

PROGRESS REPORT OF
THE SUBGROUP ON POLITICAL STRUCTURE

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22 August 1987

Mr Chairman, Messrs Vice-Chairmen, and Members,

The Subgroup on Political Structure have held six meetings since the third plenary session of the Drafting Committee in December 1986 to draft the provisions of Chapter 4 of the Basic Law -- "The Political Structure of the HKSAR". Members have conducted conscientious study and discussion for the past nine months. Apart from the relatively complicated issues, most of the preliminary provisions of Chapter 4 were drafted. In addition, our Subgroup has preliminarily discussed Article 2 of the Appendix to the Basic Law. The progress of our Subgroup for the past nine months is reported as follows:

Our Subgroup held its fifth meeting in Beijing in the afternoon of 3 December 1986. The meeting mainly discussed the work schedule of the Subgroup and adopted the principle of "resolving the easier issues first" in the drafting process. According to this principle, the Subgroup further decided to first discuss the preliminary provisions regarding the judicial organs (Section 4), regional organisations (Section 5), and the public service (Section 6) of Chapter 4 of the Basic Law. To speed up our work, the meeting entrusted several members with the responsibility of drafting specific sections to be discussed at the Subgroup meetings.

From 12 to 14 February 1987, our Subgroup held its sixth meeting in Kunming where Mr Simon Li, Ms Maria Tam, Mr Szeto Wah submitted the draft provisions regarding the sections on the judicial organs, regional organisations, and the public service as well as views expressed thereon. Members discussed these provisions and completed the first draft on the judicial organs and the public service; on the draft regarding regional organisations, members' views were not very much divided either.

The Subgroup held its seventh meeting on 16 and 17 March 1987 in Guangzhou. Ms Liu Yiu Chu and Ms Maria Tam submitted the first draft of Article 2 of the Appendix to the Basic Law and the section on regional organisations respectively. The meeting continued with the discussion on the provisions of the last three sections under Chapter 4, and completed the second draft on the judicial organs and the public service and the first draft on regional organisations. After the discussion members held that since Article 2 of the Appendix which dealt with the continued validity of previous laws and legal documents after 1997 was rather complicated, further study was required.

Our Subgroup held its eighth meeting in Beijing in the afternoon of 17 April 1987, following the fourth plenary session of the Drafting Committee. The work arrangements after the fourth plenary session was discussed and decided upon.

The ninth meeting of our Subgroup was held in Guangzhou from 9 to 11 June 1987. The meeting continued to discuss the provisions under the sections on the judicial organs, regional

organisations, and the public service. The meeting also preliminarily discussed the draft sections on the chief executive, the executive authorities, and the legislature prepared by Mr Xiso Weiyun. After the meeting, the following drafts were ready: the first draft on the chief executive, the executive authorities, and the legislature; the third draft on the judicial organs and the public service; and the second draft on regional organisations.

From 31 July to 3 August 1987, we held our tenth meeting in Guangzhou to further discuss the provisions of the six sections under Chapter 4 and passed the progress report to be submitted to the fifth plenary session of the Drafting Committee.

Our Subgroup and the Subgroup on the Relationship between the Central Government and the SAR have held two joint meetings in March and August 1987 in Guangzhou. The legal experts of the two Subgroups have also held two joint meetings to discuss the jurisdiction of the HKSAR courts.

The following preliminary provisions drafted by Our Subgroup are submitted for the scrutiny of the plenary session.

Section 1 The Chief Executive

Article 1: The Chief Executive of the HKSAR shall be the head of the HKSAR and shall be accountable to the Central People's Government and the HKSAR in accordance with the provisions of this Law.

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

Article 2: The Chief Executive of the HKSAR shall be a Chinese national who is a permanent inhabitant of the HKSAR of not less than 40 years of age and having ordinarily resided in Hong Kong for a continuous period of 20 years or more.

[Note] With regard to the age of the Chief Executive, a member considered that it should not be less than 40. Another member considered that it should be not less than 35. Some members held that the period of continuous residence should be 15 years.

Article 3: The selection of the Chief Executive (has yet to be drafted).

Article 4: The term of office of the Chief Executive shall be 5 years and may be extended once.

[Note] A member held that the term of office should be 4 years and could be renewed twice. Some members were of the opinion that the term of office of the Chief Executive should be considered in relation to the term of office of the members of the legislature. Some members considered that the term of office of the Chief Executive and that of the legislators should coincide.

Article 5: The Chief Executive of the HKSAR shall exercise the following powers:

- (1) To represent the HKSAR;

[Note] A member held that it should read "to represent the HKSAR Government".

- (2) To lead the HKSAR Government;

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

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

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

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

- (4) To assent to or withhold his assent to laws passed by the legislature, and to sign and promulgate laws;

[Note] A member maintained that the Chief Executive should not have veto power over the laws passed by the legislature and that his signing of the laws was only a formality. A member held that any law which the Chief Executive did not approve could be referred back to the legislature for reconsideration. If it was passed by a 2/3 majority of the legislature, the Chief Executive had to sign it or dissolve the legislature (see the note of Article 8 under Section 3).

- (5) To decide policies and issue executive orders;
- (6) To nominate principal officials, and report to the Central People's Government for appointment; to employ advisers (corresponding to Secretary level or above) with the approval of the Central People's Government;

[Note] A member proposed the latter part of the clause: "to employ advisers.....Government" be deleted. A member proposed to add "according to the procedure prescribed by law" before "with the approval of the Central People's Government", whereas another member deemed it unnecessary to add such a phrase as the approval by the Central People's Government would be all that was required as far as the procedure was concerned.

A member considered that provisions should be made for the removal of principal officials and advisers above the Secretary level.

- (7) To appoint or remove public servants according to the procedure prescribed by law;

[Note] Some members considered that the phrase "according to the procedure prescribed by law" was unnecessary. A member proposed to replace the phrase with "in accordance with the provisions under this Law".

- (8) To appoint or remove judges of the courts at various levels in accordance with the provisions under this Law;

[Note] Some members suggested that this clause to read: "to appoint or remove judges of the courts at various levels in accordance with procedures established. Some members suggested that it should be rewritten as "to appoint or remove judges of the courts at various level".

- (9) To execute the instructions given by the Central People's Government in respect of matters provided by this Law;
- (10) To represent the HKSAR to deal with external affairs and other affairs as authorised by the Central People's Government;

- (11) To propose or refuse to propose that the legislature accept any petition or motion, including those regarding taxation or appropriation of government revenue;

[Note] A member held that this power should be exercised by the president of the legislature.

- (12) To allow or refuse to allow the appearance of persons concerned before any committee under the legislature to testify or give evidence;

[Note] Some members held that this power should be vested with the president of the legislature. Some members proposed to amend "the persons concerned" to "any government official". A member noted that the scope within which testimony was to be made and evidence given should be further studied.

- (13) To dissolve the legislature with the approval of the Central Government; and

[Note] A member held that the Chief Executive should resign upon dissolving the legislature.

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

[Note] In addition, some members maintained that the Chief Executive shall be the president of the legislature and this Article should contain such clause. But some members opposed to it. The majority of member agreed that this issue should be further studied.

Article 6: When the Chief Executive of HKSAR is unable to perform the functions of his office, the Secretary-General (Chief Secretary) shall assume his duties.

[Note] Some members held that there should be a list indicating, in order of priority, the persons eligible to assume the Chief Executive's duties when the Chief Executive was unable to perform his functions. A member held that it was unnecessary to specify the person here as that person should be designated by the

Chief Executive as and when necessary. A member proposed that the post of Deputy Chief Executive be created; but the majority of members objected to the proposal.

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Article 7: The Chief Executive of the HKSAR shall not take advantage of his office to seek personal benefits.

[Note] Some members proposed that the Chief Executive should take an oath of allegiance to the Central People's Government and the HKSAR, and that he should abide by the law. The clause "shall not take advantage of his office to seek personal benefits" should be replaced with "shall perform his duties conscientiously". Restrictions on the employment of retired Chief Executives and principal officials have yet to be discussed.

Article 8: The Executive Assembly (tentatively named) shall be a body for assisting the Chief Executive in policy-making.

[Note] A member proposed that the provisions regarding the Executive Assembly be contained in the section on the executive authorities. A member objected to the establishment of an Executive Assembly.

Article 9: Members of the Executive Assembly shall be nominated by the Chief Executive from among principal officials, members of the legislature and members of the public, and reported to the Central People's Government for appointment.

[Note] Some members held that the legislators who were to sit on the Executive Assembly should be selected from among members of the legislature themselves, whereas members of the public who were to sit on the Executive Assembly should also be approved by a majority of members of the legislature. A member maintained that if the legislators in the Executive Assembly were not selected through this process, there should not be any legislators sitting on the Executive Assembly. As to the size of the Executive Assembly and the proportion of its various types of members, it was agreed that further study would be held. A member held that members of the Executive Assembly need not be

reported to the Central People's Government for appointment. Some members considered that the Chief Executive could remove any member of the Executive Assembly who was guilty of serious crime, misbehaviour, neglect of duty or inability to perform his functions.

Article 10: The Executive Assembly shall be chaired by the Chief Executive. If the Chief Executive did not accept the advice of the majority of members of the Executive Assembly, he shall put on record the specific reasons and report them to the Central People's Government for the record.

[Note] A member proposed that the second sentence be deleted. A member held that it would be sufficient just to put the reasons on record without reporting them to the Central People's Government.

Article 11: The terms of office of members of the Executive Assembly shall not exceed 5 years.

[Note] A member held that the term of office should not be fixed but should be at the discretion of the Chief Executive. Some members maintained that the term of office of any member of the Executive Assembly should not exceed that of the Chief Executive who nominated him.

Article 12: Members of the Executive Assembly shall take an oath of allegiance to the HKSAR.

Article 13: The HKSAR shall retain an anti-corruption body accountable independently to the Chief Executive.

Article 14: The system of advisory bodies to be established by the Chief Executive shall be maintained.

[Note] In addition, some members suggested adding the following article to this section: "An advisory body comprising advisers above Secretary level may be established to carry out the functions conferred by this Law."



Section 2 The Executive Authorities

Article 1: The _____ (has yet to be named) of the HKSAR shall be the executive authorities of the HKSAR.

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

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

Some members held that the executive authorities should include specific executive post/organs such as the Chief Executive, the Executive Assembly and the Government Secretariat. Some members noted that the Executive Assembly was an advisory body to the Chief Executive and should not be considered part of the executive authorities. A member held that the head of the executive authorities should be the Chief Secretary.

Article 2: Principal officials of the various departments of the HKSAR executive authorities shall be nominated by the Chief Executive of the HKSAR and reported to the Central People's Government for appointment.

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

[Note] Members held that principal officials should generally be selected from public servants but could also be selected from outside the public service. The terms of employment for principal officials of the latter kind should be equivalent to those of the contract staff in the public service; such principal officials should leave the public service upon completion of their terms of office. Deployment of principal officials and expansion of the establishment of principal officials should be approved by the Central People's Government. There should be clear definition as to what grades of officials would be considered principal officials. Regarding the period of continuous residence in Hong Kong required of principal officials, there were proposals for 10 years and 20 years; some members held that it should not be stipulated at all.

Article 3: The executive authorities of the HKSAR shall exercise the following functions and powers:

- (1) To submit proposals on policies to the Chief Executive;
- (2) To implement executive decisions and to administer executive affairs in accordance with the provisions under this Law;
- (3) To draw up and present budgets and final accounts; and
- (4) To formulate and present bills and motions.

[Note] A member held that if the executive authorities only referred to those organs with executive functions, the second clause should read: "with the approval of the Chief Executive, to implement executive decisions and administer executive affairs in accordance with the provisions under this Law". The majority of members were of the opinion that "bills" also referred to "subsidiary legislation".

Article 4: A prosecuting authority under the executive authorities of the HKSAR shall independently deal with criminal prosecutions free from any interference.

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Article 5: The executive authorities shall abide by law and shall be accountable to the legislature of the HKSAR: it shall implement the laws which take effect after having been passed by the legislature; it shall submit periodic reports to the legislature; it shall answer queries by members of the legislature; and taxation and public expenditure are subject to approval by the legislature..

[Note] Some members objected to the use of a colon after the phrase "accountable to the legislature" on the ground that "accountability" was not confined to the contents listed in the provision, and proposed that the following be included: "to be monitored by the legislature" and "the Chief Executive and any principal official may be subject to impeachment or vote of non-confidence by the legislature in accordance with law". But the majority of members opposed to this opinion.

Article 6: The system of advisory bodies to be established by the executive authorities shall be maintained.

Section 3 The Legislature

Article 1: The _____ (has yet to be named) of the HKSAR shall be the legislature of the HKSAR.

Article 2: The composition and method of formation of the HKSAR legislature (has yet to be drafted).

Article 3: The terms of office of members of the HKSAR legislature shall be 4 years.

Article 4: The selection of the president of the HKSAR legislature (has yet to be drafted).

Article 5: The qualifications for the president of the HKSAR legislature (has yet to be drafted).

Article 6: The HKSAR legislature shall exercise the following functions and powers:

- (1) To enact and amend laws in accordance with the provisions under this Law and the procedure prescribed by law;

[Note] A member suggested to add "propose bills and" after "To". But some members objected to this suggestion and held that if the Basic Law provided for the proposal of bills by members of the legislature, specific restrictions should be laid down in accordance with the present practice.

- (2) To examine and pass the budgets and final accounts as proposed by the executive authorities;
- (3) To approve taxation and public expenditure;
- (4) To receive the administrative report of the executive authorities;
- (5) To question the work of the executive authorities;

[Note] A member proposed that this clause be amended as follows: "To examine and question the work of the executive authorities."

- (6) To receive complaints from Hong Kong inhabitants; and
- (7) If the Chief Executive is guilty of serious breach of law or dereliction of duty, with a motion proposed by 1/3 of the members of the legislature and passed by 3/4 of the members of the legislature, the legislature may submit a proposal to impeach the Chief Executive. Such a proposal shall be reported to the Central People's Government for decision.

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[Note] A member held that the number of members required for moving an impeachment motion should be 1/4 of the legislature, and for the passage of the motion, a 2/3 majority should be sufficient. A member suggested that the legislature could impeach any principal official with a simple majority. Another member suggested that the legislature could pass a vote of non-confidence against the executive or any principle official. But the majority of members objected to the suggestion.

[Note] In addition, a member proposed to include the following clause: "With the approval of the chief executive, committees under the legislature may summon the persons concerned to appear before them to testify and to give evidence." A member proposed that a clause providing for the establishment of standing committees and select committees be added to this Article. But a member held that these contents should be covered by the standing orders of the legislature.

Article 7: The quorum for meetings of the legislature shall be at least half of its total membership.

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

The work procedure of the legislature shall be prescribed by law.

[Note] Some members suggested that the quorum could be less than half of the membership: if a large quorum was required, it would not be easy to convene a meeting.

Article 8: A law passed by the legislature of the HKSAR may only take effect after it has been signed and promulgated by the Chief Executive.

[Note] Some members suggested that any bill against public interest could be referred back to the legislature by the Chief Executive for reconsideration. Some members proposed that the Chief Executive should sign the bill within one year or refer it back to the

legislature within six months; the bill would not take effect if it was not signed within the one-year period. Some members maintained that any bill which was not signed by the Chief Executive within the one-year period should take effect automatically.

Article 9: Members of the legislature shall not be legally liable for speeches made at meetings of the legislature.

Article 10: Members of the legislature shall not be subject to arrest during or on their way to meetings of the legislature.

[Note] A member noted that at present any Legislative Councillor of Hong Kong who was guilty of a criminal offence was not liable to arrest only during meetings of the legislature.

Article 11: Members of the HKSAR legislature shall abide by law and take an oath of allegiance to the HKSAR.

[Note] In addition a member suggested that the accessibility to meetings and minutes of the legislature, and the honoraria for legislators should be provided for under this Section. But some members held that these contents should be covered by the standing orders of the legislature instead.

Some members proposed that provisions should be made in this Law to deal with members of the legislature guilty of breach of law or dereliction of duty.

Section 4 The Judicial Organs

Article 1: The judicial organs of the HKSAR shall be the HKSAR courts at various levels which exercise the judicial power of the HKSAR.

Article 2: The court of final appeal, a supreme court, regional courts, magistrate's courts and other special courts shall be established in the HKSAR. The supreme court shall comprise the court of appeal and the high court.

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

Article 3: The power of final adjudication of the HKSAR shall be vested in the court of final appeal in the HKSAR, which may as required invite judges from other common law jurisdictions to sit on the court of final appeal.

[Note] A member noted that this Article could be referred to in the note of Article 6 of Chapter 2.

Article 4: The terms of reference of the courts of the HKSAR at various levels shall be prescribed by the laws of the HKSAR.

[Note] A member held that the terms of reference of the HKSAR courts would be prescribed by this Law and other laws. This Article should be further deliberated after the provision on jurisdiction was laid down.

Article 5: The jurisdiction of the HKSAR courts (has yet to be drafted).

[Note] The eight legal experts from the Subgroup on the Relationship between the Central Government and the SAR and the Subgroup on Political Structure produced a draft of this Article after their study. The joint conference of the two subgroups endorsed the draft in principle but considered that its wording had yet to be refined:

"Except for cases relating to defence and foreign affairs and the executive acts of the Central Government over which the HKSAR courts, in accordance with the previous legal system in Hong Kong, do not have jurisdiction, the courts of the HKSAR shall enjoy the power of adjudication for all other cases in the HKSAR.

"Where a question relating to defence and foreign affairs, or the executive acts of the CPG is raised in any proceedings before the courts of the HKSAR, the Chief Executive shall be consulted, and a certificate by the Chief Executive regarding such a question shall be binding on the courts."

"Prior to the issue of the above-mentioned certificate, the Chief Executive shall obtain a certificate from the Standing Committee of the National People's Congress or the State Council".

With regard to the foregoing provision, a member was not satisfied with the expression "executive acts of the Central Government". A member held that study should be carried out at a later date as to how to deal with cases of treason or what would happen when the HKSAR courts went beyond the jurisdiction provided by this Law.

Article 6: The courts of the HKSAR shall decide cases in accordance with the laws of the HKSAR and may refer to precedents in other common law jurisdictions.

[Note] A member suggested that "the laws of the HKSAR" should read "the laws applicable to the HKSAR."

Article 7: Judges of the HKSAR courts shall be appointed by the Chief Executive of the HKSAR acting in accordance with the recommendation of an independent commission composed of local judges, persons from the legal profession and other eminent persons.

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

Article 8: The Chief Executive of the HKSAR may, acting in accordance with the recommendation of a tribunal appointed by the chief judge of the court of final appeal, consisting of not fewer than three local judges, remove a judge of the HKSAR courts for inability to discharge the functions of his office or for misbehaviour.

Article 9: In addition to the procedures prescribed by Articles 7 and 8, the appointment or removal of chief judges of the court of final appeal and of the supreme court of the HKSAR shall be made by the Chief Executive with the consent of the HKSAR legislature and reported to the Standing Committee of the National People's Congress for the record.

Article 10: The previous system of appointment and removal of judicial officers other than judges of the HKSAR shall be maintained.

Article 11: Judges and other judicial officers of the HKSAR shall be chosen by reference to their judicial and professional qualities and may be recruited from other common law jurisdictions.

Article 12: Judges and other judicial officers serving in Hong Kong before the establishment of the HKSAR may remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.

Article 13: The HKSAR Government shall pay to judges and other judicial officers who retire or leave the service in compliance with regulations, as well as those who have retired or left the service before the establishment of the HKSAR, or to their dependants, all pensions, gratuities, allowances, and benefits due to them on terms no less favourable than before, and irrespective of their nationality or place of residence.

Article 14: The courts of the HKSAR shall exercise judicial power independently and free from any interference. Members of the judiciary shall be immune from legal action in respect of their judicial functions.

Article 15: The principle of the jury system previously practised in Hong Kong shall be maintained.

Article 16: In respect of the conduct of criminal or civil proceedings in the HKSAR, the principles previously applied in Hong Kong and the rights previously enjoyed by parties to the proceedings shall be maintained.

[Note] Some members introduced the principles applicable to criminal proceedings in Hong Kong and the rights enjoyed by defendants at present. See appendix.

Article 17: The HKSAR may, through consultation, maintain judicial links with and, in accordance with law, render co-operation to the judicial organs in other parts of the country.

[Note] Some members maintained that the words "in accordance with law" should be deleted.

Article 18: Under the assistance or authorisation of the Central People's Government, the HKSAR Government may make appropriate arrangements for reciprocal juridical assistance with foreign states.

[Note] In addition, a member noted that the present notary system was both a juridical issue and an issue which involved external affairs. After the establishment of the HKSAR, the appointment of notary publics should be made by the Central Government. It was hoped that the Central-SAR Relationship Subgroup, and this Subgroup would study how this issue should be resolved.

A member proposed that the financial independence of the judiciary should be laid down as a separate article. This proposal has yet to be discussed.

Section 5 Regional Organisations

Article 1: Regional organisations which are not of the nature of local organs of political power may be established in the HKSAR, to be consulted by the HKSAR Government on district administration and other matters, or to be responsible for the provision of services in the fields of culture, recreation, environmental health, etc.

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

Article 2: The specific powers and functions of the regional organisations and their composition shall be prescribed by law.

Section 6 Public Service

Article 1: Public servants serving in all government departments of the HKSAR shall be permanent inhabitants of the HKSAR except otherwise provided in Article 4 of this Section and those below a certain salary point as prescribed by law.

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

[Note] This Subgroup has discussed for a number of times the definition of "public servants" but no appropriate conclusion has been reached yet.

Article 2: The HKSAR Government may on its own employ public servants at all level within government departments except for those principal officials specified in this Law.

[Note] A member suggested that if this Article repeated the provisions under other Chapters or Sections, it should be omitted here.

Article 3: Public servants serving in all government departments before the establishment of the HKSAR, including the police department, may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.

Article 4: The HKSAR Government may employ British and other foreign nationals previously serving in the public service in Hong Kong, and may recruit British and other foreign nationals holding permanent identity cards of the HKSAR to serve as public servants at all levels, except as heads of major government

departments (corresponding to branches or departments at Secretary level) including the police department, and as deputy heads of some of those departments.

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

[Note] Members held that the "heads of some major governments" and "deputy heads of some of those departments" should be clearly defined.

Article 5: The HKSAR Government shall pay to the public servants who retire or leave the service in compliance with regulations, as well as those who have retired or left the service in compliance with regulations before the establishment of the HKSAR, or to their dependants, all pensions, gratuities, allowances, and benefits due to them on terms no less favourable than before, and irrespective of their nationality or place of residence.

Article 6: The appointment and promotion of public servants shall be on the basis of qualifications, experience, and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training, and management for the public

service (including special bodies for appointment, pay, and conditions of service) shall, save for any provisions providing privileged treatment for foreign nationals, be maintained.

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

Note on Article 16 of Section 4
(The Judicial Organs) of Chapter 4

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According to some members, the principles applied in criminal proceedings and the rights enjoyed by defendants at present in Hong Kong include the following:

1. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law;
2. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice;
3. Any judgments rendered in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children;
4. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law;
5. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (1) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (2) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

- (3) To be tried without undue delay;
 - (4) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right;
 - (5) To have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (6) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (7) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; and
 - (8) Not to be compelled to testify against himself or to confess guilt.
6. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
7. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
8. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
9. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.