

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

CONTENTS

Preamble

Chapter 1 General Provisions

Chapter 2 The Relationship between the Central Government and  
the HKSAR

Chapter 3 Fundamental Rights and Duties of HKSAR Inhabitants

Chapter 4 The Political Structure of the HKSAR

Section 1 The Chief Executive

Section 2 The Executive Authorities

Section 3 The Legislature

Section 4 Judicial Organs

Section 5 Regional Organisations

Section 6 Public Service

Chapter 5 The Economy of the HKSAR

Section 1 Public Finance and Taxation

Section 2 Finance and Monetary Affairs

Section 3 External Trade and Economic Relations

Section 4 Industry, Commerce, and Other Enterprises

Section 5 Land Leases

Section 6 Shipping Management

Section 7 Civil Aviation Management

- Chapter 6 Education, Science, Technology, Culture, Sports, and Religion in the HKSAR
- Chapter 7 The External Affairs of the HKSAR
- Chapter 8 The Regional Flag and the Regional Emblem of the HKSAR
- Chapter 9 The Interpretation and Amendment of the Basic Law of the HKSAR
- Chapter 10 Supplementary Provisions

#### TRANSLATOR'S NOTE

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

## Preamble

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

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

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

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

## Chapter 1 General Provisions

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

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

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

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

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

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

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

Article 8: The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, save for any that contravene this Law and subject to any amendment by the HKSAR legislature.

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

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

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

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

#### Article 2

A member proposed the article be amended as follows:

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

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

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

#### Article 10

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

## Chapter 2 The Relationship between the Central Government and the HKSAR

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

specified by the NPC Standing Committee.

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

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

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

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

The HKSAR may establish an office in Beijing.

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

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

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

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

#### Article 14

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

#### Paragraph 3 of Article 16

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

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

#### Article 17

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

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

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

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

HKSAR Government before giving the above-mentioned directive.

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

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

#### Article 20

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

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

### Chapter 3 Fundamental Rights and Duties of HKSAR Inhabitants

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

Permanent inhabitants of the HKSAR are:

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

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

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

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

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

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

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

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

Article 26: Hong Kong inhabitants shall have

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

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

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

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

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

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

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

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

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

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



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

[Note]

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

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

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

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

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

courts.

[Note]

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

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

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

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

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

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

rights and freedoms of others.

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

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

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

#### Chapter 4 The Political Structure of the HKSAR

##### Section 1 The Chief Executive

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

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

A member proposed that this article should read: "The

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

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

Article 45:

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

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

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

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

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

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

3. That he be elected by functional constituencies.

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

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

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

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

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

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

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

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

relation to the term of office of the legislators.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to list the various job titles.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) he fails to discharge the functions of his office for a long period because of serious illness or other reasons; or
- (2) the newly elected legislature still passes by a two-thirds majority of its total membership the bill which the Chief Executive has twice refused to sign, leading to the dissolution of the previous legislature; or
- (3) the newly elected legislature still refuses to pass a budget or any other major bill which the previous legislature has refused to pass.

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

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

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

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

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

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

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

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

shall take their oath of allegiance to the HKSAR.

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

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

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

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

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

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

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

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

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

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

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

## Section 2 The Executive Authorities

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

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

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

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

the Central People's Government for appointment.

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

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

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

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

The Chief Executive;

Directors of Offices;

Secretaries;

Other officials equivalent to Secretaries.

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

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

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

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

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

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

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

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

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

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



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

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

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

However, the majority of members objected to this proposal.

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

### Section 3 The Legislature

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

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

Legislative Assembly.

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

Article 64:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 67:

Proposal 1:

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

Proposal 2:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# Article 71:

## Proposal 1:

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

Executive:

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

Proposal 2:

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

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

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

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

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

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

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

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

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

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

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

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



- (4) Where the member commits an act of bankruptcy or is unable to pay his debts as ruled by the court;
- (5) Where the member is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the HKSAR and is relieved of his duties by a motion passed by two-thirds of the members of the legislature present at the meeting;
- (6) Where the member is subject to a vote of censure for misbehaviour passed by more than two-thirds of the members of the legislature present;
- (7) Where the member is subject to a vote of censure for breach of oath passed by two-thirds of the members of the legislature present.

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

#### Section 4: 'Judicial Organs

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

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

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

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

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

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

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

[Note] Other proposals for this article include:

Proposal 1:

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

not handle under the common law and its precedents.

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

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

Proposal 2:

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

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

Proposal 3:

The courts of the HKSAR shall have jurisdiction over cases:

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

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

3. relating to property in the HKSAR,

except where they concern:

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

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

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

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

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

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

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

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

#### Proposal 4:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Section 5 Regional Organisations

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

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

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

## Section 6 Public Service

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

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

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



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

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

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

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

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

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

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

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

## Chapter 5 The Economy of the HKSAR

### Section 1 Public Finance and Taxation

Article 103: The HKSAR shall be financially independent.

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

People's Government.

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

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

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

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

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

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

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

## Section 2 Finance and Monetary Affairs

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

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

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

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

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

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

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

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

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

The Hong Kong currency at issue shall be covered by freely

convertible foreign currency reserves of no less than 100%.

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

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

### Section 3 External Trade and Economic Relations

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

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

Article 117: The HKSAR shall be a free port.

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

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

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

international trade agreements (including preferential trade arrangements), such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles.

Article 119: Export quotas, tariff preferences and other similar arrangements which are obtained by the HKSAR under international agreements or which were obtained in the past but still remain effective shall be enjoyed exclusively by the HKSAR.

Article 120: The HKSAR may issue its own certificates of origin for local products in accordance with prevailing rules of origin.

#### Section 4 Industry, Commerce, and Other Enterprises\*

Article 121: The HKSAR shall adopt free and open policies regarding industry, commerce and other enterprises.

Article 122: The HKSAR Government shall provide the necessary environment and conditions to encourage industrial investment and technological advancement, and open up new enterprises.

Article 123: The HKSAR shall formulate appropriate policies to promote the development of enterprises such as\* commerce, tourism, real estate industry, transport industry, public utilities, service industries, agriculture and fishery.

## Section 5. Land Leases

Article 124: The HKSAR may on its own decide policies regarding the development, management and use of land.

Article 125: All leases of land granted, decided upon or renewed before the establishment of the HKSAR, which extend beyond 30 June 1997, and all rights in relation to such leases, shall continue to be recognised and protected under the law of the HKSAR.

Article 126: As regards all leases of land granted or (in respect of leases not originally containing a right of renewal)\* renewed within 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 need not pay an additional premium as from 1 July 1997, but as from that date\* an annual rent equivalent to three per cent of the rateable value of the property at that date, adjusted in step with changes in the rateable value thereafter, shall be charged.

Article 127: 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, the 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.

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

## Section 6 Shipping Management

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

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

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

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

Article 132: Private shipping businesses and shipping-related



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

## Section 7 Civil Aviation Management

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

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

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

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

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

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

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

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

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

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

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

- (2) conclude new Air Service Agreements providing routes for airlines incorporated and having their principal place of business in the HKSAR and rights for overflights and technical stops; and
- (3) conclude provisional arrangements where no Air Service Agreement with a foreign state or other region is in force.

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

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

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

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

businesses may continue to operate.

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

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

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

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

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

Students shall enjoy freedom of choice of education and

freedom to pursue their education outside the HKSAR.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

Chapter 7      The External Affairs of the HKSAR

Article 157: Representative of the HKSAR may participate, as members of delegations of the Government of the PRC, in negotiations at the diplomatic level directly affecting the HKSAR conducted by the CPG.

Article 158: The HKSAR may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with states, regions and relevant international organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, touristic, cultural and sporting fields.

Article 159: The HKSAR may send representatives to participate, as members of delegations of the Government of the PRC, in international organisations or conferences in appropriate fields limited to states and affecting the HKSAR, or may attend in such

other capacity as may be permitted by the CPG and the organisation or conference concerned, and may express their views in the name of "Hong Kong, China".

The HKSAR may, using the name "Hong Kong, China", participate in international organisations and conferences not limited to states.

The CPG shall take the necessary steps to ensure that the HKSAR shall continue to retain its status in an appropriate capacity in those international organisations of which the PRC is a member and in which Hong Kong participates in one capacity or another.

The CPG shall, where necessary, facilitate the continued participation of the HKSAR in an appropriate capacity in those international organisations in which Hong Kong is a participant in one capacity or another, but of which the PRC is not a member.

Article 160: The application to the HKSAR of international agreements to which the PRC is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the HKSAR, and after seeking the views of the HKSAR Government.

International agreements to which the PRC is not a party but which are implemented in Hong Kong may remain implemented in the HKSAR. The CPG shall, as necessary, authorise or assist the HKSAR Government to make appropriate arrangements for the application to the HSKAR of other relevant international

agreements.

Article 161: The CPG shall authorise the HKSAR to issue, in accordance with law, passports of the HKSAR of the PRC to all Chinese nationals who hold permanent identity cards of the HKSAR, and travel documents of the HKSAR of the PRC to all other persons lawfully residing in the HKSAR. The above passports and documents shall be valid for all states and regions and shall record the holder's right to return to the HKSAR.

The HKSAR Government may apply immigration controls on entry, stay in and departure from the HKSAR by persons from various states and regions.

Article 162: The CPG shall assist or authorise the HKSAR Government to conclude visa abolition agreements with states or regions.

Article 163: The HKSAR may, as necessary, establish official and semi-official economic and trade missions in foreign countries, reporting the establishment of such missions to the CPG for the record.

Article 164: Foreign consular and other official or semi-official missions may be established in the HKSAR with the approval of the CPG.

Consular and other official missions established in Hong Kong by states which have established formal diplomatic relations

with the PRC may be maintained.

According to the circumstances of each case, consular and other official missions of states having no formal diplomatic relations with the PRC may either be maintained or changed to semi-official missions.

States not recognised by the PRC can only establish non-governmental institutions.

## Chapter 8 The Regional Flag and the Regional Emblem of the HKSAR

Article 165: Apart from displaying the national flag and national emblem, the HKSAR may use a regional flag and regional emblem on its own (has yet to be drafted).

Article 166: The regional flag of the HKSAR (has yet to be drafted).

Article 167: The regional emblem of the HKSAR (has yet to be drafted).

## Chapter 9 The Interpretation and Amendment of the Basic Law of the HKSAR

Article 168: The power of interpretation of the Basic Law shall be vested in the NPC Standing Committee.

If the NPC Standing Committee has given an interpretation of a provision of the Basic Law, the courts of the HKSAR shall in applying such provision follow the interpretation of the NPC Standing Committee. However, judgments previously given shall not be affected.

The courts in the HKSAR may, in adjudicating cases before them, interpret provisions\* of the Basic Law. If a case involves the interpretation of a provision of the Basic Law concerning defence, foreign affairs and other affairs which are the responsibilities of the Central Government, the courts of the HKSAR shall ask the NPC Standing Committee to give an interpretation of the relevant provision before giving their final judgment on the case.

The NPC Standing Committee shall consult the HKSAR Basic Law Committee before giving an interpretation of this Law.

Article 169: The power of amendment of the Basic Law shall be vested in the NPC.

The power to propose an amendment to this Law shall be vested in the NPC Standing Committee, the State Council and the HKSAR. Amendment proposals from the HKSAR shall be submitted\* to the NPC by the HKSAR's delegation\* to the NPC after obtaining the consent of no less than two-thirds of the HKSAR delegates to the NPC, two-thirds of members of the HKSAR legislature and the Chief Executive of the HKSAR.

Before a proposal for amendment to this Law is put on the agenda of the NPC, the HKSAR Basic Law Committee shall first study it and give advice on it.

No amendment to this Law shall contravene the established basic policies of the PRC regarding the HKSAR.

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

#### Article 168

A member proposed that the article be rewritten as follows: "The power of interpretation of this Law shall be vested in the NPC Standing Committee. The courts of the HKSAR may interpret all provisions of this Law.

"Regarding the provisions which are within the scope of the SAR's autonomy, the NPC Standing Committee will give full power to the courts of the HKSAR to interpret them when adjudicating cases.

"If the NPC Standing Committee has given an interpretation of a provision which is outside the scope of the SAR's autonomy, the courts of the HKSAR shall in applying such provision follow the interpretation of the NPC Standing Committee. However, cases under adjudication and previous judgments shall not be affected.

"The NPC Standing Committee will consult the HKSAR Basic Law Committee before giving an interpretation of this Law.

"All provisions under Chapters 3, 4, 5, 6, and 10 are within the scope of the SAR's autonomy. Whether the provisions under other Chapters are within the scope of the SAR's autonomy may be decided by the courts of the HKSAR or the NPC Standing Committee. The NPC Standing Committee will consult the HKSAR Basic Law Committee before making the decision. The decision of the NPC Standing Committee shall be final."

#### Article 169

A member proposed that the article be rewritten as follows: "The power of amendment of the Basic Law shall be vested in the NPC Standing Committee.

"The power to propose an amendment to this Law shall be vested in the NPC Standing Committee. Amendment proposals from the HKSAR shall be submitted to the NPC

by the State Council after obtaining the consent of two-thirds of the members of the HKSAR legislature and the Chief Executive of the HKSAR.

"Before a proposal for amendment to this Law is put on the agenda of the NPC, the HKSAR Basic Law Committee shall first study it and give advice on it.

"No amendment to this Law shall contravene the established basic policies of the PRC regarding the HKSAR stated in the Preamble."

A member proposed that paragraph 2 be amended as follows: "The power to propose an amendment to this Law shall be vested in the NPC Standing Committee, the State Council and the HKSAR. Amendment proposals from the HKSAR shall be submitted to the NPC after obtaining the consent of no less than two-thirds of the HKSAR delegates to the NPC and the Chief Executive of the HKSAR."

## Chapter 10: Supplementary Provisions

Article 170: Regarding the formation of the first government of the HKSAR, there are the following six proposals:

### Proposal 1:

1. Before 1997, the Central Government shall appoint no less than 50 persons from various sectors in Hong Kong to form an advisory board, which will then select the Chief Executive through local consultations and submit the nomination to the Central Government for appointment.

2. The Chief Executive shall form the Executive Assembly and nominate the principal officials, and then submit the nomination to the Central Government for appointment.

3. A provisional Legislative Assembly comprising legislative members jointly nominated by the Chief Executive and the Executive Assembly and elected by the advisory board shall be set

up.

4. The terms of office of all members of the first government shall not exceed three years. A regular government must be formed within three years in accordance with this Law.

Proposal 2:

The first Chief Executive designate of the HKSAR shall be selected through local consultations on 1 December 1996 in accordance with the method listed in Appendix I. With the approval of the Central People's Government, the person selected shall be the first Chief Executive designate.

Before 1 April 1997, the first Chief Executive designate shall nominate members of the first Executive Assembly who shall be the members designate of the first Executive Assembly.

The first Chief Executive designate, and the members designate of the first Executive Assembly shall jointly organise the "Preparatory Committee for the Formation of the First Government". At zero hour on 1 July 1997, with the assistance of members of the first Executive Assembly, the first Chief Executive who will have been officially appointed by the Central People's Government shall, in accordance with the provisions of this Law, announce the formation of the first government of the HKSAR which, as authorised by the Central Government, shall take up the administration of the HKSAR from the NPC Standing Committee. Before the formation of the first legislature, a provisional legislature may exercise its provisional legislative power, and may enact provisional legislation if necessary.

[Note] The provisional legislature shall be elected by the electoral college locally in accordance with the



method listed in the appendix. The previous Legislative Councillors who are relieved of their office on 30 June 1997 shall not be excluded as candidates.

After the establishment of the first HKSAR Government, elections for the District Boards and the Urban Council shall be held in accordance with the method listed in the appendix within 6 months; and the first legislature shall be formed in accordance with the method listed in Appendix II within 12 months.

Appendix I: Procedures for the Selection of the First Chief Executive through Local Consultations by the Various Sectors in Hong Kong

After the promulgation of the Basic Law, the National People's Congress appoint no less than 50 members to form the "Preparatory Committee for the Implementation of the Basic Law". The Committee will have diverse tasks which will include, after consultation with the various sectors, formulation (by the Committee itself or by its special groups) of the draft on "consultation procedures" to be submitted to the NPC for review and endorsement.

On 1 July 1995, members of the "Preparatory Committee for the Implementation of the Basic Law" will elect amongst themselves no less than 10 persons to form a "consultation committee" which will carry out open consultation in accordance with the "consultation procedures". Members of the "consultation committee" will not be allowed to stand as candidates for the Chief Executive, nor will they be allowed to nominate or support any of the candidates for the Chief Executive. The "consultation

committee" responsible for promoting and supervising the consultations shall be objective and impartial.

A candidate for the first Chief Executive designate shall be selected on 1 December 1996. With the approval of the Central Government, the candidate shall be appointed officially as Chief Executive on 1 July 1997.

#### Appendix II : Method of Election to the First Legislature

Electoral college -  $1/2$  of the members of the legislature shall be elected by a widely representative grand electoral college. Not less than  $2/3$  of the members shall be Chinese nationals.

Indirect election -  $1/4$  of the members of the legislature shall be elected from among members of the District Boards and the Urban Council who are Chinese nationals.

Direct election by functional constituencies -  $1/4$  of the members of the legislature shall be directly elected by functional constituencies (the functional constituencies shall be registered as legal entities in accordance with local laws, and shall be of Chinese nationality. Regardless of their own nationalities, members of the legislature who are directly elected by functional constituencies may, by virtue of the Chinese nationality of the functional constituencies to which they belong, exercise the civil rights of Chinese nationals during their terms of office.)

Proposal 3:

1. At an appropriate time before 1 July 1997, the National People's Congress shall set up a preparatory committee for the HKSAR that comprises mainland and Hong Kong members. The committee shall prepare for the establishment of the HKSAR.

2. The first Chief Executive of the HKSAR shall be selected through consultations or elections held locally by a representative body that comprises people from various sectors in Hong Kong and the name of the person thus selected shall be submitted to the Central People's Government for appointment. The preparatory committee for the HKSAR shall be responsible for the setting up of this representative body.

The Chief Executive of the HKSAR shall, in accordance with the provisions of this Law, be responsible for the formation of the first HKSAR Government.

2. The first legislature of the HKSAR shall, in accordance with the provisions of this Law, be formed through election one or two years after the establishment of the HKSAR.

Prior to the formation of the first legislature of the HKSAR, a provisional legislature of the HKSAR shall function in an acting capacity. The provisional legislature shall be formed in accordance with the method prescribed in the preceding paragraph.

Proposal 4:

The first government of the HKSAR shall be formed in accordance with the method listed in the following appendix on "The Formation of the First Government of the HKSAR":

Appendix:

1. The NPC Standing Committee of the People's Republic of China shall set up a "Preparatory Committee for the Formation of the First Government of the HKSAR" that comprises Chinese nationals with equal number of mainlanders and Hong Kong permanent inhabitants. The chairman of the committee shall be a member of the NPC Standing Committee.
2. The "Preparatory Committee for the Formation of the First Government of the HKSAR" shall entrust its Hong Kong members with the responsibility of inviting people who are widely representative of the various sectors in Hong Kong to set up a "Nomination Committee for the First Chief Executive of the HKSAR".
3. The "Nomination Committee" shall nominate the first Chief Executive designate of the SAR through consultations or elections in Hong Kong. The nomination shall then be submitted to the Central Government for appointment.
4. The Central People's Government shall, in accordance with the recommendation of the "Nomination Committee", appoint the Chief Executive designate as the first Chief Executive of the HKSAR.
5. The first Chief Executive shall set up an Executive Assembly by appointing its members. The Chief Executive shall nominate the principal officials in the executive authorities of the HKSAR and submit the nominations to the Central Government for appointment.
6. The president of the People's Republic of China shall

declare that on 1 July 1997 the People's Republic of China will resume the exercise of sovereignty over Hong Kong and that the "Basic Law of the HKSAR" will take effect, and shall delegate the Chief Executive of the HKSAR to implement a high degree of autonomy in the HKSAR in accordance with this Law.

(Items 1 to 6 listed above shall be completed before 1 July 1997.)

7. The Chief Executive and other principal officials shall take an oath of office.
8. The first Chief Executive of the HKSAR shall declare that previous public servants (except principal officials) at various levels in the Hong Kong Government, judges and judicial officers of the courts at various levels may all remain in employment until their new appointments or removal.
9. The Chief Executive shall declare that within one year the first legislature of the HKSAR shall be formed in accordance with the provisions of Section 3 of Chapter 4 of this Law.
10. Before the first legislature is elected and passes the budget, the public expenditure of the first government of the HKSAR shall be met by a provisional appropriation of funds proposed by the Director of Finance and approved by the Chief Executive. It shall be ratified retroactively after the first legislature is formed.
11. The chief judges of the Court of Final Appeal and of the Supreme Court shall be appointed by the Chief Executive in accordance with Articles 84 and 86 of this Law.

(Items 7 to 11 listed above shall be completed after 1 July

1997.)

Proposal 5:

1. The NPC Standing Committee of the People's Republic of China shall appoint a "Preparatory Committee for the First Government of the HKSAR". Members of the Committee shall be Chinese nationals, including mainlanders and permanent inhabitants of Hong Kong. The chairman of the committee shall be a member of the NPC Standing Committee.

2. The "Preparatory Committee for the First Government of the HKSAR" shall entrust its Hong Kong members to set up an electoral college which comprises representatives of the legislative and regional organisations prior to the establishment of the HKSAR, as well as representatives of various statutory bodies, permanent non-statutory bodies, and citizens of various sectors. The electoral college, which must be widely representative, shall be called the "Electoral College for the First Government of the HKSAR".

3. The electoral college for the First Government of the HKSAR shall be responsible for the drafting of the relevant procedures for the selection of the first Chief Executive, who will then be selected by consultations or elected from candidates nominated through consultations..

(The qualifications, functions and powers, and so on of the Chief Executive will be as set down in the provisions of Chapter 4 of this Law.)

4. The electoral college for the First Government of the HKSAR shall be responsible for the drafting of the procedures for

the election of the first legislature. Members of the legislature in office before the establishment of the HKSAR who satisfy the requirements of Chapter 4 of this Law may be elected as members of the first legislature.

(The qualifications, functions and powers, and so on of the members of the legislature will be as set down in the provisions of Chapter 4 of this Law.)

5. Government officials, public servants and judicial officers in office before the establishment of the HKSAR who satisfy the requirements of this Law shall be employed by the first government.

(The composition, functions and powers of the executive authorities will be as set down in the provisions of Chapter 4 of this Law.)

#### Proposal 6:

##### 1. The Chief Executive

The NPC Standing Committee of the People's Republic of China shall appoint a "Preparatory Committee for the First Government of the HKSAR". Members of the Committee shall be Chinese nationals who are permanent inhabitants of Hong Kong and the chairman of the Committee shall be elected from amongst the members themselves.

In mid- or late 1996, the Preparatory Committee for the First Government of the HKSAR shall, in accordance with this Law, hold elections in Hong Kong to select the Chief Executive designate through direct elections on a one-man-one-vote basis.

On 1 July 1997 the Chief Executive designate shall be appointed by the Central People's Government and take the oath of office.

## 2. The Principal Officials

The Chief Executive designate shall, before 1 July 1997, nominate principal officials for the executive authorities of the HKSAR and submit the nominations to the Central People's Government for appointment. The principal officials shall take the oath of office on 1 July 1997.

## 3. The Legislature

Members of the Legislative Council in June 1997 shall automatically become members of the first legislature of the HKSAR on 1 July until their terms of office expire. Apart from taking an oath of allegiance to the SAR, there shall not be any other special arrangements.

## Article 171:

### Proposal 1:

At the time of the establishment of the HKSAR, laws previously in force in Hong Kong (that is, the Common Law, rules of equity, ordinances, subordinate legislation and customary law), save for those listed in the Appendix, shall be adopted as the laws of the HKSAR.

The adoption of the above-mentioned laws shall not affect the power of the NPC Standing Committee to, through the exercise of its power of interpretation of this Law, repeal any of the above-mentioned laws previously in force in Hong Kong which are



found to be in contravention of the Basic Law after the establishment of the HKSAR.

Documents, certificates, contracts, and the rights and obligations that are effective under the laws previously in force in Hong Kong shall continue to be effective and be recognized and protected by the laws of the HKSAR provided that they do not contravene this Law.

[Note] The laws listed in the Appendix are laws previously in force in Hong Kong which the NPC Standing Committee considers to be obviously in contravention of the Basic Law.

Proposal 2:

Where the Basic Law Committee considers upon examination that any legislation previously in force in Hong Kong contravenes the Basic Law, it may report it to the NPC Standing Committee to be repealed upon the establishment of the HKSAR.

Documents, certificates, contracts and the rights and obligations that are effective under the laws previously in force in Hong Kong shall continue to be effective and be recognised and protected by the laws of the HKSAR provided that they do not contravene this Law.

Proposal 3:

Ordinances and subordinate legislation previously in force in Hong Kong shall, under the provisions of Article 8 of this Law, be considered effective until they are revoked or amended in accordance with the procedures prescribed by this Law, save for any that are declared to be in contravention of the Basic Law under the provisions of Article 168 of this Law upon the

establishment of the HKSAR.

Rights and duties effective under the laws previously in force in Hong Kong which continue to be in force upon the establishment of the HKSAR shall continue to be effective and be protected and recognised by the laws of the HKSAR.

Article 172: This Law shall be enacted after it is passed by the National People's Congress of the People's Republic of China and promulgated by the President of the People's Republic of China, and shall, save for the relevant provisions under Articles 170 and 171 of this Law, take effect at zero hour on 1 July 1997.

[Note] A member held that this Law should take effect on the date of its promulgation by the President of the PRC.

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