

香港基本法諮詢委員會

REPORT OF THE SUBGROUP ON POLITICAL STRUCTURE
REGARDING THE AMENDMENTS TO THE ARTICLES

(9 January 1989)

Chairmen, Vice-Chairmen, Fellow Members,

Since the seventh plenary session of the Drafting Committee ended in April 1988, some members of the Subgroup on Political Structure have conducted two consultation exercises in Hong Kong, in June and in September respectively. During July and August, some of the mainland drafters held discussion sessions in Beijing, Shanghai, Guangzhou and Fuzhou to listen to people's views on the Draft Basic Law for Solicitation of Opinions (DBLSO).

On 15 September 1988, most of the Subgroup members exchanged views in Hong Kong on how to better organize the 16th meeting of the Subgroup to be held in November in Guangzhou. Members reached a consensus on three points: (1) To arrive at a compromise among the various proposals on the selection of the Chief Executive and on the formation of the legislature; after 1997, the political structure should progress towards democracy in a gradual and orderly manner; (2) when discussing the selection of the Chief Executive and the formation of the legislature in the November Subgroup meeting, emphasis should be laid on such issues as the starting points for the selection and formation methods, how to make gradual and orderly progress, and the ultimate goals; and (3) to ask the two co-convenors to prepare a working paper for the Subgroup's discussion.

At the 16th meeting of the Subgroup held in Guangzhou from 19 to 22 November, Mr Louis Cha submitted the working paper to the Subgroup. The Subgroup amended the provisions on the political structure according to the opinions collected in the five-month consultation period. The Subgroup spent three days discussing and amending Annexes I, II and III, and another day and evening discussing and amending other articles. The Subgroup adopted the "show of hands" voting method to decide on the amendments to the Annexes and articles. Eighteen out of the 19 members were present at that meeting. One of the mainland members was absent with apology. The amendments to the articles were all adopted with the consent of more than half of the members present at that meeting, i.e. by at least 10 members.

When discussing the amendment of Annexes I and II, the Subgroup divided each Annex into three issues to be discussed and voted on individually: the starting point for the development of a democratic system, the steps involved in gradual and orderly progress, and the ultimate goals. When discussing these three issues, each issue was sub-divided into smaller questions, e.g. if the election is conducted by an election committee, what should be the composition of the election committee, and how the various sectors should be defined. The questions were revised and

voted on several times. The present Annexes I and II are prepared through such democratic procedures. The present political model has the support of the majority of the Subgroup members and is a compromise model built on the basis of the opinions collected in the five-month consultation period.

The present "Decision of the National People's Congress of the People's Republic of China on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region (Draft)" which was revised by the enlarged chairmen's meeting was prepared on the basis of Annex III to the DBLSO. "Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference" has been removed from the membership of the Election Committee [sic], and the provision that the "Election Committee shall formulate procedures and accordingly" in Item (3) of Annex III to the DBLSO has been deleted. It is now specified that the total membership of the Election Committee will be 400. Major amendments have been made to Item (5) of Annex III. It now stipulates in the Decision that the first Legislative Council will comprise 55 members and that "[f]ormer members of the last Hong Kong Legislative Council who support the Basic Law of the Hong Kong Special Administrative Region, are willing to loyally serve the Hong Kong Special Administrative Region, and meet the requirements set forth in the Basic Law will, upon confirmation by the Preparatory Committee, become members of the first Legislative Council of the Region. Any vacancy therein shall be filled through election conducted by the Election Committee." The purpose of such amendments is to ensure that the formation of the first legislature will give expression to the principles of sovereignty and smooth transition.

Now, let me briefly explain those amendments made to the articles in Chapter IV, the chapter on the political structure:

The order of the second and third paragraphs of Article 45 has been reversed and the second paragraph of the Article now reads: "The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administration Region and in accordance with the principle of gradual and orderly progress. The ultimate aim shall be the selection of the Chief Executive through general election."

The term "Commissioner of External Affairs" and the clause "to employ advisers at or above the director level as required and subject to the approval of the Central People's Government" have been deleted from Paragraph (5) of Article 48. This amendment has taken into account the opinions submitted by some people in the consultation exercise that these posts which are not at the Secretary level need not be provided for in this article.

The clause "but he/she still refuses to sign it" is added after the "original bill in dispute" in Paragraph (2) of Article

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52. With this amendment, the meaning is more explicit.

The third paragraph of Article 60 of the DBLSO, which reads: "The structure of the government of the Hong Kong Special Administrative Region shall be prescribed by law.", has been deleted. This deletion has taken into consideration the fact that the organization of the government is subject to changes and should not be prescribed rigidly.

Paragraph (6) of Article 62 is newly added: "To designate officials to sit in at the meetings of the Legislative Council." This addition will enable officials to put forward bills and motions and to answer enquiries in the Legislative Council.

[Translator's note: The amendment made to the Chinese equivalent of "Legislative Council" in all the relevant articles does not affect the English translation.]

The order of the second and third paragraphs of Article 67 has been reversed. The second paragraph of the Article now reads: "The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim shall be the selection of all the members of the Legislative Council through general election."

Alternative 2 in Article 70 has been deleted.

Paragraph (2) of Article 71 is amended to read: "To decide on the agenda, but the bills introduced by the government for inclusion in the agenda must be given priority." (Upon research by the enlarged chairmen's meeting, the provision now reads: "To decide on the agenda, giving priority to bills introduced by the government for inclusion in the agenda.")

The first three lines of Paragraph (9) of Article 72 is amended to read: "If a motion initiated jointly by one-fourth of the members of the Legislative Council accuses the Chief Executive of serious breach of law, dereliction of duty or inability to discharge the functions of his/her office and if he/she still refuses to resign, the Council may, after passing a motion for investigation, form an independent investigating committee." This amendment makes the legal procedures clearer but the rest of the paragraph remains unchanged. Paragraph (10) is newly added: "To summon, as required when exercising the above-mentioned powers and functions, the persons concerned to testify or give evidence." This is considered a function of the Legislative Council and should therefore be provided for.

The two alternatives in Article 73 of the DBLSO have been abandoned. The Article now reads: "Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure

or the structure and operation of the government may be introduced individually or jointly by members of the Council. Written consent of the Chief Executive shall be required before bills relating to government policies are introduced."

The phrase "with no valid reason" is inserted in Paragraph (2) of Article 78. Paragraph (4) of the Article is newly added: "When he/she accepts government appointment and joins the public service;". Paragraph (6) of the Article in the DBLSO is amended to read: "When he/she is sentenced to imprisonment for one month or more." [Translator's note: This amendment has not been adopted in the Basic Law (Draft).]

The second paragraph of Article 86 is newly added: "Anyone who is lawfully arrested shall have the right to a fair trial by the judicial organs without delay and shall be presumed innocent until convicted by the judicial organs." This addition has taken into consideration the two principles in common law adopted in Hong Kong.

The first paragraph of Article 89 is newly added: "The Chief Justice of the Court of Final Appeal and the Chief Judge of the High Court of the Hong Kong Special Administrative Region shall be Chinese citizens who are permanent resident of the Region." This addition has taken into consideration that these two posts are not below the rank of principal officials. As the posts of principal officials should be filled by Chinese citizens who are permanent residents of the HKSAR, so should these two posts.

The present Article 92 is formed by merging Articles 92 and 93 of the DBLSO.

The present Article 93 is newly added: "On the basis of the system previously operating in Hong Kong, the Government of the Hong Kong Special Administrative Region may make provisions for local lawyers and lawyers from outside Hong Kong to work and practise in the Region." This article is added because there is such a provision in the Joint Declaration.

Among the official posts to be filled by Chinese citizens who are permanent residents of the HKSAR in Article 100 of the DBLSO, those of the Deputy Directors for Security and for Civil Service, Deputy Commissioners of Police, Commissioner and Deputy Commissioners of External Affairs, Commissioner of Immigration and Inspector General of Customs and Excise have been deleted. This is because, when soliciting opinions, some members of the public and organizations put forward different views regarding the qualification of the heads and deputy heads of major government departments.

The clause "can be annulled or revised according to the procedure as prescribed by this Law" in the last paragraph of Article 172 of the DBLSO is now amended to read: "shall be revised or cease to have force in accordance with the procedure as prescribed by this Law" in the last paragraph of Article 160*.

Since Article 17 of the DBLSO has been amended, this Article should be amended accordingly.

* Translator's note: It should be Article 159 in the Basic Law (Draft).

This concludes the report of the Subgroup on Political Structure regarding the amendments to the three annexes and the relevant articles.

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