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- China (People's Republic).
Consultative Committee for the
Basic Law of the Hong Kong Special
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Group on Finance, Business, and
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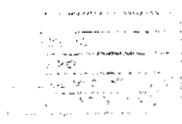
Final report on finance, taxation,
monetary system, and principles of
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FINAL REPORT ON
FINANCE, TAXATION, MONETARY SYSTEM, AND
PRINCIPLES OF THE ECONOMIC SYSTEM

(passed by the Executive Committee on 8 August 1987)

Special Group on
Finance, Business, and Economy



CHAPTER 5 - THE ECONOMY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION (HKSAR)

- (1) The HKSAR shall maintain the capitalist economic system previously practised in Hong Kong and shall not practise the socialist economic system or policies as applied in Mainland China. The HKSAR shall decide its economic policy on its own.
- (2) Rights concerning the ownership of property (including such intangible properties as knowledge, franchise, copy right, patent, etc) including those relating to acquisition, use, disposal, inheritance and compensation for lawful deprivation (corresponding to the real value of the property concerned, freely convertible and paid without undue delay) shall continue to be protected by law.
- (3) The principle whereby the distribution of resources, the production of commodities, the provision of services and their prices are determined by the market with minimum interference by the Government; the principles of free and fair competition, equality under the law without special privileges being given to any individual or corporation including any government department; shall be maintained.

SECTION 1 (1) - FINANCIAL MANAGEMENT

- (1) The HKSAR shall maintain its financial independence and shall manage its financial matters on its own, including the allocation of financial resources and preparation of financial budgets and final accounts.
- (2) The financial budgets and final accounts of the HKSAR shall be approved by the SAR legislature and submitted to the Central People's Government for record.
- (3) 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.

- (4) The HKSAR Government shall maintain its finance prudently, maintaining a policy of a balanced budget. The expenditure shall be maintained at an appropriate ratio to the Gross Domestic Product.
- (5) The HKSAR Government shall not engage in commercial activities. Individual special projects which must be undertaken by the Government must be approved by the legislature. The policies of assigning public projects to private enterprises through open and fair tender, awarding franchise to private enterprise to manage public utilities while at the same time maintaining adequate control and permitting a reasonable profit shall be maintained.

SECTION 1 (2) - TAXATION POLICY

- (1) The Central People's Government shall not levy taxes on the HKSAR Government and residents.
- (2) HKSAR shall maintain a simple taxation system and a relatively low tax rate.
- (3) The taxation laws and tax rates of the HKSAR and their amendments shall be approved by the SAR legislature.
- (4) The HKSAR shall be allowed to conclude taxation agreements with the Central People's Government as well as foreign countries.

SECTION 2 - FINANCIAL SYSTEM AND POLICY

- (1) "The HKSAR shall decide its own monetary and financial policy, and continue the practice of a free and open monetary and financial system to maintain its status as an international financial centre." (The word "continue" means to maintain the current condition.)
- (2) "Markets for foreign exchange, gold, securities and futures shall continue to open in the HKSAR."

- 第 五 章
第 三 十 三 條
- (3) "The authority to issue Hong Kong currency shall be vested in the HKSAR Government. The issue of Hong Kong currency must have not less than 100% currency reserve. 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 Hong Kong currency will be soundly based and that the arrangements for such issue are consistent with the object of maintaining the stability of Hong Kong currency. The Hong Kong currency may also be freely convertible with other international currencies." (Except for the clause on currency reserve, the paragraph is copied from the Sino-British Joint Declaration.)
- (4) "The Exchange Fund shall be managed and controlled by the HKSAR Government, primarily for regulating the exchange value of the HK dollar." (this clause is identical to the one contained in the Sino-British Joint Declaration.)

EXPLANATORY NOTES

- (1) The above are based on the Basic Law Structure (Draft) passed by the Basic Law Drafting Committee on 22 April 1986.
- (2) The working group has conducted a number of discussions on the topics of finance, taxation, financial system and economic system. A great deal of comments have been suggested and are now summarised for reference of the Special Group on Economy of the Basic Law Drafting Committee.
- (3) The first of the 4 topics: Economy
- Clause 1 is basically taken from Section 6 of Annex 1 of the Joint Declaration, with the addition only of "shall not practise the socialist system or policies as applied in Mainland China" and "The HKSAR shall decide its economic policy on its own."
- Clause 2 is basically taken from Section 6 of Annex 1 of the Joint Declaration, with the addition only of "including such intangible properties as knowledge, franchise, copy right, patent, etc".

Clause 3 is not found in the Joint Declaration. It has been discussed on several occasions in our group that whether we say "the original capitalist system" or "one country two systems", the important thing is to affirm the principles of "property ownership" and "production, distribution and prices to be determined by the market". If these two principles are not written into the Basic Law, any other suggestions would be too vague.

A member suggested to delete this clause since it comprised several concepts -- 1) market force; 2) judicial concept (which has already been included in the chapter on Law); and 3) the government shall not enjoy any privileges -- which were not consistent with the reality and it was desirable that the government should retain its privileges. In addition, the Basic Law should avoid the use of general expressions, nor should it be reduced to a list of apprehensions felt by Hong Kong people. Since this section was to state only the principles, the mention of the practice of capitalist system in clause (1) was already sufficient. A member however proposed that this clause be retained as all it mentioned were economic theories.

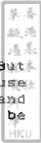
Apart from this, there seems to be no need to include too many details in the section related to economy in the Basic Law. Of course, we should give further thought to see whether there is anything missing and whether the abovementioned 3 clauses should be improved to make them more complete.

Looking at the Basic Law Structure (Draft) dated 22 April 1986, it would appear that the abovementioned 3 clauses should be included in the General Provisions of Chapter 1 while Chapter 5 on HKSAR Economy should deal directly with specific subjects such as financial management and taxation policy. This may be left to the Basic Law Drafting Committee to decide. As a working group under the Consultative Committee, we would only suggest those principles which are related to Economy and which should be written into the Basic Law.

(4) The second topic: Financial Management

Clauses 1, 2, and 3 are basically taken from Section 5 of Annex 1 of the Joint Declaration.

Clause 4 represents an important view-point raised many times in our discussions. The majority of members feel that it is more appropriate to say "the expenditure should be maintained at an appropriate ratio to the Gross Domestic Product" than to indicate a specific ratio.



Some members thought that clause 4 was appropriate. But some thought that it was undesirable to include this clause in the Basic Law; they proposed this clause be deleted and the concept "to maintain its finance prudently" be incorporated into clause 1.

Clause 5 is a new point. In fact, this has always been practised in Hong Kong. It is believed that the inclusion of such a clause in the Basic Law not only guarantees that the SAR Government will not waste public money, but also strengthens the confidence of the public.

There seems to be no need to include too many details in the Basic Law such as the issue of Government bonds.

(5) The third topic: Taxation

Clause 1 is basically taken from Section 5 Annex 1 of the Joint Declaration, only the words of "government and residents" are added after "SAR". According to the Drafting Committee, this was the original meaning of Annex 1 of the Joint Declaration. It would be better to write it down clearly in the Basic Law. This clause applies to places outside Mainland China.

Clause 2 is a principle emphasised many times in our group discussions: "a simple taxation system and relatively low tax rate". It is more advantageous to the SAR just to mention a policy without quoting any specific figures.

Clause 3 in fact includes certain matters of our group's concern including: Will taxation be limited to profits generated in Hong Kong? The version we have suggested should be more acceptable and in fact should solve the problem which we are concerned about.

The background of clause 4 is similar to clause 3.

(6) The fourth topic: Financial System and Policy

All 4 clauses are taken from the draft of the Drafting Committee. On the word "full" in clause 3 "the issue of Hong Kong currency must have full reserve", a member suggested that it be replaced by "not less than 100%" as the latter expression was more specific.

The difference between the present 4 clauses and the original 12 clauses is that the banking supervisory system and the establishment of infrastructure such as the Trade Development Council are not mentioned specifically. Members feel that "providing the necessary conditions and adopting the appropriate measures" in clause (1) is too general and need not be written down.

As to the management of the Exchange Fund by an independent trust organisation, our group has made such a proposal previously but this has not been included in the Basic Law Draft. It would seem that it may not be necessary to include this point into the Basic Law.

The question of whether it should be a floating exchange rate or a linked exchange rate would not be appropriate for discussion in the Basic Law and is therefore not included.

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

財政、稅收、金融制度及經濟制度的精神

最後報告

(1987年8月8日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會
金融財務經濟專責小組

第五章：香港特別行政區的經濟

- (1) 香港特別行政區保持原在香港實行的資本主義經濟制度，不實行在中國內地實行的社會主義經濟制度和政策。香港特別行政區自行制訂經濟政策。
- (2) 財產所有權(包括知識、專利、版權、設計等無形財產)的取得，使用，處置和繼承，以及依法徵用財產得到補償(補償相當於財產的實際價值，可自由兌換，不無故遲延支代)的權利，繼續受法律保護。
- (3) 市場決定資源的分配，商品的生產，服務的提供及其價格，而政府應採最少干擾的原則；自由公平競爭，法律面前人人平等，任何個人和法人，包括任何政府部門不得享有任何特權的原則，繼續保持。

第一節(1)：財政管理

- (1) 香港特別行政區保持財政獨立，自行管理財務事務，包括支配財政資源，編制財政預算和決算。
- (2) 香港特別行政區的財政預算和決算應經特別行政區立法機關審定，報中央人民政府備案。
- (3) 香港特別行政區的財政收入全部用於自身需要，不上繳中央人民政府。
- (4) 香港特別行政區政府應審慎理財，保持平衡的預算政策，財政支出繼續與本地國民生產總值允許適當比例。
- (5) 香港特別行政區政府不得經營工商業，個別特殊項目必須政府承辦者應經立法機關批准。公共工程交由私人企業公開競投的原則；由政府把專利權頒給經營公用事業的私人企業，並同時保持適當控制而允許其有合理利潤的原則，應繼續保持。

第一節(2)：稅收政策

- (1) 中央人民政府不向香港特別行政區政府和居民徵稅。
- (2) 香港特別行政區應保持簡單稅制和相對低的稅率。
- (3) 香港特別行政區的稅則和稅率的訂定和修改應經特別行政區立法機關審定。
- (4) 香港特別行政區應可與中央人民政府及外國訂定雙邊稅務協定。

第二節：金融制度和政策

- (1) 「香港特別行政區自行制訂貨幣和金融政策，繼續實行自由開放的貨幣、金融制度，以保持國際金融中心地位。」(特別寫明「繼續」即為表示保持現行的情況。)

- (2) 「香港特別行政區繼續開放外匯、黃金、証券、期貨市場。」
- (3) 「港幣發行權屬特別行政區政府。港幣的發行必須要有不低於百份百之貨幣儲備金。在確知港幣的發行基礎是健全的以及有關發行的安排符合保持港幣穩定的目的情況下，香港特別行政區政府可授權指定銀行根據法定權限發行或繼續發行香港貨幣。港幣亦可自由兌換其他國際貨幣。」
(除有關貨幣儲備金外，其餘皆為摘自《中英聯合聲明》)
- (4) 「外匯基金由香港特別行政區政府管理和支配，主要用於調節港元匯價。」 (此條與《中英聯合聲明》所載無異)

說明：

- (1) 上文根據 1986 年 4 月 22 日基本法起草委員會通過的「基本法結構(草案)」所列出的章節而寫。
- (2) 工作組已對財務、稅收、金融制度和經濟制度等四個專題進行了多次討論，提供了不少意見，現在作一歸納，以便提供草委會經濟專題小組參考。

(3) 四個專題中第一題：經濟

第(1)條基本上摘自聯合聲明附件一第六段，只加上“不實行在中國內地實行的社會主義經濟制度和政策”及“自行制訂經濟政策”。

第(2)條基本上摘自聯合聲明附件一第六段，只加上“包括知識、專利權、版稅、設計權等無形財產”一句。

第(3)條是聲明中沒有的，我們小組歷次討論中提到，說“原有資本主義制度”也好，說“一國兩制”也好，重要的是要肯定“財產所有權”和“市場決定生產、分配和價格”的原則；不在基本法中寫明這二個原則，其他提法會流於空泛。

有委員建議將這條取消，因為這裡包含了幾個概念：①市場決定資源分配；②司法上的概念(司法的章節已包括)；③政府不可享有特權；都是與現實不符，而政府實宜保留其特權。此外，基本法內應盡量避免用籠統的詞句，亦不可被用作記錄各人的憂慮的，在此章節更只是談精神，而第(1)條已寫明實行資本主義制度，故已足夠。但有委員却認為應保留這條，因這些均為經濟理論。

此外，似乎無須在基本法有關經濟這一節中寫得太過詳細。當然，我們還需想一想，看看遺漏了甚麼沒有？上述三條又如何使之嚴密而且完整。

從 1986 年 4 月 22 日的「基本法結構(草案)」看，或許以上三條應歸入第一章總則，而第五章香港特別行政區的經濟直接就講財政管理、稅收政策等具體問題。這可以由起草委員會去決定。我們作為諮詢委員會屬下一個工作組在於對經濟這一個題目提出認為應當在基本法中寫進去的原則。

(4) 第二題：財政管理

第(1)、(2)、(3)條基本上摘自聯合聲明附件一第五段。

第(4)條是小組討論中多次提出的一個重要觀點。多數委員認為“財政支出繼續與本地國民生產總值保持適當比例”這一提法比規定一個具體百份比來得妥當。

有委員認為這寫法是適宜的；但亦有委員認為這說法不宜寫進基本法，故建議取消此條，而將「審慎理財」一概念加進第(1)條。

第(5)條是一個新的意見，事實上香港一向以來都是這樣做的。相信這樣在基本法里加以明確，既可以保證特別行政區政府不致浪費公帑，又可以增強公眾信心。

其他諸如公債該怎麼發行等等，似乎無須在基本法里太詳細。

(5) 第三題：稅收

第(1)條基本上摘自聯合聲明附件一第五段，只是在“行政區”之後加上“政府和居民”五個字。

根據草委曾表示：聯合聲明附件一原始就是這個意思。那末把它清楚寫明在基本法上更好。這句的意思是指在中國大陸以外的地方。

第(2)條是本小組多次討論中所強調的一個原則：“簡單的稅制和相對低的稅率”。不講具體數字，只講一個政策，應該是於特別行政區有利的。

第(3)條實際上包括了本小組一直關心的一些事情，包括：徵稅是否限於發生在本港的盈利等等。

現在這一寫法比較容易被人們所接受，而實際上解決了我們關心的問題。

第(4)條的處境與第(3)條相似。

(6) 第四題：金融制度和政策

4條都是草委原文，其中第(3)條“港幣的發行必須有充份儲備金”，對於“充份”兩字，委員建議用“不低於百份之百之貨幣儲備金”更為明確。

現有四條與本小組原來提出的12條對比，差別在於沒有具體提到銀行監管制度以及貿易發展局之類基本建設。委員認為第(1)條“提供必要條件，採取適當措施”亦太籠統，無需寫下。

至於外匯基金應由獨立的信託機構管理，本小組前曾提出，現在草委所提四條並無列入，看來此點不寫進去也好。

浮動匯率還是聯繫匯率等等無需在基本法里討論，宜從略。