

REPORT OF THE SUBGROUP ON ECONOMY  
REGARDING THE AMENDMENTS TO CHAPTER V

香港基本法  
諮詢委員會  
秘書處

(9 January 1989)

Chairmen, Vice-Chairmen, Fellow Members,

The Subgroup on Economy has so far held ten meetings. At its tenth meeting held on 27 November 1988, members of the Subgroup reviewed the drafting process of the articles in Chapter V of the Basic Law and seriously studied the major opinions and suggestions put forward by people from various sectors in Hong Kong in last year's consultation exercise, especially those put forward by the Special Group of the Consultative Committee. After discussions at the meeting, individual members of the Subgroup put forward different views regarding the mainstream opinion on how to amend Chapter V of the Draft Basic Law for Solicitation of Opinions (DBLSO). The mainstream opinion of the Subgroup has been adopted after it was reported to the enlarged chairmen's meeting held on 6 December. The wording of individual articles has been revised accordingly. The following is the report on the substantive amendments which we ask the plenary session to examine.

(1) According to the basic policies of the People's Republic of China regarding Hong Kong, Article 4 in Chapter I on General Principles of the DBLSO rightly states that the "socialist system and policies shall not be practised in the Hong Kong Special Administrative Region and the existing capitalist system and way of life shall not be changed for 50 years." Upon research, all members of the Subgroup hold the view that the economic basis in a capitalist system is the system of private ownership of property. This ownership system must be protected by law and it is therefore proposed that:

(1) Article 6 of Chapter I of the DBLSO should be amended to read: "The Hong Kong Special Administrative Region shall protect the right of private ownership of property in accordance with law." With this amendment, the above-mentioned principle will be specified at a higher level.

(2) On logical grounds, the order of Articles 4 and 5 should be reversed. This amendment will strengthen the implied interrelation among Articles 5, 6 and 7 of the new draft.

(3) As to how to protect private ownership of property in accordance with law, the Subgroup proposes that such a provision should be included in the first article of the chapter on economy, i.e. the present first paragraph of Article 104. The Article at the same time stresses that the "property of legal persons" will also be protected in accordance with law.

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(II) The Subgroup has paid special attention to the proposal from many experts and scholars in Hong Kong that all policy provisions should be put in an annex to the Basic Law. The main text of the Basic Law should only include legal provisions on the economic system. This proposal has certain positive implications. However, after research, the Subgroup is still unable to make major amendments on the basis of this proposal. The main considerations are:

(1) According to the provisions of Sub-paragraph (12) on the basic policies of the People's Republic of China regarding Hong Kong, the Basic Law must include all the above-stated basic policies and the elaboration of them in Annex I to the Sino-British Joint Declaration.

(2) Paragraph 8 of the Joint Declaration provides: "This Joint Declaration and its Annexes shall be equally binding." Hence, the legal provisions and the policy provisions included in the main text of the Basic Law and its Annexes should also be equally binding.

(3) It is a fact that some of the provisions are policies in nature. But since (i) they are the important constituent parts of the Joint Declaration and its Annexes; (ii) they are necessary for ensuring and promoting the prosperity and stability in the HKSAR; and (iii) when legislating, it is extremely difficult to distinguish between provisions which are purely legal and provisions which are purely policies in nature, so at present all the relevant provisions are included in the main text. We ask all of you to further explore the issue and put forward more appropriate ways of handling these provisions.

(III) In the consultation period, two entirely different views were put forward on Articles 105 and 107. According to recent conditions of, and the experience of success in, the operation of the fiscal system in Hong Kong, the Subgroup has made certain substantive amendments to the wording of the two articles. These amendments are incorporated into Articles 106 and 107 of the new draft. According to the mainstream opinion of the Subgroup, these amendments are rational and appropriate.

(1) If the economy of the HKSAR is to prosper and remain stable in the long run, apart from other necessary conditions, the maintenance of the previous fiscal system which is relatively sound and the implementation in principle of a low tax system are absolutely essential. The above-mentioned provisions not only uphold the principles and direction, but also allows for flexibility and mobility. That is to say, we do not wish the HKSAR to take "budget deficit" as its long-term policy. By implementing a low tax system in principle, we mean that relatively low tax rates will apply to the main types of taxes while relatively high tax rates may still apply to other types of taxes. The former is a vital condition for encouraging new investments and attracting capital from outside the Region. The specific tax rates for individual types of taxes (the minimum and

maximum rates for that particular type of tax may be specified when necessary) may be prescribed by the HKSAR on its own by drawing comparison with those previously imposed in Hong Kong and the practice in other countries, and in the light of the financial needs at the time and the feasibility of such levies. The third\* paragraph of Article 107 of the new draft will grant maximum authority to the HKSAR, so in practice, the system should be extremely flexible.

\* Translator's note: It should be the second paragraph of Article 107.

(2) On the whole, sailing through 1997 relies on the upholding of the basic principle of giving expression to state sovereignty and smooth transition. This principle has been accepted by all quarters. The functioning of the economic system should also give expression to the above-mentioned basic principle. We hold the view that there should also be continuity in important economic policies. However, it does not mean that all specific policies must "remain unchanged for 50 years". Following the economic development and changes in Hong Kong and in the rest of the world in the coming decades, certain policy provisions may need to be go through necessary and legitimate revision even though they are considered proper and appropriate at present.

(3) As a matter of convention, the courts of Hong Kong at all levels do not adjudicate cases which involve policy provisions. We propose that this convention should remain unchanged. As to whether the Basic Law should contain specific legal provisions on this convention or how to provide for this convention, we ask members to further explore the issue.

Chapter V, the chapter on economy, of the DBLSO comprises seven sections containing 38 articles. After revision and amendment, the Chapter V in the new draft comprises four sections containing 31 articles. The wording of some of the articles has also been slightly amended in order to be in line with the basic policies of the state and the elaboration of them in the Joint Declaration and its Annexes.

We ask the plenary session to examine our report and your opinions and suggestions are most welcome. Thank-you!