constitutional instrument.
- From the economic point of view, the provisions regarding the rent payable by inhabitants of the New Territories seem rather unfair as they tend to give special consideration to a particular group of people. Since these are provisions laid down in the Joint Declaration, there is no objection to their inclusion in the Basic Law, but certain amendments should be made to the wording as regards the rent to make the provisions more flexible.
- Section 5 does not seem to offer any protection or consideration for the "property owners" on Cheung Chau Island. It is hoped that supplementary provisions could be made.
- Articles 126 to 128 deal with land leases during the period of transition. A special chapter should be added to discuss issues relating to the transition period.

Article 125

1. Original text

The government of the Hong Kong Special Administrative Region may, on its own, formulate policies regarding the development, management and use of land.

2. Views

- Support is expressed for this article.

Reason: - This provision may be regarded as proof that the HKSAR will enjoy "a high degree of autonomy".

- The provisions on land leases in the Basic Law are far from perfect.

Reasons: - Multi-storey buildings were badly managed.

- There is no channel through which people can lodge their complaints.

- The collection of management fees is unreasonable.

3. Suggestions

- This article should be amended to read: "The government of the HKSAR may, on its own, formulate policies regarding the planning, development, management and use of land."

- The application of this article should be extended to policies aimed at balancing the supply of and the demand for land.

1. Original text

All leases of land granted, decided upon or renewed before the establishment of the Hong Kong Special Administrative Region which extend beyond 30 June 1997, and all rights in relation to such leases, shall continue to be recognized and protected under the law of the Region.

2. No view or suggestion has been expressed on this article.

1. Original text

As regards leases of land granted or renewed where the original leases contain no right of renewal, during the period from 27 May 1985 to 30 June 1997, which extend beyond 30 June 1997 and expire not later than 30 June 2047, the lessee is not required to pay an additional premium as from 1 July 1997, but an annual rent equivalent to 3 per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter, shall be charged.

2. Suggestions

- The provision in the Joint Declaration that leases which expire before 30 June 1997 may be extended with a rent of 3 per cent of current rateable value should also be clearly stated in the Basic Law.
- It should be stipulated that the basis on which rateable values are currently evaluated will be maintained with an appropriate system of appeal, and that appeals should be handled by the Lands Tribunal and the Court of Final Appeal in Hong Kong.

Article 128

1. Original text

In the case of old schedule lots, village lots, small houses and similar rural holdings, where the property was on 30 June 1984 held by, or, in the case of small houses, granted after that date, where property is granted to a person descended through the male line from a person who was in 1898 a resident of an established village in Hong Kong, the previous rent shall remain unchanged so long as the property is held by that person or by one of his lawful successors in the male line.

2. Views

2.1 Supporting view

- This article concerns the indigenous inhabitants of the New Territories, and any provision which safeguards the rights and interests of the indigenous inhabitants is completely in accord with the provisions laid down in Annex III to the Joint Declaration.

2.2 Opposing views

- Objection is expressed to this article as it protects the privileges and feudal conventions of the indigenous inhabitants of the New Territories.

Reasons: - The right to "small houses" currently enjoyed by the indigenous inhabitants of the New Territories is unfair to those who are not "indigenous inhabitants". In Hong Kong where land is so scarce, the continuation of such a policy will put further pressure on land supply and adversely affect the economy.

- Since it is stipulated in Article 24 that Hong Kong residents shall be equal, there should not be any distinction between the indigenous and non-indigenous inhabitants. It is therefore unreasonable to make special arrangements for the indigenous inhabitants as regards land allotment. Hong Kong residents should enjoy equal rights and be treated equally. These views should also be clearly noted in Chapter III.
- This article shows discrimination against the female population as it recognizes rights and benefits enjoyed exclusively by males.
- The arrangements regarding land owned by the indigenous

inhabitants of the New Territories and the rights and benefits related to small houses are not provided for adequately.

3. Suggestions

3.1 Deletion

- This article should be deleted.

Reasons: - With the passing of the colonial era, all benefits enjoyed by the indigenous inhabitants should be withdrawn.

- The concept of indigenous inhabitants should disappear with the transfer of sovereignty.
- This provision recognizes the validity of the unequal treaties and has a tinge of colonialism.
- The small house policy enjoyed by indigenous inhabitants confines the right of succession to the male inhabitants. This is unfair to female inhabitants.

3.2 Additions

- The following provision should be added at the end of this article: "The policy on small houses and the right of succession regarding land leases shall continue."
- Provisions on succession should be laid down.

3.3 Other suggestion

- It is proposed that male indigenous inhabitants born on or before 30 June 1997 be allowed to continue to enjoy the right to own small houses, and that everyone should be treated equally as Chinese citizens after China resumes sovereignty over Hong Kong. On the other hand, the so-called "indigenous inhabitants" who are residing abroad should be stripped of such rights forthwith.

Reason: - This will prevent social unrest which might result from the immediate abolition of the rights currently enjoyed by the "indigenous inhabitants of the New Territories".

4. Issue to be clarified

- What is meant by "similar rural holdings"?

1. Original text

Where leases of land without a right of renewal expire after the establishment of the Hong Kong Special Administrative Region, they shall be dealt with in accordance with the laws and policies formulated by the Region on its own.

2. View

- This provision will give the HKSAR government an opportunity to charge lease renewal fees.

1. Views

- The provisions in this section are clear and concise. They are acceptable constitutional provisions.
- The provisions in this section are too detailed. They should not appear under the Basic Law.

Article 130

1. Original text

The Hong Kong Special Administrative Region shall maintain Hong Kong's previous systems of shipping management and shipping regulation.

The specific functions and responsibilities of the government of the Hong Kong Special Administrative Region in respect of shipping shall be defined by it on its own.

2. View

- Support is expressed for this article.

Reason: - It accurately reflects the spirit of the Joint Declaration.

3. Suggestions

- The word "maintain" in Paragraph 1 should be amended to read "develop".

Reason: - The systems should be developed rather than simply maintained at the present level.

- The words "government of the" should be added before the term "HKSAR" in Paragraph 1.

- Although this article does indicate that the present "systems" will be maintained, there should be a specific provision allowing for changes to be instituted when required, and allowing the organizations concerned to continue playing a role in the consultation process after 1997. In other words, these organizations should continue to be allowed to submit their views and suggestions on any changes to the systems, and continue to participate in Committees, as they are doing now.

- Before supplementing or amending shipping-related ordinances or agreements, the HKSAR government should be required to consult the recognized shipping bodies.

Reason: - The current practice can thereby be maintained.

Article 131

1. Original text

The Hong Kong Special Administrative Region shall be authorized by the Central People's Government to continue to maintain a shipping register and issue related certificates under its own legislation using the name "Hong Kong, China".

2. View

- Support is expressed for this article.

Reason: - It accurately reflects the spirit of the Joint Declaration.

3. Suggestion

- The term "HKSAR" should be amended to read "government of the HKSAR".

4. Issue to be clarified

- Would it be possible to simply use the name "Hong Kong"?

1. Original text

With the exception of foreign warships, access for which requires the special permission of the Central People's Government, ships shall enjoy access to the ports of the Hong Kong Special Administrative Region in accordance with the laws of the Region.

2. View

- Support is expressed for this article.

3. Suggestion

3.1 Amendment

- The term "foreign warships" should read "foreign vessels".

Reason: - Terms like "military aircraft" and "foreign vessels" have a broader meaning.

3.2 Other suggestions

- Legal provisions governing the access of ships to the ports of Hong Kong should be quite relaxed. Excessive restrictions should be avoided so that Hong Kong can continue to be a major international dockyard.
- It should be clearly stipulated that free access to, and use of, the port facilities will continue to be given without any discrimination against, or preferential treatment to, any particular nationality of vessel.
- Nuclear-powered vessels or vessels armed with nuclear weapons should be denied access to the HKSAR.
- The Central People's Government should establish a "military liaison office" in Hong Kong to authorize the entry of military vessels and aircraft into Hong Kong.

Reasons: - This will avoid the delay as a result of having to obtain authorization from Beijing.

- Since military vessels and aircraft will only be in Hong Kong for routine activities, their requests for entry should be handled and approved without delay.

1. Original text

Private shipping businesses and shipping-related businesses and private container terminals in the Hong Kong Special Administrative Region may continue to operate freely.

2. Suggestions

2.1 Amendments

- This article should be amended to read: "Private shipping businesses, shipping-related businesses (including shipping agencies) and private container terminals in the HKSAR shall continue to operate freely."

Reason: - This will dispel the worry that the HKSAR may be required to follow the regulation currently in force in all Chinese ports which stipulates that foreign ship-owners/shipping operators must employ Chinese sole agents.

- A suggested amendment to the term "container terminals" in the Chinese version. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the translation.]
- The word "may" should be amended to read "shall".

Reason: - It is believed that the intended meaning is "shall" rather than "may".

2.2 Addition

- It should be stated that the "private shipping businesses and shipping-related businesses" referred to in this article shall include barge and tug-boat businesses which are now in operation in the ports.

2.3 Other suggestion

- It should be stipulated that "shipping agencies", shipping businesses and shipping-related businesses shall continue to operate freely.

OVERALL COMMENTS ON SECTION 7 OF CHAPTER V

1. Suggestions

- The provisions on civil aviation are too detailed. Regulations governing civil aviation should be drawn up separately and need not be included in the Basic Law.
- Articles 131 and 133 as well as the contents of Articles 135 to 140 with regard to civil aviation relations with foreign countries should be moved to Chapter VII.

Article 134

1. Original text

The government of the Hong Kong Special Administrative Region shall create conditions and take measures for the maintenance of the status of the Region as a centre of international and regional aviation.

2. View

- The meaning is unclear. The Basic Law should clearly prescribe the responsibilities of the HKSAR government rather than having a legal provision which is devoid of contents.

3. Suggestions

3.1 Deletions

- The words "create conditions and takes measures for the maintenance of" should be deleted and replaced by the word "maintain".

Reason: - There are no such additional obligations in the Joint Declaration. The maintenance of the status of the HKSAR as a centre of international and regional aviation will depend partly on the superstructure (e.g., a modern airport with supporting aviation facilities) and partly on the infrastructure (e.g., bilateral air services agreements which permit other airlines to have traffic rights in the HKSAR).

- This article should be amended to read: "The HKSAR shall continue to maintain its status as a centre of international and regional aviation."
- The word "maintenance" should be replaced with "promotion".

Reason: - Since aviation plays an important part in linking Hong Kong with other parts of the world, it should be promoted rather than simply maintained.

4. Other suggestion

- The responsibility of the HKSAR government in maintaining Hong Kong's status as a centre of international and regional aviation should be stipulated more clearly.

1. Original text

The Hong Kong Special Administrative Region shall continue 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 Hong Kong Special Administrative Region requires the special permission of the Central People's Government.

2. Views

- Support is expressed for this article.
- Hong Kong will lose its freedom to develop military technology if state-of-the art aircraft and technology are denied access to Hong Kong and China is backward in the fields of science and technology.

2.1 Other views

- Nationality markings on aircraft are mostly indicated by national flags or national emblems. The handling of this technical problem may not be as easy as it appears.
- This article will adversely affect the Taiwan-based China Airlines and airlines operated by countries which have no diplomatic relations with or are hostile to China.
- This article should also encompass the operation of non-scheduled or charter flights. However, this aspect is not clearly specified in the article.

3. Suggestions

3.1 Amendments

- A suggested amendment to the term "foreign military aircraft" in the Chinese version. [Translator's note: A suggested change in the wording of the Chinese version which will not affect the English translation.]
- The clause regarding nationality and registration markings should be amended to read: "All necessary restrictions on markings shall be drawn up by the government of the HKSAR at the time in accordance with the requirements of the Central People's Government."

3.2 Additions

- The following provision should be added at the beginning of this article: "The government of the HKSAR shall endeavour to maintain the maximum standards of safety in civil aviation."

Reason: - After 1997, there may be some fear in the international aviation circles and amongst international air travellers that Hong Kong's international airlines may cease to comply with maximum safety standards as they are doing now.

- The following provision should be added at the end of Paragraph 1: "These provisions shall also be laid down in the local regulations."

Reason: - Although in principle the operation of the Hong Kong Airport falls within the scope of local affairs, the Central People's Government should have the ultimate power in deciding provisions concerning international aviation markings.

- The following provision should be added: "Nuclear-powered aircraft or aircraft carrying nuclear weapons shall be strictly denied access to the HKSAR."

- A provision concerning non-scheduled flights should be added. Paragraph 1 should thus be amended to read: "The HKSAR shall continue the previous system of civil aviation in Hong Kong, including the procedures relating to non-scheduled air services into and out of the Region, ..."

3.3 Other suggestions

- Foreign military aircraft should only be allowed access to the HKSAR subject to the approval of the Central People's Government.

- The Central People's Government should establish a "military liaison office" in Hong Kong to authorize the entry of military vessels and aircraft into Hong Kong.

Reasons: - This will avoid the delay as a result of having to obtain authorization from Beijing.

- Since military vessels and aircraft will only be in Hong Kong for routine activities, their requests for entry should be handled and approved without delay.

- The term "foreign military aircraft" should be clearly defined. Otherwise the inclusion of this provision in the Basic Law will not serve any real purpose.

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- The following are suggested definitions of the term "foreign military aircraft":
 - (1) Aircraft that have all along belonged to foreign armed forces; and/or
 - (2) Aircraft capable of performing military duties (including aircraft carrying weapons or reconnaissance and jamming devices. Reconnaissance devices are defined as those devices that are not necessary for flight-navigation but can, in one way or another, be used to survey ground or air situations. Jamming devices are defined as those devices which can destroy or obstruct surface communications).

- The term "foreign military aircraft" should include civilian aircraft chartered by foreign military units.

Article 136

1. Original text

The Hong Kong Special Administrative Region shall be responsible on its own for matters of routine business and technical management of civil aviation, including the management of airports, the provision of air traffic services within the flight information region of the Hong Kong Special Administrative Region, and the discharge of other responsibilities allocated to it under the regional air navigation procedures of the International Civil Aviation Organization.

2. No view or suggestion has been expressed on this article.

1. Original text

The Central People's Government shall, in consultation with the government of the Hong Kong Special Administrative Region, make arrangements providing for air services between the Region and other parts of the People's Republic of China for airlines incorporated in the HKSAR and having their principal place of business in Hong Kong and other airlines of the People's Republic of China.

2. No view or suggestion has been expressed on this article.

1. Original text

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 Hong Kong Special Administrative Region and for air services between the Hong Kong Special Administrative Region 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 international air service agreements referred to in the first Paragraph of this Article, the Central People's Government shall take account of the special conditions and economic interests of the Hong Kong Special Administrative Region and consult the government of the Region.

Representatives of the government of the Hong Kong Special Administrative Region may participate, as members of the delegations of the Government of the People's Republic of China, in air service consultations with foreign governments concerning arrangements for such services referred to in the first Paragraph of this Article.

2. View

- This article in fact stipulates that the Chinese Government have overall control of Hong Kong's air services and that Hong Kong representatives will only be members of the Chinese delegation in air service negotiations. This is not in conformity with the basic principle of "one country, two systems" and is a deviation from the current practice. At present, cases related to air services are heard by a government-appointed arbitration tribunal (which is usually presided over by a judge) and decided by the Hong Kong Government. This practice applies to both local and international airlines. Naturally an airline must negotiate with the authorities concerned should it wish to land in other countries or in other parts of China. The Basic Law does not have to stipulate a provision different from the above-mentioned system because it falls within the scope of local affairs. Even at present, the landing right of military aircraft is by no means a matter of course.

3. Suggestion

- The word "may" in Paragraph 3 should be replaced by "shall".

Reason: - It is of utmost importance that Hong Kong will be represented in such negotiations.

Article 139

1. Original text

Acting under specific authorization from the Central People's Government, the government of the Hong Kong Special Administrative Region may:

- (1) renew or amend air service agreements and arrangements previously in force;
- (2) negotiate and conclude new air service agreements providing routes for airlines incorporated in the Hong Kong Special Administrative Region and having their principal place of business in Hong Kong and rights for over-flights and technical stops; and
- (3) negotiate and conclude provisional arrangements where no air service agreement with a foreign state or with another region is in force.

All scheduled air services to, from or through Hong Kong, which do not operate to, from or through the mainland of China shall be regulated by the air service agreements or provisional arrangements referred to in this Article.

2. View

- This article puts stress on the practical aspect while Article 138 seems to place stress on principles. However, they are not consistent with each other.

3. Suggestions

- The following provision should be added: "Provisions for such non-scheduled flights may also be included in the air service agreements or provisional arrangements referred to in this Article."

Reason: - This article should also apply to bilateral and other air service agreements which cover non-scheduled or charter flights, but the reference to "scheduled" in the last paragraph may lead to confusion and give the impression that Article 139 is limited to scheduled services.

- The following provision should be added at the end of Paragraph 1: "In principle, all such agreements and arrangements may be renewed or amended with the rights contained therein being as far as possible maintained."

Reason: - This requirement is stipulated in the Joint Declaration and should not be omitted here. Otherwise it will be in breach of the Joint Declaration.

Article 140

1. Original text

The Central People's Government shall give the government of the Hong Kong Special Administrative Region the authority to:

- (1) negotiate and conclude with other authorities all arrangements concerning the implementation of the air service agreements and provisional arrangements referred to in Article 139 of this Law;
- (2) issue licences to airlines incorporated in the Hong Kong Special Administrative Region and having their principal place of business in Hong Kong;
- (3) designate such airlines under the air service agreements and provisional arrangements referred to in Article 139 of this Law; and
- (4) issue permits to foreign airlines for services other than those to, from or through the mainland of China.

2. View

- The meaning of Paragraph (3) seems to be incomplete.

3. Issue to be clarified

- What is meant by "designate such airlines"?

1. Original text

Airlines incorporated and having their principal place of business in Hong Kong and civil aviation related businesses there before the establishment of the Hong Kong Special Administrative Region may continue to operate.

2. View

- The wording of this article is subject to queries. The actual intention seems to be that "all those airlines already incorporated shall have the right to continue to operate". However, even the clause "shall have the right to continue to operate" fails to give the existing airlines sufficient assurance that they will be allowed to continue to operate. In the long-run, this article will undermine the confidence of these airlines and will adversely affect airline operation in Hong Kong.

3. Suggestion

- The words "before the establishment of the HKSAR" should be deleted.

Reason: - These words, which do not appear in the relevant section of the Joint Declaration, will preclude healthy competition among airlines registered in Hong Kong.

1. Views

1.1 Supporting views

- Support is expressed for the provisions in this chapter.
- The contents of this chapter are easy to understand and reasonable.
- This chapter is less controversial and quite satisfactory to those in the education profession.
- Pleased to see that a number of undertakings and requirements designed to ensure that present systems for the study of and award of educational and professional qualifications are maintained.

1.2 Opposing views

- The concept "shall not be changed" cannot cater for the needs arising from social development.
- Many of the provisions are consolatory and showing consideration.
- Too detailed; bound to create troubles and constraints for the HKSAR government.
- The existing defect of "potential discrimination" will encourage individual sectors to try their best to safeguard their own interests through the Constitution.
- It is wrong to regard the government's moral obligations as its duties and make stipulations accordingly.
- It is discriminatory to have the provisions on education, science and culture all contained in one chapter while economy and finance are in the limelight.
- It seems that this chapter intends to empower the HKSAR government to formulate relevant social policies on its own. However, there is no need to so specify in the Basic Law as it is within the normal terms of reference of a government.
- There are inconsistencies in some of the provisions of this chapter.

Reasons: - Although the Basic Law empowers the HKSAR government to formulate various social policies, the formulation of such policies may fail to look after the interests of all social strata while maintaining the status

quo. Hence, the HKSAR government will not have much power in policy making.

- The spirit of this chapter, i.e. to maintain the relevant systems covered by this chapter and to safeguard the interests of individual strata and organizations, should not be specified in a constitutional law. The former should be in line with the pattern of social development, whereas the latter is determined by social conditions.

1.3 Reservations

- The provisions of Articles 152, 153 and 154 may be able to safeguard the continuation of the subvention system and the autonomy of voluntary organizations, but they fail to ensure a balanced development of various social services. Such provisions may not prove beneficial to the Hong Kong people.
- This chapter on the one hand provides that the existing social system be maintained but on the other, it allows the relevant policies to be formulated in future according to social changes. Such a contradiction has yet to be resolved.

2. Views on specific areas

2.1 Education

2.1.1 Views

2.1.1.1 Expressing satisfaction

- The provisions on the educational system are basically acceptable.

2.1.1.2 Expressing dissatisfaction

- The provisions on education require improvement and more details.
- The policies on education stated in this chapter are not definite in meaning.
- The Basic Law should not provide that the educational policies shall remain unchanged.
- The HKSAR's educational system and policies stipulated in the Joint Declaration are inconsistent with those stipulated in the Draft Basic Law.
- Words such as "retain", "maintain" and "continue" are frequently encountered in this chapter. These words

themselves are very undesirable.

- To include educational policies in the Basic Law will only restrict the exercise of autonomy by the HKSAR government.
- The provisions of Articles 142, 143 and 144 are contradictory.
- The provision "maintain the educational system previously practised in Hong Kong" in Article 142 and the provision "the government of the HKSAR shall on its own formulate policies on education" in Article 143 are contradictory.

Reason: - If the system is to be "maintained", then how will the government be able to "formulate on its own" the educational policies?

- The contents of Article 143 are the same as those of Article 144.

Reason: - The Education Ordinance of Hong Kong allows freedom in establishing educational institutions. Further, it is already stipulated in Article 143 that community organizations and individuals may, in accordance with law, run educational undertakings of various kinds. So there is no need to specify the scope of autonomy for schools.

2.1.1.3 Reservations

- How to ensure the future educational policies will be free from political influence depends on whether the Basic Law can be truly implemented.

2.1.2 Other suggestions

- Hong Kong's educational system should be gradually improved and not remain "unchanged for 50 years".
- The educational system of the HKSAR must be improved in the light of objective environmental changes.
- The future educational system should be viewed as a long-term social investment.
- The academic status of the HKSAR should remain unchanged.
- Educational institutions may accredit other qualifications and may confer qualifications for the education profession.

- Local permanent residents who have obtained academic awards from overseas universities should receive the same pay as degree holders of local universities do.
- Should ensure that the Central People's Government will not infringe upon the freedom of pursuing education overseas enjoyed by students in the HKSAR.
- Secondary school students in the HKSAR, be they arts students or science students, should be allowed to choose Chinese History as one of their subjects.
- The local dialect (Cantonese) should be used as the language of instruction in schools in the HKSAR. However, the use of Putonghua in schools should be gradually promoted.
- As to the language of instruction, Chinese and English should be equally important.

2.1.3 Issues to be clarified

- Are the provisions of Articles 142, 143 and 144 in conflict with each other?
- Are there any contradictions between the provisions of Articles 142 and 143?
- What are meant by "educational system" in Article 142, and "policies on education" and "policies regarding the educational system and its administration" in Article 143? How should one distinguish their differences?
- What will be the objectives, targets and principles of education in Hong Kong after 1997?
- Is it appropriate to include provisions on the principles and guidelines of educational policies in the Basic Law?
- If it is inappropriate to include provisions on the principles and guidelines of education policies in the Basic Law, then in what way should such contents be expressed?
- It is stipulated in this chapter that the HKSAR government may formulate, on its own, policies on the development and improvement of the welfare system and of sports in the light of the economic conditions and social needs. Why is it that the same has not been prescribed with regard to the educational system?
- Does "maintaining the previous system" mean maintaining the slavish characteristics of the colonial educational

2.2 Religion

2.2.1 Views

2.2.1.1 Expressing satisfaction

- The provisions on religion are acceptable.

2.2.1.2 Expressing dissatisfaction

- It is inadequate as there are no explicit stipulations on the relationship between local religious organizations and their mainland counterparts.
- The first draft Basic Law omits the 1984 statement (Joint Declaration) that religious organizations in Hongkong will not be subordinated to and will not be interfered with by religious organizations on the mainland.
- Article 149 stipulates that religious organizations may develop relations with religious organizations elsewhere. However, Article 156 specifies that the relationship between local religious organizations and their their mainland counterparts should conform to the principles of non-subordination, non-interference and mutual respect. Such a provision is wrong because obviously it is intended to minimize the exchange between local religious organizations and their mainland counterparts and to prevent the religious organizations on the mainland from being influenced by their counterparts in Hong Kong.

2.2.1.3 Reservations

- The provisions on religious freedom have basically met the expectation of religious organizations. However, there is still room for improvement and further amendments should be made. -Religious freedom has, to a certain extent, been safeguarded in the provisions. However, some of the provisions are still vague and should be further amended.

2.2.2 Other suggestions

- [Translator's note: This view is on the Chinese wording and has no relevance to the English version.]
- It should be stipulated that all religious organizations in the HKSAR may not participate in politics or interfere in government administration, and that individuals may not participate in politics or

interfere in government administration in the name of religion, or interfere in the administrative power of the religious organizations concerned on religious grounds.

- Reasons: - Religious organizations are organizations of belief and do not involve any professional expertise.
- The number of religious organizations is difficult to define. Further, each religious organization has its own doctrine. It is difficult to distinguish between proper religions and cults.
 - Members of religious organizations are easily manipulated by their organizations. Hence, it is very easy for religious organizations to incite riots.
 - When religious organizations or their members participate in politics, they are bound to be influenced by their own "doctrines".
- It should be stipulated in the Basic Law that the government of the HKSAR should not, on political grounds, restrict religious freedom or the various activities of religious organizations through legislation.

Reason: - This is to further safeguard religious freedom.

- Religious freedom must be comprehensively safeguarded. (Note: Overall Views on Chapter VI-1)
- The government of the HKSAR should ensure that the internal affairs of religious organizations will not be interfered with and religious activities will not be restricted, and should allow the religious organizations in the HKSAR to maintain or establish contacts with their foreign counterparts.
- The religious freedom enjoyed in the HKSAR should be based on the provisions of Article 18 of the "Declaration of Human Rights" of the United Nations and Articles 18 and 27 of the "International Covenant on Civil and Political Rights". Religious freedom should include freedom in the following activities:
 - (1) the freedom to exercise public worship;
 - (2) the freedom to assist believers and those who are willing to accept religious beliefs to lead a religious life;

- (3) the freedom to teach religious principles;
 - (4) the freedom to pass on and publicize one's religious belief in writing or by spoken word in public places;
 - (5) the freedom to establish institutions to allow members of the religion to live and work together according to their religious principles;
 - (6) the freedom to select, train, appoint, and allocate priests, ministers, etc.;
 - (7) the freedom to establish and run educational, cultural, medical, charitable, and social welfare institutions;
 - (8) the freedom to build, acquire, possess, or use property as the religious institutes require;
 - (9) the freedom to interact with religious authorities and communities in other parts of the world; and
 - (10) parents should have the right to arrange religious life in their own family and decide for their children the kind of religious training they receive. The SAR government shall respect decisions made by parents for their children in receiving religious education.
- It should be clearly specified that schools run by religious organizations will in particular enjoy the freedom to select teaching staff and teaching materials and to design the curriculum.
 - Religious organizations may freely develop the services they provide, choose the form of services on their own and freely employ their own staff. They may also follow their religious principles within the scopes of their services.
 - Religious organizations should enjoy their independence and uphold the principles of non-subordination, non-interference and mutual respect. They may freely participate in international activities, using the name "China, Hong Kong".
 - Non-governmental organizations and religious organizations may remain independent and not be subordinate to their mainland counterparts.
 - The future HKSAR must safeguard the freedoms of preaching, distributing pamphlets, assembly, maintaining contacts with their overseas counterparts, and

2.2.3 Issues to be clarified

- As stated in Article 156, the relationship between local non-governmental organizations in fields such as education, science, technology, culture, sports, the professions and social welfare as well as religious organizations and their mainland counterparts should be in conformity with the principles of non-subordination, non-interference and mutual respect. However, it is stated in Article 157 that, in addition to those organizations mentioned in the preceding article, health and labour organizations may maintain and develop relations with foreign countries and other regions and with relevant international organizations. Why should the relationship of various non-governmental organizations, including religious organizations, in the HKSAR with their mainland counterparts differ from that with relevant international organizations in other countries and regions?
- Are the provisions of Articles 156 and 157 clear on the relationship between the religious organizations in Hong Kong and those in other special regions (such as Macao and Taiwan) of China? It is stated in Article 149 that the religious organizations in Hong Kong may "maintain and develop their relations" with religious organizations elsewhere. Does the word "elsewhere" include the above-mentioned special regions?
- In the absence of a specific provision stating that the Catholic churches or Christian churches in Hong Kong have to follow the principle of "self-supporting, self-governing and self-propagating" practised in mainland China, does it mean that the Catholic churches in the HKSAR will be allowed to maintain contact with the Vatican?

2.3 Professional qualifications

2.3.1 Views

2.3.1.1 Expressing satisfaction

- The provisions on professional qualifications and qualifications for professional practice are acceptable.

2.3.1.2 Expressing dissatisfaction

- The provisions of Articles 152 and 156 imply that some voluntary and professional organizations will be entitled to unprecedented privileges. This is improper.

Reason: - It is an unprecedented practice in Hong Kong to specify in the form of legislation which voluntary or professional organizations may choose the form of their services in accordance with law and may assess and accredit professional qualifications on their own. This may lead to undesirable consequences.

- The provisions of Articles 152 and 156 substantially diminish the governing power of the future HKSAR government, thus giving rise to "small governments" within the HKSAR which neither come under the control of nor are accountable to the government. These "small governments" will have their own domains and will strive to safeguard their own interests and strengthen their own power. They will be detrimental to the operation of the future government.

2.3.2 Other suggestions

- Professional qualifications should continue to be recognized in the HKSAR.
- After 1997, Hong Kong may assess professional qualifications on its own and the qualifications (including academic qualifications) awarded by China should also be valid in Hong Kong. Hong Kong's present system for assessing professional qualifications has colonial overtones and must be changed.

Reason: - The present system for assessing professional qualifications has strong colonial overtones. The professions are monopolized by those holding professional qualifications awarded by Commonwealth countries. Professionals from China are being discriminated against and expelled. After China has resumed sovereignty over Hong Kong in 1997, this phenomenon should not be allowed to continue. If the academic and professional qualifications awarded by the China will not be recognized, then in what way is sovereignty given expression?

- The decision to recognize or assess professional qualifications should be made by the HKSAR government. The Chinese People's Government should not interfere in such matters.
- HKSAR may formulate policies to accredit the professional bodies. Professional organizations may accredit educational or professional qualifications and confer professional qualifications.
- Professional bodies may assess educational or

professional qualifications and accredit professional qualifications.

- When compared with those national organizations on the mainland, the professional bodies in the HKSAR should only be relatively autonomous and not totally independent.
- The independence of individual professions should be based on their own discipline. The executive authorities should not interfere in the internal administration of professional bodies.
- The "need of existing professional bodies to be free from interference from the executive authorities" should be clearly distinguished from the "authority of the legislature in setting the minimum requirements for professional qualifications" as they are two different matters.
- It should be specified that twenty years after the HKSAR is established, professional qualifications awarded by regions or countries other than China and Hong Kong will not be recognized.
- Practitioners of Western medicine from the sovereign state China should be allowed to practise in the HKSAR.

Reasons: - To save and cure people is beneficial to compatriots.

- It is unfair that the present legislation deprives Chinese doctors of their professional qualifications and qualification for professional practice.

- Medical practitioners from the sovereign state China should have the right to examine and assess all foreign medical practitioners in Hong Kong.

2.3.3 Issues to be clarified

- Will professionals be given due respect in the HKSAR?
- All existing professional bodies understand the meaning of "official professional status". However, does the term "profession" in the Basic Law specifically include or eliminate certain "secondary professions" (such as technicians, engineers or taxi drivers)?
- The interpretation of the term "profession" in Hong Kong is fundamentally different from that in China. When translating the term "profession", the definition of the term in the Chinese language is different from that in the English language. So, which definition should

prevail?

2.4 Labour

2.4.1 Views

2.4.1.1 Expressing satisfaction

- The provisions on labour are acceptable.

2.4.1.2 Expressing dissatisfaction

- The stipulations on labour protection are insufficient.
- With regard to the presentation of sub-headings and provisions, it is unfair to put labour after religion.
- Articles 155 and 157 are the only articles with provisions on labour and their contents are too insignificant to match the role played the massive working class in Hong Kong.

2.4.2 Other suggestions

- An eight-hour shift should be implemented compulsorily.
- It should be spelt out in the provisions that workers shall be entitled to full retirement benefits.
- The Basic Law should specify that workers shall enjoy the following rights:

- (1) job security
- (2) industrial safety and health
- (3) vocational training
- (4) comprehensive social security
- (5) collective bargaining through unions
- (6) reasonable wage (Note: Overall Views on Chapter VI-2)

- Apart from the freedoms listed under Article 26 of the Draft Basic Law, the labour sector should be given more and reasonable economic (employment) benefits (including the constant improvement on labour legislation, sick leave, maternity leave, medical care (should gradually become free for all), retirement benefits and employment ordinance). However, these fair and reasonable benefits should be built on a basis acceptable to both the employers and the employees, and should be included in the Basic Law as principled provisions to be revised or

improved according to actual circumstances.

- In the future HKSAR, the labour sector should be given a recognized political status.

2.5 Science, culture, sports and social services

2.5.1 Views

2.5.1.1 Expressing satisfaction

- All in all the provisions in this section are satisfactory.

2.5.1.2 Expressing dissatisfaction

- The provisions on cultural policies in this chapter are self-contradictory.

- If the Basic Law continues to support the present abnormal policy on subvention for cultural activities pursued by the Hong Kong government, it will have adverse effects on the future cultural development in Hong Kong.

- The future cultural policies provided for in the Basic Law should be based on the assumption of development and should not adhere to some of the previous controversial cultural policies.

- The clause "maintain the policy previously practised in Hong Kong in respect of subventions for organizations" in Article 152 renders the clause "the government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on culture" in Article 147 meaningless.

- The provisions on the relation between local non-governmental organizations and their counterparts in foreign countries and on the mainland are inequitable. They should be appropriately amended to provide equity.

Reason: - These provisions are inconsistent. On the one hand, they allow the organizations in the HKSAR to maintain and further develop external relations, and on the other it is provided that their relationship with their mainland counterparts must be in conformity with the principle of non-subordination.

- Articles 152, 153 and 154 are contradictory.

2.5.2 Other suggestions

- The government of the future HKSAR must reform some the

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improper cultural measures and, on the existing basis, improve and develop the subvention policy for cultural construction.

- The government of the future HKSAR should set up a department to oversee the affairs concerning "health" and "labour" and to handle such affairs involving Hong Kong and mainland provinces, autonomous regions or municipalities directly under the Central Government according to the provisions of Article 21 in the Draft Basic Law.

Reason: - Hong Kong and mainland China have different sets of rules regarding hygiene inspection and examination of food and meat.

- The provisions on social services must look after the interests of the general public in Hong Kong and should be beneficial to the development of medical and health services in the HKSAR.
- The Basic Law should stress and recognize the status of such public amenities departments as the social welfare department.

2.5.3 Issues to be clarified

- Does it imply that so long as non-governmental organizations do not ask for financial assistance from the government, they may decide on their own the form of service in accordance with law? If so, what is the difference between non-governmental organizations and all other registered companies and shops established in accordance with law?

3. Suggestions

3.1 Deletion of the whole chapter

- It is proposed that the whole chapter should be deleted.

3.2 Deletion of individual articles

- Articles 142, 143 and 144 should be deleted.

Reason: - Article 15 of the Draft Basic Law has already included the contents of these three articles.

- Article 142 should be deleted, or Articles 142 and 143 should be expressed in a way consistent with the Joint Declaration.

Reason: - Articles 142 and 143 are contradictory.

- The provision: "Schools run by religious organizations

may continue to provide religious education, including courses on religion." in the first paragraph of Article 144 should be deleted. The clause: "to provide religious education and courses on religion" should be incorporated into the third paragraph of Article 148.

Reasons: - To avoid duplication.

- Those running religious schools and colleges will of course provide religious education and courses on religion.

3.3 Merging of articles

- Articles 142 and 143 should be merged to read: "The Hong Kong Special Administrative Region shall decide its educational system on its own. The government of the Hong Kong Special Administrative Region shall formulate educational policies on its own."

- The second paragraph of Article 143 and the first paragraph of Article 144 should be merged.

- The meaning of Articles 142, 143 and 144 should be linked.

Reasons: - The contents of the three articles are contradictory.

- To make the three articles closer in meaning.

- Articles 148 and 149 should be merged.

Reason: - Article 149 involves religious organizations.

- Articles 152, 156 and 157 should be merged to form one article.

Reason: - They are all policy provisions on science, education and culture.

3.4 Amendment of the heading

- The heading of this chapter should be amended.

Reason: - The heading of this chapter does not correspond with the contents of the original text.

- It should be changed to: "Society and culture".

Reasons: - To avoid the "potential discrimination" caused by listing in detail the various fields.

- The contents of this chapter involve the various aspects of society and culture.
- To ensure that the social system will remain unchanged for 50 years.
- The heading should be amended to read: "Education, science, technology, culture, sports, health, the professions, religion, labour and social welfare".
- The heading should be amended to read: "Education, medicine and health, science, culture, sports, religion, labour and social welfare".
- The term "medicine and health" should be added after "education, science, culture".

Reasons: - To cater for Hong Kong's present conditions and leave room for further improvement.

- To boost the confidence of professionals.

- The heading should be amended to read: "Education, medicine and health, science, culture, sports, religion and social welfare".

Reason: - To reflect the "medical and health services" mentioned in Article 145.

3.5 Amendment of the text

- Articles 142 to 156 should be amended as follows:
 - " (1) The Hong Kong Special Administrative Region shall practise the capitalist social system. The Hong Kong Special Administration Region shall formulate social and the cultural policies on its own.
 - (2) The government of the Hong Kong Special Administrative Region shall on its own formulate educational policies, 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 academic qualifications. Community organizations and individuals may in accordance with law run educational undertakings of various kinds.
 - (3) The government of the Hong Kong Special Administrative Region shall formulate policies on medical and health services and on social services on its own. Community organizations and individuals may provide all kinds of medical and health services and social services in accordance with

law.

- (4) The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on science and technology and determine the various kinds of scientific and technological standards and specifications applicable to Hong Kong. The Hong Kong Special Administrative Region shall protect through legislation the achievements in scientific and technological research, patents and inventions.
- (5) The government of the Hong Kong Special Administrative Region shall formulate policies on culture and art on its own. The Hong Kong Special Administrative Region shall protect through legislation the achievements and legitimate rights and interests of authors in literary and artistic creation.
- (6) Religious organizations in the Hong Kong Special Administrative Region shall administer their own internal affairs. The Hong Kong Special Administrative Region shall protect through legislation legitimate religious activities. The relationship between religious organisations in the Hong Kong Special Administrative Region and their mainland counterparts should be in conformity with the principles of non-subordination, non-interference and mutual respect.
- (7) The Hong Kong Special Administrative Region shall enact laws on its own to assess and accredit various professional qualifications and qualifications for professional practice, and shall recognize new professions and professional bodies.
- (8) The government of the Hong Kong Special Administrative Region shall formulate policies on sports on its own. Non-governmental organizations may exist and develop in accordance with law.
- (9) The government of the Hong Kong Special Administrative Region shall implement a subvention policy for organizations in fields such as education, medicine and health, culture, art, recreation, sports, social welfare and social work.
- (10) The government of the Hong Kong Special Administrative Region shall on its own formulate laws and policies on labour in the light of economic development, social needs and labour-management consultations."

- Those provisions on labour should be put under one

section with the following contents:

- (1) The relevant provisions of the international labour conventions applicable to Hong Kong must be implemented through the laws of the Hong Kong Special Administrative Region. All the laws and policies on labour shall not contravene the spirit of these conventions.
- (2) The labour force in Hong Kong shall enjoy the freedom of choice of occupation. They shall also have the right and freedom to strike.
- (3) The labour force in Hong Kong shall enjoy the right to job security, industrial safety and health, and receive vocational training. The welfare, terms of service and rights of the labour force shall be protected by law.
- (4) The labour force in Hong Kong shall be entitled to reasonable wages and terms of service, and enjoy retirement security and protection from unemployment.
- (5) Both sexes shall be entitled to equal pay for equal work and non-discriminatory terms of service. The government of the Hong Kong Special Administrative Region shall provide auxiliary service to enable both sexes to have equal employment opportunity.
- (6) The Hong Kong Special Administrative Region shall on its own formulate, develop and improve laws and policies on labour in the light of economic development, social needs or labour-management consultations
- (7) The labour force in Hong Kong shall enjoy the right and freedom of association and to join trade unions. The trade unions in Hong Kong shall enjoy the following rights:
 - i) the rights to recognition and of collective bargaining;
 - ii) to maintain contact with overseas or international trade unions and to participate in their activities;
 - iii) to maintain relations with their mainland counterparts on the basis of equality and respect.

- The words "retain" and "improve" must be added after phrases which contain such words as "previous".

- The phrase "in accordance with law" in Articles 143, 148, 151 and 153 should be amended to read: "provided that the provisions of this Law are not contravened".

3.6 Additions to individual articles

- The following provision should be added: "The government of the Hong Kong Special Administrative Region shall implement the policy of diversified education and develop a variety of schools and courses according to social needs and on the basis of fair competition."
- The following provision should be added: "The government should provide sufficient resources for a balanced development in education."
- The following provision should be added: "The academic awards of Hong Kong residents should be recognized on the basis of fairness and such recognition should not be limited to those academic awards conferred by institutions in Hong Kong or the British Commonwealth."
- The following provision should be added: "The Hong Kong government shall recognize academic awards conferred by formal universities recognized by China and other countries and shall not only recognize universities in Hong Kong and within the British Commonwealth."
- The following provision should be added: "The government of the Hong Kong Special Administrative Region shall recognize the universities in China. Graduates of universities in China and in Hong Kong should be given equal social status. They should be given equal pay for equal work according to their academic qualifications and experience, treated as equals and not being discriminated against. Doctors, teachers and lawyers from the mainland should be given legal status."

Reasons: - All along, the Hong Kong government has not recognized the universities in China and their graduates. The graduates of mainland universities are being discriminated against and not being recruited by the Hong Kong government. This is hostility of colonialists against China.

- After 1997, China will resume sovereignty over Hong Kong. It will be illogical if the graduates of Chinese universities are recognized by the State Council but not in Hong Kong.
- The following provision should be added: "the freedom to promote atheism".

- The following provision should be added: "The press in the Hong Kong Special Administrative Region shall enjoy independence and autonomy and shall be enjoy freedom of reporting, editing, publishing, distributing and broadcasting."
- The following provision should be added: "the right of publication and the right to patent".
- The following provisions should be added:
 - (1) "Registered staff unions shall enjoy legal protection and the right to settle and handle labour-management relations, labour-management consultations and labour-management bargaining."
 - (2) "Registered staff unions may, upon the approval of the majority of the trade unions, propose amendment, addition or deletion of specific labour laws and policies."
 - (3) "Workers shall enjoy the right and freedom to join trade unions and to strike."
 - (4) "Workers shall have the right of collective bargaining."

Reason: - Both labour and management should be in a bargaining position which is legally protected, real and equal in order to reach consensus and cooperation between labour and management. Otherwise, even the "one country, two systems" will not be able to secure social stability.

- The following provision should be added: "The government of the Hong Kong Special Administrative Region shall gradually establish a policy for positive and harmonious industrial relations."

Reasons: - Most of the staff unions have not been given their due status and rights in labour-management negotiations within their trades.
- The opinions of the staff unions have not been taken into account in the formulation and amendment of labour ordinances.

- The following provision should be added: "Patents shall be granted to scientific and technological achievements."

- The following provision should be added: "The government of the Hong Kong Special Administrative Region shall maintain the previous system of public housing and shall

- on its own formulate policies on the development and improvement of the system in the light of social needs."
- The following provision should be added at the end of Article 145: "The mass media in Hong Kong may continue to use Cantonese and English and the broadcasting time shall not be restricted."
 - The following provision should be added at the end of Article 147: "The Hong Kong Special Administrative Region shall on its own formulate policies for increasing the awareness for environmental protection."
 - The following provision should be added at the end of Article 151: "The government of the Hong Kong Special Administrative Region shall on its own formulate policies on the protection of consumers."

3.7 Rearrangement

- The order of Articles 152, 153 and 154 should be rearranged in the following manner: Articles 154, 152 and 153. -Article 157 should be moved to Chapter VII and merged with Article 159.
- Reason: - Article 157 involves external affairs.

3.8 Other suggestions

- The provisions of this chapter should be included in an annex.

Reason: - The provisions of this chapter are all policy provisions.

- All the policy provisions in this chapter should be included in an annex.

Reason: - To allow the future HKSAR government more flexibility in its operation.

- Articles 145 and 147 should be included in an annex.

- Some of the policy provisions in this chapter should be deleted or moved to an annex.

- This chapter may be retained as a "second best choice" but some of the provisions must be amended.

Reasons: - To make the various sectors believe that all the existing policies and systems will not be changed after 1997.

- To avoid contradiction between articles and reduce the restraints on the policy-making

- An approach distinguishing indispensable principles from directive principles should be adopted in relation to Chapter VI.
- It should be expressly stipulated that all the provisions in this chapter serve only as guidelines for policies and are not legally binding and that the courts may not interpret the over the actual implementation of these provisions.
- Those provisions on the maintenance of the previous policies and systems should be flexible.

Reason: - To make it possible for future development.

- The provisions on labour policies and educational policies should be amended. The point that the government of the HKSAR shall formulate policies on education and labour on its own should be stressed.
- Apart from stating certain principles, the various policies should not be laid down too specifically.
- The present system should be maintained to prevent the introduction of the mainland social system and should be improved upon in future in the light of social development.
- Provided that the government of the HKSAR will not be affected in the exercise of its powers, the freedom in action and the autonomy presently enjoyed by some non-governmental organizations (such as professional and social welfare organizations) should be retained.
- Provisions on cultural and art policies should be added.

Reason: - All along, literary creation and activities in Hong Kong have not been supported by the colonial government. The inclusion of this provision will make sure that serious literature be given substantial economic support.

- The provisions on medicine, science, technology and culture in Articles 145, 146 and 147 are too simple.
- Articles 156 and 157 should either be amended or deleted.

Reasons: - The issues on health and labour are not mentioned in the Sino-British Joint Declaration.

- These two articles contain policy provisions.

4. Issue to be clarified

- What is meant by the phrase "on its own" in this chapter?

Article 142

1. Original text

The Hong Kong Special Administrative Region shall maintain the educational system previously practised in Hong Kong.

2. Views

2.1 Opposing views

- This provision is not practical.

Reason: - In an ever-changing society with education being a kind of social service, the educational system should not and cannot be separated from politics, economics, culture and technology. Hence, education cannot be and should not be unchanged.

- This provision is worrying.

Reasons: - At present, the development of education in Hong Kong is not ideal. Will it be changed for the better before 1997?

- Problems will arise if the SAR government maintain the existing system.
- If Hong Kong's present educational system is to be maintained, then the future education system will be the same and not be improved.
- The expression "educational" is vague in meaning and not justiciable.

2.2 Reservations

- If the maintenance of the previous system allows reforms, this provision is acceptable.

3. Suggestions

3.1 Deletions

- This article should be deleted. (Note 142-1)

Reasons: - The present educational system in Hong Kong is full of problems.

- An educational system should change constantly in the light of the needs in different times. To specifically stipulate that the existing educational system in Hong Kong shall remain

unchanged will restrain its development.

- This article will possibly contradict Article 143 which grants the SAR government the autonomy to formulate policies.
 - Retaining Articles 143 and 148 is sufficient.
 - In the Draft Basic Law, the scope of "the educational system previously practised in Hong Kong" has not been defined.
 - The concept of "remaining unchanged" is questionable.
- The provision to "maintain the educational system previously practised in Hong Kong" should be deleted.

Reasons: - To ensure that the SAR government will enjoy flexibility.

- To reduce possible confusion in the education profession.

3.2 Amendments

- The article should be amended to read: "The government of the Hong Kong Special Administrative Region may maintain the educational system previously practised in Hong Kong, and shall on its own formulate policies for the development and improvement of the system in the light of economic conditions and social needs."
- The article should be amended to read: "The Hong Kong Special Administrative Region may on its own set up the educational system, and shall formulate policies for the development and improvement of the system in the light of economic conditions and social needs."

Reason: - This will enable the SAR government to maintain (but not necessarily) the previous educational system and to develop and improve the system.

- The article should be amended to read: "The Hong Kong Special Administrative Region shall have the right to maintain the educational system previously practised in Hong Kong and shall on its own formulate policies to develop and improve the system."
- The article should be amended to read: "The Hong Kong Special Administrative Region shall maintain the educational system previously practised in Hong Kong and on its own formulate policies to develop the system."
- The article should be amended to read: "The educational

system in Hong Kong shall be formulated and developed democratically according to the wishes and needs of the public."

- The article should be amended to read: "The Hong Kong Special Administrative Region shall maintain the educational system previously practised in Hong Kong and shall on its own develop the system on the basis of the precious system to meet social needs."
- The article should be amended to read: "The Hong Kong Special Administrative Region shall develop its educational system on the basis of the previous one practised in Hong Kong."
- The article should be amended to read: "The Hong Kong Special Administrative Region shall develop the educational system in Hong Kong in the light of social needs."
- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall on its own decide the educational system."
- The article should be amended to read: "The Hong Kong Special Administrative Region shall continue to develop and improve its educational system on the basis of the previous one."
- The article should be amended to read: "The Hong Kong Special Administrative Region shall maintain and develop the educational system previously practised in Hong Kong."
- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall maintain the educational system previously practised in Hong Kong."
- The article should be amended to read: "The Hong Kong Special Administrative Region shall maintain and continue to develop the educational system previously practised in Hong Kong, including that for special education and adult education, to ensure that the residents of the Hong Kong Special Administrative Region will enjoy equal opportunity in education."
- The article should be amended to read: "The Hong Kong Special Administrative Region shall maintain the capitalist educational system previously practised in Hong Kong."
- The word "maintain" should be replaced by the phrase "continue to develop".
- The phrase "previously practised" should be replaced by the word "existing".

Reason: - The word "existing" is more appropriate.

3.3 Additions

- The clause "and shall on its own develop the system" should be added.
- The provision "[t]he actual implementation shall be decided by the government of the Special Administration Region" should be added.
- The clause "shall develop and improve [the system] in the light of economic conditions and social needs" should be added.
- The clause "unless for further development and improvement" should be added at the end of this article.

Reason: - The original article places undue hindrance to the healthy development of the educational system.

- The clause "may improve the existing educational system in the light of social development and needs" should be added.
- The provision: "[t]he Central Authorities shall not interfere in the education in the Hong Kong Special Administrative Region" should be added.
- The provision: "[e]ducation in the Special Administrative Region shall adhere to the basic principle of patriotism for China and Hong Kong. Apart from knowledge, students must receive education in patriotic thoughts."

Reasons: - To give expression to the spirit of one country two systems.

- To give expression to the basic principle of education.

3.4 Other suggestions

- It should be stipulated that in fiscal years with a growth in gross national product, the percentage of funds allocated to education by the government in its total expenditure should not be lower than that of the previous year.
- It should be clearly specified which system is referred to by the "system previously practised" in order to avoid misunderstanding.
- Changes in the educational system should be allowed.
- This article should allow further development.

- That the educational system shall "remain unchanged" should be understood as follows: the main structure shall remain unchanged and any change in educational policies shall not be dictated by elements relating to Hong Kong's reversion to China.

4. Issues to be clarified

- Does the word "maintain" means "remain unchanged"?
- What is meant by "the educational system previously practised in Hong Kong"?
- Are the contents of this article suitable for implementation in the Special Administrative Region after 1997?
- Most of the contents of this article are policies and guidelines in nature. Should they be included in the Basic Law?
- Under the main principle of maintaining the educational system previously practised in Hong Kong, will it be possible for Hong Kong people to study at the universities in China or for secondary school students in mainland China to further their study in Hong Kong?
- If the government of the Hong Kong Special Administrative Region should permit the University of Hong Kong to change its curriculum to a four-year one and certain secondary school principals should, in accordance with this article, initiate legal actions against the SAR government for violating the Basic Law, then with what legal principles would the court of final adjudication of the HKSAR make its ruling?

1. Original text

The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on 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 organizations and individuals may, in accordance with law, run educational undertakings of various kinds in the Hong Kong Special Administrative Region.

2. Views

2.1 Opposing views

- This article is contradictory to Article 142.

Reason: - Article 142 stipulates that the educational system previously practised in Hong Kong shall be maintained whereas this article stipulates that the HKSAR shall on its own formulate policies on education.

- Specific problems exist in this article. Some of the items on which the government of the HKSAR shall on its own formulate policies under this article are items which would normally fall within the scope of autonomy of the education institutions (e.g. universities).
- This article deprives the tertiary education institutions of the freedoms they are currently enjoying.
- This article has not stated the academic rights and freedoms in a positive manner.
- This article has not specified the academic rights and freedoms enjoyed by tertiary education institutions.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reasons: - The right to formulate policies on its own has already been provided for in Article 15 in Chapter II.

- The second paragraph should be deleted.
- The term "language of instruction" should be deleted.

Reason: - The "language of instruction" should not be decided upon by the government of the HKSAR. It should be decided upon by the Central Government.

3.2 Amendments

3.2.1 Amendment of the whole article

- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own, formulate decrees on education and pursue policies on education, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the training of teachers, the examination system, the system of academic awards and the recognition of educational qualifications. Community organizations and individuals may, in accordance with law, run educational undertakings of various kinds in the Hong Kong Special Administrative Region."

Reason: - As new knowledge and scientific technology are constantly emerging, the means and contents of education should be changed to cater for these new things. It is very difficult to determine the development, the direction and the reform of the future educational undertakings as they are yet unknown. However, there is a general rule: they must be changed and not remain unchanged for 50 years. New value systems will definitely replace the traditional ones. New ordinances will also replace those obsolete ones. Hence, decrees should first of all be formulated and then policies should be pursued in accordance with these decrees. As Hong Kong is a society governed by the rule of law and not the rule of people, all matters should be handled by following the legal principles of justice, fairness, equality and openness.

- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own and in the light of the actual situation, formulate policies on education, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system and the recognition of educational qualifications. Community organizations and individuals may, in

accordance with law, run educational undertakings of various kinds in the Hong Kong Special Administrative Region."

- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on 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. The government of the Hong Kong Special Administrative Region shall support and encourage community organizations and individuals to run educational undertakings of various kinds in the Hong Kong Special Administrative Region in accordance with law."
- The article should be amended to read: "Community organizations and individuals may, in accordance with law, run educational undertakings of various kinds in the Hong Kong Special Administrative Region and the government of the Hong Kong Special Administrative Region shall regulate and supervise such undertakings in accordance with law."

Reasons: - The scope of policies on education is too extensive, and should not be specified in the Basic Law in order to avoid omission.

- Community organizations and individuals may enjoy the freedom to run educational undertakings, but such undertakings should be under the supervision of the government in accordance with law.
- The article should be amended to read: "The government of the Hong Kong Special Administration Region shall, on the basis of the existing educational system in Hong Kong, formulate policies on education on its own, including policies regarding the educational system and its administration, the language of instructions, the allocation of funds, the examination system, the system of academic awards and the recognition of educational qualifications. Community organizations and individuals may, in accordance with law, run educational undertakings of various kinds in the Hong Kong Special Administration Region."

Reason: - This article is contradictory to Article 142.

3.2.2 Amendment of individual paragraphs

- The first paragraph should be amended to read: " Apart from maintaining the educational system previously practised in Hong Kong, the Hong Kong Special

Administrative Region may, on its own, formulate policies on education..."

- The first paragraph should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on the basis of the previous educational system to develop and improve the system, including policies regarding the educational system..."
- The first sentence in the first paragraph should be amended to read: "The government of the Hong Kong Special Administrative Region may on its own formulate and develop policies on education."

Reason: - This wording is more flexible and more accommodating.

- The term "language of instruction" should be replaced by: "[t]he language of instruction shall be Chinese. Students of higher forms may choose on their own at least one or two subjects in foreign languages. The language of instruction used by tertiary education institutions may be determined by the institutions themselves."

3.3 Additions

- The following provision should be added: "The recognition of overseas educational qualifications must be determined upon examination by the government of the Hong Kong Special Administration Region."

Reason: - Holders of foreign education certificates should not be treated equally. Recognition of their qualifications should be based on local requirement. Hence, their qualifications must be assessed by the government of the Hong Kong Special Administrative Region before deciding whether or not to recognize them.

- The following provision should be added: "When recruiting staff members for primary and secondary schools and kindergartens, the government of the Hong Kong Special Administrative Region shall in principle give priority to local graduates."

- The clause "may develop and improve the system in the light of economic conditions and social needs" should be added after "the educational system previously practised in Hong Kong".

- "Religious organizations" should be inserted after "community organizations".

3.4 Other suggestions

- The first paragraph should be expressed in the same way as the provisions on the educational system in the Sino-British Joint Declaration, or else Article 142 should be deleted.

Reasons: - To avoid contradiction with Article 142.

- To ensure that the spirit of the Sino-British Joint Declaration is given expression in the Basic Law.
- The policy on recognition of educational qualifications must be amended.
- After China resumes the exercise of sovereignty over Hong Kong, the qualifications of registered graduates from Taiwan should also be recognized.
- As sovereignty will be reverted to China in 1997, it is only fair that the educational qualifications obtained from the mainland be recognized at that time.
- Apart from those qualifications awarded by universities within the British Commonwealth, those awarded by universities in other Western countries should also be recognized.
- The policies on education should include training for teachers, which must be the responsibility of the government of the Hong Kong Special Administration Region.
- The "language of instruction" should continue to be Cantonese and English because they are the principal teaching media used in schools.
- It must be stipulated that the major form of schools in the HKSAR shall be Chinese schools and not English schools, and that the principal language of instruction shall be Chinese and not English nor any other foreign language.

4. Issues to be clarified

- Are the contents of this article suitable for implementation in the HKSAR after 1997?
- What is meant by the phrase "on its own"?
- After 1997, will the language of instruction in Hong Kong continue to be English or will it be changed to the mother tongue?
- After 1997, will the academic awards conferred by the universities in Hong Kong be recognized by foreign

countries?

- After the establishment of the HKSAR, will the qualifications of university graduates from the mainland be recognized?
- After 1997, will the government of the HKSAR continue to issue certifying documents or certificates for educational qualifications as the Hong Kong government did before the establishment of the HKSAR? And will these documents continue to be valid?

Article 144

1. Original text

Educational institutions of all kinds may retain their autonomy and enjoy academic freedom. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Schools run by religious organizations may continue to provide religious education, including courses on religion.

Students shall enjoy freedom to choose between educational institutions and to pursue their education outside the Hong Kong Special Administrative Region.

2. Views

2.1 Supporting view

- This article should be retained. (Note 144-1)

2.2 Reservations

- This article will make the HKSAR government unable to formulate policies on education on its own.
- This article has not taken into account the rights of tertiary education institutions.
- This article has failed to positively affirm academic freedoms and rights.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reason: - Retaining Articles 143 and 148 is already sufficient.

- Only the first sentence of the first paragraph should be retained. The rest should be deleted.

Reason: - The contents of the part to be deleted have already been included in the first sentence.

- The second paragraph should be deleted.

Reasons: - The freedom to pursue education outside the SAR is sufficiently safeguarded by Article 30 which provides for the freedom of entry and exit.

- Even at present, students in Hong Kong do not have complete freedom to choose their schools.

3.2 Amendments

- This article should be amended to read: "Educational institutions may retain their autonomy and enjoy academic freedom. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region.

"Students shall enjoy the freedom to choose between educational institutions and to pursue their education outside the HKSAR."

- This article should be amended to read: "Community organizations and individuals may, in accordance with law, run educational undertakings of various kinds in the Hong Kong Special Administrative Region. Educational institutions may retain their autonomy and enjoy their academic freedom. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Schools run by religious organizations may continue to provide religious education, including courses on religion.

"Students shall enjoy freedom to choose between educational institutions and to pursue their education outside the Hong Kong Special Administrative Region."

- The first paragraph should be amended to read: "Educational institutions may retain their autonomy and enjoy academic freedom. They may recruit staff and use teaching materials from the mainland. Schools run by religious organizations may continue to provide religious education, including courses on religion."
- The clause "may continue to recruit staff...from outside the Hong Kong Special Administrative Region" in the first paragraph should be replaced by "may recruit staff from the mainland".
- The clause "may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region" should be replaced by "may, through legitimate means of assessment, continue to recruit staff and experts, and use teaching materials from within or outside the Hong Kong Special Administrative Region."
- The first paragraph should be amended to read: "Educational institutions may retain their autonomy, including that of formulating policies on entrance requirements, and enjoy academic freedom. They may continue to recruit staff and use teaching materials from

outside the Hong Kong Special Administrative Region. Schools run by religious organizations may continue to provide religious education, including courses on religion."

- The second paragraph should be amended to read: "Students shall enjoy the freedom to choose between educational institutions and to pursue their education overseas or on the mainland."

3.3 Additions

- The fullstop after "courses on religion" should be replaced by a comma with the following provision added: "but such courses should be provided as an option in the curriculum. Participation in religious rituals and other religious activities by staff and students should be on a voluntary basis."

Reasons: - To promote religious freedom inside and outside schools run by religious organizations.

- To promote a liberal attitude and progress in schools run by religious organizations.

- The following provision should be added: "When formulating policies on education, the government of the Hong Kong Special Administrative Region shall continue to solicit opinions of existing educational organizations and allow members of the education profession to participate in the formulation of such policies."

- The phrase "and from various parts of the world" should be added after "from outside the Hong Kong Special Administrative Region".

- The clause "provided that such recruitment and usage should be in the interest of China and Hong Kong" should be added after "recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region".

3.4 Other suggestions

- The second sentence of the first paragraph might benefit from further consideration and modification in wording. While the matter might be better dealt with through other channels, the Basic Law should also avoid being invoked to lend constitutional support to that dubious practice in present Hong Kong.

Reason: - The freedom to provide religious education in schools is an important right. If by religious education we mean enabling the young minds to

appreciate the phenomenon of world religions and philosophies and to understand the character, ground, variety and significance of religious reasoning and living. However, it becomes a different matter when this right is interpreted as a right of religious schools to instruct their pupils, whatever their age, with articles of faith of just the schools' own particular religions -- which is not at all uncommon a practice in Hong Kong.

- The specific provisions on schools run by religious organizations may be written in more precise terms.
- Educational institutions (including tertiary education institutions) may be allowed to assess and accredit qualifications within the scope of autonomy stipulated in this article.
- The recruitment of staff should be carefully considered in order to prevent those who have other intentions or who do not live up to their reputation from introducing through academic activities a subjective world into objective sciences to undermine the scientific construction and social stability in Hong Kong.
- Tertiary education institutions must try their best to accept local permanent residents who meet the requirements as students according to the principle of producing trained manpower within the shortest period.
- It should be clearly specified that local residents shall enjoy academic freedom, including freedoms of speech, research, authorship, creation and publication.
- It should be clearly specified that religious activities held by schools run by religious organizations for evangelical purposes may continue to be conducted.
- It should be clearly specified that students and staff of schools run by religious organizations should enjoy religious freedom. Courses on religion should only be one of the subjects in the curriculum and religious activities should only be attended on a voluntary basis.
- It should be clearly specified that educational institutions in the HKSAR may promote education on ethics.

Reasons: - Parents or guardians in mainland China are not allowed to teach their children or their wards unorthodox thinking, otherwise they would have violated Articles 24 and 51 of the Constitution of the PRC. This article which only allows schools run by religious

organizations in the SAR to promote moral education is in conflict with Paragraph 4 of Article 18 of the "International Covenant on Civil and Political Rights".

- Chinese students and staff members of schools run by religious organizations in Hong Kong have for a long time been subject to religious preaching, and tempted or coerced to take up religious faith. This practice should be changed following the end of colonial rule.

4. Issues to be clarified

- Are the contents of this article suitable for implementation in the HKSAR after 1997?
- Should "educational institutions" be strictly defined as universities, tertiary education institutions, etc., and exclude primary and secondary schools?
- It is specified in this article that "educational institutions may retain their autonomy and enjoy academic freedom". But to what extent?
- Will it be possible for schools run by religious organizations to conduct religious activities after school?

Article 145

1. Original text

The government of the Hong Kong Special Administrative Region shall promote the development of medical and health services and the development of Western and Chinese traditional medicine, and encourage community organizations and individuals to provide medical and health services of various kinds.

2. Views

2.1 Supporting view

- Support is expressed for this article.

Reason: - It gives Chinese medicine and medical practitioners a chance to develop in the future.

- This article allows the residents of the HKSAR to choose the form of medical service, which is a fundamental civil right.

2.2 Opposing views

- This article is kind of a slogan.
- According to this provision, any organization or individual may provide medical services, including substandard and illegal medical services. Such a provision is dangerous.
- This article may lead to the HKSAR government being brought to court on the grounds that it is not fulfilling its obligations. It also removes from the HKSAR government the authority of deciding on its own policies.
- The mention of the term "Chinese traditional medicine" in the text is to satisfy those who advocate Chinese medicine. Chinese medicine has its merits but there would be difficulties in its actual promotion. At present, the attitude adopted by the government is more of "tacit consent" than "promotion".

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reason: - This article is a policy provision and should

- The words "Western and Chinese traditional" should be deleted from the phrase "the development of Western and Chinese traditional medicine".

Reason: - The phrase "the development of medicine" will suffice. It would be better if detailed regulations could be formulated by the HKSAR government on its own.

3.2 Amendments

3.2.1 Amendment of the whole article

- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall on its own formulate medical policies and shall promote the development of medical and health services."

Reason: - The original text is suspected to be a policy provision and should therefore be amended.

- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall on its own formulate policies on medical services."

- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall on its own formulate policies on medical services. Community organizations and individuals may, in accordance with law, provide various kinds of medical and health services in the Hong Kong Special Administrative Region. These services shall be regulated and supervised by the government of the Hong Kong Special Administrative in accordance with law."

Reason: - The last sentence of the original text: "...and encourage community organizations and individuals to provide medical and health services of various kinds" has the implication of encouraging privatization through a constitutional instrument.

- The article should be amended to read: "The Hong Kong Special Administrative Region shall, on its own, formulate policies on medical and health services, and continue to develop these policies."

- The article should be amended to read: "The government of the Hong Kong Special Administrative Region may, on its own, formulate policies on medical and health services, and develop and improve the previous medical system. It shall promote medical and health services and the development of Chinese and Western medicine, and

encourage community organizations and individuals to provide medical and health services of various kinds."

- The article should be amended to read: "The Hong Kong Special Administrative Region shall on its own formulate policies on medical and health services, and shall develop modern and Chinese traditional medicine. Community organizations and individuals may, in accordance with law, provide medical and health services of various kinds in the Hong Kong Special Administrative Region."
- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall promote medical and health services, Chinese and Western medicine and its development..."

Reason: - The Hong Kong government has all along adopted the attitude of tacit consent regarding Chinese medicine. Hence, more specific stipulations should be included in the Basic Law in order to show respect for Chinese medicine.

- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall promote the development of medical and health services and the development of medicine, and encourage community organizations and individuals to provide medical and health services of various kinds in accordance with the law."

Reasons: - Whereas Western medicine is well governed by rules and regulations, laws and ordinances, and its practitioners are all members of a recognized and fully qualified profession, practitioners of traditional Chinese medicine are not recognized by law and in fact can be said to be completely beyond the supervision of law.

- To mix up Western and Chinese traditional medicine is not only a travesty of the true state of affairs, but also will create a dangerous precedent for the future SAR government.
- After (or even before) 1997, if practitioners of traditional Chinese medicine deemed it fit to organize themselves along professional lines and apply to the government to be so recognized, then provisions in Article 150, namely: "The government of the Hong Kong Special Administrative Region may, as required by developments in society and in

consultation with the parties concerned. recognize new professions and professional organizations" may allow them to be so recognized and regulated. But before that becomes a reality, the words "Western and Chinese traditional medicine" should not be allowed to appear together in the Basic Law.

- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall promote the development of medical and health services and medicine, and shall at least provide the kinds of medical and health services previously offered."

Reasons: - There is no need to lay emphasis on the words "Western" and "Chinese".

- Medical and health services are important welfare services to the public. The government has the responsibility to provide the most essential services.

- If the term "medicine" is used, the scope of the provision will be expanded.

- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall allow government organizations and individuals to provide medical and health services of various kinds in the light of actual social needs. The government should promote the development of medical science."

Reasons: - Medical services affect the life of the public to a great extent and should therefore deserve much attention of the government.

- In accordance with the wishes of the public and commensurate with the allocation of social resources, medical work at different levels should be taken up by medical staff of different levels in order to achieve higher efficiency and be able to meet social needs.

- Medicine is a science of precision. Its research and development should be guided by the government. On the one hand, it should meet the scientific criteria and on the other, it should be in line with the rational and effective utilization of resources.

- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall be responsible for the maintenance and development of health services. It shall promote other medical services

and development of Western and Chinese traditional medicine, and encourage community organizations and individuals to promote medical and health services of various kinds."

3.2.2 Amendment of individual provisions

- The word "encourage" should be replaced by "allow".
- The word "development" should be replaced by "institutionalization".

Reason: - Under British rule, the practice of Chinese traditional medicine in Hong Kong has been terribly anarchic, and the government medical department and professional bodies of the Western-trained doctors are generally quite hostile to, and ignorant about, Chinese medicine. Therefore, if it is felt that the SAR government ought to promote the "development" of Chinese traditional medicine, the wording must not be too vague.

3.3 Additions

- The following provision should be added: "Religious organizations shall enjoy the freedom to provide medical and health services and to pursue the policies of their own churches within the scope of services provided."
- The term "religious organizations" should be inserted in the clause "encourage community organizations and individuals to provide medical and health services of various kinds".
- The term "religious organizations" should be added after "community organizations".
- The clause "to formulate policies on medical services on its own" should be added.
- The word "legitimate" should be added before "medical and health services".
- The clause "in accordance with the existing laws" should be added at the end of the sentence.
- The provision that the government of the HKSAR shall assess the qualification of, and register and issue licences for practice to Western and Chinese medical practitioners should be specifically stated.

3.4 Other suggestions

- Clauses of a supervisory nature should be added.

Reason: - To ensure that the quality of medical services is the responsibility of the government.

- The government of the HKSAR shall not only be required to "promote" medical and health services, it should also fulfil its obligation to provide cheap medical services to the public.

Reason: - To provide medical services to those with low income.

- It should be specified that the Chinese medical practitioners and Chinese medicine in Hong Kong shall be given legal status.

Reasons: - For more than a century, the Hong Kong government has not recognized Chinese medical practitioners and Chinese medicine. As a result, they have not been given official and legal status in Hong Kong.

- To avoid interference in the tradition of Chinese medicine.

- Chinese medical practitioners are professionals recognized by the Chinese government and their status should therefore be protected.

- It is proposed that the medical certificates and certificates for sick leaves issued by Chinese medical practitioners should be recognized and given legal status and should not be prejudiced against.

- Medical services should not be privately run.

- The words "Western and Chinese traditional" in "the development of Western and Chinese traditional medicine" should be retained.

Reasons: - At present, the Hong Kong government has not recognized the professional status of Chinese medical practitioners. But after 1997, they should be recognized as professionals.

- The existing medical and health services in China include Chinese medicine, Western medicine and the combination of the two. As Chinese medicine and medical practitioners are beginning to be recognized internationally, Chinese traditional medicine should not be disdained.

- Chinese medicine and Chinese medical practitioners are interdependent. Is this article implying that Chinese and Western medical practitioners, and Chinese and Western medicine will all be given equal attention and status?

Article 146

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基本法
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1. Original text

The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on science and technology. The Hong Kong Special Administrative Region shall protect, by law, achievements in scientific and technological research, patents, discoveries and inventions.

The government of the Hong Kong Special Administrative Region shall, on its own, decide on the scientific and technological standards and specifications applicable in Hong Kong.

2. Views

2.1 Supporting views

- Support is expressed for this article.

Reason: - In order to continue to obtain advanced technology to promote the development of technology in Hong Kong, it is necessary to protect the achievements in scientific and technological research, patents, discoveries and inventions.

- Support is expressed for the provision that the HKSAR should protect by law the achievements in scientific and technological research, patents, discoveries and inventions.

2.2 Reservations

- The article has not specifically stated the way in which the SAR will achieve the objective of "protecting by law the achievements in scientific and technological research, patents, discoveries and inventions". To achieve this objective, there must be an internationally recognized system which has yet to be established.
- The words "on its own" in this article imply that the SAR may formulate policies on science and technology independently without asking for instructions from the Central People's Government.

3. Suggestions

3.1 Amendments

3.1.1 Amendment of the whole article

- The article should be amended to read: "The Hong Kong

Special Administrative Region shall protect the achievements in scientific and technological research, patents, discoveries and inventions by the patent law of the PRC, the regulations for its implementation and the valid international agreements signed by the PRC. A branch office directly under the patent office of the PRC shall be established in the Hong Kong Special Administrative Region to handle patent applications and to issue certificates of first registration to the applicants."

- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall on its own formulate policies on science and technology, and shall encourage and protect by law the achievements in scientific and technological research, patents, discoveries and inventions. The government of the Hong Kong Special Administrative Region shall, on its own, decide on the various scientific and technological standards and specifications applicable in Hong Kong."
- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall on its own formulate policies on science and technology. The Hong Kong Special Administrative Region shall protect by law patented commodities, designs and copyrights and manage an internationally recognized organization for registration and regulatory control. The government of the Hong Kong Special Administrative Region shall, upon consulting the relevant organizations, decide on the various scientific and technological standards and specifications applicable in Hong Kong."
- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on science and technology. The Hong Kong Special Administrative Region shall protect by law achievements in scientific and technological research, patents, copyrights, discoveries and inventions. The government of the Hong Kong Special Administrative Region shall consult the relevant organizations and on its own decide on the scientific and technological standards and specifications and codes of practice applicable in Hong Kong."

Reasons: - The policies on science and technology should be formulated by the government of the Hong Kong Special Administrative Region after adequate consultation with professional organizations.

- It is proposed that the word "copyrights" be added to the first sentence to cover that aspect.

3.1.2 Amendment of individual paragraphs

- The first paragraph should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on science and technology. The Hong Kong Special Administrative Region shall protect inventions, designs and other scientific and technological achievements as well as rights and interests in names and trademarks by itself granting patents, registered designs, registered trademarks and such other industrial and intellectual property rights in the manner and for the duration as shall be provided for by law."
- The second paragraph should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own, decide after adequate consultation with relevant organizations on the scientific and technological standards and specifications and codes of practice applicable in Hong Kong."
- The phrase "on its own" should be changed to "in consultation with local and international experts".

Reason: - The phrase "on its own" implies a totalitarian or arbitrary ruling without extensive consultation.

- The phrase "achievements in ...research" should be replaced by "work of...research".

Reason: - Achievements in research are attained after certain conceptual thinking and activities. Only by replacing the word "achievements" with "work" will the pattern of innovation be followed.

3.2 Addition

- The following provision should be added: "The government of the Hong Kong Special Administrative Region shall, in particular, encourage the development of education on high technology and raise the level of scientific awareness among the Hong Kong public."

3.3 Other suggestions

- The second sentence of the first paragraph should be amended so that design copyrights will also be protected by law by the HKSAR.
- The second paragraph should be amended so that the scientific and technological standards and specifications shall be decided on by the government of the Hong Kong Special Administrative Region after consultation with the

relevant professional bodies.

香港
法律
研究
中心

4. Issue to be clarified

- The Basic Law gives the HKSAR government the duty to protect a series of science and technology. But will it be possible for the HKSAR government to protect by law any such information from being taken over by the Central Authorities? Would this takeover constitute an act of state? What safeguard the Basic Law would offer in this respect?

Article 147

1. Original text

The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on culture and protect the achievements and the legitimate rights and interests of authors in their literary and artistic pursuits.

2. Views

2.1 Supporting view

- Support is expressed for the legislative intention reflected in this article to protect the achievements and the legitimate rights and interests of authors in their literary and artistic pursuits.

2.2 Opposing views

- It is unnecessary to stipulate in the Basic Law that the HKSAR shall formulate policies on culture.
- Such detailed policies or principles should not be listed in the Basic Law.
- This article will not afford sufficient protection for art and culture.
- Since Hong Kong will enjoy independent executive power, many of the policies on science, culture and education will of course be decided by the SAR government on its own and hence there is no need to repeat or explain in this article.
- Only with the promulgation of a copyright law will the achievements and the legitimate rights and interests of authors in their literary and artistic pursuits be protected.

3. Suggestions

3.1 Amendments

- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall, in accordance with legal provisions, safeguard the freedoms enjoyed by individuals, organizations or bodies which have established or are involved in cultural undertakings. These freedoms shall include the freedoms of creation, release, publication, research, criticism, association, assembly and to organize cultural

activities."

- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on culture. In the formulation of these policies, people from the cultural sector may fully participate and opinions of people from the relevant organizations or sectors shall be extensively solicited. The government of the Hong Kong Special Administrative Region shall fairly and rationally utilize resources to promote the development of cultural undertakings and shall protect the achievements and the legitimate rights and interests of authors in their literary and artistic pursuits."
- This article should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies to protect relics, historic sites and ancient buildings in Hong Kong in order to preserve Hong Kong's history and culture."

Reason: - As there is no legislation in Hong Kong to protect ancient buildings, it is hoped that the future government will be able to handle this issue through legislation.

- This article should be amended as follows with the words "and other" underlined: "The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on culture and protect the legitimate rights and interests of authors in their literary, artistic and other pursuits."
- This article should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on culture and protect achievements and the legitimate rights and interests of authors in their literary, musical and other artistic pursuits and achievements by copyright and such other intellectual property rights in the manner and for the duration as shall be provided for by law."
- The article should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on culture. The government of the Hong Kong Special Administrative Region shall protect by law the achievements and the legitimate rights and interests of authors in their literary and artistic pursuits."

Reason: - To safeguard the rights of authors in Hong Kong in their literary and artistic pursuits.

- The phrase "on its own" should be changed to "in consultation with local and international experts".

Reason: - The phrase "on its own" implies a totalitarian or arbitrary ruling without extensive consultation.

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3.2 Other suggestions

- It is proposed that when drafting the policies on art and culture in the SAR, the Drafting Committee should consider the following principles:

- (1) The government should not control or interfere in art and culture;
- (2) The government should fairly and rationally utilize resources in order to promote the development of art and culture;
- (3) The government should actively support and encourage all kinds of artistic and cultural pursuits and activities; and
- (4) The government should adopt policies that are moderate, free and open.

1. The government of the Hong Kong Special Administrative Region shall not interfere in the internal affairs of religious organizations and shall not restrict religious activities which do not contravene the laws of the Region.

Religious organizations shall, in accordance with law, enjoy the rights to acquire, use, dispose of and inherit property and the right to receive financial assistance. Their previous property rights and interests shall be maintained and protected.

Religious organizations may, according to their previous practice, continue to run seminaries and other schools, hospitals and welfare institutions and to provide other social services.

2. Views

- 2.1 Supporting views

- The clause "shall not interfere in the internal affairs of religious organizations" is nicely phrased.

Reason: - The scope of freedom will be greater since non-interference is highlighted by a negative form of expression.

- The second paragraph ensures that religious organizations may continue to possess their existing properties and rights.

- 2.2 Opposing views

- This article should not be included.

Reason: - It is already stipulated in Article 6 that "rights of property ownership, including those relating to acquisition, use, disposal, inheritance and compensation for lawful take over shall be protected by law". Hence, there is no need to specifically provide for the protection of properties owned by religious organizations in a separate article.

- This article contravenes Article 20.
- The meaning of "internal affairs" is vague and cannot be clearly distinguished from "external affairs".
- The term "internal affairs" is not well defined and religious activities other than internal affairs areas

could be seriously restricted.

- This article, which stipulates that the SAR government shall not interfere in the "internal affairs" of religious organizations, will be open to abuse.
- This article clearly stipulates that the internal activities of religious organizations shall not be interfered with, but on the other hand it also stipulates that such religious activities must not contravene the laws of the SAR. Obviously, the two provisions are contradictory.
- The wording of "religious activities which do not contravene the laws of the Region" creates anxiety.

Reason: - It gives much latitude to an authoritarian regime to restrict religious freedoms. However, these freedoms are given relatively greater protection in a democratic government.

- The first draft of the Basic Law does not provide for rights which cannot be taken away by the future legislature. The expression "shall not restrict religious activities which do not contravene the laws of the Region" in Paragraph 1 leaves it up to the legislature to create or take away those matters or rights.
- The wording of the second half of the first sentence will leave religious activities not fully protected.

Reason: - The laws may be amended any time to restrict religious activities.

- Activities which contravene the laws of the HKSAR should all be restricted by law. Hence, as far as this article is concerned, there is no need to specify the conditions for religious activities, nor should religious organizations be restricted from conducting such activities.
- The right of religious bodies to establish new organizations has not been safeguarded.

Reason: - This article only provides for those existing organizations.

2.3 Reservations

- Reservation is expressed for this article.

Reason: - When defining the relationship between government and non-governmental organizations in the Basic Law, the stipulation that the government does not have the right to handle

certain affairs and must fulfil certain obligations, will impose restraints on the government. No efficient government can be maintained under such a provision.

2.4 Other opinions

- This article provides that the government of the SAR shall not restrict religious activities which do not contravene the laws of the Region. It gives rise to the questions as to what are religious activities and whether political participation would fall outside the scope of religious activities. It would be unfortunate if the principle of separation of religion and politics was introduced into the Basic Law in such a subtle way.
- It is noted with concern that the government of the HKSAR might send officials to administer the affairs of religious organizations and interfere with religious freedom, thus contravening the principle of separation of religion and politics.
- This article clearly states that religious organizations shall have the right to receive financial assistance and to run seminaries and other schools according to their previous practice. A more worrying area is the practice of compulsory morning prayers or attendance at services in some religious schools. By referring to Article 144 which provides for courses on religion in schools, some schools may make it compulsory for their students to take papers on religious education in the School Certificate Examination. Such practice may well infringe upon the freedom of religious belief.

3. Suggestions

3.1 Deletions

- The first paragraph should be deleted.
- The second and third paragraphs should be deleted.
Reasons: - The contents of the second and third paragraphs have already been included in the existing laws.
 - Regarding the freedoms of religious organizations to own properties and to run schools, hospitals and welfare institutions, they are already protected by Articles 143, 145 and 154.
- The phrases "in accordance with law" and "which do not contravene the laws of the Region" should be deleted.

Reason: - These two phrases are intimidating and really unnecessary. It has already been stated clearly in Article 39 of the Draft Basic Law that these rights may be restricted under legitimate circumstances.

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- The clause "shall not interfere in the internal affairs of religious organizations" in the first paragraph should be deleted.

Reason: - It contradicts the meaning of the latter half of the sentence.

- The latter half of the first paragraph should be deleted.

Reason: - Lest the SAR government should interfere in religion through legislation.

- The word "internal" should be deleted.

Reasons: - It is difficult to define "internal affairs" and the term could easily be abused because of its ambiguity.

- The deletion would make this article clearer and more precise.
- It is noted with concern that the SAR government may make use of such a loophole to interfere in religion.
- To alleviate the anxiety of the people from religious communities.
- Religious belief covers various areas and aspects of life. The affairs which are the concerns of religious organizations also concern the secular world. Hence, the affairs of religious organizations should not be subject to interference from the government.
- The phrase "in accordance with law" in the first paragraph should be deleted.

3.2 Amendments

3.2.1 Amendment of the whole article

- This article should be amended to read: "The government of the Hong Kong Special Administrative Region shall not interfere in or restrict religious activities which do not contravene the laws of the Hong Kong Special Administrative Region."
- This article should be amended to read: "Religious

organizations may, according to their previous practice, run seminaries and welfare institutions."

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Reason: - The provision is a repetition of Article 144.

- This article should be amended to read: "Except for those affairs which contravene the laws of the Hong Kong Special Administrative Region, the government of the Hong Kong Special Administrative Region shall not interfere in or restrict the affairs of religious organizations."
- This article should be amended to read: "The government of the Hong Kong Special Administrative Region shall not delegate officials to take charge of or interfere in the affairs of religious organizations. It shall not restrict religious activities which do not contravene the laws of the Hong Kong Special Administrative Region."

Reason: - According to the original article, the government of the HKSAR shall not interfere in the internal affairs of religious organizations while it has to ensure that religious activities shall not contravene the laws of the Hong Kong Special Administrative Region. That would be a problem.

3.2.2 Amendment of individual paragraphs

First paragraph

- It should be amended to read: "The government of the Hong Kong Special Administrative Region shall not interfere in the internal affairs of religious organizations. In addition, the executive authorities shall not restrict religious activities which do not contravene the laws of the Hong Kong Special Administrative Region."
- It should be amended to read: "The government of the Hong Kong Special Administrative Region shall not interfere in or restrict the affairs of religious organizations."
(Note: 148-1)

Reasons: - The meaning of the term "internal affairs" is vague and will cause interpretation problems.
(Note 148-2)

- How to distinguish between "internal affairs" and "external affairs" and who should be responsible for defining the two are difficult questions. (Note 148-3)
- There are sufficient legal provisions to prohibit activities which contravene the law. It is not necessary to so specify in this article. (Note 148-4)

- This article makes religious organizations worry that the government might interfere in their "external" affairs.
- Activities which contravene the law are illegal activities. It is meaningless to stipulate that "illegal" religious activities will be "restricted". It will only give rise to the question: what religious activities are permitted by law?
- It has already been clearly stated in Article 31 that "Hong Kong residents shall have the freedom of religious belief and the freedom to preach and to carry out and participate in religious activities in public". This indicates that the government of the Hong Kong Special Administrative Region will not interfere in the internal or external affairs of religious organizations.
- The amendment will make religious organizations rest assured that the future SAR government will not interfere in religious activities and will safeguard religious freedom.
- It should be amended to read: "The government of the Hong Kong Special Administrative Region shall not establish a department to administer religious affairs, and shall not interfere in religious organizations..."

Third paragraph

- It should be amended to read: "Religious organizations may, according to their previous practice, continue to run seminaries and other schools, hospitals, welfare institutions, and social services organizations to provide social services and to preach their doctrines therein." (Note 148-5)
- It should be amended to read: "Religious organizations may, according to their previous practice, continue to run seminaries and other schools, hospitals, publishing houses, broadcasting organizations and welfare institutions and to provide other social services."
- It should be amended to read: "Religious organizations may, according to their previous practice, continue to purchase, build and lease premises for their activities, run seminaries and other schools, hospitals, and welfare institutions and to provide other social services."

Reason: - Although this paragraph has mentioned that the

schools, hospitals and welfare institutions run by religious organizations will be protected, it has not specified whether religious organizations are permitted to purchase, build and lease major premises for religious activities, such as churches.

- It should be amended to read: "Religious organizations may run seminaries..."
- The phrase "religious organizations may, according to their previous practice, run" should be replaced by "the government shall not interfere in religious organizations which run...according to their previous practice or by means of development".

Reason: - The original text restricts new developments which are "not according to their previous practice".

- The phrase "according to their previous practice" may be changed to "in accordance with law".

Reason: - The ways in which religious organizations provide services should adapt to the changes in society.

3.3 Additions

- A fourth paragraph should be added: "The relationship between the religious organizations in the Hong Kong Special Administrative Region and their mainland counterparts shall be in conformity with the principles of non-subordination, non-interference and mutual respect."
- One more paragraph should be added: "The government shall respect various religious beliefs and provide facilities for observance of religion."
- One more paragraph should be added: "The government of the Hong Kong Special Administrative Region shall not establish a department for administering religious affairs."

3.4 Other suggestions

- It should be clearly specified that the religious organizations mentioned in this article refer to "proper organizations" only.

Reason: - Otherwise, it may be abused by religious cults.

- Religious organizations should enjoy the right to own properties in accordance with law.

- There should be specific provisions to safeguard the civil rights of believers.
- It should be clearly specified that people from religious communities shall enjoy the freedom to preach their religious belief verbally or in writing.
- It should be specified that missionaries may continue to use the land allocated by the previous government at a lower price.

Reason: - A specific provision will reassure the missionaries.

- The right of religious organizations to freely appoint clergymen and other personnel, to train them and to send them abroad for specialized studies and also the right to use, as necessary, the services of personnel from abroad should be provided for.

4. Issues to be clarified

- What is meant by "contravene the laws" in this article?
- It has not been specified to which religions this article is applicable.
- What is meant by "internal affairs"?
- How to distinguish between "internal affairs" and "external affairs"?
- Who has the authority to define what are "internal affairs" and what are the "external affairs" of religious organizations?
- Will the stipulation that the SAR government shall not interfere in the internal affairs of religious organizations prompt the expansion of religious cults?
- This article restricts the power of the SAR government in respect of religion but which article prevents the Central Government from conducting religious activities in the HKSAR?

1. Original text

Religious organizations and believers in the Hong Kong Special Administrative Region may maintain and develop their relations with religious organizations and believers elsewhere.

2. Views

- Support is expressed for retaining this article. (Note 149-1)
- As regards the relationship between local religious organizations and their counterparts in other regions, the contents of this article is a repetition of Article 157. Such a repetition should be avoided.

3. Suggestions

3.1 Deletion

- This article should be deleted.

Reasons: - The contents of this article is a repetition of those of Articles 156 and 157.

- There is no need to draft a separate provision on religious organizations.

3.2 Amendments

- This article should be amended to read: "Religious organizations and believers in the Hong Kong Special Administrative Region may maintain and develop relations with religious organizations and believers elsewhere (including Macao and Taiwan)."
- This article should be amended to read: "Religious organizations, leaders and believers in the Hong Kong Special Administrative Region may maintain and develop relations with religious organizations, leaders and believers elsewhere."
- This article should be amended to read: "Religious organizations, bodies, leaders and believers may maintain and develop relations with religious organizations, bodies, leaders and believers elsewhere."
- This article should be amended to read: "Religious organizations and believers in the Hong Kong Special Administrative Region may maintain and develop relations with religious organizations, religious leaders and believers on the mainland and abroad."

- This article should be amended to read: "The government of the Hong Kong Special Administrative Region shall not interfere in the maintenance and development of relations between local religious organizations and believers, and their counterparts elsewhere."
- The phrase "religious organizations and believers" should be replaced by "religious organizations, leaders and believers".
- The clause "with religious organizations and believers elsewhere" should be amended to "with religious organizations and believers on the mainland and abroad".

3.3 Addition

- The term "leaders" should be inserted after "religious organizations".

Reason: - As it is provided for in Article 31 that Hong Kong residents shall enjoy religious freedom, and according to the Roman Catholic Church, believers should maintain contact with the Pope (their spiritual leader), it should therefore be so specified in the Basic Law to safeguard the religious freedom enjoyed by Catholics.

3.4 Other suggestions

- The term "believers" should be clearly defined to avoid disputes.
- The term "believers" should not be clearly defined, otherwise religious freedom would be infringed.
- The right enjoyed by Catholics to maintain their existing links and unity with the Universal Catholic Church, through union with the Pope and also with the Bishops and Catholic Communities in other parts of the world, should be provided for.

4. Issues to clarified

- If religious believers in Hong Kong maintain and develop relations with religious organizations in other countries and by doing so contravene Article 148, what will be the consequences?
- Does the term "believers" in this article includes leaders?
- Is this article applicable to relations established between religious organizations in the HKSAR and their mainland counterparts?

Article 150

1. Original text

The government of the Hong Kong Special Administrative Region shall, on its own, decide on the methods of assessing and accrediting qualifications for professional practice for the various professions. The methods of assessing and accrediting qualifications previously practised in Hong Kong may be maintained and perfected.

Persons with professional qualifications or qualifications for professional practice obtained prior to the establishment of the Hong Kong Special Administrative Region may retain their previous qualifications.

The Hong Kong Special Administrative Region shall maintain the professions and the professional organizations recognized prior to the establishment of the Region, and these organizations may, on their own, assess and accredit professional qualifications.

The government of the Hong Kong Special Administrative Region may, as required by developments in society and in consultation with the parties concerned, recognize new professions and professional organizations.

2. Views

2.1 Supporting views

- Support is expressed for this article.

Reasons: - It allows the various professions to maintain their status.

- It allows professions to further develop.

- Generally speaking, it looks after the interests of the professions in different aspects.

- It strengthens the confidence of the professionals.

- On the whole it has included the major opinions expressed by professional bodies and individuals in the past two years.

- Support is expressed for the provision that the HKSAR government shall on its own formulate procedures for assessing and accrediting qualifications for practice in various professions.

- It is necessary that "the methods of assessing and accrediting be perfected".

Reasons: - This may rectify those policies which discriminate against certain professions.

- It is conducive to drawing support from the manpower trained in other regions and to attracting more people to come and work in Hong Kong.

2.2 Opposing views

- Objection is expressed to the stipulation that the HKSAR government and the existing professional bodies shall both assess and accredit professional qualifications and qualifications for professional practice.

Reasons: - This article provides a legal basis for those with authority to set down harsher requirements to prevent mainland intellectuals from obtaining qualifications for professional practice.

- The conferment of professional qualifications through two different channels after 1997 will result in conflicts and injustice.

- The relationship between the SAR government and professional bodies in this respect has not been clearly specified.

- The various paragraphs in this article are contradictory.

Reason: - On the one hand, the government will have the power to formulate the methods of assessing and accrediting the qualifications for various professional practice, but not the power to revoke the professional qualifications and qualifications for professional practice already obtained by professionals. On the other hand, the government will be allowed to recognize new professions and professional organizations, which means that it may change the status of existing professional qualifications and professional organizations.

- This article does not seem to reflect the current practice whereby professional bodies are responsible for assessing and accrediting qualifications while the government legislate to provide for the practice of qualified personnel.

- There is no provision to regulate professionals who will easily become a privileged class in the future.
- There is no provision to protect the public from being exploited by the privileged professions.
- The provision in Paragraph 2 implies that, after 1997, a professional body will be unable to disqualify its member for professional practice even if such a member has been convicted of a criminal offence as a result of his violation of the codes of practice since under the protection of the Basic Law he may retain his professional qualification.
- The provision in Paragraph 2 implies that if a professional was convicted of a criminal offence as a result of his violation of the codes of practice, and was disqualified for professional practice by the professional body concerned before 1997, he will be reinstated after 1997 in accordance with the provision of this article.
- The contents of the second paragraph over-protects the qualifications of professionals.
- At present, the system for assessing and accrediting qualifications for professional practice is governed by statutes and subsidiary legislation. As long as these statutes remain valid after 1997, it goes without saying that these people would "retain their previous qualifications".
- The third paragraph has a loophole. It unconditionally grants the authority to existing professional bodies to handle affairs relating to professional qualifications and qualifications for professional practice.
- The stipulation in the third paragraph that "professional organizations may, on their own, assess and accredit professional qualifications" is against public interest.
- The stipulations in the fourth paragraph are unnecessary.
- This article is worrying.

Reason: - China may, in accordance with Article 17 of the Draft Basic Law, take away the authority granted by this article to statutory professional organizations to accredit relevant qualifications for professional practice.

2.3 Reservations

- If "on its own" means "no need to ask for instructions from the Central People's Government", then this article is acceptable. However, if the phrase "on its own" in the first paragraph means "the government of the Hong Kong Special Administrative Region does not need to consult the relevant academic societies or any body", then this article is unacceptable.
- This article is acceptable but the wording needs further refinement.

2.4 Other opinions

- The phrase "on its own" in the first paragraph implies that the HKSAR acts in its own right independent of the Central People's Government.
- The word "accrediting" in the first paragraph is used in the sense of "giving formal credibility to" or "endorsing" but not in the narrow sense of considering submissions from and making visitations to an academic department or qualifying body.
- It is specifically stipulated in the first paragraph that the method of assessing and accrediting professional qualifications previously practised in Hong Kong will be maintained. This will only mean closing all doors on those doctors who graduated on the mainland and other regions and letting those doctors who graduated in the British Commonwealth to dictate the future of the medical profession.
- Paragraph 2 only states that those who have obtained professional qualifications or qualifications for professional practice before 1997 may continue to keep their qualifications. It does not mention that those who violate the codes of practice after 1997 may be disqualified. Nor does it mention under what conditions they may retain their previous qualifications.
- The term "qualifications for professional practice" in the second paragraph means the summation of all the necessary steps determined by the appropriate professional body and may include one or more or all of the following: supervised training, minimum period of experience, professional practice examinations and/or interviews, licensing, minimum age, etc, in addition to an educational qualification.
- The phrase "on its own" in the third paragraph implies that each individual professional organization acts independently of other professional organizations and the HKSAR (Government) administration.

- The term "parties concerned" in the fourth paragraph has not been clearly defined.
- Objection is expressed to the inclusion in the Basic Law provisions which discriminate against professionals who graduated in mainland China.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reason: - This article is a policy provision and should not be included in the Basic Law.

- The clause "shall, on its own, decide on the methods of assessing and accrediting qualifications for professional practice for the various professions" should be deleted. It should be clearly stated that "Except for laws on defence and foreign affairs, the Hong Kong Special Administrative Region may, on its own make laws for the peace, order and good government of the Region."

Reasons: - This clause is is a policy provision in nature and should therefore be deleted.

- Retaining the second sentence of the first paragraph is sufficient.

- The word "government" in the first paragraph should be deleted.

Reason: - When the word "government" is used, it precludes the participation of non-governmental organizations such as, in this case, the professional organizations. The present method of assessing and accrediting qualifications for professional practice differs from profession to profession and the government is only involved when it is necessary to ensure public safety, health and matters of important interest. But in fact, such matters are specifically provided for in legislation, for instance, the Buildings Ordinance, the Medical Registration Ordinance, etc.

- The second, third and fourth paragraphs should be deleted.

- The second paragraph should be deleted.

Reason: - Professional qualifications, once conferred,

may only be taken away in any of the following circumstances: (1) resignation (voluntary); (2) failure to pay subscription (voluntary); and (3) expulsion (involuntary, by the professional organisation concerned). A government which takes away one's professional qualifications would be deemed infringing human rights. With regard to "qualifications for professional practice", Paragraph 2 does not add anything to Paragraph 1.

- The clause "these (recognized) organizations may, on their own, assess and accredit professional qualifications" in the third paragraph should be deleted.

Reason: - Since Hong Kong has for decades recognized the privilege granted to professionals from the British Commonwealth for practising in Hong Kong, it should also recognize degree qualifications conferred by China's legitimate government.

- The fourth paragraph should be deleted or replaced by another stipulation to prohibit direct or indirect issuance of "licences" so that infringement on the freedoms of speech, the press and publication will be avoided.

Reason: - To avoid the provision being abused as a result of ambiguity in meaning.

3.2 Amendments

3.2.1 Amendment of the whole article

- This article should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own, decide on the methods of assessing and accrediting qualifications for professional practice for the various professions. Professionals from Hong Kong, the mainland and overseas shall be given equal treatment and enjoy equal legal status.

"Persons with professional qualifications or qualifications for professional practice obtained prior to the establishment of the Hong Kong Special Administrative Region may retain their previous qualifications.

"The Hong Kong Special Administrative Region shall maintain the professions and the professional organizations recognized prior to the establishment of the Region, and shall, in the light of social needs and developments and according to the principle of equality

and fairness, recognize mainland professions and professional bodies established in Hong Kong."

Reasons: - This article has failed to look after the status and interests of those professionals in Hong Kong who are mainland graduates.

- The number of Hong Kong students applying to mainland universities is increasing each year. When these graduates come back to Hong Kong, they should be given equal treatment. If their qualifications are not recognized, the stability and prosperity in Hong Kong will be affected.

- At present, most of the British Commonwealth doctors in Hong Kong have obtained foreign passports and are adopting a by-stander's attitude towards the future of the SAR. As they are not committed to providing medical services to the public, the public should not rely too much on them.

- After 1997, the SAR government must first safeguard the interests of doctors from the sovereign state (China) and recognize their professional status.

- This article should be amended to read: "The Hong Kong Special Administrative Region shall, on its own, decide on the system of assessing and accrediting qualifications for professional practice for the various professions. The system of assessing and accrediting such qualifications previously practised in Hong Kong shall be maintained and developed.

"The government of the Hong Kong Special Administrative Region shall permit the professions and the professional organizations recognized prior to the establishment of the Region to continue and may, as required by developments in society and in consultation with the parties concerned, recognize new professions and professional organizations. These organizations may, on their own, assess and accredit professional qualifications."

- This article should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own, decide on the methods of assessing and licensing those with approved qualifications for professional practice for the various professions. The methods of assessing and licensing previously practised in Hong Kong shall be maintained and developed."

- This article should be amended to read: "The government

of the Hong Kong Special Administrative Region shall, on its own, decide on the methods of assessing and accrediting qualifications for professional practice for the various professions. The methods of assessing and accrediting qualifications previously practised in Hong Kong may be maintained and perfected. Persons with professional qualifications or qualifications for professional practice obtained prior to the establishment of the Hong Kong Special Administrative Region may retain their previous qualifications. The Hong Kong Special Administrative Region shall maintain the professions and the professional organizations recognized prior to the establishment of the Region. These recognized organizations may, on their own, assess and accredit professional qualifications and qualifications for professional practice free from interference of the government of the Region."

- This article should be amended to read: "The Hong Kong Special Administrative Region shall have the right to decide, on its own, the methods of assessing and accrediting various professional qualifications. All methods of assessing and accrediting professional qualifications previously practised in Hong Kong shall remain unchanged."

3.2.2 Other amendments

- The second and third paragraphs should be amended to read: "Persons with professional qualifications or qualifications for professional practice obtained prior to the establishment of the Hong Kong Special Administrative Region may retain their previous qualifications in accordance with law. The Hong Kong Special Administrative Region shall maintain the professions and the professional organizations recognized prior to the establishment of the Region, and these organizations may, on their own and in accordance with law, assess and accredit professional qualifications."

Reason: - To ensure that while due respect is paid to the professional autonomy of the professions and professional organizations, the government should still have sufficient power to enact the relevant laws and policies on qualifications for professional practice.

- Paragraphs 3 and 4 should be merged and rephrased as follows: "The government of the Hong Kong Special Administrative Region shall permit the professions and the professional organizations recognized prior to the establishment of the Region to continue and may, as required by developments in society and in consultation with the parties concerned, recognize new professions

and professional organizations. These organizations may, on their own, assess and accredit professional qualifications."

- The word "may" should be replaced by "may be permitted to".

Reason: - This makes the objective of this chapter more specific.

3.3 Amendment of individual paragraphs

3.3.1 First paragraph

- The first paragraph should be amended to read: "The Hong Kong Special Administrative Region shall, on its own, decide on the methods of assessing and accrediting qualifications for professional practice for the various professions. The previous system of assessing and accrediting qualifications shall be maintained and developed."
- The first paragraph should be amended to read: "The Hong Kong Special Administrative Region shall, on its own, decide on the methods of assessing and accrediting qualifications for professional practice for the various professions. The system of assessing and accrediting previously practised in Hong Kong shall be maintained and developed."
- It should be amended to read: "The methods of assessment and accrediting previously practised in Hong Kong must be retained. The government of the Hong Kong Special Administrative Region may improve the existing methods in order to decide on the future methods of assessing and accrediting qualifications for professional practice for the various professions."
- The first sentence should be amended to read: "The government...of assessing and accrediting qualifications awarded by professional organizations for professional (and sub-professional?) practice for the various professions."
- The first sentence should be amended to read: "The government of the Hong Kong Special Administrative Region shall authorize the statutory management committees of the various professions or recognized professional organizations to assess and specify the standards for various professional qualifications and qualifications for professional practice. Individual statutory management committees shall principally be composed of members of that particular profession, and have their presidents chosen from among such members."

Reasons: - To ensure that the power of supervision and execution will rest with the government of the Hong Kong Special Administrative Region.

- With both the statutory management committees and the recognized professional organizations as authorized parties, those professions which have not established statutory management committees will be taken care of and this article will remain flexible.

- Individual statutory management committees shall mainly be composed of members of that particular profession and have their presidents chosen from among such members. This will enable individual professions to remain independent and autonomous, and to develop.

- Members of statutory management committees may still include government officials and members of the public to ensure that the professions concerned will look after the interests of the community at large and will not adopt policies and measures which are over protective.

- The second sentence should be amended to read: "The methods of assessment, accrediting and disqualification previously practised in Hong Kong may be maintained and improved."

- The second sentence should be amended to read: "The methods of assessment and accrediting previously practised in Hong Kong shall be maintained and developed."

- The term "methods" should be replaced by "system".

Reasons: - The choice of the word "methods" connotes the mechanics.

- The word "methods" is too restrictive and does not have the present flexibility of different practices applicable to different situations.

- The phrase "may be maintained" in the second sentence should be replaced by "shall be maintained".

- The word "perfected" in the second sentence should be replaced by "developed".

Reason: - The replacement of the word "perfected" would

avoid any connotation that the present system is imperfect or defective. The use of the word "developed" embraces the meaning that the SAR may accept new qualifications for professional practice, a point which is echoed in Paragraph 4.

- The words "assessing" and "accrediting" in the first and second sentences of the first paragraph should be respectively replaced by the words "examining" and "evaluating".
- The word "may" should be replaced by the word "shall".

Reason: - The change of the word "may" in the second sentence to "shall" puts it beyond doubt that the present methods of assessment and accreditation are to be maintained and developed. The use of the word "may" means that it is possible that those present methods "may not" be maintained. The use of the word "develop" caters for the flexibility and allows us to drop the word "may". It makes more sense to say that such method "shall be developed" than "may be developed".

3.3.2 Second paragraph

- The clause "may retain their previous qualifications" should be replaced by "may, in accordance with the relevant codes of practice, retain their previous qualifications".

Reason: - To look after the situations where professionals have their professional qualifications or qualifications for professional practice suspended as a result of violation of their codes of practice.

- The clause "may retain their previous qualifications" should be replaced by "may, in accordance with the code of practice of their own professions, retain their previous qualifications".
- The second paragraph should be amended to read: "Persons with professional...may retain their previous qualifications subject to the rules and procedures of the professional organizations concerned."

Reason: - This allows such persons to be deprived of their professional qualifications and membership as a result of misconduct and non-payment of subscriptions.

- The second paragraph should be amended to read: "Persons

with recognized qualifications and qualifications for professional practice obtained prior to the establishment of the Hong Kong Special Administrative Region may retain their previous recognized qualifications and qualifications for practice, subject to the criteria laid down by the qualifying bodies."

- The second paragraph should be amended to read: "Persons with recognized qualifications and licenses for professional practice obtained prior to the establishment of the Hong Kong Special Administrative Region may retain their previous qualifications and licenses, subject to the criteria laid down by the qualifying and licensing bodies."

3.3.3 Third paragraph

- The third paragraph should be amended to read: "The Hong Kong Special Administrative Region shall maintain the professions, professional organizations and management committees for professional personnel recognized prior to the establishment of the Region. These recognized professional organizations may, on their own, assess and accredit professional qualifications."

Reason: - In Hong Kong, some of the existing medical professionals have their qualifications assessed and accredited by the management committee of their own profession.

- The third paragraph should be amended to read: "The Hong Kong Special Administrative Region shall maintain the professions and professional organizations recognized prior to the establishment of the Region, and these recognized professional organizations may, on their own, assess, accredit and suspend professional qualifications."

- The third paragraph should be amended to read: "The Hong Kong Special Administrative Region shall maintain the professions and professional organizations recognized before 19 December 1984. Professions and professional organizations established after that date are required to regain recognition from the government of the Hong Kong Special Administrative Region."

Reason: - In order to avoid any abnormality during the transitional period, these professional organizations should regain the recognition of the government of the Hong Kong Special Administrative Region.

- The third paragraph should be amended to read: "The Hong Kong Special Administrative Region...and these organizations may, on their own, assess and accredit

educational and professional qualifications and confer their own professional (and sub-professional?) qualifications."

Reason: - To cater for the situation where professional bodies may recognize university or polytechnic degrees, and professional training courses organized by the relevant professional bodies, and confer professional qualifications.

- The third paragraph should be amended to read: "The government of the Hong Kong Special Administrative Region shall continue to recognize the professions and professional organizations recognized prior to the establishment of the Region and these recognized professional organizations may, on their own, assess and accredit professional qualifications."

- The third paragraph should be amended to read: "The government of the Hong Kong Special Administrative Region shall continue to recognize the professions and professional organizations recognized prior to the establishment of the Region, and these organizations may, on their own, assess and confer professional qualifications."

- The word "maintain" should be replaced by the phrase "continue to recognize".

Reasons: - The phrase "continue to recognize" is more appropriate.

- The word "maintain" implies some other meaning than just a recognition, for example, it implies that the SAR has an obligation to support financially such professions and professional organizations.

- To specify the relationship between the government and the professional organizations.

- The word "assess" should be replaced by "evaluate".

3.3.4 Fourth paragraph

- The clause "(may) in consultation with the parties concerned, recognize new professions and professional organizations" should be amended to read: "(may) in consultation with existing professional organizations, recognize new professional organizations".

- The term "parties concerned" should be replaced by "professional organizations concerned".

Reason: - The term "parties concerned" is too general.

3.4

Additions

- The word "such" should be inserted before the word "qualifications" in the second sentence of the first paragraph.

Reason: - Since this paragraph deals with qualifications for professional practice, the qualifications referred to in the second sentence are those for professional practice. In order to be more precise, the word "such" should be inserted before the word "qualifications".

- The clause "subject to the relevant code of conduct" should be added to the second paragraph.

Reason: - In the present Draft, a professional may retain his previous qualification, but there is no provision for his disqualification if he violates the code of conduct of his profession.

- The word "recognized" should be inserted before "professional qualifications or qualifications for professional practice" in the second paragraph.

Reason: - There are recognized and unrecognized professional qualifications. So they must be clearly distinguished in the article.

- The clause "except for those who have committed serious errors in their practice" should be inserted before "may retain their previous qualifications".

Reason: - To allow greater flexibility.

- The phrase "of the government" should be inserted after "establishment" in the third paragraph.

- The term "applicants" should be inserted after "may, on their own, assess" in the third paragraph.

- A new paragraph should be added: "With regard to those professionals from other regions who, in the past, were discriminated against by some of the professionals monopolizing the market and were forbidden to practise, they may be granted professional qualifications after their qualifications have been approved by the new professional organizations."

- A new paragraph should be added: "Newly established and existing professional organizations, and other organizations may decide on their own activities,



provided that such activities do not undermine the stability and prosperity in Hong Kong."

- A new paragraph should be added: "The Hong Kong Special Administrative Region shall recognize universities recognized by the State Council, the academic qualifications of university graduates from China, and the education certificates issued by universities in China, and shall grant these university graduates legal status in Hong Kong, highlighting the rights of professionals, such as doctors, teachers and lawyers, who graduated from universities in China to practise. No one shall discriminate against them."

Reason: - The existing practice that qualifications accredited by Chinese universities are not recognized in Hong Kong should be abolished, otherwise the resumption of sovereignty over Hong Kong by China will be meaningless.

3.5 Rearrangement

- The second, third and fourth paragraphs should be moved to an annex.

Reason: - Paragraphs 2, 3, and 4 are policy provisions.

- The second sentence of the first paragraph: "The methods of...maintained and perfected.", and the second and third paragraphs should be moved to Chapter X, i.e. put among the provisions on the first government.

3.6 Other suggestions

3.6.1 On professional organizations and the assessment of professional qualifications

- Professional organizations may, on their own, decide on the standards and qualifications for their own professions.
- After 1997, the professional organizations in Hong Kong should be allowed to form organizations to assess the qualifications for their own professions.
- The existing conventions for the recognition of professional qualifications should be maintained.
- Professional organizations should be given the autonomy to assess professional qualifications and qualifications for professional practice and to formulate methods of accrediting such qualifications free from any interference of the government.
- In their pursuit of autonomy of all professions, the

various professions hope that they are autonomous in determining standards and accrediting qualifications, in deciding professional discipline, and in expressing professional views and attending professional meetings, free from government interference.

- A system for the recognition of examinations held by professional bodies should be established.
- It should be ensured that professionals would practise under the management of the management committees of their professions, and that the members of those committees are mostly members of the respective professions.

Reason: - To improve the professions concerned.

- It should be stipulated that non-professionals may jointly form a statutory organization to resolve the conflicts between the professional qualifications accredited by the professional organizations and the qualifications for professional practice accredited by the government.
- The existing professional organizations should not be unconditionally granted the authority to handle issues concerning professional practice on their own.
- Professional organizations should be allowed to disqualify members who do not meet the requirements.
- With respect to the third paragraph, a list of professions and professional organizations recognized prior to the establishment of the HKSAR should be presented in an appendix to the Basic Law.
- The fourth paragraph should not be deleted.

Reason: - This provision has already laid down the foundation for the establishment of professional organizations in future.

- This article should be applied to the art and education professions.

Reason: - It has positive effect on society.

- It is proposed that the present practice of assessing professional qualifications and qualifications for professional practice by separate authorities should be continued.

Reason: - To prevent certain professions from being monopolized by individual organizations and members.

3.6.2 On the role played by the government of the Hong Kong Special Administrative Region

- Professional standards should be carefully laid down through legislation.
- If the HKSAR government may on its own formulate the relevant laws in the light of social developments, then the provision that "in consultation with the parties concerned" is meaningless.
- It should be clearly stated that the authority to assess professional qualifications and the authority to recognize new professional organizations rest with the government of the HKSAR.
- It should be clearly stated that professional qualifications shall be laid down in future by the government of the HKSAR.

Reason: - Under the present provision, the authority to accredit professional qualifications is vested in professional organizations, which will weaken the power of the HKSAR in this area.

- The future HKSAR government should not play any role in the assessment of professional qualifications.
- The HKSAR government should on its own assess the professional qualifications of doctors. The assessment should be comprehensive and should not only be based on their examinations results.
- The authority to accredit professional qualifications should be vested in the HKSAR government. But the government may ask recognized professional organizations to assess such qualifications and make recommendation to the government on the accrediting of qualifications.

Reason: - The determining of professional qualifications concern the interests of the public at large. Professional organizations are only private organizations whose interests may not be the same as those of the public.

- Certain flexibility may be added to the existing system of accrediting and assessing professional qualifications and qualifications for professional practice so that the HKSAR government may advise on matters relating to the determining of professional qualifications and qualifications for professional practice.
- A committee for accrediting professional qualifications should be set up under the Department of Education in

the HKSAR to assess recognized professional qualifications and academic status. The measures adopted by the relevant ministry in Britain for the recognition of 100 professional qualifications as equivalents of university degrees may be taken as reference.

- The HKSAR government must strictly examine the graduation certificates awarded by major universities. It may contact the relevant authorities or department of the university which awarded the certificate or the education department of the place where the university is located in order to make investigation into the certificate.

3.6.3 On the role played by the Central People's Government

- The Central People's Government should recognize all professional organizations (including those for medical practitioners who graduated in China) founded prior to the establishment of the HKSAR.
- The Central People's Government should recognize all university graduation certificates (including those awarded by universities on the mainland, in Taiwan and in Hong Kong) held by Chinese compatriots who are residing in Hong Kong with Chinese citizenship, and should recognize the qualifications for professional practice for various professions.
- The Central People's Government should be able to order the HKSAR government to recognize all university graduation certificates and to treat those certificate holders equally without discrimination.
- The Central People's Government will be responsible for formulating the methods of assessing professional qualifications and for accrediting qualifications for professional practice for various professions in the HKSAR.

Reasons: - The original text is full of colonialistic overtones and is against the spirit of the Sino-British Joint Declaration.

- Only this practice will give expression to sovereignty.

- The Central People's Government may, in the light of social developments and in consultation with the HKSAR government or the parties concerned, recognize new professions and professional organizations.

3.6.4 On other matters

- This article should be amended to clearly indicate the

following principles:

- (1) The responsibility of assessing and accrediting the various professional qualifications should only be assumed only by the professional organizations concerned which have already been recognized.
 - (2) The government of the HKSAR shall recognize the professions and professional organizations which were recognized prior to the establishment of the HKSAR.
 - (3) The government of the HKSAR may, in the light of social developments and in consultation with the parties concerned, recognize new professions and professional organizations.
- It is proposed that this article should be applicable to all professions.
 - This article is supposed to reflect the present Hong Kong situation inclusive of compatible developments up to July 1997.
 - After 1997, the HKSAR should hold professional examinations and assess qualifications for professional practice in a fair and non-discriminatory manner, and should not, in particular, look after the interests of those professionals from the British Commonwealth.

Reason: - To give expression to China's sovereignty.

- After 1997, professionals coming from regions other than the British Commonwealth who are not recognized may continue to serve Hong Kong and no policy discriminating against these professionals should be adopted.
- There should be a provision in the Basic Law to control the influx of mainland professionals into the HKSAR.
- It should be expressly provided that the government of the HKSAR should recognize education certificates obtained in China.

Reasons: - Improvement is made through competition.

- To link up the present and the future educational systems.
- A suitable method of assessment should be formulated to determine the status of professionals newly immigrated to Hong Kong.
- The qualifications of those Hong Kong professionals who have emigrated to other countries should not be

recognized.

Reason: - Since they have already obtained foreign nationalities, they should not be entitled to the same rights as those enjoyed by Hong Kong people.

4. Issues to be clarified

- What is meant by the phrase "on its own" in the first paragraph?
- If the methods of assessment and accrediting formulated by the HKSAR are contradictory to those previously practised in Hong Kong, then which provision should be applied to determine their validity?
- What are the standards for assessing professional qualifications?
- Does the second sentence of the first paragraph imply that the standards for professional practice should be more stringent or more lenient?
- In China, there is only qualification for "professional practice", but not "professional" qualification. So how can they be "assessed", "accredited" and "perfected"?
- After 1997, will the international status of the professions in Hong Kong be lowered as a result of the intervention of the government?
- If the government does not intervene, how can it be ensured that the professional organizations will look after the public interests after 1997?
- Is it possible for foreign professional organizations to hold professional examinations and accredit professional qualifications in the HKSAR?

Article 151

1. Original text

The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on sports. Previous non-governmental sports organizations may continue to exist and develop in accordance with law.

2. View

- As Hong Kong will enjoy independent executive power, it goes without saying that many of the policies on science, culture and education should be formulated by the SAR itself. There is no need to repeat or so specify in this article.

3. Suggestions

- The second sentence should be deleted.
- This article should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on sports. However, the non-governmental sports organizations existing in Hong Kong shall be permitted to continue to exist and develop."
- The second sentence should be amended to read: "Non-governmental sports organizations in Hong Kong may exist and develop in accordance with law."

Reasons: - The word "previous" is deleted to indicate that any organization which "did not exist previously" may exist once registered in accordance with law.

- The words "continue to" are deleted to indicate that all and not just the existing organizations are protected.

- The second sentence should be amended to read: "The Hong Kong Special Administrative Region may establish non-governmental sports organizations."

4. Issue to be clarified

- This article has not mentioned the "organizations for performing arts". Does it mean that non-governmental organizations for performing arts may not exist and develop in accordance with law?

1. Original text

The Hong Kong Special Administrative Region shall maintain the policy previously practised in Hong Kong in respect of subventions for organizations in fields such as education, medicine, culture, arts, recreation, sports, social welfare and social work. Staff previously serving in subventioned organizations in Hong Kong may remain in their employment in accordance with the previous system.

2. Views

2.1 Opposing views

- This article restricts the ability of the HKSAR government to revise policies.
- This article imposes unnecessary restrictions on the government of the SAR.
- This article fails to specifically protect the education system of the SAR.
- The meaning of the last sentence is ambiguous and will create anxiety among staff members working for subventioned organizations regarding their future.
- The last sentence restricts to the greatest extent the freedom of internal administration of various organizations.

2.2 Other views

- This article specifies that the subvention policy and the system for recruitment of staff members previously practised will be "maintained". It is hoped that the word "maintained" will not mean "remain unchanged".

Reason: - In order to adapt to social developments, the subventions for culture and performing arts cannot remain unchanged.

- The term "previous system" needs further clarification.

Reason: - At present, the government is constantly running related social services through privatization. Such a situation should be considered in the Basic Law.

- The difference between the terms "social welfare" and

"social work" has not been clearly indicated.

3. Suggestions

3.1 Deletions

- The term "social work" should be deleted.

Reason: - Social work is a specialized profession under social welfare. Hence they have a subordinate relationship.

- The sentence: "Staff previously serving in subvention organizations in Hong Kong may remain in their employment in accordance with the previous system." should be deleted.

Reason: - The recruitment of staff members is within the autonomy of the organizations concerned and should not be provided for in the Basic Law.

- The words "previously practised" and "previous" should be deleted.

3.2 Amendments

3.2.1 Amendment of the whole article

- This article should be amended to read: "Apart from maintaining the policy previously practised in Hong Kong in respect of subventions for organizations in fields such as education, medicine, culture, arts, recreation, sports, social welfare and social work, the Hong Kong Special Administrative Region shall improve, supplement and develop the policy in the light of actual needs. Staff previously serving in subventioned organizations in Hong Kong may remain in their employment in accordance with the previous system."

- This article should be amended to read: "The Hong Kong Special Administrative Region shall maintain the system previously practised in Hong Kong in respect of subventions for organizations in fields such as education, medicine, culture, arts, recreation, sports, social welfare and social work, and shall on its own formulate policies on the development and improvement of the system."

Reason: - To enable the SAR government to maintain the present subvention system or to improve it, and to formulate the relevant policies.

- This article should be amended to read: "The Hong Kong Special Administrative Region may, on its own, formulate policies in respect of subventions for organizations in

fields such as education, medicine, culture, arts, recreation, sports, social welfare and social work."

Reason: - The original text imposes too many restrictions on the executive power of the SAR government.

- This article should be amended to read: "The Hong Kong Special Administrative Region may, on its own, formulate policies for the development and improvement of the system previously practised in Hong Kong in respect of subventions for organizations in fields such as education, medicine, culture, arts, recreation, sports, social welfare and social work. Staff previously serving in subventioned organizations in Hong Kong may remain in their employment in accordance with the previous system."
- This article should be amended to read: "The Hong Kong Special Administrative Region shall maintain the policy previously practised in Hong Kong in respect of subventions for organizations in fields such as education, medicine, culture, arts, recreation, sports, social welfare, social work, care for the handicapped and self-help. Staff previously serving in subventioned organizations in Hong Kong may remain in their employment in accordance with the previous system."
- This article should be amended to read: "The Hong Kong Special Administrative Region shall continue to maintain the policy previously practised in Hong Kong in respect of subventions for organizations in fields such as education, medicine, culture, arts, recreation, sports, social welfare and social work, and shall on its own develop the policy on the previous basis."
- This article should be amended to read: "The Hong Kong Special Administrative Region shall maintain and develop the policy previously practised in Hong Kong in respect of subventions for various organizations, including those in such fields as education, medicine, culture, arts, recreation, sports, social welfare and social work."
- This article should be amended to read: "The Hong Kong Special Administrative Region shall improve the policy presently practised in Hong Kong in respect of subventions for organizations in fields such as education, medicine, culture, arts, recreation, sports, social welfare and social work."

Reasons: - Policies on social services should be improved as time goes by.

- The recruitment system of subventioned organizations should also be adapted to the latest circumstances.

- This article should be amended to read: "The Hong Kong Special Administrative Region shall maintain the policy previously practised in Hong Kong in respect of subventions for organizations in fields such as education, medicine, culture, arts, recreation, sports, social welfare and social work, and shall develop and improve such policy in the light of economic conditions and social needs."
- This article should be amended to read: "The Hong Kong Special Administrative Region shall pursue a subvention policy in respect of organizations in fields such as education, medicine, culture, arts, recreation, sports, and social welfare. The terms of employment, pay and benefits for staff of subventioned organizations shall basically be the same as those enjoyed by civil servants of corresponding ranks. Staff serving in subventioned organizations prior to the establishment of the Region may retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before."
- This article should be amended to read: "The Hong Kong Special Administrative Region shall pursue a subvention policy in respect of organizations in fields such as education, medicine, arts and culture, sports and recreation, social welfare and social work. The employment requirements, pay and benefits for staff of the previous subventioned organizations shall basically be the same as those enjoyed by civil servants of corresponding ranks. Staff serving in subventioned organizations prior to the establishment of the Region may retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before."
- This article should be amended to read: "The Hong Kong Special Administrative Region shall maintain the policy previously practised in Hong Kong in respect of subventions for organizations in fields such as education, medicine, culture, arts, recreation, sports, social welfare and social work. The terms of employment offered by subventioned organizations shall be no less favourable than before. Staff serving in subventioned organizations prior to the establishment of the Region may retain their seniority."

Reason: - The provision that "[s]taff previously serving in subventioned organizations in Hong Kong may remain in their employment in accordance with the previous system" in the original text imposes restrictions on the organizations concerned in the revision of terms of employment.

3.2.2 Amendment of individual provisions

- The phrase "maintain...previously practised" should be amended to "improve the existing...".
- The term "subventioned organizations" should be specified as "organizations currently subvented by the Hong Kong government".
- The word "medicine" should be replaced by "health-care".
- The sentence: "Staff previously serving in subventioned organizations in Hong Kong may remain in their employment in accordance with the previous system." should be amended to read: "Staff previously serving in subventioned organizations in Hong Kong may be appointed or dismissed by applying the previous system."

3.3 Additions

- The phrase "consumer protection" should be added after "social work".
- The field of "science" should be added to the listed fields.

3.4 Rearrangement

- The sentence: "Staff previously serving in subventioned organizations...may remain...previous system." should be incorporated into Annex III (on the first government).

3.5 Other suggestions

- The provision on subvention in the original text should cover those organizations in the fields of science and technology.

Reason: - The Hong Kong Government at present giving subventions to organizations in the fields of science and technology.

- This article should be amended to allow the HKSAR government to introduce changes to the policies and systems in the light of social and economic circumstances.

Reason: - The original text has the undersirable effect of not providing for changes to the subvention and employment system as necessitated by changing economic and social circumstances.

- It should be stipulated that the HKSAR government will not deprive the voluntary organizations of their autonomy through the subvention policy.

Reason: - The subvention policy should only serve the function of effectively allocating resources.

- The terms of service, benefits and qualifications of the staff of subventioned organizations should be the same as those of the civil servants of corresponding ranks.

Reasons: - To uphold the principle of "equal pay for equal work".

- To maintain the morale and stability of the staff of subventioned organizations.
- This article is too specific and is against the spirit of constitutional documents which only lay down major principles.

4. Issues to be clarified

- Will it be possible for the policy and system mentioned in this article to remain unchanged for 50 years after 1997?
- According to Article 143, public organizations and individuals may run educational institutions of various kinds in the HKSAR. However, will the future government subvent all newly established educational institutions or allocate subvention funds only to those existing organizations in accordance with the provisions of this article?

1. Original text

The government of the Hong Kong Special Administrative Region shall maintain the previous social welfare system and shall formulate, on its own, policies on the development and improvement of this system in the light of the economic conditions and social needs.

2. Views

- Since Hong Kong will have independent executive power, many policies on science, culture and education should be decided by the SAR on its own. It is not necessary to repeat or specify this arrangement in this article.
- Social welfare services should not be determined in the light of prevailing economic conditions.

Reason: - If the Hong Kong economy experienced a recession after 1997, social welfare services would be cut back. People living in poverty and in need of welfare aid would have a very difficult time.

- The term "maintain" implies remaining unchanged. The HKSAR government should be allowed to develop welfare institutions.
- This article has points of contradiction.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reason: - This is part of the previous system as it is the present practice of the Hong Kong government. Besides, the contents have already been included in Article 15 of Chapter II, so there is no need to repeat them in this article.

- The clause "in the light of the economic conditions and social needs" should be deleted.
- The phrase "economic conditions" should be deleted.

Reason: - Too many restrictions are undesirable as they would give rise to controversies or put the future SAR government in a straitjacket should the social welfare system be improved.

3.2 Amendments

- This article should be amended to read: "The Hong Kong Special Administrative Region shall formulate social welfare policies on its own, and shall develop and improve such policies in the light of economic conditions or social needs."

Reason: - In case of economic recession, many workers will be made redundant and social welfare will be even more important.

- This article should be amended to read: "The government of the Hong Kong Special Administrative Region may formulate, on its own, policies on the development and improvement of [the previous social welfare system] in the light of social needs."

Reasons: - Social welfare should be improved, instead of remaining unchanged.

- Economic conditions are not indexes for decisions on welfare policies.

- This article should be amended to read: "The government of the Hong Kong Special Administrative Region shall formulate, on its own, social welfare policies and shall develop and improve such policies in the light of economic conditions and social needs."

- This article should be amended to read: "The Hong Kong Special Administrative Region shall, in the light of social needs, implement an appropriate social welfare system."

- This article should be amended to read: "The government of the Hong Kong Special Administrative Region shall maintain the previous social welfare system and shall formulate, on its own, policies on the development and improvement of this system."

- This article should be amended to read: "The government of the Hong Kong Special Administrative Region should develop and improve the social welfare system in order to provide basic social security to Hong Kong residents and to meet social needs."

- This article should be amended to read: "The social welfare system in Hong Kong shall be democratically formulated and developed in accordance with the will and the needs of the residents."

- The first sentence should be amended to read: "The Hong Kong Special Administrative Region may maintain the

previous social welfare services."

Reason: - To allow greater flexibility; besides, the definition of the term "social welfare system" is too narrow.

- The expression "economic conditions" should be replaced by "social conditions".

Reason: - The term "social conditions" has a broader sense.

3.3 Additions

- The phrase "shall have the right" should be added after "[t]he government of the Hong Kong Special Administrative Region".

- The word "may" should be added after "the government of... Region".

Reason: - In order to grant sufficient autonomy to the HKSAR government for deciding the social welfare system and policies.

- The phrase "upon consultation" should be added before "formulate, on its own,...".

Reason: - The original text may be a bit too autocratic.

3.4 Other suggestions

- A set of long-term development plans, systems and measures should be formulated to provide social welfare services to Hong Kong residents.

- Under the social welfare system of the future SAR, those aged over 60 should be entitled to pensions.

- Under the social welfare system of the future SAR, those aged over 70 should be provided for by the government.

1. Original text

Voluntary organizations providing social services in the Hong Kong Special Administrative Region may, on their own, decide their forms of service in accordance with law.

2. View

- Since Hong Kong will have independent executive power, many of the policies on science, culture and education should of course be decided by the future government on its own. There is no need to repeat or explain in this article.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reason: - This provision represents part of the previous system and the practice of the existing government. Further, it has been included in Article 15 in Chapter II.

- The phrase "in accordance with law" should be deleted.

Reasons: - The phrase "in accordance with law" is not clearly defined.

- The phrase "in accordance with law" may become the basis for depriving voluntary organizations of the freedom to decide the forms of service on their own.

3.2 Amendments

- This article should be amended to read: "Voluntary organizations providing social services in the Hong Kong Special Administration Region may develop appropriate services in the light of social needs. The government may subvent these organizations if the financial situation permits."

- This article should be amended to read: "Voluntary organizations providing social services in the Hong Kong Special Administrative Region may, on their own, decide their forms of service, provided that the laws are not contravened."

Reasons: - To maintain the present practice of voluntary organizations in providing services.

- The phrase "in accordance with law" in the original text implies the government may legislate to specify the forms of service of voluntary organizations, which is undesirable.

- This article should be amended to read: "Subventioned organizations providing social services in the Hong Kong Special Administrative Region may, on their own, decide their forms of service. However, such activities should be conducted in accordance with law."

Reason: - According to the present practice, subventioned voluntary organizations must obtain prior approval before they can change their rules of service. The wording of the original text does not distinguish subventioned voluntary organizations from those which are not. This will impose restrictions on those voluntary organizations which are privately-run and not subventioned. The proposed amendment will make this article more specific and suitable to Hong Kong's conditions.

- The phrase "in accordance with law" should be replaced by the clause "provided that (such services) are not against the law".

3.3 Other suggestions

- [Translator's note: This view is on the Chinese wording and has no relevance to the English version.]

- It should be specified that voluntary organizations providing social services will be subject to government regulation.

- It should be stipulated that the SAR government will not infringe on the autonomy of voluntary organizations through its subvention policies.

Reason: - Subvention policies should only serve the purpose of allocating resources efficiently so that most of the services will not be repeated.

4. Issues to be clarified

- What is meant by "may, on their own, decide...in accordance with law"?

- If the future SAR government prescribes the forms of service of voluntary organizations through legislation, how will these organizations be able to "decide on their

own"?

- May voluntary organizations provide services which are outside the scope of services defined by the SAR government?
- The "voluntary organizations providing social services" in this article refer to those organizations involved in "social welfare", "social work" and "social services". Are these three terms different in contents and meaning?

1. Original text

The Hong Kong Special Administrative Region shall, on its own, formulate labour laws and policies in the light of economic development, social needs and the specific circumstances of labour-management consultations.

2. Views

2.1 Supporting view

- Support is expressed for this article.

2.2 Opposing views

- This article postpones the workers' entitlement to welfare and rights.
- The provisions on labour and social security in this article are inadequate. The Basic Law should specify the labour protection scheme that Hong Kong as a prosperous society should have.
- The last part of this article provides that the SAR government may, on its own, formulate labour laws and policies, but it does not mention what rights the workers may enjoy.
- The term "labour-management consultations" lacks specific indication. The article overlooks the workers' right of bargaining and therefore fails to provide any legal protection to the working class. In the end, it will turn labour-management negotiations into confrontations and conflicts.
- The provision on "labour-management consultations" in this article will be an obstacle to the formulation of relevant labour laws and policies.

Reasons: - Take the work of the present Labour Advisory Board as an example, in many of the labour-management disputes it handles, the parties concerned fail to reach an agreement and thus many of the disputes remain unresolved. This will hinder the progress of labour protection. If the term "labour-management consultations" is retained in the article, there will be similar consequences.

- Under the circumstances where the status of trade unions and their right of collective bargaining are not yet affirmatively recognized, labour-management consultations

are not as effective as expected.

- If the relevant labour laws and policies can only be formulated in the light of the specific circumstances of labour-management consultations, the power of the employers will be strengthened and the workers will be deprived of protection.
- The formulation of labour laws and policies in the light of "economic development" and "labour-management consultations" is not appropriate for Hong Kong's environment.
- The formulation of labour laws is one of the basic duties of the government. Economic development and social needs are only factors which need to be considered in the process of legislation. Further, labour-management consultations should not be an essential factor to be considered in the formulation of labour laws and policies lest the formulation of the relevant policy should be delayed by either one of the parties.

3. Suggestions

3.1 Deletions

- This article should be deleted.
- The clause "in the light of economic development, social needs and the specific circumstances of labour-management consultations" should be deleted.

Reasons: - Many labour laws and policies are formulated during economic recessions. The phrase "economic development" in this article indicates economic growth or boom, which will make it difficult for the government to help workers out during economic recessions.

- The term "social needs" in this article is open to interpretation.

- The term "labour-management consultations" in this article is unfavourable to workers because the present trade unions do not have the right of negotiation and the employers will try every means to delay negotiation. This will hinder the formulation of labour laws and regulations.

- The deletion is aimed at reconciling the contradiction between Article 26 and this article. Article 26 provides that Hong Kong residents shall enjoy the right to join trade unions and to go on strike. But in this

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article, it is stipulated that labour laws and policies may only be formulated in the light of economic development, social needs and the specific circumstances of labour-management consultations, which will curtail the right of Hong Kong residents to join trade unions and to go on strike.

- The expression "labour-management consultations" should be deleted.

Reasons: - At present, there is no proper channel or organization for labour-management consultations. If the phrase "labour-management consultations" is retained, it may give the impression that such channel or organization will be established in the future.

- "Labour-management consultations" are only a means and not a condition comparable to "economic development" and "social needs".
- "Labour-management consultations" may be incorporated into labour laws.

3.2 Amendments

3.2.1 Amendment of the whole article

- This article should be amended to read: "The Hong Kong Special Administrative Region shall, on its own, formulate labour laws and policies in the light of economic development, social needs, and the specific circumstances of labour-management consultations in accordance with the provisions of the International Labour Conventions."

Reason: - The original text is too conservative and lacks initiative in strengthening labour protection and rights.

- This article should be amended to read: "The Hong Kong Special Administrative Region shall, on its own, formulate labour laws and policies in the light of social needs and the specific circumstances of labour-management consultations."

Reason: - Labour laws should not be influenced by the economic environment.

- This article should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own, formulate labour laws and policies in the light of economic development and social needs, and by taking

the existing labour ordinances as reference."

- This article should be amended to read: "The Hong Kong Special Administrative Region shall formulate labour laws and policies on its own and shall develop and improve such laws and policies in the light of economic development and social needs."
- This article should be amended to read: "The Hong Kong Special Administrative Region shall, on its own, formulate labour laws and policies and shall develop and improve such laws and policies in the light of economic development, social needs and the demands of trade unions."
- This article should be amended to read: "The government of the Hong Kong Special Administrative Region shall gradually revise and formulate comprehensive labour laws and policies in the light of economic development and social needs in order that the working conditions and quality of life of the working class in Hong Kong will be constantly improved."

Reasons: - The principles and objectives of formulating labour laws and policies by the SAR government should be affirmed.

- This amendment provides an objective standard for conducting labour-management discussions and negotiations.
- This article should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own, formulate and continue to develop labour laws and policies."
- This article should be amended to read: "The Hong Kong Special Administrative Region shall revise labour laws and policies in the light of social needs, especially the needs of workers."
- This article should be amended to read: "The Hong Kong Special Administrative Region may, on its own, formulate labour laws and policies."
- This article should be amended to read: "The Hong Kong Special Administrative Region shall, on its own, formulate labour laws and policies. Registered trade unions shall enjoy the right of collective bargaining."
- This article should be amended to read: "The government of the Hong Kong Special Administrative Region shall, on its own and through labour-management consultations, develop and improve labour laws and policies. In labour-management consultations, trade unions shall enjoy the

right of collective bargaining."

- This article should be amended to read: "The government of the Hong Kong Special Administrative Region shall affirm the status and right of collective bargaining of trade unions, and shall, through labour-management consultations, formulate labour laws and policies and improve labour protection in the light of economic conditions and social needs."

Reasons: - As representatives of workers, trade unions play an important role in safeguarding the rights and interests of workers, stabilizing society and stimulating economic development.

- Labour-management consultations are essential for looking after the interests of various strata and developing labour-management relations.

- Only after trade unions are officially recognized and possess the right of collective bargaining may labour-management consultations be viable.

- This article should be amended to read: "The Hong Kong Special Administrative Region shall, under the principle of affirming the status and right of collective bargaining of trade unions, formulate labour laws and policies and improve labour protection on its own through labour-management consultations."

- This article should be amended to read: "The Hong Kong Special Administrative Region shall, in the light of economic conditions and social needs, affirm the status and right of collective bargaining of trade unions, and through labour-management consultations, formulate labour laws and policies on its own. Labour representatives shall be allowed to take part in the formulation of labour laws and policies."

Reasons: - Labour-management relations in modern times must be based on mutual recognition and respect. Through labour-management consultations, the interests of both parties will be looked after rationally, thus ensuring Hong Kong's prosperity and stability.

- To build up friendly labour-management relations, there must be two conditions: one is that labour representatives should be allowed to take part in the enactment of labour laws, and the other is that the status and right of collective bargaining of trade unions must be affirmed. Only on these two

conditions will labour-management consultations be able to function properly.

- This article should be amended to read: "The Hong Kong Special Administrative Region may, on its own, formulate and improve labour laws and policies in the light of the actual needs of workers. Trade unions shall enjoy the right to recognition and of collective bargaining and may, on their own, conclude collective agreements with the employers."

Reasons: - In order to distribute more effectively the wealth of society, restrictions on the formulation of labour laws and policies should be kept to a minimum.

- The representativeness of trade unions should be affirmed in order to protect the rights of workers.

- This article should be amended to read: "The Hong Kong Special Administrative Region shall, on its own, formulate, develop and improve labour laws and policies in the light of economic development, social needs and labour-management consultations. Trade unions shall enjoy the right to recognition and of collective bargaining and may, on their own, conclude collective agreements with the employers."

Reasons: - As the majority of the Hong Kong population are workers, once there is such a need in society and economic conditions permit, labour policies and measures can be formulated.

- Labour-management consultations should not constitute a prerequisite for formulating labour laws and policies, lest either one of the parties should delay the formulation of policies.

- Hong Kong is an open society. Employers and employees should have the right to freely conduct negotiations for putting into practice progressive measures. Hence, it should be specified that trade unions shall enjoy the right to recognition and of collective bargaining.

- This article should be amended to read: "The Hong Kong Special Administrative Region shall, in the light of the actual needs of workers, formulate labour laws and policies in order to protect the justified returns and to improve the quality of life of workers. Trade unions shall enjoy the right to recognition and of collective bargaining, and may, on their own, conclude collective

agreements with the employers."

Reasons: - As a means for formulating labour laws and policies, "labour-management consultations" must be based on equality of the two parties.

- Only after trade unions have obtained the right to recognition and of collective bargaining will the rights and interests of workers be actually protected.

3.2.2 Amendment of individual provisions

- The phrase "economic development" should be changed to "economic conditions".

Reasons: - The basis for formulating labour laws and policies may not necessarily be economic development. It may be economic recession or unemployment.

- As most of the trade unions have not be given equal rights in labour-management consultations, it will be difficult to have consultations conducted on the basis of equality.
- The phrase "economic development" should be replaced by "social development".
- The word "and" in "in the light of economic development, social needs and the specific circumstances of labour-management consultations" should be replaced by the word "or".

Reasons: - If there are economic development and social needs, labour-management consultations are no longer required as a condition for formulating labour laws and policies.

- There is no definite relation among "economic development", "social needs" and "labour-management consultations".
- The phrase "labour-management consultations" should be replaced by "collective bargaining".
- "The Hong Kong Special Administrative Region" should read "The government of the Hong Kong Special Administrative Region".

3.3 Additions

- The provision: "Trade unions are legitimate voluntary organizations working for the welfare of their members."

Trade unions in Hong Kong shall be independent of the All-China Federation of Trade Unions and shall not be manipulated or used as subsidiary tools by political parties."

Reason: - Some political parties consider themselves the vanguard of the working class, fighting for the interests of workers. They substitute economic struggle with political struggle, thus depriving the trade unions of the function of fighting for for the interests of their members. Hence, provisions should be laid down in this respect, lest the capitalist system of Hong Kong should be undermined.

- The following provisions should be added at the end of the original text: "The previous labour laws shall be applied to protect the rights and interests of labour." "All other activities which are beneficial to society and constructive in nature should be protected."
- The provision "trade unions shall enjoy the right of collective bargaining" should be added.

3.4 Other suggestions

- The clause "in the light of economic development, social needs and the specific circumstances of labour-management consultations" should not be deleted.

Reason: - Such freedoms as the freedom to strike should be restricted. Retaining these three conditions may check illegitimate industrial actions.

- The specific measures for providing labour services should be clearly stated.

Reason: - The contents of this article are inadequate to protect Hong Kong's labour force.

1. Original text

The relationship between non-governmental organizations in fields such as education, science, technology, culture, sports, the professions and social welfare as well as religious organizations in the Hong Kong Special Administrative Region and their counterparts on the mainland shall be in conformity with the principle of non-subordination, non-interference and mutual respect.

2. Views

2.1 Supporting views

- Support is expressed for this article.
- The principles of "non-subordination, non-interference and mutual respect" are welcomed.
- The principle of non-subordination is good enough for ensuring the independence of the SAR churches.

2.2 Opposing views

- Since Hong Kong will have independent executive power, many of the policies on science, culture and education should be decided by the SAR government on its own. It is not necessary to repeat or specify such arrangement in this article.
- The principles of "non-interference" and "mutual respect" could prevent churches from giving advice to their mainland counterparts.
- The nature of post-1997 activities of non-governmental organizations should not be stipulated by the Basic Law.
- The principles of "non-subordination, non-interference and mutual respect" are quoted from the Sino-British Joint Declaration. It may be understood as: religious organizations in the SAR will not be allowed to preach or set up branches or subsidiary bodies on the mainland. This provision is not necessary.

Reasons: - Any religious organization that intends to preach on the mainland shall abide the law of the mainland.

- It would be difficult to prevent mainland religious organizations from coming to the SAR to preach, as to do so would infringe the strongly defended freedom of religion here in Hong Kong. Should the SAR churches criticize

the religious policies of the Central People's Government, they would be deemed violating this principle.

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- The provision that the non-governmental and religious organizations in the Hong Kong Special Administrative Region and their counterparts on the mainland shall be in conformity with the principle of non-subordination and non-interference will hinder the establishment of relations between local non-governmental organizations and their mainland counterparts.

2.3 Other views

- It is agreed that non-governmental organizations should remain independent and autonomous. However, people have expressed concern about the principles of non-subordination, non-interference and mutual respect which would easily give rise to controversy when being interpreted and implemented in future.

3. Suggestions

3.1 Deletions

- This article should be deleted.

Reason: - This article touches on the autonomy of non-governmental organizations in the SAR. Non-governmental organizations should decide on their own whether or not to establish contact with their counterparts on the mainland. Such a provision should not included in the Basic Law.

- Such terms as "religious organizations" and "non-subordination" should be deleted.

Reason: - The various non-governmental organizations should decide on their own whether or not to establish contact with their counterparts on the mainland.

- Such terms as "non-interference" and "mutual respect" should be deleted.

Reasons: - These terms are vague and difficult to define.

- This is a matter of attitude which should not be provided for by law.

3.2 Amendments

3.2.1 Amendment of the whole article

- This article should be amended to read: "Non-governmental

organizations in fields such as education, science technology, culture, sports, the professions and social welfare as well as religious organizations in the Hong Kong Special Administrative Region may remain independent and autonomous, and their relationship with their counterparts on the mainland shall be one of non-subordination." (Note 156-1)

Reasons: - The principles of non-subordination, non-interference and mutual respect should not be fully incorporated into the Basic Law which is a constitutional instrument.

- In the expression "the principles of non-subordination, non-interference and mutual respect", except for the term "non-subordination" which is relatively clear and specific, the terms "non-interference" and "mutual respect" are quite abstract and vague and will easily give rise to disputes when the article is being interpreted and implemented in future. (Note 156-3)
- This article should be amended to read: "The relationship between non-governmental organizations in fields such as education, ..., labour, social welfare, medicine and health as well as religious organizations in the Hong Kong Special Administrative Region and their counterparts on the mainland should be based on the principles of non-subordination, non-interference and mutual respect."
- This article should be amended to read: "Non-governmental organizations in fields such as education, science, technology, culture, sports, the professions and social welfare as well as religious organizations in the Hong Kong Special Administrative Region and their counterparts on the mainland should adopt the principles of non-subordination, non-interference and mutual respect as the basis for developing their relationship."
- This article should be amended to read: "The relationship between non-governmental organizations in fields such as education, science, technology, culture, sports, the professions, labour and social welfare as well as religious organizations in the Hong Kong Special Administrative Region and their counterparts on the mainland may adhere to the principles of non-subordination, non-interference and mutual respect."
- This article should be amended to read: "Non-governmental organizations in fields such as education, science, technology, culture, sports, the professions, social welfare, services for the handicapped and self-help as well as religious organizations in the Hong Kong Special Administrative Region shall observe the principles of

non-subordination, non-interference and mutual respect in maintaining contact with their counterparts on the mainland and freely developing their relationship."

- This article should be amended to read: "Non-governmental organizations in fields such as education, science, technology, culture, sports, the professions, labour and social welfare as well as religious organizations in the Hong Kong Special Administrative Region shall, on their own, decide their relationship with their counterparts within the territory of the People's Republic of China and shall abide by the principles of non-interference and mutual respect."
- This article should be amended to read: "Educational institutions, organizations and bodies in the Hong Kong Special Administrative Region and educational institutions or organizations established by the government or people in other regions of the People's Republic of China may maintain contact by adopting the principles of non-subordination, non-interference and mutual respect."

3.2.2. Amendment of individual provisions

- The word "mainland" should be replaced by "other regions of China".
- The word "mainland" should be replaced by "other places on the mainland".
- The phrase "shall be in conformity with the principles of non-subordination,..." should be replaced by "shall take non-subordination,... as principles".

Reason: - This is more flexible. Those organizations which are subordinate to mainland organizations may continue to maintain their previous relationship.

- The phrase "shall be in conformity with...non-subordination" should be replaced by "may be in conformity with...non-subordination".
- The term "non-subordination" should be replaced by "freedom of participation".
- The terms "non-interference" and "mutual respect" should be respectively replaced by "non-intervention" and "equality".

3.3 Additions

- The following provisions should be added:

"The government of the Hong Kong Special Administrative Region shall formulate the relevant policies without being influenced by the proposals of any organizations."

"The government of the Hong Kong Special Administrative Region shall maintain the freedom of individuals to choose the form of medical treatment."

Reasons: - The expansion of this article to cover internal relationship may avoid the situation where the field of medicine in the HKSAR is monopolized by Western medicine.

- The addition of the second provision may prevent the government from formulating legislation without a scientific basis to suppress other forms of treatment.

- A second paragraph should be added: "Non-governmental organizations and individuals may, in accordance with law and as encouraged by the government, run undertakings in such fields as education, science, technology, culture, sports, medicine, health, labour, the professions, recreation, and social welfare."

- A second paragraph should be added: "The above policies on science, education and so on shall abide by the principles of prosperity and stability."

- "Labour" organizations should be included among the various types of organizations.

Reasons: - To make this article consistent with Article 157.

- Labour organizations should enjoy independence.

- Local labour organizations frequently meet and maintain contact with their counterparts on the mainland. Hence, they should be protected by the principles of non-subordination, non-interference and mutual respect like any other organizations.

- To make sure that the labour organizations in Hong Kong will not be put under the leadership of mainland trade unions.

- To strengthen labour protection and rights.

- In order to be fair.

- The expression "trade unions and other labour organizations" should be added.

- "Health" organizations should be included among the various types of organizations.

Reason: - To make this article consistent with Article 157.

- The word "health" should be added after "education, science, technology, culture...".
- The words "medical and health" should be added after "social welfare".
- The words "consumer protection" should be added after "social welfare".
- "The relationship between" should be deleted and the clause "may freely exchange information with each other, but their structure should be inserted between "...counterparts on the mainland" and "shall be in conformity with...".

Reason: - The principles of non-subordination, non-interference and mutual respect should only govern the structure of non-governmental and religious organizations in the HKSAR and on the mainland, and should not restrict the exchange of information among those organizations in fields such as education, science, culture, sports, religion, labour, the professions and social welfare.

- The clause "excluding Macao and Taiwan" should be added after the word "mainland".

Reason: - In order to respect the autonomy of non-governmental and religious organizations in the HKSAR, these organizations should be allowed to decide on their own whether or not to develop subordinate relationship with their counterparts within the territory of China. Nevertheless, these organizations must observe the principles of non-interference and mutual respect.

- The phrase "non-subordination" should be replaced by "absolute equality in status" and the clause "so that they will maintain frequent contacts with each other" should be added at the end of the paragraph.

Reason: - The phrase "non-subordination" may restrict or hinder the association of various organizations in the HKSAR with their counterparts on the mainland.

- The clause "and the relationship between non-governmental organizations and religious organizations in the Hong Kong Special Administrative Region" should be inserted after "their counterparts on the mainland".
- The following provision should be added: "All affairs relating to health and labour in the Hong Kong Special Administrative Region and on the mainland should be handled by one coordinating authority."
- The following provision should be added: "The above principles shall not affect the government of the Hong Kong Special Administrative Region in its formulation of the methods of assessing and accrediting professional qualifications."

Reason: - As provided in this article, the professional organizations in the HKSAR and other regions of the country should abide by the principles of non-subordination and non-interference. These principles will impose restrictions on the SAR government's formulation of methods for assessing professional qualifications in future in accordance with Article 157.

3.4 Other suggestions

- This article should be redrafted.

Reason: - It is not necessary to provide that the relationship between ordinary organizations and their counterparts on the mainland should be one of non-subordination.

- It should be carefully considered whether the principles of "non-subordination and non-interference" will meet the actual needs of various organizations.
- The restriction in this article should be imposed only on religious organizations. Other organizations should be allowed to decide on their own their relationship with their mainland counterparts.
- The principles of "non-subordination, non-interference and mutual respect" governing the relationship between religious organizations and their counterparts on the mainland should not be written into the Basic Law.
- The draft should simply state that non-governmental organizations in fields such as education, science and religion shall maintain their independence and autonomy and shall not be subordinate to, or exercise authority over their counterparts in China.
- The relationship between non-governmental organizations

in the HKSAR and their mainland and foreign counterparts should follow the principle of equality.

- The principles of "non-subordination, non-interference and mutual respect" should also be applicable to non-governmental organizations in the HKSAR.

4. Issues to be clarified

- Why is it that organizations in the fields of "health" and "labour" have not been included in this article? How is the relationship between organizations in these two fields in the SAR and their mainland counterparts to be regulated?
- Why are "labour organizations" excluded from this article?
- Why are "religious organizations" being highlighted in this article?
- Will religious organizations that intend to run churches on the mainland contravene the principle of "non-subordination"?
- Why are "non-governmental organizations" specified? In future, will performing companies supported by the government not be required to observe the principles of "non-subordination, non-interference and mutual respect"?
- Will international organizations be able to set up branch offices in the HKSAR?
- Will the act of criticizing certain mainland organizations or personalities contravene the principles of "non-interference" and "mutual respect"?
- Will football teams in the HKSAR be allowed to play in matches on the mainland?

1. Original text

Organizations in fields such as education, science, technology, culture, sports, health, the professions, labour, social welfare and religion in the Hong Kong Special Administrative Region may maintain and develop relations with foreign countries and other regions and with relevant international organizations. They may, as required, use the name "Hong Kong, China" in the relevant activities.

2. Views

- This article ensures that the cultural and performing arts organizations in Hong Kong will be able to participate in international activities as independent units.
- The addition of the word "China" might well give rise to the question of whether sports organizations in Hong Kong would retain their separate international recognition in the event.

3. Suggestions

3.1 Deletions

- The clause "may, as required, use the name..." should be amended to read: "shall use the name...".

Reason: - The words "as required" imply that these organizations may or may not use the name "Hong Kong, China".

3.2 Amendments

- This article should be amended to read: "Organizations in fields such as education, science, technology, culture, sports, health, the professions, labour, social welfare, services for handicapped and self-help as well as religious organizations in the Hong Kong Special Administrative Region may maintain and develop relations with foreign countries and other region and with relevant international organizations, and may participate in activities using the name of "Hong Kong, China"."
- This article should be amended to read: "Registered organizations in the Hong Kong Special Administrative Region may maintain and develop relations with foreign countries and other regions and with relevant international organizations. They may, as required, use the name "Hong Kong, China" in the relevant activities."

Reason: - The term "registered organizations" will cover all types of legitimate organizations.

- This article should be amended to read: "Non-governmental organizations in fields such as education, science, technology, culture, sports, health, the professions and labour as well as religious organizations in the Hong Kong Special Administrative Region may freely maintain and develop relations with foreign countries, other regions and relevant international organizations. They may, as required, use the name "Hong Kong, China" in the relevant activities."

- The name "Hong Kong, China" should be changed to "Hong Kong".

Reasons: - At present, Hong Kong is not required to use the name "Hong Kong, United Kingdom" in relevant international activities.

- Since Hong Kong may take part in relevant international activities as an independent unit and not as part of China, it should be able to use the name "Hong Kong" in those activities.

- The name "Hong Kong, China" should be amended to read "China/Hong Kong".

Reason: - Many of the existing organizations in Hong Kong uses the term "Hong Kong" in their names. There is no need to add the word "China" to the names of organizations.

- The word "may" should be replaced by "shall be allowed to".

Reason: - This amendment will make the purpose of this Chapter better understood.

3.3 Additions

- The word "existing" should be added at the very beginning of this article.

- The phrase "and other non-governmental organizations" should be inserted after "...social welfare and religion".

- The term "consumer protection" should be inserted after "social welfare".

- The phrase "in accordance with law" should be inserted before "maintain and develop...with foreign countries".

- The phrase "and wherever possible" should be inserted after "may, as required".

Reason: - This is to affirm the political status of Hong Kong among other countries.

- The phrase "or, Hong Kong" should be inserted after "Hong Kong, China".

- The following provision should be added at the end of this article: "Outstanding personalities in the above-mentioned types of services may receive awards from the government of the Hong Kong Special Administrative Region as well as from various international organizations."

Reasons: - This is to maintain contact between Hong Kong and international organizations.

- This is to encourage and attract those who are active in various services to continue to contribute their efforts.

- The following provision should be added: "The government of the Hong Kong Special Administrative Region shall continue to maintain and acquire overseas educational institutions' recognition of qualifications accredited by local educational institutions in order to maintain the status of the Hong Kong Special Administrative Region as a member of the international academic circle."

3.4 Other suggestions

- It should be specified in this article that the Hong Kong Special Administrative Region may, using the name "Hong Kong, China", participate in organizations and activities which China does not join.
- In trade and cultural activities, the use of the name "Hong Kong" should be allowed. Only in the signing of formal international agreements should the name "Hong Kong, China" be used.
- More detailed guidelines should be available on the requirement that organizations should use the name "Hong Kong, China".
- It should be clearly specified that the membership status of Hong Kong in international organizations will not be affected by any political changes.

Reason: - Hong Kong is an official member of many international organizations. These organizations may have already stipulated that a country may only have one representative.

4. Issues to be clarified

- If Hong Kong may use the name "Hong Kong, China" in maintaining and developing relations with foreign countries in future, will it be contradictory to the principles of "non-subordination, non-interference and mutual respect" stated in Article 156?
- Will the future HKSAR be allowed to use the name "Hong Kong" only in the activities mentioned in this article?
- After 1997, will all organizations be required to add the word "China" to their names?
- If after 1997, all organizations in the HKSAR are required to use the word "China" as part of their names, will they be required to apply to alter their registered names?
- If the name used by organizations in Hong Kong is changed from "Hong Kong" to "Hong Kong, China", will certain international organizations suspend Hong Kong's membership as a result of this change?

OVERALL COMMENTS ON CHAPTER VII

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1. Views

- Support is expressed for all the provisions in this chapter.
- This chapter reflects that China is sincere in granting the Hong Kong Special Administrative Region a high degree of autonomy.
- This chapter is acceptable because the provisions are basically extracted from the relevant provisions in Annex I to the Sino-British Joint Declaration.
- The negotiations between the HKSAR government and other foreign countries should be the responsibility of the Central Government.

2. Suggestions

2.1 Amendments

- Hong Kong should have power not only over external affairs but also over foreign affairs.

2.2 Additions

- It is proposed that this chapter should provide that Hong Kong shall continue to enjoy valid export quotas, tariff preferences, transfer and application of high technology, and all the related interests and obligations, and that all of the above shall not be shared by the Central People's Government.

Reason: - This will make sure that Hong Kong will continue to enjoy the transfer and application of high technology.

- It should be clearly stated how the HKSAR should handle affairs relating to Taiwan, and the relationship between the HKSAR and Taiwan.
- The relationship between the HKSAR and Taiwan or Macau should be more clearly specified.
- That Vietnamese refugees are not welcome to live in Hong Kong should be clearly stated in this chapter.

2.3 Other suggestions

- According to this article, the HKSAR is an authentic administrative region which is not of the status of legal

person in international law. Since there is no other provision in the Basic Law to directly govern the future relationship between Hong Kong and Taipei, there are only two possibilities concerning the future relationship between Hong Kong and Taipei envisaged by the People's Republic of China in the Basic Law:

- (1) Hong Kong may, on its own, maintain and develop relations and conclude and implement agreements with "regions" (including Taiwan). (Article 159)
- (2) Hong Kong may, with the assistance and authorization from the "Central People's Government", conclude visa exemption agreements with "regions" (including Taiwan). (Article 163)

Other provisions concerning the relations between Hong Kong and "foreign countries" are obviously not intended by China to be applied to the relationship between Hong Kong and Taipei. Hong Kong will not be able to establish any official or semi-official trade missions in Taipei. Hence, the provisions of Article 164 are strictly confined to "foreign countries".

Taipei will neither be able to continue the operation of its official or semi-official missions in Hong Kong. As a result, the establishment of such missions is limited to that by "foreign countries" and is subject to the approval of the Central People's Government. (Article 165)

As a matter of fact, if Hong Kong intends to maintain or develop relations with Taipei or to attract Taiwanese to invest in Hong Kong (instead of mainland China), the two possible arrangements mentioned above are insufficient. The two countries should at least establish an official trade agency in each other's territory.

The post-1997 relationship between Hong Kong and Taipei will not be one between two "local regions" but should be one between a "local region" and "the state". Such a relationship will certainly not be similar to that with "foreign countries" but must be another relationship concerning the "expression of sovereignty".

There should be at least one specific article in the Basic Law to provide for the relationship with other "foreign countries" so that the relationship between the highly autonomous HKSAR and Taipei will be a realistic one which will further remain and develop into a favourable "direct relationship".

1. Original text

Representatives of the government of the Hong Kong Special Administrative Region may participate, as members of delegations of the Government of the People's Republic of China, in negotiations at the diplomatic level directly affecting the Region conducted by the Central People's Government.

2. Views

- Support is expressed for this article.

Reason: - This article is very positive and helps Hong Kong maintain its status as a major international trading and financial centre.

3. Suggestions

- The word "may" should be replaced by "is entitled to".

Reasons: - Although this chapter is on "external affairs", the handling of this article will directly affect the rights of Hong Kong.

- According to the principle of "one country, two systems", Hong Kong should enjoy certain privileges that other municipal governments may not. If Hong Kong is not granted the right of participation, the principle of "one country, two systems" will be contravened.

1. Original text

The Hong Kong Special Administrative Region 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 organizations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields.

2. Views

- Support is expressed for this article.

Reasons: - It accurately reflects the Sino-British Joint Declaration.

- It is very positive and helps Hong Kong maintain its status as a major international trading and financial centre.
- It is doubted whether the name "Hong Kong, China" will be recognized in international trade and whether Hong Kong will continue to enjoy its existing trade preferences. By the time Hong Kong becomes part of China, other countries may find it difficult to give it preferential treatment.
- At present, Hong Kong independently joins some of the international sports organizations, including the International Olympic Committee, using the name "Hong Kong". The name "Hong Kong, China" will certainly be appropriate for activities at the diplomatic level and with other governments. However, this name may make it difficult for Hong Kong to continue to independently take part in international athletic and sports competitions.
- The following distinction should be stressed: The agreements concluded by "Hong Kong, China" with foreign countries should not be mixed up with those concluded by China with foreign countries. These two kinds of agreements are unrelated and have no bearing on each other.
- Since China adopts the basic policy of "one country, two systems" with regard to Hong Kong, it is not necessary for Hong Kong to express opinions in the name of "Hong Kong, China".

3. Suggestions

3.1 Amendments

- This article should be amended to read: "The Hong Kong

Special Administrative Region may, on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with states, regions and organizations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural, sports and astronomical fields."

- This article should be amended to read: "The Hong Kong Special Administrative Region may, on its own, using the name "Hong Kong, China" or "Hong Kong", maintain and develop relations and conclude and implement agreements with states, regions and relevant international organizations in the appropriate fields, including the economic, trade, financial and monetary, professional and technological affairs, shipping, communications, tourism, patent, copyright, cultural and sports fields."
- This article should be amended to read: "The Hong Kong Special Administrative Region 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 organizations in the appropriate fields, including the economic, trade, financial and monetary, professional shipping, communications, tourism, patent, copyright, cultural and sports fields."
- The clause "using the name 'Hong Kong, China', ...and conclude and implement agreements' should be amended to read: "using the name 'Hong Kong' or 'Hong Kong, China',...and be a party to the related agreements".

3.2 Additions

- The phrase "or 'Hong Kong'" should be inserted after "Hong Kong, China".

Reason: - Since Hong Kong has been using the name "Hong Kong" in trade activities and negotiations and in international sports events and cultural activities, it is only reasonable and proper that the present practice should be maintained after 1997.

- The terms "professional" and "technological" should be inserted between "financial and monetary" and "shipping".
- The expressions "professional and technological affairs" and "patent and copyright" should be added.
- The expression "scientific and technological" should be added after "cultural".
- The terms "professional" and "scientific and technological" should be added.

- The following provision should be added at the end of this article: "The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies relating to the affairs specified in this Article."
- It should be clearly specified in this article that: (1) in the fields of economics, trade, finance and banking, shipping, communications, tourism, culture, sports, etc., the SAR may continue to maintain its previous status and shall develop independently; (2) the SAR may send delegates to attend and take part in those international conventions or organizations which are open to states only; (3) the SAR may use the name "Hong Kong, China" in joining regional international conventions or organizations; and (4) should the future SAR need to establish new relations with certain organizations or regions, proper arrangements will be made then.

3.3 Other suggestions

- The international agreements concluded in the name of "Hong Kong, China" should be recognized and implemented through legislation.
- Since Article 157 in Chapter VI also concerns organizations in fields such as technology, education, culture, the professions and labour as well as religious communities, it may be merged with this article.

4. Issue to be clarified

- Will this article apply to organizations within the HKSAR? Will these organizations also have the right to develop relations with the relevant international organizations, such as becoming their members?

1. Original text

Representatives of the Hong Kong Special Administrative Region may participate, as members of delegations of the Government of the People's Republic of China, in international organizations or conferences in appropriate fields limited to states and affecting the Region, or may attend in such other capacity as may be permitted by the Central People's Government and the international organization or conference concerned, and may express their views, using the name "Hong Kong, China".

The Hong Kong Special Administrative Region may, using the name "Hong Kong, China", participate in international organizations and conferences not limited to states.

The Central People's Government shall take the necessary steps to ensure that the Hong Kong Special Administrative Region shall continue to retain its status in an appropriate capacity in those international organizations of which the People's Republic of China is a member and in which Hong Kong participate in one capacity or another.

The Central People's Government shall, where necessary, facilitate the continued participation of the Hong Kong Special Administrative Region in an appropriate capacity in those international organizations in which Hong Kong is a participant in one capacity or another, but of which the People's Republic of China is not a member.

2. Views

- Support is expressed for this article.

Reason: - This article is very positive and helps Hong Kong maintain its status as a major international trading and financial centre.

- The provisions of this article will affect the international relations of Hong Kong.

Reason: - Hong Kong is an international city more open than China. It frequently participates in international conferences and organizations. If Hong Kong intends to join a certain international organization whose membership is limited to states and China objects to its joining, the HKSAR will be deprived of the right to join such an international organization as a result of China's objection.

- Reservations about the third paragraph have been expressed.

3. Suggestions

3.1 Amendments

- The name "Hong Kong, China" should be replaced by "Hong Kong".
- The third paragraph should be amended to read: "The Hong Kong Special Administrative Region may independently join any non-military international organizations and conclude agreements without requiring the arrangements of the Central People's Government."

3.2 Additions

- The following provision should be added at the end of this article: "The government of the Hong Kong Special Administrative Region shall, on its own, formulate policies relating to the participation of the Hong Kong Special Administrative Region in the above-mentioned international organizations and conferences."
- The following provision should be added: "With regard to those international agreements to which the People's Republic of China is not a party and in which Hong Kong participate in one capacity or another, the Central People's Government shall, as required, assist the Hong Kong Special Administrative Region to continue to perform its obligations."

Reason: - Hong Kong has always been able to freely import high-tech components and apparatus without being subject to any conditions. The industries in Hong Kong may lose this advantage once the sovereignty over Hong Kong is reverted to China. The research and development projects undertaken in Hong Kong require a long time to reach a mature stage. In order to increase the confidence of the export countries concerned, it is necessary to add another paragraph to clearly state that Hong Kong is determined to observe all relevant international agreements and will never transfer the technology to a third party. This should be one of the guiding principles under "one country, two systems".

3.3 Issue to be clarified

- Who is going to decide the "appropriate capacity" mentioned in the third paragraph?

1. Original text

The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region.

International agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may continue to be implemented in the Hong Kong Special Administrative Region. The Central People's Government shall, as necessary, authorize or assist the government of the Region to make appropriate arrangements for the application to the Region of other relevant international agreements.

2. Views

- Support is expressed for this article.

Reason: - This article is very positive and helps Hong Kong maintain its status as a major international trading and financial centre.

- Although this article is not immaculate, China as a sovereign state will not arbitrarily impose on the SAR international agreements which are detrimental to the interests of compatriots.

3. Specific suggestions

3.1 Amendments

- This article should be amended to read: "International agreements to which the People's Republic of China is a party and which are inconsistent with the spirit of this Law shall not be applied in the Hong Kong Special Administrative Region. The Central People's Government may decide, in the accordance with the conditions and needs of the Hong Kong Special Administrative Region and after seeking the views of the government of the Hong Kong Special Administrative Region, the application of international agreements concluded by the People's Republic of China to the Hong Kong Special Administrative Region.

"International agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may continue to be implemented. The Central People's Government shall, as necessary, authorize or assist the government of the Hong Kong Special Administrative Region

to make appropriate arrangements for the application to the Region of other relevant international agreements."

3.2 Other suggestions

- The expression "the government of the Hong Kong Special Administrative Region" in the first paragraph may be specified as the Chief Executive, the Executive Council and the Legislative Council to ensure that the opinions of these parties will be received and that they will be given the chance to represent the people.
- With regard to the binding force of international agreements concluded by the Central Authorities in the SAR, it may be decided by the Committee for the Basic Law because with sufficient representation in the Committee, Hong Kong will be able to safeguard its interests.

4. Issues to be clarified

- What method will be used for "seeking views"? Will such a method be satisfactory to the Hong Kong people?
- Is it sufficient to seek the views of the "government of the Hong Kong Special Administrative Region" only?

Article 162

香港
基本法
第162
條

1. Original text

The Central People's Government shall authorize the government of the Hong Kong Special Administrative Region to issue, in accordance with law, passports of the Hong Kong Special Administrative Region of the People's Republic of China to all Chinese nationals who hold permanent identity cards of the Region, and travel documents of the Hong Kong Special Administrative Region of the People's Republic of China to all other persons lawfully residing in the Region. The above passports and documents shall be valid for all states and regions and shall record the holders's right to return to Hong Kong.

The government of the Hong Kong Special Administrative Region may apply immigration controls on entry into, stay in and departure from the Hong Kong Special Administrative Region by persons from foreign states and other regions.

2. Views

- The meaning of this article is ambiguous.

Reasons: - It may create the misunderstanding that the government will be able to prevent foreign nationals in Hong Kong from leaving the territory.

- It may create the misunderstanding that the right of Hong Kong residents holding "British passports" or "British Dependent Territories Citizens(BDTC) passports" to enter or leave the territory will be restricted.

- In connection with the issue of SAR passports by the HKSAR government to Chinese nationals in Hong Kong, it has not been specified in this article whether or not such issue will be applicable to holders of United Kingdom travel documents or C.I. If not, the holders of the two above-mentioned travel documents will possibly be regarded as stateless persons when travelling abroad and will not be under the protection of the Chinese embassies abroad. This point should therefore be confirmed in this article. If this point is to be provided for in future legislation only, people in Hong Kong will not be reassured.

3. Suggestions

3.1 Additions

- The phrase "when necessary" should be inserted before "authorize" in the first line.

- The following sentence should be added at the end of the last paragraph: "The above-mentioned passport holders shall be under the protection of the Chinese embassies in the foreign countries where they are staying."
- To make the meaning clearer, the second sentence of the first paragraph should be amended to read: "Hong Kong residents holding the above-mentioned passports and documents shall be permitted to leave for other countries or regions and shall have the right to return to Hong Kong."
- The following provision should be added at the end: "Hong Kong Chinese residing abroad and have acquired foreign nationality shall enjoy the right to enter or leave the territory."

Reason: - On the question of the right of Hong Kong residents residing abroad to enter or leave the SAR, in accordance with the Sino-British Joint Declaration, the BDTC passports held by Hong Kong residents will be invalid after 1997 and be replaced by the British Nationals (Overseas) passports which may continue to be used after 1997, and the holders of BNO passports may have the right of abode in Hong Kong. But apart from the above-mentioned category, there are Hong Kong people living in non-British territories who have not resided in Hong Kong for a period of over seven years or who are indigenous inhabitants of the New Territories or their descendants still having business interests in Hong Kong.

- The following paragraph should be added: "For the purpose of travelling to and from the Hong Kong Special Administrative Region, residents of the Hong Kong Special Administrative Region may use travel documents issued by the government of the Hong Kong Special Administrative Region, or by other competent authorities of the People's Republic of China, or of other states. Holders of permanent identity cards of the Hong Kong Special Administrative Region must have this fact stated in their travel documents as evidence that the holders have the right of abode in the Hong Kong Special Administrative Region."

3.2 Rearrangement

- As the right to obtain travel documents in accordance with law is an inherent right, it should be put under Chapter III.

3.3 Other suggestions

- This article should be written in greater detail. Visitors and refugees who are staying illegally or on expired visas in Hong Kong, or who are conducting illegal activities in the territory should be punished or deported.
- On the issuing of passports, immigration control and the issuing of documents on the basis of reciprocity, it should be clearly specified in the Basic Law that Hong Kong and other regions shall enjoy equal status and rights.

4. Issues to be clarified

- Is there any absolute guarantee that "the above passports and documents shall be valid for all states and regions"?
- After 1997, may Hong Kong people hold passports of other countries in addition to the HKSAR passports? If not, how should the matter be handled?
- The present provision is on immigration control only. How will those persons staying illegally or on expired visas be dealt with?
- At present, holders of PRC passports when travelling abroad are being classified as coming from a "communist country". Will the same treatment be given to holders of SAR passports?
- Will holders of the SAR identity cards definitely be issued a SAR passport?
- It is stipulated that "the Central People's Government shall authorize the government of the Hong Kong Special Administrative Region to issue, in accordance with law, passports of the Hong Kong Special Administrative Region of the People's Republic of China to all Chinese nationals who hold permanent identity cards of the Region...". But it is not clear in the article as to which law is referred to. Moreover, the arrangements for BNO passports after 1997 has not been clearly specified.

1. Original text

The Central People's Government shall assist or authorize the government of the Hong Kong Special Administrative Region to conclude visa exemption agreements with states or regions.

2. View

- Support is expressed for this article.

Reason: - This article is very positive and helps Hong Kong maintain its status as a major international trading and financial centre.

Article 164

1. Original text

The Hong Kong Special Administrative Region may, as necessary, establish official or semi-official economic and trade missions in foreign countries and shall report the establishment of such missions to the Central People's Government for the record.

2. View

- Support is expressed for this article.

Reason: - This article is very positive and helps Hong Kong maintain its status as a major international trading and financial centre.

3. Suggestions

- The clause "and handle other non-diplomatic affairs" should be added after "trade missions in foreign countries".
- The clause "and other organizations within the scope of affairs of the Hong Kong Special Administrative Region authorized by the Central Authorities in accordance with the Basic Law" should be inserted after "economic and trade missions in foreign countries".
- The words "The government of" should be added before "the Hong Kong Special Administrative Region" and the expression "other states and region" should replace "foreign countries". These amendments will make the meaning of this article clearer.

Article 165

1. Original text

The establishment of foreign consular and other official or semi-official missions in the Hong Kong Special Administrative Region requires the approval of the Central People's Government.

Consular and other official missions established in Hong Kong by states which have formal diplomatic relations with the People's Republic of China may be maintained.

According to the circumstances of each case, consular and other official missions established in Hong Kong by states which have no formal diplomatic relations with the People's Republic of China may either be permitted to remain or be changed to semi-official missions.

States not recognized by the People's Republic of China can only establish non-governmental institutions in Hong Kong.

2. Views

- After 1997, states which have not established diplomatic relations with China but have already established consular or other official missions in Hong Kong will only be able to establish trade commissions or commercial agencies in Hong Kong. If the policy on diplomatic relations is too stringent, these states will not establish any commercial agencies in Hong Kong at all. To a certain extent, the foreign trade relations established by Hong Kong will diminish after 1997.
- Although diplomatic affairs are not within the scope of Hong Kong's high degree of autonomy, it will be difficult to ask countries referred to in Paragraph 3 to apply to the Central People's Government for approval.

3. Suggestions

3.1 Amendments

- The phrase "before the establishment of the Hong Kong Special Administrative Region" should be inserted after "...established in Hong Kong" in the second and third paragraphs.
- The phrase "be permitted to remain" in the third paragraph should be replaced by the word "remain"

Reason: - The procedural permission requirement is not found in the Sino-British Joint Declaration.

- China should empower the HKSAR government to approve the

establishment of official and non-governmental organizations in Hong Kong by states which have not been recognized by China in order to give expression to Hong Kong's democracy.

- Official or semi-official organizations established in Hong Kong by other states, irrespective of the diplomatic relations between these states and China, should continue to be maintained.

4. Issues to be clarified

- If a certain country has established a consulate in Hong Kong for years and close trade relations with Hong Kong but has not established formal diplomatic relations with China, what is going to happen to the status of its consulate after 1997? This decision will have important bearing on Hong Kong's future economy.
- "The establishment of foreign consular and other official...missions...requires the approval of the Central People's Government." On what basis will the Central People's Government approve the establishment of such missions?
- "According to the circumstances of each case, consular and other missions established...by state which have no formal diplomatic relations with the People's Republic of China may either be permitted to remain or be changed to semi-official missions." According to what circumstances and criteria will the decision be made?
- Should China and a certain country end their diplomatic relations, what is going to happen to the consulates of this country?
- "Consular and other official missions established in Hong Kong by states which have formal diplomatic relations with the People's Republic of China may be maintained." Will such a decision be made by the HKSAR or the Central Authorities?
- "States not recognized by the People's Republic of China can only establish non-governmental institutions in Hong Kong." Will Hong Kong be deprived of the freedom to establish commercial or religious contacts with these states, or participate in activities of international organizations? Will non-governmental institutions not be supported or protected by the government? Will it be impossible for countries in dispute with China to have any activities in Hong Kong?

1. Suggestions

- In addition to a regional flag and a regional emblem, the HKSAR should have its own regional anthem.
- The scope within which the regional flag, regional emblem and regional anthem will be used should be specified, but should not be too restrictive.
- The heading of Chapter VIII should read "The Regional Flag, Regional Emblem and Holidays of the Hong Kong Special Administrative Region".

Article 166

1. Original text.

Apart from displaying the national flag and national emblem, the Hong Kong Special Administrative Region may use a regional flag and regional emblem of its own (to be drafted).

2. No view or suggestion has been given.

Article 167

香港
基本法
條文
匯編
HKEU

1. Original text

The regional flag of the Hong Kong Special Administrative Region (to be drafted).

2. Suggestions

- The design of the regional flag should be based on the national flag of the PRC.

Reasons: - This will demonstrate that the Central People's Government has sovereignty over Hong Kong.

- This will provide a vivid image of "Hong Kong, China".

- This will fully illustrate the political ties between China and Hong Kong.

- The design of the regional flag should reflect the characteristics of Hong Kong and should be distinctly different from that of the national flag and national emblem.

- Apart from Arabic numerals, there should not be any other foreign language inscriptions on the regional flag.

- There should not be any sign of foreign or colonial influence on the regional flag.

- Excessive Chinese flavour should be avoided.

Reason: - To show that Hong Kong enjoys autonomy and freedom.

- The red colour seems to be predominant in the short-listed entries in the regional flag design competition. This is undesirable as it will arouse apprehension on the part of those who resent the red colour.

- Most of the 52 short-listed designs fail to manifest the "one country, two systems" concept, the characteristics of Hong Kong, and the promise that Hong Kong will enjoy a high degree of autonomy and that the existing capitalist system and way of life will not be changed for 50 years. On the contrary, some of the rejected designs not only look dignified and beautiful but can give expression to the above-mentioned qualities.

- The regional flag of the HKSAR must show dignity in its design, be nicely coloured, embody the "one country, two systems" concept and the coexistence of Chinese socialism

- 3.2.2 Only the consent of the executive authorities and the legislature should be required
- The procedures for proposing amendments should be simplified to the effect that only the consent of two-thirds of the members of the Executive Council and the Legislative Council of the HKSAR would be required.
- 3.2.3 Only the consent of the legislature should be required
- Since the Basic Law is the law of the SAR, its amendment proposals should only require the consent of two-thirds of the members of the legislature of the SAR. (Note 170-1)
- 3.2.4 Only the consent of the Chief Executive should be required
- Proposals for amendment to the Basic Law should be directly submitted to the National People's Congress for examination after obtaining only the consent of the Chief Executive of the SAR. (Note 170-2)
- 3.2.5 Other suggestions
- Doubtless, the power of amendment should be vested in the National People's Congress. However, the right to propose amendments should rest with the HKSAR only.
 - During the 50 years after 1997, only the HKSAR may propose amendment to the Basic Law in accordance with this article.
 - The proposals to amend the Basic Law should be put forward by a group of people who are familiar with the conditions in Hong Kong.
- Reason: - The National People's Congress and the State Council are unfamiliar with the conditions in Hong Kong, especially the common law system practised in Hong Kong.
- 3.3 The power of amendment of the Basic Law should be vested in the government of the HKSAR and the National People's Congress
- The power of amendment of the Basic Law should be vested in the National People's Congress and the government of Hong Kong.
 - The power of final amendment of provisions concerning state sovereignty and the relationship with the Central Authorities should be vested in the Central Authorities; whereas the power of final amendment of provisions concerning the capitalist system or relating only to the

operation of Hong Kong should be granted to the HKSAR by the National People's Congress.

- The Standing Committee of the National People's Congress and the deputies of Hong Kong to the National People's Congress should have equal power of amendment or the two parties should amend the Law through consultations provided that the Sino-British Joint Declaration is not contravened. Only through such a practice will the high degree of autonomy be realized.

3.4 The right to propose amendments to the Basic Law should rest with both the HKSAR and the National People's Congress

- The Chief Executive or members of the legislature or deputies of Hong Kong to the National People's Congress may put forward amendment proposals.
- The deputies of the SAR to the National People's Congress should be elected by universal suffrage. The Chief Executive should also be selected through a democratic election system. Only through such a practice will the interests of the Hong Kong people be fully represented and proposals to amend the Basic Law be put forward.
- The Central Authorities and the SAR should have the right to propose amendments. If the "special court" (or the Committee for the Basic Law) rules that the right to propose amendments is outside the autonomy of the Region, the power of resolution shall rest with the National People's Congress, otherwise it shall rest with the SAR.
- As all amendments will finally be passed by the National People's Congress, Hong Kong, rather than the mainland, should be granted more power to propose amendments.

3.5 The right to propose amendments to the Basic Law should rest with the Central People's Government

- The Standing Committee of the National People's Congress and the State Council should consult the Committee of Legislative Affairs (and not the Committee for the Basic Law) before proposing amendments.

3.6 Suggestions on the article as a whole

- No amendment to the Basic Law shall contravene or weaken the principles stipulated in Chapter I.
- Provisions on the right to propose amendments should be in accordance with the principles of the Sino-British Joint Declaration.
- It should be clearly stated that "no amendment shall

contravene the established policies of China regarding Hong Kong specified in the Sino-British Joint Declaration".

- The meaning of "established basic policies" should be defined in order to avoid doubts and suspicion.
- The procedure for proposing amendments to the Basic Law by the National People's Congress and the State Council should be included in this article.
- The procedure for proposing amendments should not be too complicated. If two-thirds of the deputies of the SAR to the National People's Congress or one-third of the members of the Legislative Council move the proposal, the proposal should be immediately submitted to National People's Congress for discussion. If the proposal does not affect China's defence or foreign affairs, it should be directly voted on by the electorate of the SAR.
- The provision that an amendment proposal may only be put forward by two-thirds of the deputies of Hong Kong to the National People's Congress is too harsh. The proportion of deputies should be reduced to one-third or less.
- All proposals for amendment to the Basic Law passed by the National People's Congress must have the support of at least half of the deputies of Hong Kong to the National People's Congress.
- Before any amendment proposals could be put forward, the Committee for the Basic Law should be consulted.
- As amendment to the Basic Law will involve the Committee for the Basic Law, the nature, composition, duties of the Committee should be listed in detail in the Basic Law.
- Amended articles will affect future cases but should not affect previous cases or cases being heard.
- [Translator's note: This view is on the Chinese wording and has no relevance to the English version.]

3.7 Suggestions on amendment

3.7.1 Deletions

- [Translator's note: This view is on the Chinese wording and has no relevance to the English version.]
- The phrase "two-thirds of the deputies of the Region to the National People's Congress" in the second paragraph should be deleted.

3.7.2 Amendments

- The expression "established basic policies" may either be replaced by "the spirit of the Constitution of China" or deleted.
- The last paragraph should be amended to read: "No amendment to this Law shall contravene the provisions of Article 31 of the Constitution of the People's Republic of China or violate legal procedures."
- The last paragraph should be amended to read: "No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong or be against the interests of Hong Kong."
- The third paragraph should be amended to read: "Before a proposal for an amendment to this Law is put on the agenda of the National People's Congress, it should be studied by an independent research committee for the Basic Law commissioned by and accountable to the legislature of Hong Kong, and then submitted to the National People's Congress by the legislature as a proposal."
- The second sentence of the second paragraph should be amended to read: "Amendment proposals from the Hong Kong Special Administrative Region shall be submitted to the National People's Congress by the delegation of the Region to the National People's Congress after obtaining the consent of two-thirds of all the members of the legislature of the Region, and the Chief Executive of the Region."
- It should be amended to read: "The Central People's Government and the Hong Kong Special Administrative Region have the right to propose amendments. However, if the right to propose amendment is ruled by the special court to be within the autonomy of the Region, the power of resolution shall rest with the Region and the amendment proposal shall be directly voted on by the electorate or the legislature; if it is ruled otherwise, the power of resolution shall rest with the National People's Congress."
- It should be amended to read: "Amendment proposals from the Hong Kong Special Administrative Region must be submitted through the State Council to the National People's Congress after obtaining the consent of two-thirds of all the members of the legislature of the Region and the Chief Executive of the Region."
- It should be amended to read: "The procedures for amendment to this Law: the right to propose amendments rests with the Hong Kong Special Administrative Region and the powers of examination, approval and veto rest with the National People's Congress."

- The first paragraph should be amended to read: "The power of final amendment of the Basic Law is vested in the courts of the Hong Kong Special Administrative Region."
- It should be amended to read: "The right to propose amendments to this Law rests with the Hong Kong Special Administrative Region."
- The last paragraph should be amended to read: "No amendment to this Law shall contravene the Constitution of the People's Republic of China."
- The last paragraph should be amended to read: "No amendment to this Law shall contravene the basic policies of the People's Republic of China regarding Hong Kong specified in the Sino-British Joint Declaration."
- It is proposed that the second paragraph be amended to read: "The right to propose amendments to this Law rests with the Standing Committee of the National People's Congress, the State Council and the Hong Kong Special Administrative Region. Amendment proposals from the Hong Kong Special Administrative Region must be submitted through the State Council to the National People's Congress after obtaining the consent of two-thirds of the members of the legislature of the Region, and the Chief Executive of the Region."
- The second paragraph should be amended to read: "Amendment proposals to the Basic Law must be submitted to the National People's Congress by the delegation of the Region to the National People's Congress after obtaining the consent of two-thirds of all the members of the legislature of the Region, and the Chief Executive of the Region."
- The last paragraph should be amended to read: "No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong stated in the Preamble."

3.7.3 Additions

- The following provision should be added: "If the Standing Committee of the National People's Congress intends to propose amendment, it should officially consult the Committee for the Basic Law, and the Chief Executive and the legislature of the Hong Kong Special Administrative Region."
- The following provision should be added at the end of this Article: "No amendment to this Law shall contravene the spirit and the basic policies of the Sino-British Joint Declaration."

- The following provision should be added to the third paragraph: "Before the Committee for the Basic Law submits its views, it must consult the legislature and the Chief Executive of the Hong Kong Special Administrative Region."

3.8 Rewriting

- It should be rewritten as: "The power of amendment to this Law is vested in the National People's Congress. The right to propose amendments to this Law rests with the Standing Committee of the National People's Congress, the State Council and the Hong Kong Special Administrative Region. Amendment proposals from the Hong Kong Special Administrative Region shall be submitted through the State Council to the National People's Congress after obtaining the consent of two-thirds of the members of the legislature of the Region, and the Chief Executive of the Region.

"Before a proposal for an amendment to this Law is put on the agenda of the National People's Congress, the Committee for the Basic Law of the Hong Kong Special Administrative Region shall first study it and submit its views. No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong stated in the Preamble." (Note 170-3).

- It should be rewritten as: "The right to propose amendment to this Law rests with the Standing Committee of the National People's Congress, the State Council and the Hong Kong Special Administrative Region. Amendment proposals from the Hong Kong Special Administrative Region shall be submitted to the National People's Congress by the delegation of the Region to the National People's Congress after being passed by two-thirds of all the members of the Legislative Council of the Region and obtaining the consent of the Chief Executive of the Region."

Reason: - Proposals for amending the provisions of the Basic Law within the scope of the high degree of autonomy of the SAR should be drafted, discussed, passed and proposed by the executive and legislative authorities of the Region. The deputies of Hong Kong to the National People's Congress shall only submit the proposals to the National People's Congress upon request of the Region.

- It should be rewritten as: "The power of amendment of this Law is vested in the National People's Congress. The right to propose amendments to this Law rests with the Standing Committee of the National People's Congress. Amendment proposals from the Hong Kong Special Administrative Region

shall be put forward by the Standing Committee of the National People's Congress in the name of the legislature of Hong Kong after the legislature of Hong Kong has consulted the public and local grass-roots organizations, debated the proposals and passed the proposals by two-thirds of all its members, and after obtaining the consent of the Chief Executive of Hong Kong. Before a proposal for an amendment to this Law is put on the agenda of the National People's Congress, the Committee for the Basic Law of the Hong Kong Special Administrative Region shall first study it and submit its views. Should the Committee disagree with the amendment proposals submitted by Hong Kong, it may refer the proposals to the Court of Final Appeal of Hong Kong for a ruling. The final amendment proposals submitted by Hong Kong, once put forward to the National People's Congress by its Standing Committee, shall be passed as proposed to become an integral part of this Law."

Reason: - Amendments to this Law should be debated by the legislature of Hong Kong after it has consulted the various sectors. Amendment proposals must be submitted to the Standing Committee of the National People's Congress by the legislature and not through the State Council nor the Hong Kong delegation to National People's Congress. The State Council is an executive organ of the state and not an organ directly under the Hong Kong Special Administrative Region. And the delegation to the National People's Congress is responsible for discussing national policies. It is inevitable that when studying the amendment proposals put forward by Hong Kong, the Committee for the Basic Law of Hong Kong Special Administrative Region will have different opinions and disagreements. However, such conflict of opinions should not be remedied by further amendment by the Committee for the Basic Law because of its different standpoint. Hence, the proposals should be submitted to the Court of Final Appeal of Hong Kong for a ruling. Amendment proposals ruled in favour by the Court of Final Appeal should be submitted to the National People's Congress through its Standing Committee and passed as proposed and should not be further amended or revoked.

- It should be rewritten as: "The right to propose amendments to this Law rests with the Standing Committee of the National People's Congress, the State Council and the Hong Kong Special Administrative Region. Amendment proposals shall be submitted to the National People's Congress by the State Council after obtaining the consent of the Chief Executive of the Hong Kong Special

Administrative Region. Before a proposal for an amendment to this Law is put on the agenda of the National People's Congress, the Committee for the Basic Law of the Hong Kong Special Administrative Region shall first study it and submit its views. No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong stated in the Preamble."

- It should be rewritten as: "Before an amendment proposal put forward by the Standing Committee of the National People's Congress and the State Council is put on the agenda of the National People's Congress, the Committee for the Basic Law of the Hong Kong Special Administrative Region shall first study it and submit its views. No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong."
- It should be rewritten as: "The power of amendment of this Law is vested with the National People's Congress. The right to propose amendments to this Law rests with the Standing Committee of the National People's Congress and the Hong Kong Special Administrative Region. Amendment proposals submitted by either party must have obtained the consent of two-thirds of the members of the legislature of the other party, and the Chief Executive before they can be put forward to the National People's Congress by the State Council."
- It should be rewritten as: "Amendment to this Law should be through a referendum in Hong Kong. The right to propose amendments to this Law rests with the Hong Kong Special Administrative Region. Amendment proposals from the Hong Kong Special Administrative Region must be put to a referendum by the Hong Kong people after obtaining the consent of two-thirds of the members of the legislature of the Region, and the Chief Executive of the Region. An amendment proposal should only be passed with the consent of at least half of the voters participated in the referendum in Hong Kong."
- It should be rewritten as: "The power of amendment of this Law is vested in the National People's Congress. The right to propose amendments to this Law rests with the Standing Committee of the National People's Congress, the State Council and the Hong Kong Special Administrative Region. Amendment proposals from the Hong Kong Special Administrative Region shall be put forward by two-thirds of the members of the legislature of the Region and submitted to the Chief Executive in writing. After having been approved, they should be submitted to the National People's Congress by the delegation of the Region to the National People's Congress. Before a proposal for amendment is put on the agenda of the National People's

Congress, the Committee for the Basic Law of the Hong Kong Special Administrative Region shall first study it and submit its views."

- It should be rewritten as: "The power of amendment of this Law is vested in the National People's Congress. The Standing Committee of the National People's Congress and the legislature of the Hong Kong Special Administrative Region may put forward proposals for amendments to this Law with the consent of at least two-thirds of the members of the legislature of the Region and the Chief Executive. Before an amendment proposal is put on the agenda of the National People's Congress, the consent of the Standing Committee of the National People's Congress and the legislature of the Region must first be obtained. No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding the Hong Kong Special Administrative Region stated in the Preamble to this Law."
- It should be rewritten as: "Proposals for amendments to this Law must be submitted through the State Council to National People's Congress for decision after obtaining the consent of the Chief Executive of the Region. Before such a proposal is put on the agenda of the National People's Congress, the Committee for the Basic Law shall first study it and submit its views. No amendment to the Basic Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong."
- It should be rewritten as: "The power of amendment of this Law is vested in the National People's Congress. The right to propose amendments to this Law rests with the Standing Committee of the National People's Congress, the State Council and the Hong Kong Special Administrative Region. Amendment proposals from the Hong Kong Special Administrative Region must first be passed by more than half of the members of the Legislative Council of the Region and then submitted to the Chief Executive for consideration and adoption. If the Chief Executive vetoes it, the proposal shall be returned to the Legislative Council for reconsideration. If two-thirds or more of all the members of the Legislative Council pass the same proposal again, the Chief Executive must submit the proposal to the National People's Congress."

4. Issues to be clarified

- Since the power of amendment is vested in the National People's Congress, why is it necessary to consult the people of Hong Kong?
- Will the National People's Congress accept the opinions of people in Hong Kong and act accordingly?

- If the majority of the eligible people in the Hong Kong Special Administrative Region put forward a proposal for an amendment to the Basic Law, will it be possible for the National People's Congress to veto it?
- What is meant by "contravene the established basic policies of the People's Republic of China regarding Hong Kong"?
- How can it be ensured that amendments to the Basic Law will not contravene the "established" policies?
- "No amendment to the Basic Law shall contravene the established policies of the Central Authorities regarding Hong Kong." Do these established policies refer to those specified in the Sino-British Joint Declaration? If so, why not clearly specify what the "established policies" are and incorporate the relevant provisions of the Sino-British Joint Declaration into the Basic Law for reference?
- [Translator's note: This view is on the Chinese wording and has no relevance to the English version.]
- According to the punctuation marks of this Article, the Standing Committee of the National People's Congress, the State Council and the Hong Kong Special Administrative Region simultaneously have the right to propose amendments. However, this article only provides for the procedures for submitting proposals by the Hong Kong Special Administrative Region. Does it mean that the Standing Committee of the National People's Congress and the State Council may put forward amendment proposals at any time without being subject to any restrictions?
- Under what circumstances may the Basic Law be amended?

CHAPTER X

Article 171

1. Original text

The first government and the first Legislative Council of the Hong Kong Special Administrative Region shall be established in accordance with the principles of national sovereignty and of smooth transition and in accordance with the stipulations of Annex III: "Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region".

2. Suggestions

- After extensive consultation and thorough discussion, the method for the formation of the first government and the first Legislative Council should be detailed in the text of the Basic Law as Article 171 rather than in the form of an annex.
- This question should not be dealt with in the Basic Law. Instead, it should be resolved through consultation between the Chinese and British governments.

Reason: - The Basic Law will be a Chinese law. It should not provide for constitutional or political activities under British administration before 1997. Even if the British government agrees, China should not prescribe in one of its laws matters which are beyond its authority.

* Note: For suggestions and views on the formation of the first government, please also refer to the Section on Annex III in this Report as well as the Special Report on "Methods for the Formation of the First Government of the Hong Kong Special Administrative Region".

1. Original text

At the time of the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the National People's Congress declares to be in contravention of this Law. If any laws are later discovered to be in contravention of this Law, they can be annulled or revised according to the procedure as prescribed by this Law.

Documents, certificates, contracts, and rights and obligations valid under the laws previously in force in Hong Kong shall continue to be valid and be recognized and protected by the laws of the Hong Kong Special Administrative Region provided that they do not contravene this Law.

2. Views

- This article does not give the specific procedure for the annulment or revision of a particular law of the HKSAR if it is deemed to be in contravention of the Basic Law.
- This article gives the Standing Committee of the NPC the power to determine which laws of the HKSAR are in contravention of the Basic Law. If the Central Authorities have so much power of intervention, the high degree of autonomy promised to Hong Kong will be seriously impaired.
- In giving such great power to the executive authorities and the legislature, this article has overlooked the role that the judicial organs are supposed to play in checking and balancing power.
- This article goes against the Joint Declaration.

Reason: - The Joint Declaration states that the legislature of the HKSAR will have the power to enact laws except in respect of defence and foreign affairs. This article, however, gives the Standing Committee of the NPC the power to annul certain laws of Hong Kong at the time of the establishment of the HKSAR.

- This article will harm the prosperity of Hong Kong.

Reason: - Under this article, the Standing Committee of the NPC will have the power to annul any law, certificate or contract which it deems to be in contravention of the Basic Law.

- This article appears finicky compared with the American Constitution.

3. Suggestions

- Representatives of Hong Kong's legal sector should join the Standing Committee of the NPC in examining and deciding whether any law previously in force in Hong Kong is in contravention of the Basic Law.
- There should be a legal procedure for declaring which particular laws are in contravention of the Basic Law. Such declaration should be made as early as possible before 1997.
- If a certificate, contract, right or obligation is discovered to be in contravention of the Basic Law and is annulled by the Standing Committee of the NPC, reasonable compensation should be given.
- The following provision should be added as Annex IV: "The Standing Committee of the NPC reserves the final right to interpret the following provisions of this Law: Articles 1, 2, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 137, 138, 158, 160, 161, 163, 164, 165, 169, 170, 171, and 172." Furthermore, Article 172 should be amended to read as follows: "At the time of the establishment of the HKSAR, the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the NPC declares to be in contravention of the provisions specified in Annex IV to this Law. If any laws are later discovered to be in contravention of the provisions specified in Annex IV to this Law, they can be annulled in accordance with the procedure as prescribed by this Law. Except in cases where criminal charges have resulted in convictions, the annulment of a law shall not have retroactive effect.

"Documents, certificates, contracts and rights and obligations valid under the laws previously in force in Hong Kong shall continue to be valid and be recognized and protected by the laws of the HKSAR provided that they do not contravene this Law."

- This article should be amended to read: "At the time of the establishment of the HKSAR, the Standing Committee of the NPC shall declare invalid those laws previously in force in Hong Kong which are in contravention of the provisions of this Law on matters related to defence or foreign affairs, or on matters which according to this Law are the responsibilities of the Central People's Government. The legislature of the HKSAR shall annul or revise without delay those laws previously in force in Hong Kong which are in contravention of the other

provisions of this Law. The courts of the HKSAR may refuse to recognize or implement any of the above-mentioned laws previously in force in Hong Kong which are in contravention of this Law. If any laws are later discovered to be in contravention of this Law after the establishment of the HKSAR, they may be dealt with in accordance with the provisions of Article 16."

4. Issue to be clarified

- What shall be done if, during the period after the promulgation of the Basic Law in 1990 and the establishment of the HKSAR in 1997, provisions of the Basic Law become unsuitable due to changes in society?

Views regarding the underlying principles of the method for selecting the Chief Executive:

1. To meet the principles of democracy and fairness
 - To give expression to a high degree of democracy and to select the Chief Executive through democratic election.
 - To safeguard the democratic rights of the public.
 - It should be fair and reasonable.
 - The public should have the right to remove those officials who fail to discharge their duties, and the power of the future Chief Executive must be exercised by a democrat.
 - Elections must be open in order to avoid the unnecessary political bargains behind the scene.
 - To avoid, as far as possible, the manipulation by individual interest groups or political organizations.

2. The qualities and representativeness of the Chief Executive
 - The prime concern should be to select the most qualified and ideal person.
 - The Chief Executive should have adequate administrative experience, a high degree of diplomatic skills and a noble character, and should be impartial.
 - The Chief Executive should be decisive enough and courageous.
 - To ensure that the Chief Executive has the general support of various sectors of society and full authority.
 - The Chief Executive should represent the interests of various parties, including those of different social strata, professions and trades.
 - The Chief Executive should be accountable to the voters as well as non-voters, and should not neglect the overall interests of society.

3. To maintain the stability and prosperity of society
 - To maintain the stability of society which is favourable

- To look after the economic development of society.
4. The relationship between the executive and the legislature
- To ensure coordination as well as checks and balances between the Chief Executive and the Legislative Council.
5. "A high degree of autonomy"
- To give expression to the spirit of "a high degree of autonomy".

1. Original Text

1. The Chief Executive of the Hong Kong Special Administrative Region shall be elected locally by a broadly representative electoral college.
2. The electoral college shall be composed of about 600 representatives from various walks of life in Hong Kong, including members of the legislature; representatives of district organizations; representatives of corporate bodies and non-corporate permanent organizations; and representatives of various functional constituencies (including industry, commerce, finance, professions, educations, labour, religious communities, social services and the public servants).
3. Communities and organizations with seats in the electoral college may, according to their own rules, elect their representatives by a democratic procedure. Each elected representative must not concurrently represent several organizations and shall vote in an individual capacity. The electoral college will be dissolved after the election is completed.
4. The electoral college shall elect a nominating committee of 20 members from its own midst. The committee shall nominate three candidates for the office of the Chief Executive. Members of the nominating committee cannot run for the office of the Chief Executive, nor can they vote in the election of the Chief Executive.
5. The electoral college shall vote on the nominations by the nominating committee, and a candidate must win over half of the votes to be elected. If no one wins over half of the votes on the first ballot, a second ballot has to be taken on the two candidates with the highest number of votes. The Chief Executive elected by the electoral college shall be reported to the Central People's Government for appointment.
6. Detailed election rules shall be prescribed by the laws of the government of the Hong Kong Special Administrative Region.

2. Views

2.1 Supporting views

- Support is expressed for this alternative.

This alternative is more acceptable.

Reasons:

(1) The qualities and representativeness of the Chief Executive

- It will ensure the qualities of the candidates.
- It will enable candidates who are qualified in all aspects to run for the office of Chief Executive.
- There will be greater chances of selecting the cream of society.
- The Chief Executive would be more representative.
- The Chief Executive will have the support of all strata of society, including the Legislative Council, thus enabling him to lead the government of the HKSAR more effectively.

(2) Maintaining the status quo

- The status quo will be maintained.
- The degree of change to the political system will be relatively small.
- The capitalist system will be maintained.
- It is the only guarantee that an executive-led government will be constituted.
- It is a conventional method for selecting well-qualified personnel in the political field, and such a method is accepted by the general public.

(3) Stabilizing the government and ensuring a smooth transition

- It is the only method to ensure a stable government with consistent leadership.
- It will ensure that the Chinese Government will keep its promise to Hong Kong in the next ten to twenty years.
- It can gather the support of different sectors, thus minimizing the possibility of monopolization and the formation of political parties.
- It will minimize the possibility of confrontational politics.
- It is the only method to ensure that Hong Kong will enjoy a smooth transition even if crises do occur in

the next ten or twenty years.

- It will give better regard to the concerns and needs of Hong Kong's trade and industry.

(4) Gradual and orderly progress

- It will suit Hong Kong's actual conditions and meet the principle of gradual and orderly progress.
- It can apply the principle of gradual and orderly progress, which will be appropriate to the early political model of the HKSAR after 1997.
- The change should not be too great. It should stick to the method of gradual and orderly progress in order to maintain the prosperity and stability of Hong Kong.
- As the general public is apathetic to politics, it is not the right time to introduce a legislative-led government at present.
- The political consciousness of the general public, civic education and the democratic political system are developing very slowly and the public have no clear concept of the different types of election.
- It is difficult to achieve genuine "democratization" as the Hong Kong public are apathetic to politics.
- As we are now entering a period of transition, this alternative is more suitable.

(5) In favour of electoral college

- The electoral college includes members from the sectors of labour and social services, members of functional constituencies and members of the Legislative Council. It does not neglect the question of general representation in comparison with the membership of the Legislative Council.
- The electoral college is broadly representative.
- The selection of the Chief Executive by the electoral college will allow representation and will not be easily manipulated. Moreover, Hong Kong people have considerable experience in functional constituencies elections.
- It will ensure that the Chief Executive will not be controlled by the Legislative Council nor by any of the organizations or social strata, as the electoral college is not a power organ which will be dissolved

- No one will be able to influence the impartiality of the electoral college.
 - The electoral college represents the most important step in the political ladder in Hong Kong, and includes the elements of "functional constituency" and "regional constituency" in the politics of election.
- (6) Nomination of the Chief Executive
- As there are not too many members in the nominating committee, consultations are more likely when nominating the candidates.
 - Since the number of candidates would not be too large, the voters would not find it difficult to make a choice, nor would the representativeness of the elected person suffer.
- (7) Compromise
- Being relatively stable, it is a method of compromise.
 - Votes would not be manipulated by any of the organizations or individuals.
 - It is neither radical nor conservative.
- (8) People's livelihood is more important than democracy
- Livelihood of the citizens is more important than election.
 - With the democratic fighters or ambitious politicians being elected, the stability of Hong Kong would be jeopardized.
- (9) Checks and balances between the executive and the legislature
- There will be checks and balances between the executive and the legislature.
- (10) Other aspects
- It will save money.
 - It reflects the wishes of the various strata of society.
 - It will have the support of the public.

- It is fair.
- It is relatively reasonable.
- It is the most appropriate and the best alternative.
- Election on a one-person-one-vote basis will allow the infiltration of the Triad Society into the government as the community of Hong Kong is a complicated one and the Triad Society has significant influence.

2.2 Opposing views

- Objection is expressed to this alternative.

Reasons:

- (1) It will only protect the interests of a particular stratum
 - The proportions of the commercial and industrial sectors as well as the professions are too large whilst other organizations are a foil for them. It creates the situation where the fate of the majority will be in the hands of the minority.
 - The method of the electoral college is not fair. It mainly protects the interests of the business and financial sectors and cannot protect the interests of all social strata.
 - It is not difficult for a rich and powerful person to buy more than half of the votes in the electoral college which consists of only 580 people (apart from the 20 nominating committee members) in order to be elected as the Chief Executive. The Chief Executive so elected will make the public pay for what he has spent in the election, and millions of Hong Kong people will become the ultimate victims.
 - It does not achieve the objective of balancing the interests of various strata in society as the proportions of the business and professional sectors are too large.
 - The composition of the electoral college is not clearly defined. As it is possible that the number of people engaged in some professions is particularly large, members of these professions are more likely to be elected.
- (2) It will easily be manipulated by a handful of people

- As the membership of the electoral college is too small (only 600 people), it would be easily controlled and manipulated.
- It will easily be controlled by a handful of interest groups.
- The election would easily be monopolized and manipulated .

(3) It will be against the wishes of the majority

- The Chief Executive elected by the electoral college may not necessarily represent the wishes of the majority in the electoral college.
- The methods through which the organizations select their representatives to the electoral college might not be disclosed to the public and hence would not be subject to public scrutiny. They would be open to manipulation and abuse.
- The electoral college purports to be government by consensus. It is in fact government by conspiracy.
- The electoral college would force some professional bodies, trade associations, charities, religious communities, labour and other social organizations to take up the responsibility of electing the Chief Executive, thus politicizing them beyond the ambit of their normal functions. The transient membership of some of these organizations means that the constituencies could not effectively enforce the accountability of the Chief Executive.

(4) It will lack representation and fairness

- Six hundred people cannot represent six million people.
- It lacks representation.
- The electoral college violates the principle of equal participation in politics as it only looks after the interests of those special constituencies.
- It is unfair to determine who shall be Chief Executive by counting the number of votes as the size of membership of the organization represented by each member in the electoral college is not the same. It is highly possible that the number of people of the organization represented by a defeated candidate is greater than that of the winning candidate.
- The so-called grand electoral college is in fact

composed of the representatives of units led by the rich and upper-middle class. It goes without saying that preference would be given to the interests of this class.

- It violates the principle of fairness and makes other strata in society dissatisfied.
- It deprives the public of their right to choose as the power is centralized at the 600-member electoral college which is not required to let the public know whom it would choose as Chief Executive. In fact, when the electoral college is being formed, there are no candidates available for its members to choose from as the Chief Executive.

(5) It will affect the qualities of the Chief Executive

- The Chief Executive chosen by a few hundred people would not have public support as his representativeness and authority must be minimal.
- The prosperity and stability of Hong Kong would be affected as the Chief Executive would not have the support of all the people.
- In the elections by small circles, there is bound to be trading of benefits and the Chief Executive so elected is not necessarily the ideal candidate.

(6) It will be unfavourable to the operation of the government

- An electoral college formed or a Chief Executive elected by different professions and industries will have to face the situation where different professions and industries are fighting with each other for their own interests. Their policies being affected by the interests of these professions and industries would have no direction and would be capricious.
- If neither candidate obtain more than half of the votes, a second ballot will have to be conducted. But if the electoral college still has to choose one candidate as the Chief Executive just for the sake of completing its task, it may not be favourable to the operation of the government.

(7) The formation of the electoral college is vague

- It is impossible to have an objective criterion for deciding which profession or industry may be represented and which organization within these professions and industries may be represented.

Therefore, when determining which organization or individual may be represented in the electoral college, there would be even greater and more extensive debates which would be detrimental to society.

- The method of forming the electoral college is not defined.

(8) It will make the system inflexible

- Once the electoral college system is established, persons who have benefitted from the electoral college would resist any changes to the system. This system would then become inflexible and cannot completely meet the needs of society and the development of democracy.

(9) It will intensify internal conflicts

- The present electoral college made up of regional constituencies is complicated enough. Factional struggles are likely to take place as the future electoral college will be so large.

(10) Nomination of the Chief Executive

- The establishment of a nominating committee is unnecessary. The nomination of the Chief Executive can be made by a prescribed number of members of the electoral college.
- The results of the so-called election would in fact be pre-determined by the 20 members of the nominating committee because the qualifications of the candidates would be decided by the nominating committee of the electoral college. It would not be very much different from the appointment system.
- Corruption and bribery are more likely as the nominating committee is only composed of 20 members and the number of candidates for the Chief Executive is limited to only three. Capable persons would find it difficult to be nominated as candidates for the post of Chief Executive if they do not please the nominating members beforehand.
- The nominating committee may have the power to control the future Chief Executive before the nomination. The electoral college may manipulate the future Chief Executive.
- Since the nomination of the Chief Executive only involves 20 people who are not selected by democratic methods, ambitious politicians would

struggle for political power through personal relations, illicit dealings or even various forms of "buying votes". The government of the HKSAR would then be corrupt.

- There are too many restrictions on election and nomination.
- If candidates for the office of Chief Executive can only be nominated by a 20-member nominating committee, there is bound to be rampant under-the-table trading of political benefits, which is not conducive to the setting up of a 'clean' government, or one that is able to inspire confidence.
- Objection is expressed to the method of setting up a nominating committee because with the three candidates selected by the undemocratic nominating committee through consultations, the subsequent one-person-one-vote election will not be of much significance.

(11) No attention is paid to democracy and human rights

- It lacks extensive social participation.
- The general public is deprived of the chance to participate.
- It violates the principle of equal participation and pays no attention to equal political rights of the general public.
- It neglects the interests and rights of the public.
- It is a serious blow to the sense of belonging of the people in Hong Kong.
- It is undemocratic and unfair.
- It is too conservative.
- All eligible voters should have the right to vote on a one-person-one-vote basis in the election of the Chief Executive.

(12) Other aspects

- It can easily be interfered in and controlled by the Central People's Government.
- It will weaken the civic consciousness of the people in Hong Kong.
- The base of democracy in Hong Kong would be

strengthened if political parties exist in Hong Kong. Confrontational politics is healthy because only through confrontational politics will Hong Kong have democracy.

- As Paragraph 6 states that detailed election rules shall be prescribed by the laws of the government of the HKSAR, this alternative cannot be applied before the prescription of the election rules by law. Moreover, prior to the setting up of the Legislative Council of the HKSAR, there is no way to legislate. If the Chief Executive has not yet been selected, there will be no one to sign bills and promulgate laws.

2.3 Other Views

2.3.1 Merits of the electoral college

- The industrialists and businessmen may continue to stay in the establishment in order to maintain the economic prosperity of Hong Kong.
- It is not fair to blame the industrial and business sectors for monopolizing political power because the electoral college is broadly representative. It includes representatives from such functional constituencies as industry, commerce, finance, professions, education, labour, religious communities, social services and the public servants.

2.3.2 Drawbacks of the electoral college

- To indirectly force candidates to run for the office of Chief Executive may not be able to eliminate the existence of "free lunch" as these candidates must appease the different functional constituencies in the electoral college. Moreover, it will easily give rise to illicit dealings, "small circles" or emotional votes.
- The "electoral college" as a system of indirect election may lead to "party politics".

Reasons: - Competitive candidates would try every possible means to canvass members of the electoral college whose number is defined.

- The emergence of spheres of influence inside the electoral college would probably intensify the rivalry among the different organizations.
- It cannot ensure that members of the electoral college will not be subject to external pressures.

Reasons: - The social circle in Hong Kong is small. No member of the electoral college would like to offend a future Chief Executive who is capable of "organizing a cabinet".

- Candidates would pressurize and lobby individual members of the electoral college, demanding their support behind the scene.
- The concept lacks detailed design.

Reasons: - The "electoral college" will be dissolved right after the election is completed. As far as the principles of being "directly accountable to the voters" is concerned, it lacks a permanent object to be held accountable to.

- This alternative fails to spell out whether members of "the electoral college" should strive for the overall interests of Hong Kong without being influenced by the various sectors, or should play a mechanical role because their choices will be solely made by the functional constituencies they represent.
- It will probably lead to a crisis in which the political power in Hong Kong is monopolized by the industrial and business sectors, giving them direct control of the government, economic lifelines and administrative power of Hong Kong.

Reason: - The industrial and business sectors directly account for one-third of the membership of the electoral college, and indirectly control the other 10 to 20 per cent of the votes (for instance, the votes of corporate bodies and charitable organizations).

- The representatives selected by the grand electoral college will probably be representatives of the industrial and commercial sectors who need not be held accountable to the general public.
- It is possible to decide who will be chosen as the next Chief Executive if 11 out of the 20 members of the nominating committee are being controlled.
- To propose that the electoral college be composed of representatives of such functional constituencies as religious communities, education, civil service and charitable organizations is to politicize the present non-political organizations.

2.3.3 Reservations about the electoral college

- This alternative implies that "Hong Kong will be governed by the cream of society". The intension is not bad but careful consideration should be given to whether the method for forming the 20-member nominating committee is appropriate, and whether it will create a small number of "political aristocrats", thus becoming an obstacle to climbing the social ladder in Hong Kong and creating a new feudal system.
- It has some good points but is still inadequate.

Reasons: - This alternative eliminates the participation of the central regime.

- This alternative has not spelt out the proportions of representation of functional constituencies in the electoral college.
- The representativeness of the grand electoral college is incomplete because no representation is given to the deputies of Hong Kong to the National People's Congress.

Reason: - After 1997, the deputies of Hong Kong to the NPC will still be elected by the people in Hong Kong through democratic means, their importance is not less that of Legislative Councillors.

2.3.4 Other views

- The meaning of "non-corporate permanent organizations" in the second paragraph should be defined.
- "Corporate bodies and non-corporate permanent organizations" should not be given separate representation because that will give them a second identity on top of that as functional constituencies.
- It is specified in the third paragraph that "communities and organizations...may...elect their representatives by a democratic procedure". However, the meaning of "democratic procedure" has not been clearly defined. Moreover, different organizations have different means for selecting their own representatives, the meaning of the phrase should therefore be clearly defined.
- The possibility that the Chief Executive may be a member of the Legislative Council has not been eliminated. If Legislative Councillors may become members of the electoral college, then it is possible that the Chief Executive will have dual identity. Hence, due consideration should be given to the proposal that once a Legislative Councillor becomes the Chief Executive, he

should be asked to resign from the Legislative Council.

- As some members of the electoral college will be Legislative Councillors, when selecting Legislative Councillors, the electoral college should consider their dual identity.
- Paragraph 5 achieves nothing.

3. Suggestions

3.1 Principles on the composition of the electoral college

- The number, proportion and method for selecting the various representatives to the electoral college should be clearly stipulated.
- The representation of functional constituencies in the grand electoral college can be broader so as to allow for adequate and balanced representation of various strata.
- The grand electoral college should, as far as possible, be broadly representative. The number of representatives of grass-roots organizations, labour and the masses should be increased.
- The concept of the grand electoral college should incorporate the element of direct election.
- The representatives of each functional constituency in the grand electoral college should be elected through democratic nomination in order to ensure that the wishes of the people can be represented. The grand electoral college should not be formed by district election.
- Any electoral college designed for the selection of the Chief Executive must have a balanced and broad representation. Only through such representation will the elected Chief Executive or members of the Legislative Council not be biased towards the interests of a certain group of people.
- Legislation should be formulated to expand the representation of various organizations in the electoral college.
- More legislators should be involved in the nomination process of the Chief Executive to be elected by a grand electoral college.
- The number of representatives to the grand electoral college may be reduced, whereas the proportion of members of the Legislative Council may be increased.

3.2 Concrete suggestions on the composition of the electoral college

- The seats allocated to the industrial and business sectors and the grass-roots representing respectively interests at the two extremes should not exceed 30 to 35 per cent. The seats allocated to the professions and district organizations should not exceed 15 to 20 per cent each, thus making them take a more neutral stance. No group should win by an overwhelming majority. Candidates must win the majority support of the electoral college by taking an unbiased stance.
- The electoral college should comprise representatives of the various sectors in Hong Kong. It should have a membership of 500 made up by: members of the Legislative Council and representatives of the various district organizations, corporate bodies, non-corporate permanent organizations, and functional constituencies.
- The Chief Executive should be selected by a 500- to 800-member electoral college comprising the functional constituencies and district boards as each of them plays an important role in the political arena in Hong Kong, thus enabling the electoral college to inherit the political foundation and traditional wisdom laid down in Hong Kong.
- A 600-member electoral college should be formed comprising representatives of:

Industrial, business and financial sectors	20 %
Professions	20 %
Labour, grass-roots and religious communities	20 %
District organizations	20 %
Executive authorities and legislature	15 %
Deputies to the National People's Congress and members of the National Committee of the Chinese People's Political Consultative Conference	5 %
- An electoral college should be formed by functional groups and district boards for selecting the Chief Executive. Working on the basis of a 60- to 80-member Legislative Council, Hong Kong has 42 to 56 "functional constituencies and district boards" within its political structure, each producing 10 representatives to form an electoral college comprising 420 to 560 members.

- During the transitional period, the Chief Executive should be elected by an electoral college comprising 600 to 1000 representatives of the various sectors in Hong Kong. And, the number of candidates should not be limited to three. Moreover, any permanent resident of Hong Kong may run for the office of Chief Executive provided that he has the support of one-tenth of the members of the electoral college, thus setting the maximum number of candidates to 10.
- The grand electoral college should have 400 to 600 members, representing the following sectors in Hong Kong:
 - (1) Industrial, business and financial organizations;
 - (2) Professional groups;
 - (3) Religious, social and charitable organizations;
 - (4) District and labour organizations.

Communities and organizations with seats in the grand electoral college may, according to their own rules, elect their representatives through democratic procedures. Elected representatives should vote in their personal capacity and must not concurrently represent several organizations. And their term of office will be terminated once the election is completed.

All members of the electoral college may run for the post of Chief Executive. However, a candidate should be nominated by no less than ten members of the electoral college. No nominator should nominate more than one candidates.

- The total membership of the electoral college should be 700. The number of representatives of the grass-roots should be increased and the composition of the electoral college should be as follows:

Industrial, business and financial organizations	150
Professional groups	200
Labour organizations	100
Religious, social and charitable organizations	100
Area communities and street vendors' organizations	150

The method for electing a 20-member nominating committee by the electoral college and the subsequent nomination of three candidates have some limitations. It is proposed that 10 out of the 700 members of the electoral college should each nominate one candidate to be voted on by the

700 members on a one-person-one-vote basis.

- Senior government officials should be allowed to form a functional constituency to elect their representatives.
- An electoral college formed by the following representatives is to select the Chief Executive.

Legislative Councillors 60

Hong Kong deputies to the National People's Congress and members of the National Committee of the Chinese People's Political Consultative Conference 20

Representatives of social organizations 12
(Kaifong associations 2
religious communities 4
academics 2
grass-roots and labour organizations:
fisheries, farming, and street vendors 2
sports organizations 1
charitable organizations 1)

Unofficial members of the Executive Council 8

Representatives of district organizations 24

This 124-member electoral college will elect a 20-member nominating committee to select one to three candidates by consultation. The electoral college will select by ballot from among these candidates the Chief Executive.

3.3 The nominating committee and the number of candidates

- In order to fully utilize qualified personnel, it is proposed that members of the nominating committee may select a candidate from among themselves.
- An electoral college is an organization vested with the power of nomination and election. Candidates must be nominated by one-tenth of the members of the electoral college. If the candidate is a member of the electoral college, he should resign from the electoral college after he is nominated, and his seat should be taken up by another representative selected by the relevant constituency.

In order to be fair, avoid neglecting qualified personnel, and partially satisfy the desire of participation, the electoral college should, apart from nominating candidates from among themselves, publicly invite outside parties to nominate candidates. "Outside

parties" refers to those social organizations other than functional constituencies and district boards which are qualified to have representation in the electoral college. Individuals do not have the right to nominate candidates. In order to ensure that the nomination is solemn and efficient, it must be expressly provided for upon careful consideration which social organization has the right of nomination and how the nomination should be conducted.

The membership of the nominating committee should be increased to 40, including 15 Legislative Councillors, to strengthen its representativeness.

- Apart from being nominated by the 20-member nominating committee of the grand electoral college as candidates, those who wanted to run for the office of Chief Executive may also be nominated by a certain number (e.g. 20 or 30) of members of the grand electoral college.
- The number of candidates should not be limited, but the maximum number of nominees should be 10. The electoral college should be dissolved after the Chief Executive is elected.
- The Legislative Council ought to substitute the 20-member nominating committee in the nomination process for the election of the Chief Executive. Each candidate shall be nominated by no less than one-tenth of the members of the Legislative Council.

Reason: - To ensure that the Chief Executive has some definite support of the legislature which minimizes the chance of a lame-duck administration.

3.4 The process of election

- The provision "[c]ommunities and organizations with seats in the electoral college may, according to their own rules, elect their representatives by a democratic procedure" should be amended to read "the procedures for election shall be prescribed by the laws of the government of the Hong Kong Special Administrative Region".
- Vetting procedures: After the candidates are nominated by the electoral college and outside parties, their qualifications should be vetted against the relevant provisions of the Basic Law.
- Debating procedures: Candidates should be given the chance to meet with the electoral college to present their manifestoes and answer questions.

- Election should be by secret ballot.
- A candidate must win over the vote of half of the members of the electoral college in order to be elected.
- The above-mentioned vetting and debating procedures should, as far as possible, be open in order to show fairness and reliability.
- The proposed voting procedure should be improved. It should be similar to the preferential elimination system adopted this year by the Legislative Council for the election of the functional constituencies.

3.5 Gradual development

- A democratic system similar to the parliamentary system should only be considered ten years after 1997.

Reasons: - The development of a democratic system is determined by the degree of political participation, and not the results of a public opinion poll.

- The constituent parts of the grand electoral college should be constituencies not individuals.
- The interests of the industrial, business and financial sectors in the grand electoral college should be reduced.
- Following the changes in time and keeping abreast with social trends, the Chief Executive should be elected by universal suffrage in future.
- The system of grand electoral college should be on a short-term basis.
- Some have accepted the concept of a grand electoral college only for the first two terms of the Chief Executive while holding that the third Chief Executive must be elected by universal franchise. This is acceptable.
- After ten years of experience, the people should be able to select a leader through direct election.
- The Chief Executive should be elected by universal franchise from the third term onwards. Before that, the prime concern of the HKSAR government is to raise the civic consciousness of the public. The gradual development of the method for selecting members of the Legislative Council should be able to strengthen the involvement and recognition of the public.

- This alternative should be implemented on a trial basis for ten years and the Chief Executive should be elected by universal franchise only from the third term onwards.

Reason: - This practice will prevent the emergence of social chaos and political instability as a result of the premature implementation of universal franchise in the HKSAR for the election of the Chief Executive.

- The Chief Executive should be selected by "general and direct election" in 2017. By then, candidates for the post of Chief Executive will still be nominated by a nominating committee which has a broad representation. And the Chief Executive will then be selected through "general and direct election" from two to three candidates nominated by this nominating committee.

4. Issue to be clarified

- What is meant by "their own rules" ?

1. Original text

1. The Chief Executive of the Hong Kong Special Administrative Region shall be nominated by no less than one-tenth of the members of the legislature, and directly elected by a general election held throughout Hong Kong.
2. Each member of the legislature can nominate only one candidate for the Chief Executive.
3. The election for the Chief Executive must be genuine and held at regular intervals. The right to vote must be universal and equal. Election should be by secret ballot to ensure free expression of the will of the voters.
4. If the elected Chief Executive is a member of the legislature, the executive authorities, or the judicial organs, he/she must resign from his/her original post upon election.
5. Detailed rules for the election of the Chief Executive shall be prescribed by the laws of the Hong Kong Special Administrative Region.

2. Views

2.1 Supporting views

- Support is expressed for this alternative. (Note: Annex 1/2-1)
- This alternative is more acceptable.

Reasons:

(1) Qualities of the Chief Executive

- It ensures that the Chief Executive will have the support of the public, thus becoming the legitimate representative of people in Hong Kong.
- The Chief Executive will genuinely be representative.
- The Chief Executive will be more authoritative.
-(Note: Annex 1/2-2)
- It allows persons with ability and social status to run the new government.
- The Chief Executive will be accountable to all

citizens of Hong Kong and be monitored by them.

- It intensifies the identification of the public towards their political leader.
- It gives full expression to the legitimacy of the Chief Executive.
- It gives the Chief Executive a real power base.
- Most of the candidates nominated have worked in the legislature, executive authorities or judicial organs.
- The Chief Executive will have the recognition of the Legislative Council and be accepted and recognized by the Central Authorities and citizens of Hong Kong.
- It gives the Chief Executive the legal status to resolve conflict of interests among people from different sectors.
- An independent Chief Executive with full authority will be selected, ensuring that the head of each government department and other subordinate civil servants will maintain an efficient government.
- The Chief Executive will be monitored in order that he/she will lead the future HKSAR government efficiently.
- Citizens have the right to remove the Chief Executive should he/she fail to discharge his/her duties.
- It will prevent the Chief Executive from looking after the interests of a particular social stratum.

(2) Nomination for the office of Chief Executive

- Since candidates for the office of Chief Executive will be nominated by no less than one-tenth of the members of the legislature, the source of power will be from all citizens of Hong Kong.
- Most of the nominees understand the operation of the Hong Kong Government and the role of politics.
- It is the only method to ensure that the nominees have broad representation.
- This alternative is more justified with respect to the limitations on nomination and the right to vote.
- It will act as an effective filter for preventing public figures who know nothing about politics from

standing for election.

- Nomination by members of the Legislative Council may simplify the political structure and avoid chaos.
- It will reduce the number of candidates.
- It will prevent the results of the election from being biased and the Chief Executive from being regarded as untrustworthy as a result of the unpopularity of the nominators among the electorate.
- The 80-member Legislative Council should be more representative of the people of the HKSAR than a 20-member nominating committee elected by a less open process.

(3) Relationship between the executive authorities and the legislature

- The executive authorities and the legislature will establish a certain kind of communication and will uphold the principle of checks and balances. (Note: Annex 1/2-4)
- It is conducive to a closer coordination between the Chief Executive and the Legislative Council.
- The process of nomination allows the Chief Executive to establish an indirect relationship with the Legislative Council.
- Nomination by members of the Legislative Council will ensure that the Chief Executive be accountable to the Legislative Council.
- As the Chief Executive will obtain the mandate of people from various sectors, he/she may contend with the power of the Legislative Council.
- It will ensure that the Chief Executive will get a certain amount of support and trust from the Legislative Council, thus strengthening the cooperation between the two and reducing the possibility that the Legislative Council will go against the enforcement of administrative orders issued by the Chief Executive in future. Otherwise, there will be negative effects on the stability and efficiency of the government as a result of the poor relationship between the two. (Note: Annex 1/2-5)
- Since a candidate is only required to be nominated by one-tenth of the members of the legislature, it is not justified to say that the Chief Executive will be subject to undue influence of the whole Legislative

Council. Even a candidate who persistently identifies with the minority view of the Legislative Council will not find it onerous to secure support from one-tenth of its members. Once nominated, such a candidate stands the same chance as other candidates with greater support from the Legislative Council of getting elected by the Electoral College or the people of the HKSAR.

- (4) In accordance with the principles of democracy and fairness
- It fully represents the wishes of the public.
 - It is in accordance with the principle of fairness.
 - It gives expression to democracy, freedom and equal rights in politics.
 - It ensures that the principles of "a high degree of autonomy" and "advancing towards democracy" will be implemented after 1997.
 - It signifies the beginning of a democratic society.
 - It speeds up the development of an open government.
 - It strengthens the spirit of freedom and rule-by-law.
 - It is in accordance with the spirit of democracy. (Note: Annex 1/2-6)
 - It puts into practice the "spirit of democracy" mentioned in the Sino-British Joint Declaration.
 - The high intellectual standard of people in Hong Kong, and the easy access to knowledge and efficient communication network in Hong Kong are conducive to the development of a democratic political system.
- (5) Participation of people in Hong Kong and safeguarding of the right to vote
- Every one has the right to participate in politics. (Note: Annex 1/2-7)
 - It safeguards the freedoms of residents, human rights and the institutionalization of government operation.
 - Only a Chief Executive elected on a one-person-one-vote basis can represent the people in Hong Kong and meet the demand of "Hong Kong people administering Hong Kong".
 - With the standard of education, communication network

and rule by law in Hong Kong, Hong Kong people are totally capable of making a rational decision in election. Hence, they should not be deprived of their democratic rights.

- Through election, members of the public will be more concerned about and be able to participate directly in political affairs.
 - General and direct election is the best way to raise the civic and democratic consciousness of the general public. Civic and democratic consciousness will be speedily raised through participating in direct election.
 - Through an election in which every one may participate, members of the public will be confident about the election and have a sense of belonging towards Hong Kong.
 - It allows more people to participate in elections.
 - It gives expression to human rights.
 - It allows citizens who are eligible to vote to exercise their rights in elections.
 - It safeguards the interests of all citizens of Hong Kong.
 - It is the most credible form of participation by the people of Hong Kong.
 - With the public's exposure to direct election from now on, it is confident that voters after 1997 can be trusted to make a sensible choice among suitable candidates for this very important post.
- (6) Ensuring the prosperity and stability of society and putting into practice "one country, two systems"
- To select the Chief Executive through the most direct and open method (i.e. through general and direct election) is the best foundation for the long-term stability and prosperity of Hong Kong.
 - It is beneficial to maintaining stability in administration, thus ensuring Hong Kong's future prosperity and stability.
 - Only when citizens feel their wishes are respected will they try their best to safeguard the prosperity and stability of Hong Kong.
 - It ensures a stable political system.

- It ensures the stability and prosperity of Hong Kong and the implementation of "one country, two systems".
- It actually puts into practice the policies of "one country, two systems" and "a high degree of autonomy", giving expression to the spirit of the Sino-British Joint Declaration. (Note: Annex 1/2-8)
- It helps maintain and strengthen the confidence of people in Hong Kong regarding their future.
- It strengthens the public's trust in the HKSAR government.

(7) On political parties

- It will neither give rise to confrontational politics nor political parties.
- The real reason and assumption of those people who object to this proposal is that they are afraid of the emergence of political parties.

(8) Other alternatives are not acceptable

- The methods proposed in other alternatives impose restrictions on the citizens' right to vote.
- Other alternatives are not detailed enough and lack representation.
- Other alternatives do not allow this kind of general election.
- This alternative is clearer and more well-defined than the other alternatives.
- Most of the other alternatives touch on the questions relating to the composition of individual constituencies. Such questions as who will decide on the constituencies and how many members will there be in each constituency are extremely controversial.
- It consumes less manpower and resources than other alternatives.
- The methods proposed in other alternatives will diminish the representation and authority of the Chief Executive.
- This alternative is the most effective method for avoiding the monopolization or manipulation by interest groups.

(9) Objection to the election by an electoral college

- The element of "electoral college" exists in the methods of selection proposed in other alternatives.
- Irrespective of their methods of nomination and election, election by a grand electoral college, through functional constituencies, through consultation with an advisory group, or through consultation with a nominating committee will be controlled by a handful of people, and the general public will be squeezed out of politics. Such a practice is undemocratic.
- A grand electoral college will give rise to small regimes. The Chief Executive will then be unable to run the government smoothly as he/she has no support from the general public.
- Representatives of the industrial and business sectors and the professions in the grand electoral college only account for a small proportion of the population. Such representations have not taken into account of the 2.6 million manual workers.
- The composition of the grand electoral college violates the following principles:
 - (1) Popularity: The electoral college only gives some of the adults the right to vote. The Chief Executive so elected will not be able to look after the interests of different social strata.
 - (2) Fairness: The number of representatives of each functional constituency varies.
- Its representativeness is questionable.
- People who have been benefitted will try to reduce the size of the grand electoral college, thus giving rise to dictatorship and autocracy. The Chief Executive so selected will only strive for the interests of the functional constituency he/she represents, thus giving rise to unfair representation.
- The Hong Kong government has already promised to allow the Legislative Council have 10 directly-elected seats starting from 1991, six years ahead of 1997. So the development of the political system should "gradually progress" towards selecting the Chief Executive through general election. If the election process retrogresses to a grand electoral college, it will undoubtedly be inconsistent with the principle of "gradual and orderly progress".

- If the method of a "grand electoral college" is adopted, it will create small-circle politics, making the majority of the citizens unable to ensure the qualities of the Chief Executive through monitoring.
- Other alternatives are rather complicated, most of them propose election by an undefined electoral college.
- It prevents possible conflicts and malpractices from arising during the formation of the electoral college.
- It will not block a broad based election by electoral college or direct election.
- The concept of electoral college, functional electoral college, advisory group and nominating committee found in other alternatives will only be acceptable if the college, group or committee is elected on a one-person-one-vote basis by the electorate of Hong Kong.

(10) Other aspects

- It reduces the complexity of election.
- This alternative can easily be understood, and therefore stands a greater chance of being accepted by members of the general public.
- It makes politics and opinions more pluralistic.
- It will give rise to an equitable government.
- This alternative should be implemented without delay in 1997 and should never be treated as an "ideal" or a "distant prospect" nor be postponed for implementation indefinitely.
- It will avert the emergence of dictatorship, abuses of power, and personal influence.
- It will avert administrative intervention in the judiciary and legislature and helps maintain the development of the separation of the executive, legislative and judicial powers.
- It could settle once and for all the arguments over the election of the Chief Executive.
- It is more open and will not be easily manipulated.
- The right of nomination must not be monopolized and

abused by a handful of people.

- It will prevent a "small group of people" from gaining at others' expenses.
- Unless this alternative is adopted, the so-called "consultation" will only be a term standing for dealings behind the scene arranged by those in power. The end result must be "Beijing people administering Hong Kong" and not "Hong Kong people administering Hong Kong".
- A dictatorial Chief Executive will easily be selected if he/she is not selected by democratic means.

2.2 Objection is expressed to this alternative.

2.2.1 Nomination for the office of Chief Executive

- If nomination is by the Legislative Council only, it will be necessary to reconsider the proposal in terms of democracy.
- If nomination is by the Legislative Council only, it will be worth discussing whether or not the nomination is broadly representative.
- The right to nominate candidates for the office of Chief Executive should not be monopolized by members of the Legislative Council. Since the Chief Executive has to be nominated by at least one-tenth of the members of the Legislative Council, it is therefore impossible that each member of the Council will be able to nominate one candidate. This alternative is self-contradictory.

2.2.2 Relationship between the executive authorities and the legislature

- It will lead to a dictatorship by the legislature and be detrimental to the essence of the executive authorities being accountable to the legislature.
- It will indirectly create a power centre within the Legislative Council.
- The power of the Legislative Council will be excessively expanded if the Legislative Council is to nominate candidates for the office of Chief Executive.
- If the Chief Executive is to be nominated by members of the Legislative Council, the former will be controlled by the latter, thus violating the spirit of the separation of the executive, legislative and judicial powers, and mutual checks and balances.

- The Chief Executive will be influenced to a great extent by the Legislative Council because he/she wishes to be re-elected. A certain degree of "trade-off" and compromising with the Legislative Council may happen as a result.
- The Legislative Council will become the arena for power in future.
- It is not justified to have one-tenth of the members of the Legislative Council representing all citizens of Hong Kong.

2.2.3 On general election

- Judging from the standard of civic consciousness of the Hong Kong public at present and in the foreseeable future, it is inappropriate to elect the Chief Executive through general and direct election.
- It will easily give rise to malpractices.
- Universal franchise will give rise to conflicts between the industrial and business sectors and the grass-roots.
- General election on a one-person-one-vote basis will not necessarily be able to ensure the "legitimacy" of the Chief Executive. Hong Kong is not and will not be a sovereign state, the selection of the Chief Executive therefore cannot be separated from the operation of the Central Authorities.
- People in Hong Kong psychologically "repel" politics. Plus the fact that they have to look after their livelihood, a genuine "silent majority" has thus emerged, enabling some people to "command the world" in the name of the "majority".
- Hong Kong has been governed as a colony for a long time. Universal franchise will make the public at a loss as to what to do or even be abused by certain groups of people.
- As a result of the living environment and pressure at work, ordinary voters basically have no energy and enthusiasm left for elections. Hence, a large number of them vote only for the sake of voting.
- Before the political environment in Hong Kong matures, direct election should not be practised without careful consideration in order to avert confrontational party politics.
- Election on a one-person-one-vote basis will be impossible in the absence of political parties because of the vast number of voters. However, by the time of the election political parties will not be fully developed yet.

- It is difficult to assess the potential of the candidates. In elections, the party which commands powerful campaigns will often be the winner, thus easily giving rise to spheres of influence and making the election lose its true meaning.
- The future Chief Executive will be prompted to make use of "free lunches" to canvass more votes.

2.2.4 Other aspects

- The maintenance of Hong Kong's prosperity and stability relies on the joint efforts and pragmatism of all social strata. Hence, the structure and composition of society must be seriously considered. At present, there are certain conditions in favour of election by functional constituencies, an effective method which is able to meet the actual needs.
- The state government should, as far as possible, respect the wishes of the local people. However, it does not mean that the results of local election may replace the sovereignty of the state.
- It will encourage the expansion of social welfare.
- It provides relatively little ensurance in terms of quality.
- Since the detailed rules of election will be prescribed by the laws of the HKSAR government, this alternative therefore cannot be implemented before the prescription of such rules.
- Candidates nominated for the election may be bribed and manipulated by people with ulterior motives.

2.3 Other views

2.3.1 Advantages of this alternative

- It strengthens the power of Legislative Councillors, and acts as a compromise between direct and indirect elections.
- Making the Legislative Council the organization for nomination will save the extra money, time, manpower and resources required for electing a nominating committee.

2.3.2 Disadvantages of this alternative

- It may give rise to a bureaucratic government.
- If politics by consensus is assumed, then more than one

persons should be nominated.

- The Chief Executive so selected may not be able to maintain proper working relationship and communication with the Central People's Government.

2.3.3 Reservations about this alternative

- Unless the Legislative Councillors are selected by election, this alternative is unacceptable.
- This alternative may be adopted for selecting the Chief Executive if it is adopted by the Legislative Council in the direct election to be held a few years later and is proven feasible.
- Election by secret ballot may allow the voters the freedom to make a choice, but it will easily give rise to malpractices.

2.3.4 Matters to be improved upon

- This alternative has not spelt out the procedures for voting.
- No specific explanation has been given to the expression "directly elected by a general election held throughout Hong Kong" mentioned in this alternative.
- The right to nominate should not be restricted to Legislative Councillors only.
- The 20% of seats allocated to district organizations is not worth retaining.
- This alternative may only be regarded as a preliminary measure for the transition, and gradually evolve towards the formation of the Legislative Council completely by direct election.
- Each functional group should have a specific number of representatives by whom the Chief Executive is to be elected. Such a practice will be more befitting to Hong Kong's actual conditions.
- As the Hong Kong society is gaining more and more experience in politics, this method of mixed election should be eventually abolished. That means, all members of the Legislative Council will be selected by direct election while the Chief Executive will be selected from among the Legislative Councillors.

2.3.5 Relationship between the executive authorities and the legislature

- The nomination of candidates for the office of Chief Executive will be monopolized by the Legislative Council. If too much power is vested with the Legislative Council, not only the executive authorities will be made accountable to it, a political regime may, as an indirect result, emerge within the Legislative Council. This will disrupt the system of checks and balances between the executive authorities and the legislature and lead to a dictatorship by the legislature. The watchdogs will probably be the secondary rulers, thus diminishing the importance of the accountability of the executive authorities to the legislature.
- The nomination of candidates for the office of Chief Executive by the Legislative Council constituted by Alternative 2 in Annex II will put strong emphasis on direct election because the election by functional constituencies and the election by electoral college both have elements of direct election. This seems to contravene the principle of checks and balances all along being stressed.
- Concern is expressed for the possibility that the compromise between the Chief Executive and the Legislative Council will lead to malpractices.
- The Chief Executive will guard against each member of the Legislative Council in order to secure the support of one-tenth of the members.
- Most of the Legislative Councillors will only nominate members of the legislature, executive authorities and judicial organs.

3. Suggestions

3.1 Deletion of provisions

- The second paragraph should be deleted.
- The fourth paragraph should be deleted.

Reason: - This is to make the people in Hong Kong feel that they have the real decision-making power in nominating candidates for the office of Chief Executive. If they know that the Chief Executive will reflect their opinions, they will have more confidence in Hong Kong.

3.2 Amendments to the provisions

3.2.1 Nomination for the office of Chief Executive

- The nomination of candidates for the office of Chief Executive should be proposed by no less than 20 per cent

of members of the Legislative Council so that the Chief Executive elected will have the support of at least some of the Legislative Councillors.

- Candidates for the office of Chief Executive of the HKSAR, apart from being nominated by no less than one-tenth of the members of the Legislative Council, may also be nominated by no less than 100 registered voters.

Reason: - This will prevent those candidates who have no support from standing for election.

- There should not be too many restrictions on the qualification of the nominators of candidates for the office of Chief Executive, so long as they are permanent residents of Hong Kong.
- Candidates should be nominated by ten citizens.
- It should be amended to read: "Candidates for the office of Chief Executive must also be nominated by at least one district board member from more than half of the district boards."
- The following should be added to Paragraph 1: "(shall be nominated)..., jointly by four district boards, or by government authorities,...".
- With respect to the right to nominate, apart from the Legislative Council, an organization may be established to increase the number of nominators. The best choice will be district boards.
- It should be amended to provide that nomination should be made by a specific number of voters.
- The provision "shall be nominated by no less than one-tenth of the members of the legislature" should be amended to read "shall be nominated by no less than 500 Chinese nationals in Hong Kong".
- The membership of the nominating committee should be expanded to include members of councils at each level, i.e. the Legislative Council, Regional Council and Urban Council, and members of all district boards (about 600 to 700 members). And, the nomination will only be valid if proposed by one-tenth of these members.

Reason: - This will weaken the strong linkage between the Chief Executive and the Legislative Council, and will make the Chief Executive accountable to all members, thus strengthening his/her authority and representativeness.

- Candidates have to be nominated by a certain number of

permanent residents of Hong Kong, e.g. a candidate may be nominated by 600 (i.e. one-ten thousandth of) permanent residents.

Reason: - The proposal that nomination should be made by a certain number of permanent residents of Hong Kong is to give expression to the principle that every one enjoys the same right in nominating candidates for the office of Chief Executive. Candidates will be able to stand for election provided that they are nominated by and have the support of a certain number of permanent residents of Hong Kong. This will eliminate the situation in which the nomination of candidates for the office of Chief Executive is monopolized by Legislative Councillors.

- All candidates for the office of Chief Executive have to be endorsed by the Standing Committee of the NPC before they can be nominated.

Reason: - The sovereign control of the NPC should be placed at the time of nomination rather than after the election process. A refusal to appoint after a candidate has been selected will sap confidence and create a power vacuum, especially if the refusal is repeatedly exercised.

3.2.2 Candidates for the office of Chief Executive

- The words "candidates for" should be added before "[t]he Chief Executive of the Hong Kong Special Administrative Region" in the first paragraph.
- The number of candidates should not be limited.

Reasons: - This may prevent the right to nominate candidates for the office of Chief Executive from being monopolized by the Legislative Council.

- This may ensure that all qualified residents of Hong Kong have the same opportunity to stand for election.
- It is proposed that it will be more appropriate to increase the number of candidates to five.
- The maximum number of candidates should be three.
- Each nominator should only be able to nominate one candidate and at the same time should not be a candidate himself nor have the right to vote for other candidates. All candidates may secure the vote of their nominators.

- Candidates for the office of Chief Executive should not have any criminal records.

3.2.3 Expenses for election campaigns

- The campaign expenditure of candidates for the office of Chief Executive must be strictly controlled by the Legislative Council through regular reviews and as required.

3.2.4 Rules on voting

- It is more appropriate to use the identity card numbers as records in a "secret ballot".

Reason: - This will prevent duplicated votes and ensure the fairness of "one person, one vote".

4. Issue to be clarified

- Will all candidates be members of the Legislative Council? Or, will only no less than one-tenth of the members of the Legislative Council be entitled to nominate candidates?

1. Original text

1. The Chief Executive shall be elected by a functional electoral college on a one-person-one-vote basis.
2. The functional electoral college shall have no more than 600 members and be composed of representatives elected from among the permanent residents of the Hong Kong Special Administrative Region, who belong to business, finance, professional, labour and other organizations which have an influence on the operation of the government and social services. The proportions of representation shall be as follows:

Business and financial organizations	25%
Professional bodies	35%
Labour organizations	10%
Religious, social welfare and philanthropic institutions	15%
Area committees and street vendors' organizations	15%

3. Any person with qualifications prescribed by Article 44 of this Law and nominated by no less than 50 permanent residents of Hong Kong can become a candidate for the Chief Executive of the Hong Kong Special Administrative Region.
4. Members of the electoral college shall not nominate or be nominated as candidates. Nominators shall not be members of the electoral college or be candidates. Candidates shall not be members of the electoral college or nominators of other candidates.

2. Views

2.1 Support is expressed for this alternative.

Reasons:

- It will avert a system of party politics which emphasizes "Hong Kong party administering Hong Kong".
- It will create an efficient government.
- It meets the aspirations of people in Hong Kong.
- In order not to affect the development of industries and

commerce, no one-person-one-vote election system should be promoted before civic education is popularized among Hong Kong residents.

- Before the conditions for direct election mature, development must be progressive and in a gradual and orderly manner.

2.2 Objection is expressed to this alternative.

Reasons:

- (1) It pays too much attention to the industrial and business sectors.
 - People eligible to participate in the election are too few. The whole election will be controlled by the industrial, commercial and financial organizations.
 - It only looks after the interests of those functional constituencies which are dominated by members of the industrial and commercial sectors. The Chief Executive thus selected will not be accountable to the public.
- (2) Disadvantages of election by a functional electoral college
 - Members of the functional constituencies may have good performance within their own trade, but no one can be sure that they have the ability and qualifications to lead the entire Hong Kong Special Administrative Region.
 - Sudden changes in functional constituencies and their rise and fall will affect the political stability of Hong Kong, thus affecting the interests of the general public.
 - The number of functional constituencies can be easily increased but not otherwise. If the number is constantly on the rise, the whole society will face disunity.
 - Representatives of functional constituencies may not necessarily be selected by democratic means. The majority of the people may not have the chance to vote. Hence, the representativeness of the election will be directly affected.
 - The Hong Kong public are not that enthusiastic about joining organizations. Election by functional constituencies will only give some people the right to vote, thus neglecting the interests of the majority.
 - The disadvantage of delegation by functional

constituencies or designated social organizations is that it fails to provide a method for peaceful transition in case the internal power structure of individual interest groups changes. For example, administrative means will be used if the social position of the organization representing a particular constituency changes, or the government will be unwillingly entangled in the conflicts of interests among the organizations, intensifying the conflicts between the government and the people.

- With respect to the proportions of representation, it is not justified to let professional bodies take up 35% of the total representation.
 - It is not democratic enough to elect the Chief Executive by a functional electoral college constituted by indirect election.
 - It is very difficult to ensure that the Chief Executive will not be manipulated if he/she is elected by an electoral college, even though members of the electoral college may be selected by a more democratic means.
 - A membership of only 600 will easily give rise to monopolization.
 - It will be easily manipulated by a handful of interest groups.
- (3) It neglects democracy and human rights.
- It is undemocratic and unfair.
 - It hampers democracy in elections.
 - It will easily neglect the rights and interests of the general public.
 - It ignores the wishes and the right to participate of the general public in Hong Kong.
 - It lacks the participation of the general public.
 - It lacks representation.
 - This kind of election will not be a genuine one but a kind of disguised appointment.
 - The votes of 600 people cannot substitute the right to vote of the 6 million population.
- (4) Qualities of the Chief Executive
- If candidates for the office of Chief Executive are

only required to be nominated by 50 permanent residents, the number of candidates will be excessive and the voters will be confused. Moreover, as the votes are dispersed, the winner will lack representation.

- Without the participation and influence of the general public, the Chief Executive thus elected will be undemocratic and lack representation.

(5) Inadequacies of this alternative

- The composition is extremely complicated and the method of selection is ambiguous.
- The procedures for voting have not been provided for in this alternative.
- This alternative is incomplete. It is not clear which kind of people have influence on government operation and social services. Thus, there is no way to show that the proportions of representation listed are fair.
- With the constitution of the functional electoral college undecided, this alternative will not make the public rest assured.
- It has not specified which organizations are eligible to participate in the election.

(6) Other aspects

- It will be easily interfered with and controlled by the Central People's Government.
- The electoral college lacks students' representation. Since students are also members of society, they should be eligible to vote.
- There are quite a number of gangs and illegal organizations within the Hong Kong society. If candidates for the office of Chief Executive, irrespective of their qualifications and backgrounds, are only required to be nominated by 50 permanent residents of Hong Kong, social chaos will easily arise.

2.3 Other views

2.3.1 Advantage of this alternative

- Election by a functional electoral college on a one-person-one-vote basis may act as the foundation for developing direct election on a one-person-one-vote basis.

2.3.2 Disadvantages of this alternative

- The method of nomination proposed in this alternative is too simple, and will probably create too many candidates.
- The proportion of representation given to the cream of society is too large.
- The unity of the functional constituencies remains a latent worry.

Reason: - If the functional constituencies have conflicts of interests, they will not be able to elect a representative jointly.

- A functional electoral college is similar to a "grand electoral college", only that it is solely composed of representatives from functional constituencies. Since its representation is totally lopsided towards functional constituencies and neglects other sectors, it therefore lacks the support of the Legislative Councillors. This alternative is not any better than the "alternative which proposes a grand electoral college".
- If members of the electoral college are selected upon nomination by the Central Authorities, or the majority of the members so nominated are affiliated with the Central Authorities, then the electoral college will be monitored by the Central Authorities and its functions will thus be seriously affected.

3. Suggestions

3.1 Amendments

- The Chief Executive of the HKSAR for the first and second terms should be selected by indirect election. Universal franchise should only be adopted from the third term onwards.
- The proportions of representation should be as follows: labour organizations, 20%; industrial, commercial and financial organizations, 20%; and professional bodies, 30%.
- The proportions of representation should be as follows: industrial, commercial and financial organizations, 30%; labour organizations, 15%; and professional bodies remain at 25%.

3.2 Additions

- Representation of the following functional constituencies should be included in the functional electoral college: various rural committees in the New Territories, 15%; and mini-bus organizations, 15%.
- Representation of students from universities and tertiary

educational institutions should be included.

Reason: - Students are also members of society, they should be eligible to vote.

- The Kai Fong association of each district in Hong Kong, Kowloon and the New Territories belong to district organizations. They should be specified in detail in the Basic Law as members of the functional constituency for social services.

4. Issue to be clarified

- How should the composition of constituencies be defined in the functional electoral college?

Annex I: Alternative 4

1. Original text

1. The selection of the first Chief Executive is specified in other provisions. The second or third Chief Executive shall be selected by an advisory group through consultation.

The advisory group shall be composed of 50-100 advisers. Candidates for advisers shall be nominated by different circles in Hong Kong, selected by the Executive Council and then appointed by the Chief Executive after approval by the Central People's Government. (These are special political advisers, different from other professional advisers.)

Each advisory group must be formed six months before the term of office of the incumbent Chief Executive expires. But if the advisory group and the Central People's Government endorse him/her for another term, the next advisory group need not be formed.

2. Subsequent Chief Executives shall be elected by an electoral college.

The electoral college shall be composed of former members of the Legislative Council, former members of the Executive Council, former Chief Executives, and former principal officials appointed by the Central People's Government. The first electoral college cannot be formed with less than 250 members. The number may gradually increase in the successive electoral colleges, but shall not exceed 500. Once that number is exceeded, members will have to resign in the order of their length in office. If their length in office is the same, the member elder in age shall resign first.

Three candidates for the office of the Chief Executive shall be nominated by the advisory group and, after the approval of the Central People's Government, the Chief Executive shall be voted on by the electoral college.

2. Views

- 2.1 Support is expressed for this alternative.

Reasons:

- If the selection of the Chief Executive is through consultations, people with ulterior motives will be prevented from making use of the opinions of the public to defy the Central Authorities.

- A Chief Executive selected through consultations has representation.

2.2 Objection is expressed to this alternative.

Reasons:

(1) Drawbacks of consultation with an advisory group

- The representativeness of the advisory group is questionable.
- The small number of advisers (only 50-100 advisers for the selection of the first Chief Executive) and the lack of representativeness of these advisers who are restricted to members of certain sectors will make it difficult for people to establish confidence in them.
- The advisory group will give rise to political cliques, thus having adverse effects on establishing identification and sense of belonging of members of the public towards the government and on the authority of the Chief Executive.
- The composition and operation of the advisory group are basically similar to that of a grand electoral college. However, the degrees of manipulation and monitoring may be said to be approaching 100%, far more serious than those exercised by a grand electoral college.
- It is mentioned in this alternative that candidates for advisers must be selected by the Executive Council. However, Article 54 of this Law states that the Executive Council is only an organ for assisting the Chief Executive in policy-making. If candidates for the office of adviser are to be selected by the Executive Council, it will give rise to the situation in which successors of the office are determined internally.
- It will be easily controlled by a handful of interest groups.
- The advisory group or the electoral college will be completely controlled by a handful of members of the Executive Council, the Chief Executive and the Central People's Government. It will develop into a system of centralized power as the nomination and election will be controlled by these people.
- It is a dangerous move to allow the advisory group to select through consultations the Chief Executive for the first few terms because that will give it some kind of ultra-superior status.

- An advisory group whose method of formation has not been clearly specified will likely become the dominant influence over the Chief Executive.
- (2) Interference of the Central Authorities
- It will be easily interfered with and controlled by the Central People's Government.
 - It gives full expression to the sovereign power of the Central Authorities.
 - The Chief Executive will be most easily influenced by the Central People's Government.
- (3) Violation of the principles of democracy and fairness
- It violates the principle of fair participation and pays no attention to the equal political rights of the people.
 - It lacks the participation of the general public.
 - This alternative is the most undemocratic and conservative.
- (4) Drawbacks of the alternative itself
- The method of organization is extremely complicated and the method of formation is ambiguous.
 - This alternative has no provision on the procedure for voting.
 - The contents of this alternative are incomplete.
 - The meaning of the phrase "different circles" is too vague.
 - There is no specification nor suggestion on who are eligible to nominate candidates for the advisory group responsible for selecting the Chief Executive for the second and third terms.
- (5) Other reasons
- Under the instruction of the Central Authorities, the first Chief Executive will be able to determine the candidates for the successive advisory groups and then through consultation with such advisory groups and the Central People's Government, select the Chief Executive for the subsequent terms.
 - This alternative will most easily give rise to a dictator.

- To replace democracy with "politics of the elite" and "politics of the elders" will make it impossible for the grass-roots to take part in politics.
- The election by an electoral college composed of retired officials and Legislative Councillors is unjustified and is a method of election which completely renounces the participation of the public.
- The most prominent feature of this alternative is that it gives special political power to former politicians and purposely retains the authoritative position of the Executive Council in the British colonial era. This alternative may also be said to be one which carries the greatest quantity of remnants of the colonial political system.
- It totally contravenes the spirit of "a high degree of autonomy" to be enjoyed by the Hong Kong Special Administrative Region specified in the Sino-British Joint Declaration.
- The outcome of this alternative is in fact the control of the legislature by the executive authorities, a disguised continuation of the present colonial appointment system.

2.3 Other views

- The addition of an electoral college to the advisory group will be regarded as overlapping and complicated.
- It has totally failed to specify clearly the method for the formation of the advisory group. It is believed that members of the advisory group will be appointed.
- If the electoral college only comprises former official members of the Legislative Council and Executive Council, and the Chief Executive, it will be inevitable that the Chief Executive so elected for each term will be one of them or re-elected.
- It is confusing that the Chief Executive be finally selected by an advisory group and an electoral college which are constituted through repetitive selection and consultation.
- The meaning of the term "consultation" is vague.

3. Suggestions

3.1 Deletion

- Since the proportion of representation of the business and

financial circles is exceedingly large and the definition of the term "grass-roots organizations" remains undefined, it is therefore proposed that the proportion of representation of the business and financial circles should be reduced, that the nominating committee should be abolished, and that nomination should be by one-tenth of the members of the Legislative Council.

3.2 Additions

- Three to five seats in the advisory group should be given to businesses based in Hong Kong by foreign countries (mainly businesses which have bearing on the economy). On the one hand, it will satisfy the demands of foreigners while on the other, it will demonstrate the international characteristics of the HKSAR.
- The electoral college must not comprise former politicians. The number of seats given to representatives of genuine patriotic organizations should be increased. This will increase the proportion of representation of patriotic manual workers and grass-roots organizations.

3.3 Other suggestions

- Candidates for the office of adviser need only be selected by various sectors and the people and such selections need not be submitted to the Central People's Government for approval.

Reason: - This is to prevent the advisory group from being controlled by the Central Authorities.

- The advisory group should not be endorsed for another term as it may give rise to manipulation and restrict chances for changes.

4. Issues to be clarified

- What is meant by "special political advisers"? What qualifications should they possess? How many such advisers are available in Hong Kong? Why do they have to be selected by the Executive Council?
- "The electoral college shall be composed of former members of the Legislative Council, former members of the Executive Council, former Chief Executives, and former principal officials appointed by the Central People's Government." Is the Chief Executive accountable to past governments or to the people?
- "But if the advisory group and the Central People's Government endorse him/her for another term, the next advisory group need not be formed." Then, how will members of the advisory group be able to account to the sectors

they represent?

- The advisory group will comprise 50-100 members nominated by different circles and selected by the Executive Council. What is meant by "different circles"? Does it mean that they will be elected by people in Hong Kong on a one-person-one-vote basis? On what criteria will the advisory group base in selecting the Chief Executive?
- Will the advisory group be dissolved once the Chief Executive is elected?
- For the subsequent terms of the Chief Executive, candidates for the office of Chief Executive shall be nominated by the advisory group through consultations. Then after they have been approved by the Central Authorities, the Chief Executive shall be selected from among these candidates by the electoral college. Hence, the Central Authorities will be vested with too much power. If the Central Authorities do not approve of a certain candidate, will the electoral college be required to select another candidate with whom the Central Authorities are satisfied?

香港
基本法
諮詢
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1. Original text

1. The Chief Executive shall be elected by all the voters of Hong Kong on a one-person-one-vote basis. Three candidates shall be nominated, through consultation or by ballot after consultation, by the "Nominating Committee for the Election of the Chief Executive of the HKSAR".
2. The "Nominating Committee" shall be composed of permanent residents of Hong Kong who must be broadly representative, including deputies of the Hong Kong region to the NPC, members of the National Committee of the CPPCC from the Hong Kong region, representatives from Hong Kong's legislature and from district organizations, and from other strata and sections of society in Hong Kong.
3. The proportions of representation of the "Nominating Committee" shall be as follows:

Representatives of business and financial circles	25%
Representatives of professional bodies	25%
Representatives of labour, grass-roots and religious organizations	25%
Members of the legislature	12%
Members of district organizations	8%
Deputies to the NPC and members of the National Committee of the CPPCC	5%
4. The "Nominating Committee" shall formulate a procedure for consultation or balloting and nominate candidates for the office of the Chief Executive. Members of the "Nominating Committee" shall not be candidates for the office of the Chief Executive.
5. Members of the "Nominating Committee" shall be elected, recommended or selected through consultation by corporate bodies or non-corporate permanent organizations in various fields. Rules of the "Nominating Committee" shall be prescribed by the laws of the HKSAR.
6. The HKSAR shall stipulate by law the provisions for constituency registration and voting procedures for a one-person-one-vote election of the Chief Executive.

2. Views

2.1 Support is expressed for this alternative.

Reasons: (1) This alternative is in keeping with the principle of democracy.

- It is more democratic.
- It can give expression to the spirit of democracy.

(2) The Chief Executive thus elected will be more representative and authoritative.

- The Chief Executive thus elected will be more representative.
- Only a Chief Executive who is returned to office by general election will have the support of the people and be able to maintain his/her authority and prestige.
- Under this alternative, the candidates for the office of Chief Executive will be nominated by a broadly representative body and all the voters will have a say in the final selection of the Chief Executive.
- This alternative will give the Chief Executive the legitimacy needed to administer Hong Kong.

(3) The advantages of the "Nominating Committee":

- It is in keeping with the spirit of the separation of executive, legislative and judicial power to have the Chief Executive nominated by a "Nominating Committee". Since the "Nominating Committee" will be composed of representatives from different strata and sections of society, it is highly unlikely that the nomination process will be stage-managed. The candidates thus nominated will have the support of the various sectors. The entire process of selection will be monitored by them. This will provide extra safeguards for this method.
- Since Hong Kong people do not have a high level of political awareness, the presence of the "Nominating Committee" will ensure that the election of the Chief Executive will proceed smoothly. The one-person-one-vote

general election will enable all the voters to take part in the election.

(4) Other reasons

- This alternative is more well-considered and takes the interests of every sector into account.
- The involvement of the general public through universal suffrage is considered most essential in cultivating a sense of belonging among the population.
- Election by a "grand electoral college" goes against the Joint Declaration.

2.2 Objection is expressed to this alternative.

Reasons: (1) This alternative is not in keeping with the principle of democracy.

- It involves consultation, which is a very undemocratic method.
- It ignores the equal political rights of the people.
- Under this alternative, the one-person-one-vote general election will only be a window-dressing of democracy.
- It does not involve widespread public participation.

(2) Intervention by the Central Authorities:

- This method invites intervention and control by the Central Authorities.
- Deputies of the NPC and members of the National Committee of the CPPCC should not be allowed to involve themselves in the affairs of the HKSAR. The principle of "a high degree of autonomy" will be violated if they are allowed to do so.

(3) The drawbacks of this alternative:

- The method of organization is extremely complicated and the method of selection is vague and unclear.
- It is proposed that rules of the "Nominating Committee" be prescribed by the laws of the

HKSAR. There will first have to be a Legislative Council to enact the relevant laws and a Chief Executive to sign and promulgate the laws. However, this alternative says nothing about how the first Chief Executive will be selected.

2.3 On the composition of the "Nominating Committee"

2.3.1 The proportions of representation are uneven

- Under this alternative, members of the legislature will only account for 12% of the Nominating Committee while representatives of business and financial circles and representatives of professional bodies will each account for 25%. With the balance tilting so much toward the business and professional circles, it will be very easy for the "Nominating Committee" to be manipulated by minority interest groups.
- It is very hard to set objective criteria as to which sectors or organizations should be represented and their appropriate proportions of representation. Thus, the composition of the "Nominating Committee" will be subject to a lot of external pressure.

2.3.2 It is unfair and undemocratic.

- The method of letting an undemocratically-formed "Nominating Committee" select three candidates is not acceptable. If this method is adopted for the general election, the voter turnout will be poor, thus weakening the authority of the Chief Executive.
- The "Nominating Committee" will hardly be a democratic system if the choice of candidates is limited to those nominated by a "representative" committee.
- The method of nomination will prevent people of different political persuasions, strata and backgrounds from running for the office of Chief Executive. The candidates nominated will most probably be people who represent the interests of one particular sector or who are controlled by a minority group. The resultant system will be one without any legitimacy, representation or authority whatsoever.
- Some of the less well-known or newly-developed organizations or sectors might not even be represented on the "Nominating Committee" and thus will not be able to take part in the selection process.
- The specific delimitation of the composition of the "Nominating Committee" has not been given. Although it is proposed that the Chief Executive be elected by direct

election on a one-person-one-vote basis, the result will not make too much difference if the three candidates are controlled behind the scene.

2.3.3 Other issues

- This alternative will involve too much manpower.
- Members of the "Nominating Committee" will easily be bribed and manipulated by those with ulterior motives.
- Judging from the level of Hong Kong people's sense of civic duty at present and in the near future, the election of the Chief Executive on a one-person-one-vote basis will still be inappropriate.
- The "Nominating Committee" is still being considered a semi-exclusive and conservative model which will be easily manipulated by those with vested interests and is unlikely to win the support of the Hong Kong people.

2.4 Other views

2.4.1 Advantages of this alternative

2.4.1.1 The alternative itself:

- This alternative will ensure the quality of those nominated while allowing a measure of democracy in the selection process.

2.4.1.2 As compared with the other alternatives:

- It is a compromise of various other alternatives.
- It is clearer than Alternatives 2, 3 and 4 and allows more public participation.
- It is a compromise between election by an electoral college and election by universal suffrage.

2.4.2 Drawbacks of this alternative

2.4.2.1 On the "Nominating Committee"

- The method of composition is unclear and this is very worrying.
- The proportions of representation will be subject to dispute.
- Although this alternative includes an element of election on a one-person-one-vote basis, it does not specify how the "Nominating Committee" will be established.

- The "Nominating Committee" is mainly the brain-child of those in authority, and those in authority will naturally design a model that is to their advantage.
- The "Nominating Committee" will have the power to decide who will be the Chief Executive. This is not very different from a system of appointment.

2.4.2.2 Regarding the nomination process

- In this alternative, there is no provision for the nomination process.
- The method of nomination is similar in nature to that adopted by a grand electoral college, which is bound to be biased and will not be sufficiently representative. It is possible that the voters will find all three candidates unacceptable. If none of the candidates can win the support of the voters, direct elections will only expose the weakness of the candidates, thus leading to even worse consequences
- There are no grounds for limiting the number of candidates to three.

2.4.3 Other reservations

- This alternative is acceptable provided that the proportions of representation on the "Nominating Committee" are modified.
- If the "Nominating Committee" is a well-balanced and widely-representative body, it is believed that the candidates recommended by the committee will have the qualifications and qualities necessary to discharge the functions of the Chief Executive and will have the support of the public.
- The method of election is not important. What is important is how the candidates will be selected and screened. It is believed that a candidate who wins nomination after stringent screening procedures will no doubt be an outstanding person of integrity and ability who will be able to shoulder the heavy responsibility of the Chief Executive.
- It is uncertain whether the "Nominating Committee" will be truly representative and will be democratically formed.
- Since the "Nominating Committee" will directly or indirectly affect the selection of the Chief Executive, its members should come from various strata and sectors of society. This will increase the efficiency of the election and guarantee the establishment of a democratic system based on separation of powers. However, it is not

easy to decide on the proportions of representation or to determine the necessary qualifications of representatives.

- It is still uncertain how Hong Kong deputies to the NPC and Hong Kong members of the National Committee of the CPPCC will be selected. Yet, under this alternative, they are given the power to nominate candidates for the office of Chief Executive. This is very worrying.

3. Suggestions

3.1 Deletions

- NPC deputies and members of the National Committee of the CPPCC should not be represented on the "Nominating Committee".

Reasons: - Hong Kong deputies to the NPC and Hong Kong members of the National Committee of the CPPCC do not necessarily have to be permanent residents of Hong Kong.

- They do not belong to the political structure of Hong Kong.
- The power to nominate candidates for the office of Chief Executive should be exercised by the people of Hong Kong. In this way, they will have greater confidence in the future Chief Executive.
- Members of the legislature and of District Boards should not be represented on the "Nominating Committee".

Reason: - This will prevent an overlapping of roles, since members of the legislature or of District Boards may already be representatives of the business and financial circles, professional bodies, or labour, grass-roots and religious organizations.

3.2 Amendments

3.2.1 The nomination process

- Candidates for the post of Chief Executive should be nominated by various sectors or a given number of organizations and their candidature should be examined and approved by a Political Consultative Council before they can stand for election. Nominators should be selected in equal numbers from among public figures or organizations in the following sectors: The financial sector, the business sector, the professions, the labour sector, the grass-roots level, the public service, the educational sector and the religious sector.

Each sector should be allowed to nominate three candidates, but this number could possibly be changed after consulting the various sectors.

Reasons: - Voters who possess the necessary qualifications should be allowed to stand for election.

- This method will ensure that people from various sectors or strata who have the ability and prestige necessary to administer Hong Kong will be nominated.
- The method for forming the "Nominating Committee" suggested in Paragraph 5 is not good enough. Nomination by professional divisions as suggested by the "Group of 38" could be adopted.
- A Nominating College should be established. This college should be composed of all members of the Legislative Council as well as Hong Kong deputies to the NPC and Hong Kong members of the National Committee of the CPPCC. To be nominated for the post of Chief Executive, candidates should be required to have gained the backing of one-eighth of the Legislative Council members of the Nominating College, and one-eighth of the NPC and CPPCC members of the Nominating College. The Chief Executive will be returned by direct general election and appointed by the Central People's Government.
- Three to five candidates should be nominated by a 200-member "Committee for the Selection of Candidates for the Post of Chief Executive". This committee should be constituted through election by various sectors six months before the election of the Chief Executive. It should be up to the sectors to decide whether the committee will be elected on a one-person-one-vote or a one-unit-one-vote basis.
- A Nominating Committee with 640 members should be established. To prevent monopoly by the majority, the nomination of candidates should only require the endorsement of one-tenth of the members.
- The Nominating College should be composed of an elite with broad vision and open minds. After the nomination process, the list of candidates should be screened and approved, and the Chief Executive should then be elected or selected through consultation.
- Each candidate - for the post of Chief Executive should require nomination by no fewer than five members of the Nominating Committee. Each member should only be allowed to make one nomination. Should there be more than three candidates, a ballot should be conducted and the three who win the highest number of votes shall be considered having

been nominated. The candidates will then be voted on by all the qualified voters on a one-person-one-vote basis.

- The candidates should be nominated by at least five Legislative Councillors, and at least ten District Board members and Urban Councillors. Candidates thus nominated will then be voted on by the people of Hong Kong and the Chief Executive will be appointed by the Central People's Government.
- Members of the Nominating Committee should be entitled to nominate one of their members.
- The Nominating Committee should nominate five candidates after consultations.
- The Nominating Committee should have about 100 members. The committee should be constituted through election by corporate bodies or non-corporate permanent organizations. It should be possible for members representing the NPC and the National Committee of the CPPCC to be elected or selected through consultation.

3.3 Additions

3.3.1 Increasing the proportions of representation of the business and financial sectors and the professions

- The composition of the Nominating Committee should be amended to the following:

Representatives of business and financial circles	30%
Representatives of professional bodies	30%
Representatives of labour, grass-roots and religious organizations	30%
Members of the legislature	2.5%
Members of district organizations	5%
Deputies to the NPC and members of the National Committee of the CPPCC	2.5%

Reason: - The three major sectors should form the mainstay of the Nominating Committee, accounting for 90% of the members. Half of the remaining 10% should be represented by members of district organizations, while members of the legislature, deputies to the NPC and members of the National Committee of the CPPCC should take up the remaining 5%.

3.3.2 Increasing the proportion of representation of grass-roots organizations

- Under this alternative, the business circles and professional bodies have two to three times more representation than the grass-roots organizations. This is unreasonable. The business circles and professional bodies should have a 40% representation; the grass-roots organizations should also have a 40% representation.
- The representation of the professional bodies should be reduced from 25% to 20%, while the representation of the labour, grass-roots and religious organizations should be increased from 25% to 30%.

3.3.3 Increasing the proportion of representation of members of the legislature

- The proportional representation in the Nominating Committee should be as follows:

Members of the legislature	50%
Representatives of labour, grass-roots and religious organizations	15%
Members of district organizations	15%
Representatives of business and financial circles	10%
Representatives of professional bodies	10%

- The method for selecting the Chief Executive should be as follows: Five candidates for the post of Chief Executive should be nominated by a 230-member Nominating Committee and be voted on by all Hong Kong residents on a one-person-one-vote basis in a direct general election.

The composition of the Nominating Committee should be as follows:

Members of the Legislative Council	(no less than 35%)
Members of district organizations	(no more than 15%)
Representatives of functional bodies	(no more than 45%)
(15% each for the business circles, the professional bodies and the grass-roots organizations)	
Members of the National Committee of the CPPCC from the Hong Kong region	(no more than 5%)

- The composition of the Nominating Committee should be as follows:

Representatives of business and financial circles	20%
Representatives of professional bodies	20%
Representatives of labour, grass-roots and religious organizations	20%
Members of the legislature	20%
Members of district organizations	15%
Deputies to the NPC and members of the National Committee of the CPPCC	5%

- One-third of the members of the Nominating Committee should be members of the Legislative Council.

3.3.4 Increasing the proportion of representation of members of district organizations

- The composition of the Nominating Committee should be as follows:

Representatives of business and financial circles	15%
Representatives of professional bodies	15%
Representatives of labour, grass-roots and religious organizations	25%
Members of the legislature	10%
Members of district organizations	30%
Deputies to the NPC and members of the National Committee of the CPPCC	5%

- The composition of the Nominating Committee should be as follows:

Representatives of business and financial circles	20%
Representatives of professional bodies	20%
Representatives of labour, grass-roots and religious organizations	25%
Members of the legislature	15%
Members of district organizations	20%

- The composition of the Nominating Committee should be as follows:

Representatives of business and financial circles and professional bodies	30%
Representatives of labour, grass-roots, religious and recreational organizations	30%
Members of the legislature	15%
Members of district organizations	20%
Deputies to the NPC and members of the National Committee of the CPPCC	5%

- The proportion of the "representatives of business and financial circles" should be drastically reduced to under 18%. The representation conceded should be taken up by "members of district organizations" or representatives elected on a one-person-one-vote basis by respective district voters.

3.3.5 Increasing the proportion of representation of deputies to the NPC and members of the National Committee of the CPPCC

- The composition of the Nominating Committee should be as follows:

Representatives of business and financial circles	25%
Representatives of labour, grass-roots and religious organizations	25%
Representatives of professional bodies	20%
Members of the legislature	12%
Members of district organizations	8%
Deputies to the NPC and members of the National Committee of the CPPCC	10%

3.3.6 The addition of "representatives of agricultural and fishing organizations"

The composition of the Nominating Committee should be as follows:

Representatives of business and financial circles	25%
Representatives of professional bodies	25%

Representatives of labour, agricultural, fishing, grass-roots and religious organizations	25%
Members of various Councils and District Boards	20%
Deputies to the NPC and members of the National Committee of the CPPCC	5%

3.4 Other suggestions

3.4.1 On the Nominating Committee

- If heads of departments, Councillors and Board members at various levels are allowed to become members of the Nominating Committee, the rest of the members could easily be controlled by them.
- The proportions of representation suggested for the Nominating Committee should be examined in greater detail if it is decided that Alternative 5 is to be adopted.
- The word "organizations" in this alternative should read "sectors".

Reasons: - If the representation is restricted to organizations, then only members of these organizations will have the right to vote and to stand for election. Individual members of various sectors who do not belong to any particular organizations will be left out.

- If the word is replaced by "sectors", then anyone belonging to these sectors will be entitled to take part, and members of the Nominating Committee will be elected by the various sectors.

3.4.2 On the voting procedure

- Voting for the Chief Executive should be conducted by districts. The voting process and ballot counting should be done by disinterested parties. The ballot results should then be tallied and the candidate with the highest number of votes shall win.
- Voting should be by secret ballot.

Reason: - This will give expression to the free will of the voters.

3.4.3 Merging with other alternatives

- A compromise model should be produced, with Alternative 5 as the main body and the other alternatives as

supplements. This will combine Chinese and western democracy and take care of the political rights of the various strata and sections of society.

- It should be prescribed by law that the Chief Executive shall be elected in accordance with the method suggested under Alternative 1 until the second or third term, after which Alternative 5 will be adopted.

4. Issues to be clarified

- What will be the size of the Nominating Committee? Will there be a maximum number of members?
- Will the Nominating Committee be dissolved after the election of the Chief Executive?
- What is to be done if the candidates nominated are not acceptable to the majority of Hong Kong people?

OVERALL COMMENTS ON ANNEX II

Views regarding the underlying principles of the method for forming the Legislative Council:

- Both the method for forming the Legislative Council and the Legislative Councillors themselves should be dependable.
- The Legislative Council should be broadly representative.
- The right to vote must be universal and equal.

Reasons: - Democracy means the seeking of consensus and autonomy without stifling the voice of the minority.

- This will ensure that representatives of various social strata and districts will truly concern themselves with government affairs, voice their opinions and exercise supervision over the work of the government.
 - This will make it easier for voters from various bodies, organizations and districts to take part in politics.
 - This will facilitate the compromise of interests among various social strata.
 - This will ensure that all views will be fully reflected.
- The method adopted should be able to effectively bring into play the supervisory role of the executive authorities.
 - The Legislative Council should be accountable to the people.

Reason: - Since the major function of the Legislative Council will be to review the decision of the executive authorities and to pass or refuse to pass the budget or other bills on the basis of public interests, the method for electing members of the Legislative Council must ensure that the members thus elected will be accountable to the public and that they will make decisions on the basis of the overall interests of society and the general public.

- It is authoritative.

Reason: - The Legislative Council represents the people

and symbolizes the exercise of sovereignty by the people. Moreover, it has great authority in exercising supervision over the functions of the executive authorities. Hence, the method for forming the Legislative Council must achieve these objectives.

- It respects the established system and allows for orderly progress. Attention should be paid to the realities and firm decisions should be made, otherwise the development of the political structure will lose its continuity and become unstable.
- The election system should be based on the elite of society. Celebrities or heroes of the grass roots who have no political background, academic qualifications or professional skills should not be elected.

Annex II: Alternative 1

1. Original text

1. The legislature of the HKSAR shall be composed of 80 persons. The proportions of representation shall be as follows:

Members elected by functional bodies 50%

Members directly elected by districts 25%

Members elected by the electoral college 25%

2. The composition of the electoral body and the nominating committee shall be the same as that prescribed in Alternative 1, "Method for Selecting the Chief Executive of the HKSAR", and the chairman of the nominating committee shall be the Chief Executive.
3. In the above three types of election, each person can vote and stand for election only in one.
4. The term of office of the members of the legislature shall be four years, and half the members shall be elected every two years. The functional bodies shall elect half of their members to the legislature every two years. The direct election in the districts and the election by the electoral college shall be held alternatively every two years. (District direct elections and elections of the Chief Executive shall take place in the same year.)
5. District direct elections: Hong Kong shall be divided into 10 constituencies, with two seats for each constituency, and the two candidates with the first and second highest number of votes shall be elected.
6. Detailed election rules shall be prescribed by the laws of the HKSAR.

2. Views

- 2.1 Support is expressed for this alternative.

Reasons: (1) On election by functional constituencies

- Election by functional constituencies will best suit the peculiar circumstances of Hong Kong.
- A 50% representation by functional constituencies will ensure that the interests of all quarters will be taken care of.

- A 50% representation by functional constituencies will enable the professionals and persons with specialized knowledge to play a greater role in the Legislative Council.

(2) On direct election by districts

- The credibility of direct elections is quite low because candidates might try to bribe the voters in canvassing their votes.
- Hong Kong is a complex society where secret societies have a presence and influence. Elections on a one-person-one-vote basis might result in the infiltration into the Legislative Council by secret societies.
- The people's livelihood is much more important than votes. Hong Kong's stability might be at risk if the fighters for democracy and ambitious politicians were to win in an election.
- The stipulation that only 25% of the members of the Legislative Council will be returned by district direct elections is conducive to discouraging party politics.
- District direct elections on a one-person-one-vote basis will make up for the lack of district representation in elections by functional constituencies.

(3) On election by the grand electoral college

- Members elected by the grand electoral college will have the prestige needed to discharge the functions of their office.

(4) Members will be sufficiently representative

- Members thus elected will be able to represent the interests of various social strata. They will also have appropriate professional skills to ensure the more effective functioning of the Legislative Council.
- This alternative will ensure that the members elected will be broadly representative and will have the professional know-how needed by the future HKSAR.

- With balanced representation by members from different social strata, the Legislative Council will not be monopolized by a particular political group.
 - This will ensure that members of the Legislative Council will be representative and absolutely impartial.
 - This alternative, which combines elements of direct and indirect elections, will ensure that the Legislative Council will be broadly and equally represented.
- (5) This alternative is in conformity with the principle of gradual and orderly progress
- Under this alternative, the magnitude of changes in the political system will be smaller.
 - Most people are unwilling to take risks. All they want is a peaceful and stable environment in which to live and work. Thus, changes should be gradual and orderly.
 - The principle of gradual and orderly progress will accord well with the political system in the early days of the HKSAR.
 - The future HKSAR government will be able to manifest political democracy by carrying out more consultations when deciding policies. Thus, direct elections need only be introduced in a gradual and orderly manner.
- (6) Other reasons
- The method of election is reasonable.
 - Under this alternative, there is a greater possibility of returning to office the best and most qualified candidates. Members returned by general election will be more capable of administering Hong Kong efficiently.
 - It will be possible to return to office fair and unbiased representatives who will act as mediators in the Legislative Council.
 - Compared with other alternatives, this alternative enables the formation of a legislature with a composition quite similar to that of the existing Legislative Council.

- The public at large have not yet attained a sufficiently high level of knowledge and political awareness.
- Long exposed to a colonial environment, the sense of civic duty and political awareness of the people have yet to be increased. Thus, political changes should not be introduced too hastily.
- This system will facilitate the smooth transfer in 1997.
- This system will help maintain the stability and prosperity of Hong Kong.

2.2 Objection is expressed to this alternative.

Reasons: (1) On election by functional constituencies

- The proportion of members to be elected by functional constituencies is too small.
- Under this alternative, 50% of the members will be returned by functional constituencies. Judging from previous experience, members representing functional constituencies tend to concern themselves more with the interests of their respective constituencies, which is not a healthy sign.
- A 50% representation by functional constituencies will result in disunity within the Legislative Council. With each group working on its own, the Legislative Council will be unable to arrive at a consensus on the basis of the overall interests of society.

(2) On direct election by districts

- Since Hong Kong is such a small place, direct election by districts might return to office members with a high profile who make their appearance regularly at public functions but who may not be very capable.
- A 25% representation by directly-elected members will only serve as a window-dressing of democracy. Such a Legislative Council will be unlikely to play the best possible role.
- A 25% representation by directly-elected

members is too small. A Legislative Council with such a composition will lack legitimacy and authority and will be unable to objectively reflect public interests. This will render it impossible for the Legislative Council to coordinate public interests in a reasonable manner.

(3) On election by a grand electoral college

- Election by a grand electoral college could easily be abused and manipulated to produce unfair results.
- Election by an electoral college is a method which could easily lead to corruption, dereliction of duty and favouritism.
- There are drawbacks in this method because it is possible that members of the electoral college will also be members of functional constituencies. Some organizations will thus have double voting rights. Under this alternative, it is likely that 75% of the members of the Legislative Council will be returned by functional constituencies.
- If a grand electoral college is responsible for returning 75% of the members of the Legislative Council, these members will most certainly form an alliance with conservative members from functional constituencies. In this way, the Legislative Council will be controlled by people with vested interests and will not be able to effectively exercise democratic supervision.
- Members returned by a grand electoral college will easily be manipulated.
- Under this alternative, it will be easy for election results to be influenced by inter-personal ties and friendship. Members thus elected will not necessarily be able to properly reflect the wishes of the people.
- This system will result in appointment in disguise.
- This system will result in the business and professional sectors dominating the electoral scene.
- This system will result in a mode of election based on small group politics.

- The method of election proposed is similar to that practised in socialist China, a system with which Hong Kong people are not very familiar. This will raise doubts as to whether the "one country, two systems" concept will indeed be implemented.

(4) This alternative is undemocratic

- Members of the Legislative Council thus elected will not be broadly representative.
- The Legislative Council formed in accordance with this alternative will lack sufficient prestige and authority.
- The Legislative Council formed in accordance with this alternative will not be able to supervise, check and balance the Executive Council.
- This alternative goes against the wishes of the people and the Legislative Council thus formed will not be able to exercise supervision over the Executive Council.
- Under this alternative, the terms of office of the Chief Executive and members of the Legislative Council do not coincide. This could have an adverse effect on the workings of the executive authorities and the Legislative Council.

2.3 Other views

2.3.1 Election by functional constituencies

2.3.1.1 Advantage

- This will ensure that due attention will be given to the interests of various trades and sectors of society.

2.3.1.2 Drawbacks

- With such a large proportion of members to be elected by functional constituencies, corruption could easily occur.

Reason: - Members of some functional constituencies might resort to bribery to secure small advantages or for other personal reasons.

- Allowing the business circle such a large representation is not in keeping with the objective of balancing the interests of various sectors.

- People who belong to functional constituencies only make up a small proportion of the local population, but under this alternative, they will be responsible for electing half of the members of the Legislative Council, while the electoral college, which will also be formed by representatives of functional constituencies, will be responsible for electing 25% of the members. The remaining 25% of the members will be returned by district direct elections. In other words, the overwhelming majority of members of the Legislative Council will be returned by functional constituencies which represent only a small proportion of the population. This will result in an obvious monopoly of the political scene by a small group of people, leaving the majority of the people without any power.
- This alternative attaches too much weight to functional constituencies, whose representation can in no way be compared with that of direct general elections.

2.3.1.3 Other comments

- The roles of members returned by functional constituencies and of members returned by an electoral college are likely to overlap, and this will produce unfairness.
- Not many people can become members of functional constituencies. This is not in keeping with the principle of everyone having an equal opportunity to participate in politics.
- Under this alternative, functional constituencies will be returning 50% of the members of the Legislative Council. In view of the potential problems in delimiting the constituencies, such as determining the representation of each constituency and defining the member organizations, this alternative will result in a society where functional constituencies are constantly fighting against each other for their own interests.
- The Legislative Council will have too little power to exercise supervision over the executive authorities if members of the Council are returned by functional constituencies.
- Election by functional constituencies should only be a measure of expediency. As the number of directly-elected members grows, the representation of functional constituencies should be gradually reduced and so should the number of members returned by the electoral college. The only tenable reason for the retention of appointed seats is that this will allow some outstanding top- or high-ranking public servants to sit on the Legislative Council to answer questions and explain the government's

policies.

- The functional constituencies should be clearly delimited.
- The proportions of capitalists, top- and mid-level professionals and labour in the functional constituencies should be properly set down.

2.3.2 Direct elections

- The proportion of directly-elected members is too small.

Reasons: - The proposed percentage does not reflect the people's wishes.

- The proposed percentage is undemocratic.
- The few directly-elected members will only serve as a window-dressing of democracy. The Legislative Council thus formed will not be able to fulfil its role.
- This proposal goes against the principle of open politics.
- With the proposed proportion of directly-elected members, it will not be possible to carry out democratic supervision.

2.3.3 Electoral College

2.3.3.1 Advantages

- An electoral college will be able to play the part of a nominator. The quality of those elected will be assured and the support of influential bodies will be guaranteed if a large number of candidates are nominated when direct elections are first introduced. It is suggested that each candidate be required to secure a given number of votes from the electoral college before he/she can be considered having been nominated and thus qualified to take part in the election. This will be a powerful safeguard against the nomination of a large number of candidates by organized political bodies.

2.3.3.2 Disadvantages

- This will lead to dictatorship by a single party.
- Although the electoral college will be composed of 600 members, it is still possible that it will be manipulated by small groups of people. Making use of the closely-knit community networks, the small groups will be able to manipulate the electoral college through keen lobbying. An organization like the electoral college will

precipitate the coalition of small groups with differing interests and this in turn will precipitate the development of confrontational politics.

- Under this alternative, a 20-member nominating committee will be elected by an electoral college from among their own members. The fact that the power to nominate candidates will be exercised by such a small number of people will greatly reduce the degree of openness of the election and hinder the election of truly representative candidates to the Legislative Council.
- Election by a grand electoral college is not much different from the appointment system. It will only protect those with vested political or economic interests.
- The composition of the electoral college is not clearly laid down. The drawback of this alternative lies in the fact that it fails to provide details as to which organizations will qualify for representation and how they are to elect their representatives during the process of development of democracy. These details are essential for determining whether the resultant political system will be both fair and representative.
- Election by a grand electoral college will only take care of the needs of those social strata with vested interests under the current colonial policies. This reflects a lack of objective analysis of Hong Kong's long-term development. Such an over-cautious form of indirect election will only produce a political system with "indirect autonomy" and will not bring about "a high degree of autonomy" as promised in the Joint Declaration.
- The method of election appears to be too complicated. (The nominating committee seems unnecessary.)

2.3.3.3 Other comments

- Support is expressed for election by a grand electoral college. The concept of introducing universal suffrage in accordance with a prescribed gradual process is also found acceptable.
- The Chief Executive should concurrently act as chairman of the nominating committee as a symbol of authority.

3. Suggestions

3.1 Amendments to the composition of the Legislative Council

- The Legislative Council should be based on the "3-3 system", with one-third of members returned by functional constituencies, one-third returned through direct elections and one-third returned by an electoral college.

The method for forming the legislature should be as follows:

- (1) The size of the Legislative Council of the HKSAR shall be a compromise among the figures proposed by the different alternatives detailed in the Draft Basic Law for Solicitation of Opinions.
 - (2) One-third of the members of the Legislative Council shall be directly elected on a one-person-one-vote basis through a number of constituencies which contain appropriately equal proportions of the Hong Kong population.
 - (3) One-third of the members shall be returned by functional constituencies.
 - (4) One-third of the members shall be returned by a "Political Consultative Conference" which will be composed of people from different sectors.
 - (5) Any eligible voter may vote or stand for election in any one of the modes of election mentioned above.
 - (6) The Political Consultative Conference shall be constituted by representatives from different sectors, with a membership not exceeding 600. Members shall render their services voluntarily for a term of 5 years. Members shall include legislators, representatives of regional organizations, Hong Kong deputies to the NPC and Hong Kong members of the National Committee of the CPPCC, representatives of the commercial, industrial and financial sectors, and representatives of professional bodies, labour organizations, religious, social welfare and philanthropic institutions, Kaifong associations (area committees) and hawkers' organizations, who are elected by their respective sectors in a manner decided upon by themselves. The functions of the "Political Consultative Council" shall be: (i) To promote understanding, contact and consultation among people of different sectors and social strata; (ii) To review the long-term policies and measures of the HKSAR Government without interfering in its administrative, legislative and judicial affairs; (iii) To accept, examine and approve nominations for the post of the Chief Executive of the HKSAR; and (iv) To elect one-third of the members of the Legislative Council from amongst its own ranks.
 - (7) Detailed election rules shall be prescribed by the laws of Hong Kong.
- The composition of the Legislative Council should be as follows:

Members elected by an electoral college	30%
Members elected by functional constituencies	30%
Members directly elected by districts	30%
Members nominated by the Chief Executive, endorsed by half of the members of the Legislative Council and approved by the Hong Kong and Macau Affairs Office of the State Council in Beijing	10%

- The composition of the Legislative Council should be as follows:

Members elected by direct general elections	No less than 50%
Members elected by functional constituencies	No less than 30%
Members elected by members of a buffer electoral college from among their own ranks	No more than 20%

(Note: The buffer electoral college will be a grand electoral college with the function of alleviating conflicts. There shall be no overlapping between the composition of this electoral college and the functional constituencies. The composition of the electoral college shall vary according to the results of direct elections and elections by functional constituencies, so as to make up for the inadequacies of these two modes of election. Members of the electoral college will be elected or selected through consultations from the various sectors.)

- The composition of the Legislative Council should be as follows:

Members elected by functional constituencies	50%
Members returned by direct elections	30%
Members elected by an electoral college which comprises the Urban Council, Regional Council and the District Boards	20%

- The composition of the Legislative Council should be as follows:

Members elected by functional constituencies	35%
Members returned by direct elections	50%
Members elected by an electoral college	15%

There should be a number of government-appointed members sitting on the Legislative Council to answer questions on government policies. However, they should only attend Legislative Council sessions as non-voting members. (There are at present 10 appointed Legislative Councillors and this could be taken as the basis).

Reasons: - A healthy political system should be able to take care of and accommodate the wishes of different interest groups. Members of the Urban and Regional Councils and the District Boards and the Chief Executive should be subject to supervision by members of the public.

- The combination of direct and indirect elections should take care of the interests of different sectors and social strata.
- Election by function constituencies is more representative than election by an electoral college.

3.2 Election by functional constituencies

- Representatives of functional constituencies should be elected by members of the bodies concerned on a one-person-one-vote basis.

Reasons: - As voters will only be allowed to vote in one form of election, election by functional constituencies is not much different from district general elections. This could increase the number of directly-elected members of the Legislative Council.

- Representatives of functional constituencies should account for the largest proportion of members of the Legislative Council.

3.3 Direct general election

- The actual proportion of directly elected members should be set down in the Basic Law in order to provide a guideline for future elections. This will also encourage the public to take a more active part in elections.
- When direct elections are first introduced, the proportion should be kept under 25%. This proportion could be gradually increased until the entire Legislative Council is elected by universal suffrage.
- The number of directly-elected seats should be gradually increased.

- In order to realize the principle of achieving a high degree of democracy through gradual and orderly progress, the proportions of members returned by direct elections and by the electoral college set down in this alternative should be modified when the total voter turnout has reached a given level (say over 50%). The number of directly-elected members should be increased as the voter turnout grows.
- It should be clearly specified whether this alternative will be applied and will not be changed for 50 years, or whether a gradual and orderly program will be followed until the voter turnout exceeds 55% or even 75%.

3.4 Election by the electoral college

- The composition of the electoral college should be clearly defined.
- The size of the electoral college should be increased.
- The electoral college could also serve as the committee for reviewing nominations in Legislative Council elections.

Reason: - This would ensure the quality of nominees.

- The electoral college should be required to have the representation of members of functional constituencies, directly-elected members of the Legislative Council and members of the District Boards. At least 50% of representatives from the functional constituencies should come from the business and financial circles.

3.5 Other suggestion

- The HKSAR government should be responsible for prescribing the detailed election rules and enacting the relevant laws and should be allowed to make the necessary changes to these rules and laws in accordance with the actual situation.

Annex II: Alternative 2

1. Original text*

1. The legislature of the HKSAR shall be constituted as follows: No less than 50 per cent of the members shall be directly elected in a general election; no more than 25 per cent shall be elected by the functional bodies, and no more than 25 per cent shall be elected by district organizations (i.e. District Boards, Urban Council and Regional Council or other similar organizations.)
2. The direct election of the legislature must be genuine and held at regular intervals. The right to vote must be universal and equal. Election should be by secret ballot so as to ensure free expression of the will of the voters.
3. Detailed rules for the election of the legislature shall be prescribed by the laws of the HKSAR.

2. Views

2.1 Supporting views (Note Annex 2/2-1)

- This alternative is acceptable.
- Support is expressed for this alternative.

Reasons: (1) It gives expression to democracy.

- It embodies the spirit of democracy.
- It will improve the quality of democratic politics and protect the interests of the majority.
- It accords with the aspirations of the people for democracy and the trends of world history and will lead to the establishment of a political system that will ensure social stability.
- It will lead to a democratic society.
- It comes closest to 100% direct elections.
- It accords with the principle of fair and open politics.

(2) It protects the right to vote and to stand for election.

- It embodies the principle of equal political rights for all.
 - With the existing educational level, communication facilities and rule of law in Hong Kong, the people of Hong Kong are fully capable of making a rational choice in elections. Their democratic rights should not be taken away.
 - It provides Hong Kong people with an appropriate channel and opportunity by which to take part in elections.
 - It will attract capable people to run in the elections.
 - It will have the participation of representatives from various sectors.
- (3) The legislature thus formed will be accountable to the people and be able to exercise better supervision.
- Under this alternative, at least half of the members will be returned by direct elections. This will ensure that the members will be accountable to the people. (Note Annex 2/2-2)
 - It will enhance the political awareness and confidence of the people as it proposes that members of the Legislative Council will be accountable and responsible to the people.
 - Since members returned by general election will have to be accountable to the voters, the interests of the people will be protected.
 - It will enable the legislators to fulfill their functions in democratic supervision.
 - It will ensure supervision over the Chief Executive and the executive authorities.
- (4) Power will be vested in the people.
- Under this alternative, legislative power will be vested in the people of Hong Kong.
 - The masses will be the main source of power.
 - It will give Hong Kong people greater right to speak.

- (5) It will allow the expression of public opinion.
 - It is sufficiently representative. (Note Annex 2/2-3)
 - It has the greatest possible legitimacy.
 - It will allow the expression of public opinion. (Note Annex 2/2-4)
 - It will protect the interests of the various sectors.
- (6) It embodies the "one country, two systems" concept and "a high degree of autonomy".
 - It embodies the principle of "a high degree of autonomy". (Note Annex 2/2-5)
 - It embodies the spirit of "Hong Kong people administering Hong Kong".
 - The other alternatives are not in accord with the Joint Declaration and the principles of "Hong Kong people administering Hong Kong" and "a high degree of autonomy". (Note Annex 2/2-6)
 - It will ensure the successful implementation of the policy of "one country, two systems".
 - It will give expression to national sovereignty.
- (7) It will be advantageous to Hong Kong's development.
 - It will cultivate Hong Kong people's sense of belonging and strengthen their confidence.
 - It will protect the interests of the various sectors and promote the stability and prosperity of Hong Kong. (Note Annex 2/2-7)
- (8) It will be advantageous to the development of the political system.
 - It will ensure the steady development of the future political system.
 - It suits the needs of the future development of Hong Kong.

- Although this alternative falls short of the goal of democratic general elections, it is still able to look after the actual political needs of Hong Kong.
 - It is in keeping with the principle of gradual and orderly progress. (Note Annex 2/2-8)
 - Under this alternative, it is possible that in the years subsequent to 1997, all members of the Legislative Council will be returned by universal suffrage following a gradual and orderly programme of political development.
 - It will prevent the future government from being controlled by a small elite group.
 - It will be able to accommodate different political forces in society.
- (9) It will be advantageous to the development of the political framework.
- It will ensure communication, and checks and balances between the Chief Executive and the legislature.
 - It will pave the way for the selection of future Chief Executives.
 - It fits in best with the changes that will take place in the future development of the existing Legislative Council.
 - It retains the methods of election currently used by the district organizations and functional constituencies, thus ensuring that the HKSAR Legislative Council will not be too different from the present Legislative Council.
 - The laws and government policies passed by the Legislative Council will have the support of the people.
 - Like the current practice, this alternative will allow the people to decide how the Legislative Council is to be formed.
 - It will guarantee judicial independence.
 - Through indirect elections with the District Boards as the basis, it will be possible for important local issues and views to be

channelled to the legislature. In this way, the links between the legislature and the District Boards will be strengthened.

- It will ensure the continuation of the present methods of election.
- It will give encouragement to members of district organizations, and in the process, it will be possible to train deft hands in politics.

(10) It is better than other alternatives.

- It is better than the other existing alternatives. (Note Annex 2/2-9)
- Alternatives 1, 3 and 4 mainly look after the interests of the business circles and the capitalists and tend to neglect the interests of the middle class intellectuals and the general public.
- The other alternatives will give rise to political cliques and are unlikely to give the general public the encouragement they need to participate in the running of Hong Kong. Hence, they will ultimately pose an obstacle to the grooming of successors.
- With the other alternatives, it will be difficult to arrive at a consensus or achieve impartiality in the delimitation of categories and the number of representatives to be returned by each category.
- The concepts of a grand electoral college, the advisory group and the nomination committee have come under strong criticism.
- With the other alternatives, elections might be criticized as acts of "sham democracy".
- The other alternatives are not representative enough.
- The other alternatives will result in a monopoly by the minority factions.
- If the Legislative Council is formed by representatives from the well-off and upper-middle class, it goes without saying which class the Council will serve.
- The other alternatives are unlikely to

produce a government and Legislative Council that will have the trust and support of the general public.

(11) The mode of election is better.

(A) Composition

- Elections by functional constituencies, direct elections and elections by district organizations will all have an important role to play and will allow representation of different interests.
- Since none of the three groups of members will be too great in number, it will be possible for them to check and balance each other's power.
- This alternative only stipulates that members of the Legislative Council will be returned in three different ways but allows flexibility in the proportions. Hence, with the passage of time, the number of directly-elected members could be increased whereas the number of members returned by functional bodies and district organizations could be decreased. (Note Annex 2/2-10)
- The stipulation that no less than 50% of the members of the Legislative Council will be elected on a one-person-one-vote basis shows respect for the equal political rights of citizens, whereas the stipulation that 25% of the members will be returned by the professional circles and another 25% will be returned by the District Board members takes into account the realities.
- Under this alternative, Legislative Council members will be able to keep themselves informed of the needs of the people they desire to win over.
- The method of nomination is more open and less easily manipulated.

(B) Direct elections

- Since no less than 50% of the members will be returned by direct general elections, indirect elections could be retained.
- Blind voting can be prevented because complete direct elections will not be

arbitrarily introduced.

(C) Functional bodies

- The stipulation that 25% of the members will be returned by functional bodies will ensure that all trades and professions, especially the business circles, will be able to voice their views through their representatives on the Legislative Council.
- Although a 25% representation by the functional bodies still leaves much to be desired, it nevertheless will allow the interests of the entrepreneurs to be looked after and thus encourage them to remain in Hong Kong. This will be advantageous to the economy.
- Under this alternative, no minority strata or interest group would be in a position to monopolize or manipulate the Legislative Council.
- Under the other alternatives, different organizations might look after each other's interests and exchange information for their own benefit, but such an eventuality can be minimized under this alternative.

2.2 Objection is expressed to this alternative.

- Reasons: - Elections by functional bodies and by district organizations have their drawbacks. Besides, this alternative does not detail how the directly-elected members, who will constitute 50% of the membership, will be returned.
- The stipulation that no more than 25% of the members will be returned by the district organizations is not acceptable.
 - Leaders returned by general election will be reluctant to fully implement policies designed to protect those groups with vested interests.
 - This alternative will not be able to guarantee the quality of the electoral results while the degree of political openness has not yet reached a stage of maturity.
 - Hong Kong should not introduce universal suffrage or attach too much weight to general election too soon because this is not in conformity with the objective reality of

society. Since the political awareness of the Hong Kong people and the local political situation have not yet reached a stage of maturity, the development of the political system after 1997 should be based on the principle of gradual and orderly progress. Dramatic changes will have an adverse effect on the economic prosperity and social stability of Hong Kong.

- This alternative will give rise to the situation where some people will claim that they have "the mandate of the people of the whole region" and establish an administration antagonistic to the Central Authorities.
- This system will reduce the Legislative Council to an organization which provides services according to the needs of its members. It will not have the required representativeness, authority or legitimacy.
- Lobbying and factional strife among members of the Legislative Council will lead to internal disunity and corruption.

2.3 Other views

2.3.1 Views on direct general election

2.3.1.1 Advantages

- Direct election is the most fair and democratic of all modes of election.
- The return of no less than 50% of the Legislative Council members by direct election is in fact the bottom line. If the proportion is smaller than this, it will be impossible to form a democratic and responsible government or for the Legislative Council to effectively check and balance the power of the executive authorities.

2.3.1.2 Disadvantages

- Judging from the sense of civic duty of Hong Kong people at this stage and for some time in the future, a 50% representation by directly-elected members is too high a percentage.
- In terms of their nature, direct general election and election by district organizations seem to overlap.

2.3.2 Views on election by functional constituencies

2.3.2.1 Advantages

- This alternative will ensure that the members elected will be people who command respect in the constituencies they represent.
- Although election by functional constituencies has its problems, the fact that under this alternative no less than 50% of the members will be directly elected will make the Legislative Council sufficiently representative. Besides, the method of election by functional constituencies is already widely practised under the present political system.

2.3.2.2 Disadvantages

- Election by functional constituencies will lead to the stratification of society and confer greater political power on a small number of people.
- Although under this alternative, nearly 25% of the members of the Legislative Council will be returned by functional constituencies, it may still give rise to prevent small-circle politics whereby factional, group or individual interests are bartered for electoral gains.

2.3.3 Views on election by district organizations

2.3.3.1 Advantage

- The strong point of this alternative lies in the fact that it will ensure that the Legislative Council will take care of the interests of the people and strengthen the links between the Legislative Council and the District Boards. (Note Annex 2/2-11)

2.3.3.2 Disadvantages

- Election by district organizations at various levels is a form of indirect election, a method which is due to be abolished in 1991. It would be turning the clock back if this system is re-introduced in 1997. This mode of election should therefore be removed from the present alternative.
- Election by district organizations (like election by a grand electoral college), does not allow mass participation and could easily be manipulated by a handful of people. It would lead to unfairness and be unable to represent public opinion.

2.3.3.3 Reservations

- Reservations are expressed in respect of the proposal that no more than 25% of the members of the Legislative Council be returned by district organizations.

Reasons: - This system could be manipulated by a small number of people.

- This system is neither fair nor democratic.

- This system has many loopholes.

2.3.4 Views on the detailed rules of election

- This alternative stipulates that detailed rules for the election of the legislature shall be prescribed by the laws of the HKSAR. However, there must be a Legislative Council before laws can be passed, and there must be a Chief Executive to sign the laws before they can take effect.

- Paragraph 3 of this alternative stipulates that detailed rules for the election of the legislature shall be prescribed by the laws of the HKSAR. This is a reasonable provision, since it is inappropriate to elaborate on details in a constitutional instrument like the Basic Law.

2.3.5 Views on the total number of Legislative Council members

- The total number of Legislative Council members each term should be based on the number of eligible voters in the HKSAR. The ratio should be one member for every 10,000 voters.

- There should be one Legislative Council member for every 100,000 residents.

2.3.6 Candidates

- The details for the method of selecting candidates should be clearly laid down in the laws of the HKSAR.

- A candidate should not be allowed to run for election in different constituencies.

- A candidate should be required to have a clean record of criminal conviction as a qualification to run in any election.

- The limits of the campaigning expenses incurred by the candidates should be worked out by the incumbent Legislative Council in accordance with needs and should be subject to strict control. The limit prescribed must be endorsed by more than two-thirds of the Legislative Council members.

- It should be stipulated that a candidate must be nominated by no less than 100 permanent residents of Hong Kong.

- Since nominators should vote for the candidates they nominate, they should not be allowed to vote for any other candidate.

2.3.7 Voters

- Registered voters for the election of the Chief Executive should automatically be eligible to vote for Legislative Council members. The qualifications of voters should be the same in both cases, that is, they must be permanent residents of Hong Kong who have reached the age of 21.
- Voters should only be allowed to vote in one constituency.

2.3.8 View on the notes

- Support is expressed for the view expressed in Note 3 that all members of the legislature be elected through direct election on a one-person-one-vote basis.

Reason: - In this way, the wishes of the people can be better reflected.

3. Suggestions

3.1 Deletion

- Paragraph 1 should be deleted.

Reason: - The provisions in Paragraph 1 lack flexibility.

3.2 Amendments

3.2.1 On direct general election

- The Legislative Council should be constituted in its entirety by one-person-one-vote election. No member should be returned by functional constituencies or district organizations.

Reasons: - Representation by functional constituencies and district organizations might overlap.

- Election on a one-person-one-vote basis is more democratic.

- This alternative is but a transitional measure. In the long run, all members of the Legislative Council should be returned by direct elections.

- The model proposed in this alternative should be developed in the years subsequent to 1997 into a totally democratic political system.

3.2.2 On election by functional constituencies

3.2.2.1 Increasing the proportion

- A 25% representation by the Urban Council, Regional Council and other district organizations and a 25% representation by functional constituencies will not bring about balance of power. The functional constituencies should have more say than the district organizations because the interests they represent are broader and they are more influential in society.
- The representation of functional constituencies should be enlarged so that the majority of residents will be able to take part in a district general election or an election by functional constituencies.
- The percentage of members returned by functional constituencies should be increased.

Reason: - This will ensure that the future Legislative Council will function more efficiently.

- Functional constituencies should have a 50% representation, half or nearly half of whom should be returned by the business and financial circles.

3.2.2.2 Reducing the proportion

- The number of members returned by functional constituencies should be gradually reduced until all members are returned by direct elections.

3.2.2.3 Other suggestions

- In order to balance the interests of different organizations in society, functional constituencies should be allowed to adopt a mixed form of election. However, the proportions of representation should be subject to restrictions and an electoral system should be formulated for election within these bodies.
- Representation by functional constituencies should be evenly distributed, with each constituency returning no more than two members.
- Up to 50% of the members of the Legislative Council should be returned by functional constituencies.

3.2.3 On election by district organizations

3.2.3.1 Increasing the representation of the District Boards

- Under this alternative, it is proposed that up to 25% of the members of the Legislative Council be returned by the District Boards, Urban Council and Regional Council. It

would perhaps be clearer and more appropriate to specify that three-quarters of this percentage shall be returned by the District Boards while the remaining one-quarter shall be returned by the Urban and Regional Councils.

- The 25% representation proposed for district organizations should instead be returned through district general elections in which only District Board members can be candidates.

3.2.3.2 Removing the representation of district organizations

- The representation of district organizations should be phased out and the proportion of members returned by direct general elections should be gradually increased. For it is inappropriate for the legislature, which should serve the interests of Hong Kong people as a whole, to be overly concerned with district issues.
- No member should be returned by district organizations. Instead, no less than 70% of the members of the Legislative Council should be returned by general election and up to 30% of the members should be returned by functional constituencies.
- The 25% representation proposed for district organizations should be given to the functional constituencies so that the Legislative Council will be constituted 50-50 by direct elections and functional constituencies.

3.2.3.3 The proportions of members returned by direct elections and functional constituencies

- Eventually 75% of the members of the Legislative Council should be returned by direct elections on a one-person-one-vote basis. The remaining 25% should be returned by functional constituencies.
- The proportions of representation on the Legislative Council should be as follows:

Members elected by functional constituencies 45%

Members elected by district general elections 55%

- The composition of the Legislative Council should be as follows: "No less than 65% of the members shall be elected by direct general elections and no more than 35% shall be elected by functional constituencies on a one-person-one-vote basis."

Reason: - This amendment is necessary because the composition proposed in this alternative is not in accordance with the arrangements which have been made for a representative government and

will lead to a monopoly by an even smaller group of people. It is even more undesirable than the "grand electoral college" system.

- The Legislative Council should have more directly-elected members. The 25% to be returned by the electoral college should also be directly elected so that a total of 75% of the members will be returned through direct elections.

3.2.3.4 The proportions of members to be returned by functional constituencies and district organizations

- Paragraph 1 should be amended to read: "... no more than 35% shall be elected by functional bodies, and no more than 15% shall be elected by district organizations".
- No more than 20% of the members should be returned by functional constituencies, while up to 30% of the members should be returned by district organizations.

Reason: - If a member is returned by a functional constituency, he/she must be a member of that functional body. An ordinary citizen will not be eligible to stand for election under this system.

3.2.3.5 The proportions of members returned by direct elections, functional constituencies and district organizations

- The Legislative Council should be composed of 100 members, with 60% of the members returned by direct election, 20% returned by functional constituencies and 20% returned by district organizations.
- The proportions of representation on the Legislative Council should be as follows:

Members elected by qualified voters on a one-person-one-vote basis	50%
Members elected by functional constituencies	40%
Members elected by district organizations	10%

- 50% of the members of the Legislative Council should be directly elected by the citizens of Hong Kong, while 15% should be returned by an electoral college and 35% should be returned by functional constituencies.

- The proportions of representation on the Legislative Council should be as follows:

Members elected by District Boards	25%
Members elected by functional constituencies	40%

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- The Legislative Council should be composed of 70 members. One-third of the members should be returned by functional constituencies; one-third should be returned through direct election by districts; and one-third should be returned by a number of electoral colleges, including an electoral college formed by the Urban and Regional Councils, an electoral college formed by the District Boards, and an electoral college formed by various consultative committees and statutory committees.
- The proportions of representation on the Legislative Council should be as follows:

Members returned by functional constituencies	50%
Members returned by District Boards	20%
Members returned by direct election	30%

Reasons: - It will have a stabilizing effect on the internal political situation if 50% of the Legislative Councillors are returned by functional constituencies and the other 50% are returned by the District Boards and direct election.

- Election by functional constituencies will ensure that all major trades, social strata, and professions are represented in the Legislative Council.
- At present, the functional constituencies basically represent three different broad sectors, with the business and financial sectors accounting for five-twelfths, the grass-roots, labour and social service sectors accounting for three-twelfths, and professionals accounting for four-twelfths. Hence, elections by functional constituencies will by no means be merely a representation of the interests of the business sector. Other important trades and professions could be included in the future, but appropriate arrangements must be made for the proportional representation of these three broad sectors. The business and financial sectors should be allowed to take up half or nearly half of the seats returned by functional constituencies because other modes of election do not directly represent the interests of these sectors.
- Members returned by the District Boards will

have an important role to play in the Legislative Council. However, since district affairs are of a different nature and level to regional affairs, the representation of the District Boards should not be too great.

- The results of direct elections will to some extent be affected by the way they are conducted. The most important factor will be the size of the constituencies. The basic principle is that different political forces and interest groups will stand a fairly equal chance in a direct election.
- The proportions of representation proposed here will prevent the monopoly or manipulation of the Legislative Council by a minority sector or interest group. Members representing the business and financial sectors or members from grass-roots organizations will have to secure the endorsement and support of the moderates in order to initiate or stop any legislation. This will be an important guarantee for the fair and unbiased operation of the Legislative Council.

3.2.4 Addition

- The following provision should be added as Paragraph 4 of Alternative 2: "All members of the Legislative Council shall eventually be returned by general election."

3.2.5 Addition of government officials

- The percentage of members returned by district organizations should be reduced and their seats should be filled instead by principal officials.
- The proportions of representation on the Legislative Council should be revised as follows: Direct elections, no less than 40%; functional constituencies, 20%; district organizations, 20%; and government departments, 20%.

Annex II: Alternative 3

1. Original text

1. The legislature of the HKSAR shall have 60 members.
2. Thirty per cent of the members (i.e. 18 persons) shall be elected by the advisory group from among non-advisers. At least one-third of these members (i.e. 6 persons) shall be principal officials, and the rest (around two-thirds) shall be members of the Executive Council and other public figures. (Members of the legislature elected by the advisory group must include members of the Executive Council and principal officials so as to strengthen the links between the executive and the legislature.)
3. Forty per cent of the members (i.e. 24 persons) shall be elected by functional bodies.
4. Thirty per cent of the members shall be elected directly by the districts. The members of the legislature directly elected and those elected by the advisory group shall be roughly the same in number and shall be elected roughly at the same time, so that balance can be maintained. (Unless the method of the election by the advisory group is accepted, direct election cannot be held.)
5. The two election methods stated above in paragraphs 3 and 4 shall be prescribed in detail by law.

2. Views

2.1 Support is expressed for this alternative.

Reasons: - This alternative will make it possible for people with ability and social standing to run the Legislative Council.

- This alternative will bring about political equilibrium and the balancing of class interests necessary for Hong Kong-style politics.

- Under this alternative, the composition of the Legislative Council is better proportioned.

2.2 Objection is expressed to this alternative.

Reasons: (1) Views on the advisory group

- The advisory group lacks democratic representation.

- Since the advisory group will be formed without the participation of the masses, it could easily result in a closed political structure.
 - It is not stipulated how the advisory group will be formed.
 - Election by the advisory group is in fact appointment in disguise.
 - The influence of members elected by the advisory group might differ from that of members elected by other means.
 - Confrontational factions might develop between members elected by the advisory group and directly-elected members.
 - The authority of the advisory group will come from the Chief Executive and the Central Government. This will result in totalitarian rule by the Chief Executive or the control of the HKSAR government by the Central Authorities. This not only goes against the principles of democracy but will undermine the spirit of "a high degree of autonomy".
 - The stipulation that it will not be possible to hold direct elections unless the method of election by the advisory group is accepted puts the role of the advisory group above that of direct elections. This goes against the fundamental spirit of gradually introducing an open political system.
- (2) Views on election by functional constituencies
- Under this alternative, 40% of the members will be elected by functional constituencies. It is unreasonable that they should have a larger representation than directly-elected members.
 - The functional constituencies will still form the main body of the Legislative Council although the proportion is somewhat smaller than in other alternatives.
 - A 50% representation by members elected by functional constituencies will split the Legislative Council between constituencies representing different interests, thus making

it impossible to reach a consensus based on the overall interests of society.

- Election by functional constituencies will give the Legislative Council very little power to exercise supervision over the executive authorities.

(3) Views on government officials serving on the Legislative Council

- This alternative is very conservative as it will maintain the current practice of having members of the Executive Council serve concurrently as members of the Legislative Council.
- There is absolutely no need to give the principal officials the power to vote in elections to the Legislative Council. The Legislative Council should have the power to supervise the work of principal officials. Under this alternative, however, the principal officials will have the power to choose the people who will supervise their work. This is unreasonable. Furthermore, the principal officials will be given sufficient authority in the running of the government. Giving them the right to vote in elections to the Legislative Council is not only inappropriate but also goes against the principle of the separation of powers.
- Saying that the inclusion of members of the Executive Council in the Legislative Council will "strengthen the links between the executive and the legislature" seems a rather lame excuse. The presence of "links" between the two will render them unable to check and balance each other's power.
- If 30% of the members are to be elected by the advisory group, the Legislative Council will be controlled by the government because most members of the advisory group will come from the government.
- Under this alternative, some members of the Legislative Council will be government officials. This goes against the provision that "the legislature of the HKSAR shall be constituted by election" as stated in the Annex to the Joint Declaration.

(4) The element of democracy

- This goes against the spirit of democracy.
- A Legislative Council formed in accordance with this alternative will become a tool of dictatorship.
- Under this alternative, the Legislative Council is too small in size and not broad enough in its representation. Furthermore, with this kind of elitist politics, the Legislative Council will come under the control of a handful of people.
- With such a small representation of directly-elected members (30%), the Legislative Council will lack legitimacy and authority and will be unable to objectively reflect public interests. This will render it impossible for the Legislative Council to coordinate public interests in a reasonable manner.

(5) Other reasons

- The Legislative Council thus formed will lack sufficient prestige and authority.
- The Legislative Council thus formed will not be able to monitor, check and balance the Executive Council.
- Under this alternative, it will be easy for election results to be influenced by inter-personal ties and friendship. Members thus elected will not necessarily be able to properly reflect the wishes of the people.
- The adoption of this alternative could easily result in small group politics and even under-the-table dealings.
- The adoption of this alternative will result in the business and professional sectors dominating the electoral scene.
- The method of election proposed is similar to that practised in socialist China, a system with which Hong Kong people are not very familiar. This will raise doubts as to whether the "one country, two systems" concept will indeed be implemented.
- Members of the Executive and the Legislative Councils should not have "dual identity".

- This alternative cannot guarantee that members of the Communist Party or pro-Communist elements will not make up more than half of the membership of the Legislative Council.

- If the NPC has the power to refuse to appoint an anti-Communist or a neutral person who is elected to the Legislative Council, such a method of election is rather meaningless.

- Paragraph 5 of this alternative indicates that the proponents themselves have doubts about this alternative.

Annex II: Alternative 4

1. Original text

1. The composition of the legislature of the HKSAR shall be as follows:

From business circles	30%
From the professions	25%
From grass-roots organizations	20%
Through district general elections	25%

2. The composition is thus divided into four major categories. The first three major categories are further divided into sub-categories according to trades or professions. The delimitation of each sub-category and the number of members it elects to the legislature shall be prescribed by the laws of the HKSAR.

All members of the legislature who belong to the three major categories shall be elected from corporate bodies in accordance with law.

According to the assigned number of seats, each corporate body shall decide on its own which of the following methods to adopt for electing its members to the legislature:

- (1) Each member is directly elected on a one-person-one vote basis;
 - (2) Members from its subsidiaries are elected through indirect election on a one-unit-one-vote basis; and
 - (3) The general membership conference authorizes a council to elect members through indirect election.
3. The division of the district constituencies, the voter registration, the voting procedures, and the nomination of candidate in district general elections shall be prescribed by the laws of the HKSAR.

2. Views

- 2.1 Support is expressed for this alternative.

Reasons: - The proportions are quite well balanced.

- The Legislative Council formed in accordance with this alternative will be more representative.

- This alternative is more democratic.
- This alternative will fully bring about political equilibrium and the balancing of interests necessary for Hong Kong-style politics.
- Perhaps the strong points of Alternatives 2 and 4 can be merged to produce a new moderate alternative which will be more acceptable.

2.2 Objection is expressed to this alternative

Reasons: (1) It attaches too much importance to the interests of the business circles.

- It has the business circles and the professions as the core electoral bodies.
- The proportions proposed for the business circles and the professions (30% and 25% respectively) are too large and are therefore unreasonable.
- This alternative is likely to give rise to political cliques and even under-the-table dealings.
- This alternative will result in the politization of many organizations, which will put people who are not members of these organizations at a disadvantage.

(2) It lacks representation.

- The proportion proposed for directly-elected members is too small. A Legislative Council formed in accordance with this alternative will lack legitimacy and representation and will be unable to coordinate the diversified interests of society. This will strangle the normal development of democracy. It also shows that the proponents of this alternative are not sincere in their efforts to achieve democracy.
- The election results could easily be influenced by personal ties and friendship and the persons elected might not be able to properly reflect or represent the wishes of the voters.

(3) It is not authoritative enough.

- A Legislative Council formed in accordance with this alternative will not be authoritative and powerful enough.
- A Legislative Council formed in accordance with this alternative will not be able to monitor the Executive Council or to check and balance its power.

(4) Other drawbacks:

- This alternative is incomplete in the sense that its provisions are not detailed enough and its delimitation of sub-categories is not clear-cut.
- The composition is not well-proportioned and the method for electing members proposed for the three major categories is not very desirable.
- The method of election proposed is similar to that used in socialist China, a system with which Hong Kong people are not very familiar. This will raise doubts as to whether the "one country, two systems" concept will indeed be implemented.
- This alternative is a continuation of the appointment system in disguise.

2.3 Other views

2.3.1 Drawbacks in the delimitation of the sub-categories

- As things now stand, most grass-roots public figures have not got themselves organized. It is thus doubtful whether they will qualify under "grass-roots organizations".
- The delimitation of the professions and grass-roots organizations is rather vague.
- This alternative is too complicated. It is difficult to categorize members according to groups like "business circles", "the professions" and "grass-roots organizations". With the three different methods for selecting members of the Legislative Council, this alternative is even more complicated.
- This alternative lacks fair and objective criteria in its proposed composition.
- Although this alternative attaches great importance to resolving differences, it is still undesirable because it

favours indirect election.

2.3.2 Uneven proportions of representation

- Under this alternative, 55% of the Legislative Council members will be elected from among the business and professional circles while only 25% will be directly elected. The small percentage to be returned by direct elections means that the Legislative Council will be poorly represented, undemocratic and unable to discharge its democratic monitoring function. On the other hand, with such a large representation of the business and professional circles, the Legislative Council is likely to be biased towards the interests they represent. This will result in the domination of members with business and professional background in the Legislative Council as well as a scramble for interests. Rather than serving the function of balancing the interests of various social strata, the Legislative Council will turn out to be a bastion of dictatorship.
- If this alternative is adopted, conflicts among various interest groups will be brought into the Legislative Council and be institutionalized. This is not conducive to the overall development of society.

3. Suggestions

3.1 Increasing the proportion of directly-elected members

- It should be stipulated that initially 25% of the Legislative Council members will be elected through district general elections and that the proportion will later be modified in accordance with the actual situation and the principle of gradual and orderly progress.

Reason: - Since the Legislative Council will be constituted partially by direct elections in 1991, the smooth transfer of power will be affected if the Basic Law stipulates that direct elections will have no role to play in the formation of the HKSAR Legislative Council in 1997.

- The composition of the legislature should be modified as follows:

From business circles	25%
From the professions	25%
From grass-roots organizations	20%
Through district general elections	30%

- The composition of the legislature should be modified as follows:

From business circles	20%
From the professions	20%
From grass-roots organizations	20%
Through district general elections	40%

- No less than 50% of the members of the Legislative Council should be returned by direct general elections while the remaining seats should go to the business and professional circles.

Reasons: - This will give representatives of various sectors a fair chance of participation.

- This will allow checks and balances and ensure the overall stability of society.
- The gradual and orderly introduction of direct elections will ensure the attainment of true democracy.

- The composition of the legislature should be modified as follows:

From business circles	30%
From the professions	20%
From grass-roots organizations	20%
Through district general elections	30%

After 1997, elections should be made increasingly open to the public to allow public participation in politics.

The method of forming the Legislative Council should be reviewed every 5 years in accordance with the principle of public participation and to meet social needs.

Detailed rules of election to the Legislative Council should be prescribed by the laws of the HKSAR.

3.2 Increasing the proportion of members from grass-roots organizations

- The following provisions are suggested for elections to the Legislative Council:

(1) The Legislative Council shall be based on the one-house system. All members shall be elected. In order

to increase the representation and authoritativeness of the Legislative Council, there shall not be any appointed members.

- (2) The Legislative Council shall have 80 members who shall be elected:

Through district general elections (Hong Kong shall be divided into 10 constituencies) 25%

From grass-roots organizations (such as kaifong associations, labour organizations, the Automobiles Association, the Tailors' Association, etc) 25%

From functional bodies (such as the teaching profession, social services, the medical profession, nursing and pharmaceutical staff, engineers and the religious circles) 25%

From business and financial circles (such as the Jaycees, the Joint Stock Exchange, the Federation of Industries) 25%

Reasons: - With members of the Legislative Council elected from the various professions and sections of society, each representing a given number of people or trade, or the interests of a given district, the conflicts among different strata will be resolved. This will ensure stability and prosperity.

- It has been proposed that the proportion of members representing the grass-roots organizations should be increased to 25%

3.3 Increasing the proportion of representation of other sectors

- The Legislative Council should include representatives of:

Various rural committees of the New Territories 15%

Public light bus bodies 15%

Principal officials and Executive Council members 5%

3.4 Other suggestions

- Members from the three major categories should be elected by professional divisions because this method will ensure greater representation and a higher degree of public participation. Further, the proposal suggested by the

"Group of 38" should be adopted to ensure well-balanced proportional representation.

OVERALL COMMENTS ON ANNEX III

香港
基本法
附件三
評語

1. Original text

1. Within the year of 1996, the National People's Congress shall establish a Preparatory Committee of the Hong Kong Special Administrative Region, which shall be responsible for the preparations of the establishment of the Region, and shall decide on the specific method for the formation of its first government. The preparatory committee shall be composed of mainland members and of Hong Kong members who shall constitute no less than 50 percent. Its chairman and members shall be appointed by the Standing Committee of the National People's Congress.
2. The Preparatory Committee for the Hong Kong Special Administrative Region shall be responsible for preparing the establishment of the "Election Committee for the First Government of the Hong Kong Special Administrative Region".

The "Election Committee" shall be composed entirely of permanent residents of Hong Kong and must be broadly representative. It shall include deputies of the Hong Kong region to the National People's Congress of the People's Republic of China, Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference, experienced persons who have served in Hong Kong's administrative, legislative and advisory organizations before the establishment of the Hong Kong Special Administrative Region as well as persons representative of all strata and sections of society.

The proportions of the composition of the "Election Committee" are tentatively proposed as follows:

Persons from business and financial circles	25%
Professionals	25%
Persons from labour, grass-roots and religious organizations	25%
Political figures of former times	20%
Deputies to the National People's Congress and members of the National Committee of the Chinese People's Political Consultative Conference	5%

3. The "Election Committee" shall formulate procedures and accordingly recommend the candidate for the first Chief

Executive through local consultation or through local election after consultation, and report the recommended Chief Executive to the Central People's Government for appointment. The term of office of the first Chief Executive shall be the normal term.

4. The Chief Executive of the Hong Kong Special Administrative Region shall be responsible for preparing the election of the first government of the region according to this Law.
5. The first (or provisional) legislature of the Hong Kong Special Administrative Region shall be elected by the "Election Committee". All members of the former Hong Kong Legislative Council can be candidates for membership in the first (or provisional) legislature of the Region.

The term of office of members of the first (or provisional) legislature of the Hong Kong Special Administrative Region shall be two years.

6. The first Chief Executive of the Hong Kong Special Administrative Region shall be sworn in to office on 1 July 1997. On 1 July 1997, the first government and legislature of the Hong Kong Special Administrative Region shall be inaugurated simultaneously.

2. Views

2.1 Supporting views

- Support is expressed for this Annex.
- This Annex is, in principle, acceptable, but the "Election Committee" should be constituted by election based on professional divisions. Members of the legislature should be elected in accordance with the method proposed by the "Group of 38".
- The method of recommending a candidate through local election after consultation should be adopted.

Reasons: - This will ensure that the Chief Executive is duly-respected by the people.

- This will ensure that the interests of all strata and sections of society are looked after.

- The composition of the "Election Committee" proposed in Annex III is acceptable.

Reasons: - The first government will be provisional in nature.

- Such a committee is conducive to smooth transition.
 - Support is expressed for Alternative 4 in "A Collection of Opinions". (Note Annex 3-1)
- Reasons:
- A government set up by Chinese nationals in Hong Kong and appointed by the NPC can give expression to national sovereignty.
 - The provision that members of the legislature elected in 1996 will automatically become members of the first legislature of the HKSAR will ensure a smooth transition.
 - A government thus elected will have the trust of Hong Kong people.

2.2 Opposing views

- Objection is expressed to the suggestions detailed in Annex III.
- Reasons:
- Election/consultation after appointment by the NPC as suggested in this alternative will not be genuine election since most members of the "Preparatory Committee" and the "Election Committee" will most likely be "pro-China" or people from the business and financial circles. It will be a special form of appointment, not election as understood by most people. Neither will it be a form of election suggested in the Joint Declaration. (Note Annex 3-2)
 - The method for selecting members of the legislature suggested in Annex III is likely to result in a break in continuity in and around 1997. Annex III is in fact based on the assumption that in 1997 some of the incumbent members of the Legislative Council will not be able to become members of the first legislature. If a member of the pre-1997 legislature, regardless of whether he/she was returned by direct election or by a functional constituency, is not recommended by the "Election Committee", people will ask whether this break in continuity reflects on the quality of the incumbent member of the Legislative Council, or indicates that something is wrong with the method of recommendation by the "Election Committee".
 - The method of relying on the "Election Committee" to recommend members of the first

legislature is likely to result in many incumbent legislators not being re-elected. However, it is both inappropriate and impossible for the Central People's Government or Hong Kong to set down a given number of legislators who will be re-elected (the stipulation of such a quota not only will subject the Election Committee to constraints but will turn the electoral process into a game). Major changes in the Legislative Council in and around 1997 will not be conducive to a smooth transition.

- There is no objective criterion for deciding which sectors or professions should be represented on the Election Committee. In deciding which organization or individual will be eligible to become members of the electoral college or advisory board, there is bound to be controversy, which will not do society any good.
- On the surface, it seems that the Central Authorities and the business and financial sectors will only make up 30% of the Election Committee. However, since most political figures of former times will also have the same background, it will mean that people from these sectors will account for more than half of the membership of the Election Committee. This arrangement will make it easy for them to manipulate elections in such a way as to return a Chief Executive who will protect the interests of their sectors at the expense of public interests. In this way, the desire of the public to elect a Chief Executive who will look after the interests of all strata and sections of society will not be realized.
- A Chief Executive recommended by the Election Committee cannot be very representative. He/she will have little support from the masses and will therefore lack the authority for implementing policies.
- A government formed by such undemocratic means will be able to enact all kinds of harsh laws during its term of office and will be in a position to lay the foundation for the administration in the next 40 years or so, thus ensuring that all governments after the first one are undemocratic. (Note Annex 3-3)
- The "Election Committee" established in 1996 will become an influential centre of power

during the transitional period because anyone hoping to become the Chief Executive and incumbent members of the Legislative Council in 1996 wishing to remain in office will have to win the support of members of the "Election Committee". The words of the "Election Committee" or its individual members or groups of members will have tremendous influence on the legislature. In order to remain in office beyond 1997, incumbent members of the Legislative Council in 1996 will be cautious in their utterances and will try to avoid contradicting individual members or groups of members of the "Election Committee".

- The method for forming the first government should not differ from that to be used for forming subsequent governments.
- This proposed annex violates Britain's sovereignty over Hong Kong because both the Preparatory Committee and the Election Committee will be established before 30 June 1997.
- Although the Basic Law will be passed before 1997, it will not in force until 1 July 1997. If the Chief Executive and the legislature are indeed to be elected before 1 July 1997, they will not be recognized by the laws of Hong Kong which are still in force.
- Since the first government and legislature of the HKSAR will represent the "one country, two systems" concept, they should be formed through normal means devised after consulting the public. If they are formed according to a method decided by the Election Committee, which may be different from what the public desires, people will think that their wishes have been ignored, and this will seriously undermine their confidence in the "one country, two systems" concept.

Reasons: - Failure to adopt this suggestion will go against the principles of ensuring continuity and smooth transition.

- The Election Committee will be the equivalent of an electoral college. This means that members of the public will not have the opportunity to take part in the election.
- Alternative 1 in "A Collection of Opinions" should not be adopted.

Reasons: - The power of the advisory group and the Chief Executive will be too great.

- The method for selecting the Chief Executive detailed in Alternative 1 is undemocratic.

- Alternative 5 in "A Collection of Opinions" should not be adopted.

2.3 The "through train" approach

- The "through train" approach should be adopted. (Note Annex 3-4)

Reasons: - This will avoid having to engage in electoral activities before 1997.

- A pledge of allegiance to China is already an expression of sovereignty.

- The "through train" approach should not be adopted.

Reasons: - The "through train" approach is not the only way to ensure a smooth transition.

- It is questionable whether the "through train" approach will be able to give expression to sovereignty.

- The replacement of a small number of members of the Legislative Council on 1 July 1997 will be a welcome move because it will inject fresh blood into the Council.

- It is over-simplistic to indicate the transition of the Legislative Council from a British-administered body to an organ of the HKSAR on 1 July 1997 merely by a change of signboards.

- All other existing models for the future political structure involve some degree of election, but the "through train" approach does not reflect the spirit of election.

- Whether a government formed by means of the "through train" approach will be a regular government is open to doubt.

- Voters may not wish to see all members of the Legislative Council automatically become members of the HKSAR's first legislature. Besides, not all members of the Legislative Council will wish to remain in office after 1997.

- If the public are satisfied with the performance of the incumbent legislators in

1997, these members will definitely be re-elected without having to rely on the "through train" approach.

- The Joint Declaration states that the legislature of the HKSAR will be constituted by elections. These elections must be carried out under Chinese sovereignty in order to be legally tenable after 1997. Thus, the "through train" approach is not practicable.

2.4 The "Election Committee"

- The establishment of the Preparatory Committee by the NPC will be an expression of China's sovereignty.
- Power will be over-centralized in the hands of the Election Committee if, as proposed, the first Chief Executive and the first legislature are to be recommended by this Committee.
- If the Chief Executive is to be selected by an advisory group, his/her term of office should be as short as possible and should on no account exceed the term of office of the legislature.
- Although it is stipulated that the electoral college will be broadly representative, the so-called "representatives of corporate bodies, non-corporate permanent bodies and various strata and sectors" sounds vague and will result in disputes over the proportion of representation of each sector.
- If the Election Committee will be composed of 600 members as proposed in Paragraph 2 under Alternative 1 of Annex I, and if the so-called political figures of former times refers to members of the Executive and the Legislative Councils, their 20% representation will stand for 120 persons. Such a number is perhaps too large. The term "political figures of former times" should therefore be defined.
- It is reasonable to stipulate that Hong Kong members will account for no less than half of the members of the Election Committee.

Reason: - This will mean that Hong Kong members will account for more than half of the members of the Election Committee. Preparing for the establishment of the first government is something that concerns Hong Kong people and more Hong Kong people should play a part in it.

- If the Preparatory Committee and the Election Committee can be established before 1997 without arousing any

problem of legality, there should not be any problem with the first government and legislature being established in accordance with the methods proposed in Annexes I and II.

- The business and financial sectors and the professionals account for quite a large proportion in the proposed composition of the Election Committee. This will affect the neutral image of the committee and take away the confidence of the masses.

2.5 Term of office

- The term of office of the Chief Executive should not be 5 years.

Reasons: - The first government will be provisional in nature.

- Annex III suggests a 2-year term of office for members of the Legislative Council, meaning that the term of office of the Chief Executive will span two terms of the legislature. This will strengthen the power of the executive authorities.

- The method for forming the first government proposed in Annex III is undemocratic.

- As proposed in Alternative 1 in "A Collection of Opinions", the term of office of the Chief Executive and the Legislative Council should not exceed 3 years.

Reasons: - Since the first Chief Executive and the first Legislative Council will both be temporary, the terms of office should not be different.

- If the term of office of the Chief Executive is longer than that of members of the Legislative Council, the second Legislative Council will be elected during his term and he will have influence over the election. This is unfair.

2.6 Other views

- The establishment of the first government should be based on the following principles:

- (1) National sovereignty
- (2) Smooth transition
- (3) A high degree of autonomy
- (4) Conformity with the Joint Declaration

(5) Conformity with law

- The provision in Paragraph 3, which stipulates that the "Election Committee" shall "recommend the candidate for the first Chief Executive through local consultation or through local election after consultation" is not specific enough and is very different from the more specific wording used in Annexes I and II.

3. Suggestions

3.1 The work of the first government

- The major tasks of the first government should be to maintain stability, run the day-to-day affairs of the government, and build up the government after 1997. However, it should not make new decisions on major policies or laws.
- The first government and legislature should not have the power to make changes to the form of the legislature or government.

Reason: - This will prevent the first government from having control over the method for forming the future HKSAR government.

- The major task of the first government should be to smoothly take over administration from British hands and to select the Chief Executive and form the legislature after the takeover.

3.2 The method for forming the first government

(These are general comments only. Please also refer to the Special Report on this topic.)

- The ideal method would be to first finalize the post-1997 political structure and then proceed step by step toward that goal after 1990.
- The method should be decided by democratic means on a one-person-one-vote basis. (Note Annex 3-5)
- A caretaker government which will last for one and a half to 2 years should be established before the first government is formed.
- The Chinese and British governments should work together to produce a method for selecting the last pre-1997 Governor and Legislative Councillors. A post of Deputy Governor, who will take over as the first Chief Executive after 1997 should be created.
- In the few years immediately preceding 1997, Hong Kong will in fact be jointly ruled by the Chinese and British

governments although Britain will remain the nominal sovereign. The term of office of the first government, as a provisional government, should run from 1995 to 1999.

Reasons: - During the transition period, it will be inevitable that there will be two centres of power. Rather than seeing them harbour suspicion and take opposite stands, it would be more sensible to accept their joint rule.

- This will ensure a smooth transition.

3.3 The "Election Committee"

- The electoral college should have 500-600 members.

Reason: - This will make up for the fact that the first government will not be elected by universal suffrage.

- Since elections for the first government will be conducted by a Preparatory Committee formed by the Chinese, the Election Committee should only stand as a symbol of Chinese sovereignty and should not engage in actual work or make substitute arrangements. The actual election could be modelled after elections to the pre-1997 Urban Council.

Reasons: - This will give expression to national sovereignty.

- This will demonstrate that the Chinese and British governments are sincerely working in cooperation.

- This will give the public an equal opportunity to participate.

3.4 The "through train" approach

- The "through train" approach might be appropriate for the (directly or indirectly) elected members of the Legislative Council. However, the appointed members (the implication being they were appointed by Britain) should be subject to either direct or indirect elections.

Reason: - This will take into consideration both the stability of the legislature and the provisional nature of the first Legislative Council.

- If the "through train" approach is to be adopted and elections to the first HKSAR Legislative Council are to be conducted by a Chinese organ in Hong Kong before 1997, such arrangements cannot be laid down in the Basic Law. The Joint Liaison Group will at least have to be

consulted.

3.5 Nature of the first government

- The first government should be a provisional government.

Reasons: - The method for forming the first government may be different from that for forming subsequent governments. For example, it is highly likely that the first government will not be elected by universal suffrage, but it is quite possible that subsequent governments will.

- The first government will, in a sense, make the transition from "Hong Kong British administering Hong Kong" to "Hong Kong people administering Hong Kong". It will represent the end of the 10-year transition period and the beginning of the resumption of sovereignty. The two are bound to affect and influence each other. Thus, it would be more appropriate to treat the first government as a provisional government.
- The work of organizing the first government should be completed before 1 July 1997 so that the takeover can take place on that date. The fact that all preparations and organization must be completed before 30 June 1997 means that the first government will have been formed under British rule during the transition period and will therefore be different from government organization work subsequent to the reversion of sovereignty. It would thus be more appropriate to treat the first government as a provisional government.
- The principal members of the first government, including the Chief Executive and members of the Legislative Council, will probably be selected in a way which is quite different from the method to be adopted in the selection of subsequent governments. For example, some members of the pre-1997 Legislative Council might automatically become members of the HKSAR Legislative Council. Of course it is quite possible that members of the Legislative Council, particularly the (directly or indirectly) elected members, will be able to ride on the "through train" and become members of the HKSAR Legislative Council. However, it will only be possible to adopt this approach once as a provisional measure.
- The first government should be a regular government.

Reasons: - This will prevent frequent changes in the government during the transition period.

- A method for forming the first government which is acceptable to all sectors should be devised before 1997. If such a method has been devised, the first government should be formed in accordance with this method and the government thus formed should not be a provisional government.

3.6 Term of office

- The term of office of the first Chief Executive should be 2 years instead of 5 years because a 5-year term is too long.
- The term of office of the first government (including the Chief Executive and the legislature) should be 1 year.

4. Issue to be clarified

- The heading of Annex III is "Method for the Formation of the First Government and the First Legislative Council of the HKSAR", but in the text, the Legislative Council is referred to as the legislature. Is there any special reason for this?

SUGGESTED ADDITIONS

1. Environmental protection

- The Basic Law of the HKSAR should include provisions on the protection of the environment to ensure that the people of Hong Kong will be able to enjoy a peaceful and healthy life.
- Provisions on environmental protection should be added. It should be stipulated that all natural resources, including land, trees, wildlife, water and air will be protected against pollution or destruction.

Reason: - Provisions on environmental protection must be included in the Basic Law to ensure that the future HKSAR government will continue to protect Hong Kong's environment and prevent it from deteriorating.

- A "Hong Kong Environment Basic Law" should be drafted. All future plans for social, economic and political development should be devised on the basis of the need to preserve, cultivate and regenerate the territory's limited natural resources. The use of energy which will not pollute the environment should be popularized.
- The spirit of Article 26 of the Constitution of the PRC should be enshrined in the Basic Law.

2. The rights of homosexuals

- The political rights of homosexuals and their right to vote should be protected.
- Provision on homosexuals should be added.
- The following provision should be added: "No one may deliberately incite resentment or discrimination against people of different ethnic origin, race, language, sex, sexual or emotional inclination, occupation, religious belief, political views, educational level, or financial status."

Reason: - In this way, protection of the homosexual population will be clearly specified.

3. Provisions on other rights and obligations

- There should be a provision prohibiting smoking in private premises, on the streets, in factories, offices, toilets and bookstores, or on board buses or vessels.
- The following provision should be added: "Public holidays

in the HKSAR shall be prescribed by the government of the Region."

- The following provision should be added: "The government of the HKSAR shall decide whether things with a colonial connotation which exist prior to the establishment of the Region are to be preserved or abolished."
- The following provisions should be added:
 - (1) "The government of the HKSAR is committed to the Central Authorities' task of trying to bring about stability in Hong Kong and striving to bring about the four modernizations in China."
 - (2) "Hong Kong residents shall have the obligation to be loyal to their country and to staunchly support the sagacious decisions of the Central Authorities."
 - (3) "The government of the HKSAR shall have the obligation to pay tax to the Central authorities."
 - (4) "Hong Kong residents shall have the obligation to serve their country."

Reasons: - The Basic Law will be a promise between the Central Authorities and the HKSAR and its residents. However, the Draft Basic Law for Solicitation of Opinions seems to contain nothing but demands by the HKSAR government and Hong Kong residents on the Central Authorities for this or that right. It is unfair to force the British Charter onto the Basic Law.

- Hong Kong cannot have rights alone with no obligations.

4. Youth

- Provisions on youth policies should be added.

5. Labour

- The following provision should be added: "Hong Kong shall exercise strict control over the import of labour. People seeking to enter Hong Kong shall be subject to control and approval."

6. Political structure

- A section should be added setting down the relationship between deputies of the HKSAR to the NPC and the HKSAR's executive authorities and legislature and clearly specifying the terms of reference of these deputies.

7. The boundaries of the HKSAR

- The boundaries of the HKSAR should be defined in the Basic Law.
- The Basic Law should include as an annex a map showing the administrative boundaries of the HKSAR.

8. Other suggestions

- The following statement should be added before the main text of the Basic Law: "We, the people of Hong Kong, desiring to achieve greater unity and public justice, maintain internal stability, promote the public interest and prosperity, and protect our own life and freedom as well as the life and freedom of our descendants, hereby enact and promulgate the following Basic Law of the HKSAR of the PRC."

Reasons: - As a former colony, it will of course be necessary for Hong Kong to maintain close ties with its motherland (China). As noted in the Joint Declaration, Hong Kong people need stability and prosperity, and freedom is something treasured by Hong Kong people.

- This statement will increase the credibility of the Basic Law.

- The following emergency provisions should be added: "In the event of special emergencies, such as an economic crisis, financial crisis, political crisis or social upheaval, the Chief Executive of the HKSAR shall, in conjunction with the Executive Council, declare Hong Kong to be in a state of emergency and shall have the power to implement emergency measures or declare that certain provisions of the Basic Law shall cease to have force temporarily for a maximum period of one month. The approval of the Standing Committee of the NPC or the State Council shall be required if this period needs to be extended."

Reason: - In view of the debate over whether certain policy provisions should be included in the Basic Law, this addition is necessary as a safety valve should the HKSAR be strait-jacketed and lack the flexibility needed to cope with emergencies.

NOTES

Part I

Chapter I

Chapter II

<u>Note</u>	<u>Serial No. of Pre-printed Letters*</u>	<u>Note</u>	<u>Serial No. of Pre-printed Letters*</u>
General-1	A3/38	2 Overall-1	A3/14
2-1	A3/40	13-1	A3/40
2-2	A3/19	13-2	A3/37
2-3	A3/38	13-3	A3/40
7-1	A3/37	13-4	A3/19
9-1	A3/40	13-5	A3/36
10-1	A3/40	13-6	A3/36
10-2	A3/19	16-1	A3/38
10-3	A3/37	16-2	A3/38
10-4	A3/37	16-3	A3/19, A3/37
		16-4	A3/14, A3/37, A3/40
		16-5	A3/40
		16-6	A3/37, A3/14
		16-7	A3/12
		16-8	A3/12
		17-1	A3/38
		17-2	A3/35
		17-3	A3/14, A3/17, A3/37, A3/12
		17-4	A3/40
		17-5	A3/19
		17-6	A3/44
		17-7	A3/11
		17-8	A3/35
		17-9	A3/38
		18-1	A3/38, A3/35
		18-2	A3/40, A3/12, A3/17, A3/37
		18-3	A3/38
		18-4	A3/14, A3/19, A3/37, A3/40, A3/17
		18-5	A3/14, A3/37
		18-6	A3/12
		18-7	A3/36
		20-1	A3/19, A3/40
		21-1	A3/14, A3/37
		22-1	A3/38
		22-2	A3/37, A3/14, A3/40
		22-3	A3/12
		22-4	A3/17
		22-5	A3/19
		22-6	A3/36

* Please see Part II for quantity of each type of letters.

Chapter III

<u>Note</u>	<u>Serial No. of Pre-printed Letters*</u>	<u>Note</u>	<u>Serial No. of Pre-printed Letters*</u>
3 Overall-1	A3/35	28-5	A3/40
23-1	A3/38	28-6	A3/40
24-1	A3/40	28-7	A3/40
24-2	A3/40	30-1	A3/38
24-3	A3/40, A3/19	30-2	A3/40
24-4	A3/37, A3/14	30-3	A3/14, A3/37
24-5	A3/38	30-4	A3/19, A3/14
24-6	A3/15		A3/37, A3/40
24-7	A3/37, A3/14, A3/15	30-5	A3/38
24-8	A3/37, A3/14, A3/15	30-6	A3/14, A3/37
24-9	A3/37, A3/14, A3/15	31-1	A3/12
25-1	A3/38, A3/14, A3/11	31-2	A3/12
25-2	A3/19, A3/37, A3/14	31-3	A3/14, A3/17, A3/30
26-1	A3/36	31-4	A3/12
26-2	A3/19, A3/40	32-1	A3/15
26-3	A3/37, A3/14	32-2	A3/15
26-4	A3/37, A3/14, A3/40, A3/38	32-3	A3/9, A3/39
26-5	A3/37, A3/40, A3/38	32-4	A3/9, A3/39
26-6	A3/12, A3/37, A3/40, A3/38	32-5	A3/9, A3/39
26-7	A3/12	32-6	A3/9, A3/39
26-8	A3/12	35-1	A3/12
27-1	A3/14, A3/38	35-2	A3/9, A3/39, A3/12
27-2	A3/14, A3/38	35-3	A3/9, A3/39
27-3	A3/12	35-4	A3/9, A3/39, A3/12
27-4	A3/40, A3/38, A3/37, A3/19, A3/14	35-5	A3/9, A3/39, A3/12
27-5	A3/40, A3/38, A3/37, A3/19, A3/14	35-6	A3/9, A3/39
27-6	A3/12	35-7	A3/39
27-7	A3/14, A3/37, A3/40	35-8	A3/15
28-1	A3/14, A3/38	36-1	A3/15
28-2	A3/40, A3/38, A3/37, A3/19, A3/14	36-2	A3/15
28-3	A3/40	36-3	A3/15
28-4	A3/40, A3/38, A3/37, A3/19, A3/14	36-4	A3/15
		38-1	A3/40, A3/37
		38-2	A3/19
		38-3	A3/38
		38-4	A3/21
		38-5	A3/11
		38-6	A3/44
		38-7	A3/36, A3/16, A3/34, A3/12
		38-8	A3/36, A3/16, A3/34
		38-9	A3/38
		39-1	A3/12
		39-2	A3/12
		39-3	A3/19, A3/40
		40-1	A3/15
		40-2	A3/15, A3/36

* Please see Part II for quantity of each type of letters.

Chapter IV

<u>Note</u>	<u>Serial No. of Pre-printed Letters*</u>	<u>Note</u>	<u>Serial No. of Pre-printed Letters*</u>
43-1	A3/12	64-2	A3/12
43-2	A3/12	64-3	A3/12, A3/19
43-3	A3/19	64-4	A3/40
43-4	A3/40	64-5	A3/40
43-5	A3/40	67-1	A3/12
43-6	A3/40	70-1	A3/6, A3/19, A3/36, A3/37, A3/38, A3/40
44-1	A3/37	70-2	A3/40
44-2	A3/37	70-3	A3/37
47-1	A3/40	70-4	A3/19, A3/37
47-2	A3/40	71-1	A3/40
48-1	A3/38	71-2	A3/12
48-2	A3/12	71-3	A3/12
48-3	A3/12	71-4	A3/40, A3/19
48-4	A3/38	71-5	A3/37
48-5	A3/12, A3/19	71-6	A3/37
48-6	A3/12	71-7	A3/38
48-7	A3/19	71-8	A3/38
49-1	A3/19, A3/40	71-9	A3/38
49-2	A3/12	72-1	A3/12
49-3	A3/12	72-2	A3/12
49-4	A3/38	72-3	A3/12
49-5	A3/40	72-4	A3/40
50-1	A3/40	72-5	A3/19, A3/40
50-2	A3/40	72-6	A3/40
50-3	A3/12	72-7	A3/38
50-4	A3/19	72-8	A3/37
51-1	A3/12	72-9	A3/37
52-1	A3/12	72-10	A3/19
52-2	A3/19	73-1	A3/40
54-1	A3/12	73-2	A3/12
55-1	A3/12	73-3	A3/12
55-2	A3/37	73-4	A3/19, A3/38
55-3	A3/37	73-5	A3/38, A3/40
55-4	A3/37	75-1	A3/19
55-5	A3/37	86-1	A3/19
55-6	A3/40		
55-7	A3/40		
55-8	A3/40		
55-9	A3/19		
55-10	A3/40		
55-11	A3/40		
56-1	A3/12		
56-2	A3/40		
4/2-1	A3/12		
59-1	A3/12		
59-2	A3/12		
62-1	A3/12		
64-1	A3/38		

* Please see Part II for quantity of each type of letters.

Chapter V

<u>Note</u>	<u>Serial No. of Pre-printed Letters*</u>
105-1	A3/36
105-2	A3/19, A3/35 A3/40
105-3	A3/35, A3/40
107-1	A3/36
107-2	A3/19, A3/35, A3/40
107-3	A3/35, A3/40

Chapter VI

<u>Note</u>	<u>Serial No. of Pre-printed Letters*</u>
6 Overall-1	A3/16, A3/34
60A-2	A3/39
142-1	A3/19
144-1	A3/19
148-1	A3/37, A3/11, A3/17, A3/20, A3/14
148-2	A3/37, A3/11, A3/17, A3/20, A3/14
148-3	A3/14, A3/20
148-4	A3/14, A3/20, A3/37
148-5	A3/19
149-1	A3/37, A3/19, A3/17, A3/14
156-1	A3/20, A3/37, A3/14, A3/17, A3/11
156-2	A3/11
156-3	A3/20, A3/37, A3/14, A3/17
156-4	A3/36

* Please see Part II for quantity of each type of letters.

<u>Note</u>	<u>Serial No. of Pre-printed Letters*</u>
169-1	A3/38
169-2	A3/38
169-3	A3/37, A3/36, A3/17, A3/14, A3/44, A3/11
169-4	A3/19, A3/40
170-1	A3/35 A3/38
170-2	A3/36
170-3	A3/40, A3/19

<u>Note</u>	<u>Serial No. of Pre-printed Letters*</u>
1/2-1	A3/2, A3/3, A3/4, A3/6, A3/8, A3/10, A3/12, A3/14, A3/16, A3/17, A3/19, A3/20, A3/21, A3/34, A3/35, A3/36, A3/37, A3/38, A3/40, A3/41, A3/42, A3/43
1/2-2	A3/3, A3/4, A3/37
1/2-3	A3/38
1/2-4	A3/4, A3/6, A3/10
1/2-5	A3/38
1/2-6	A3/8, A3/38
1/2-7	A3/16, A3/34
1/2-8	A3/43
1/2-9	A3/12

Annex II: Alternative 2

2/2-1	A3/2, A3/3, A3/4, A3/6, A3/8, A3/10 A3/12, A3/14, A3/16, A3/17, A3/19, A3/20, A3/21, A3/34, A3/35, A3/36, A3/37, A3/38, A3/40, A3/41, A3/42, A3/43
2/2-2	A3/38
2/2-3	A3/38
2/2-4	A3/3
2/2-5	A3/43
2/2-6	A3/43
2/2-7	A3/4, A3/41
2/2-8	A3/38
2/2-9	A3/37
2/2-10	A3/38
2/2-11	A3/6

Annex III

Annex 3-1	A3/19, A3/40
Annex 3-2	A3/38
Annex 3-3	A3/38
Annex 3-4	A3/38, A3/35
Annex 3-5	A3/43

* Please see Part II for quantity of each type of letters.

Part II

A3 Pre-printed letters

<u>Serial No.</u>	<u>Qty.</u>	<u>Qty. of letters with incomplete data</u>	<u>Serial No.</u>	<u>Qty.</u>	<u>Qty. of letters with incomplete data</u>
1	13	-	23	13	13
2	503	22	24	14	14
3	61,463	28,414	25	16	16
4	219	-	26	10	10
5	3	-	27	10	10
6	449	7	28	8	8
7	9	-	29	8	8
8	1	-	30	8	8
9	456	-	31	8	8
10	116	-	32	10	10
11	515	1	33	9	9
12	45	45	34	247	2
13	34	-	35	2	-
14	46	2	36	3	-
15	273	2	37	18	-
16	5	-	38	15	-
17	17	-	39	884	-
18	5	-	40	6	-
19	3	-	41	16	1
20	16	-	42	48	-
21	5	-	43	799	25
22	35	1	44	17	-

* The Consultation Report on the Draft Basic Law for Solicitation of Opinions comprises five volumes and an appendix. The appendix covers:

I. List of organizations and summaries of data

II. Submissions on public opinion polls and summaries of data

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

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for the Basic Law of the Hong
Kong Special Administrative
Region. Secretariat.
The draft basic law of the
Hong Kong Special