

OPINIONS ON CHAPTER 5  
"THE ECONOMY OF THE HKSAR"  
OF THE DRAFT (AUGUST 1987) OF THE BASIC LAW

(passed by the Executive Committee on 4 November 1987)

Special Group on  
Finance, Business, and Economy

The Special Group has also brought up two points which are the cornerstones of the present economy of Hong Kong. It is therefore proposed that the spirit of these two points be included in the General Provisions of the Basic Law:

- (1) The HKSAR shall continue to practise free competition and market economy.
- (2) The HKSAR Government shall as far as possible avoid competing with private firms in the market.

## Introduction

The Special Group on Finance, Business, and Economy submitted its final reports to the Drafting Committee in August. During the last two months, the Special Group held four meetings to discuss in-depth the draft articles released by the fifth plenary session of the Drafting Committee. In addition, Mr Wong Po Yan, Hong Kong co-convenor of the Subgroup on Economy of the Drafting Committee, was invited to our exchange sessions on two occasions. Mr Sanford Yung also attended a meeting of the Special Group and provided an amended version to our members for discussion. At a meeting with Mr Louis Cha, the co-ordinating group of the Special Group had the opportunity to know more about the discussion of the Drafting Committee.

After rounds of discussion, our Special Group has come up with a number of proposed articles for the consideration and possibly redrafting of the Drafting Committee. Some of these proposed articles were already published in our final reports. They are the results of discussions at more than ten working group meetings. Even the wording has been deliberated carefully again and again. It is hoped that the drafters will consider them seriously.

Most of the proposed articles reflect the consensus of the Special Group. Our members are divided only on two articles, namely, Article 2 on the basically balanced budget of the SAR and Article 4 on the policy of low tax rate. Individual members have also submitted discussion papers which analyse and explore these issues thoroughly.

To facilitate a comparison between the draft articles and our proposed articles, we have prepared a table of comparison on which discussion can be based.

In addition, some discussion papers prepared by our members have been incorporated into the table in the form of provisions. Other papers submitted by members are appended to this report for the reference of the Drafting Committee.

The 40-odd members of the Special Group are all well-informed about the economy of Hong Kong and have made considerable contribution to it. These members are from different sectors of the economy such as banking, trade, industry, real estate, taxation-related business, shipping, and civil aviation. Some are in charge of organisations which support the development of industry and commerce in Hong Kong (e.g. Trade Development Council and Hong Kong Productivity Council), and some are scholars of economics. Members of the Special Group would like assist to the Subgroup on Economy of the Drafting Committee in drafting the articles on economy. This is particularly important as the economy of Hong Kong has significant bearing on the prosperity and stability of Hong Kong.

## Contents of this report

- (1) Introduction
- (2) Table of Comparison
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-- Comments on the draft articles by Mr Peter J. Wrangham

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



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Chapter 5 The Economy of the Hong Kong Special Administrative Region (Draft)

Amended version as suggested by Mr Sanford Yung

Views of CCBL members

Section 1 Public Finance and Taxation

Article 1: 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 2: The HKSAR shall maintain a basically balanced budget.

The growth rate of the HKSAR budget shall not exceed the growth rate of the Gross Domestic Product.

[Note] A member proposed to delete the word "rate" which appeared twice in the second paragraph. Some members considered that it was unnecessary to include the second paragraph in the Basic Law.

Article 3: The HKSAR shall adopt an independent taxation system.

Article 4: The HKSAR shall continue to maintain a policy of low tax rate.

Article 5: The type, rate, and exemption of tax of the HKSAR shall be stipulated by the HKSAR in law.

[Note] Some members held that the following provision should be added as the second paragraph: "The HKSAR shall not impose tax on Hong Kong inhabitants on their extra-territorial income." Some members opposed to the inclusion of such specific provision in the Basic Law.

Article 1: (Same as Article 1 in the Draft)

[Note] It is suggested that Article 2 in the Draft be deleted because there may be difficulties in its implementation. For example, what is meant by "basically balanced"? If in a certain year the economy suddenly changes for the worse and the income of the HKSAR falls short of the expected level, does it mean that it must immediately reduce expenses in order to be in accordance with this Article?

Article 2: The HKSAR shall adopt an independent taxation system. The Central People's Government shall not levy taxes on the HKSAR. The type, rate, and exemption of tax of the HKSAR shall be stipulated by the laws of the HKSAR.

[Note] It is suggested that Articles 3, 4, 5, and 6 be combined into one. Since the type, rate, and exemption of tax etc. are all to be stipulated by HKSAR laws, it is unnecessary to mention the "policy of low tax rate". Moreover, it is difficult to lay down what exactly qualifies as low tax rate.

Article 1: A member proposed that the first paragraph be deleted lest there should be the misunderstanding that the SAR could not make any loans from outside Hong Kong.

Article 2: Most members considered that it would be more appropriate to provide that "The expenditure shall be maintained at an appropriate ratio to the Gross Domestic Product" than to set down a definite percentage. However a member maintained that the percentage should be laid down. Also, there was a view that this article should be deleted. Another member held that it would be adequate just to mention the concept that the government should maintain its finance prudently.

Article 3: No particular comment.

Article 4: CCBL members held that the meaning of "a policy of low tax rate" was obscure but to maintain the investors' confidence, its inclusion in the Basic Law was feasible. CCBL members held that to be more accurate, the term should read "a low tax regime".

In addition, CCBL members proposed that it be stated that the HKSAR should adopt "a simple and consistent tax system". The word "consistent" means that the tax system should remain permanently stable and should not be amended to solve temporary problems.

Article 5: The group was concerned whether tax would only be levied on the profit derived from Hong Kong. The present article was more acceptable.

It was suggested that a new article be added to authorise the HKSAR to sign agreements with the PRC and other states on mutual exemption of double taxation.

Article 6: The Central People's Government shall not levy taxes on the HKSAR.

[Note] Some members proposed to amend the wording to "The HKSAR shall not have the duty to pay tax to the Central People's Government."

Article 7: The budgets of the HKSAR shall be drawn up by the SAR executive authorities, examined and approved by the SAR legislature, and reported to the Central People's Government for the record.

Article 8: The expenditure of the HKSAR Government shall be in accordance with the budget.

Any expenditure which exceeds the budget shall be submitted to the legislature for examination and approval or subsequent endorsement.

Article 10: The final accounts of the HKSAR shall be drawn up and audited by the SAR executive authorities, examined by the SAR legislature, and reported to the Central People's Government for the record.

Article 3: The budgets of the HKSAR shall be drawn up by the SAR executive authorities, and submitted to the SAR legislature for examination and approval, and reported to the Central People's Government for the record.

[Note] Amend "examined and approved by the SAR legislature" to "submitted to the SAR legislature for examination and approval" in order to emphasise the fact that the legislature has the power to approve or reject the budgets.

Article 4: The management system of public expenditure shall continue will be stipulated by HKSAR laws.

[Note] The meaning of paragraph 1 of Article 8 in the Draft is unclear; it seems as though even an expenditure smaller than that in the budget is unacceptable.

The content of paragraph 2 is already stipulated in the present legislation regarding public finance. If this clause is singled out, it may seem that other clauses in the legislation are neglected. This problem will not arise if the amended version is adopted.

Article 5: The final accounts of the HKSAR shall be drawn up annually by the SAR executive authorities.

[Note] Since the auditing authorities will be responsible for auditing, it is unnecessary by the executive authorities."

The normal work procedure is to first draw up the final accounts and then carry out the auditing. Therefore, the order of Articles 9 and 10 in the Draft should be reversed.

Article 6: Members proposed that this article be rewritten as follows: "The Central People's Government shall not levy taxes on the HKSAR Government and inhabitants."

It was suggested that following be clearly laid down: the Central People's Government should not levy taxes on extra-territorial income of HKSAR inhabitants.

Article 7: Extracted from Annex 1 of the Joint Declaration.

Articles 8 to 10: "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."

Article 9: Public accounts of the HKSAR shall be verified by the SAR auditing authorities.

The SAR auditing authorities shall report to the SAR legislature annually.

## Section 2 Finance and Monetary Affairs

Article 11: 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 12: The HKSAR shall decide its monetary and financial systems on its own.

Article 13: The HKSAR shall maintain a free and open policy regarding finance and monetary affairs.

Article 14: The HKSAR Government shall safeguard the free operation of financial businesses and financial markets, and regulate and supervise such businesses and markets in accordance with law.

Article 15: The HKSAR Government shall safeguard the free flow of capital within, into and out of the HKSAR.

Article 6: The final accounts (including public accounts) of the HKSAR shall be audited by the auditing authorities of the SAR.

The auditing authorities shall annually submit the auditing report on the final accounts to the SAR legislature for examination, and report to the Central People's Government for the record.

[Note] The terms of reference of the auditing authorities should encompass the entire final accounts, and should not be limited to only the public expenditure accounts.

Article 7: The HKSAR Government shall provide appropriate economic and legal conditions to facilitate the maintenance of the HKSAR as an international financial centre.

[Note] It is difficult to define what are "necessary conditions" as in the Draft. It is suggested that the expression be deleted.

Article 8: The HKSAR shall decide on its own its monetary and financial policies.

[Note] The word "systems" in the Draft is a replacement of the word "policies" in Annex 1 of the Joint Declaration.

Article 9: (Same as Article 13 in the Draft.)

Article 10: The monetary and financial systems previously practised in Hong Kong, including the systems of regulation and supervision of deposit taking institutions and financial markets, shall be maintained.

[Note] The amended version is taken from Annex 1 of the Joint Declaration.

Article 11: The HKSAR Government shall safeguard the free operation of financial business and the free flow of capital within, into and out of the HKSAR.

[Note] The meaning of the Draft is incomplete. The amended version is taken from Annex 1 of the Joint Declaration.

Article 11: Members held that the expression "shall provide the necessary conditions and take appropriate measures" was too vague to be laid down as a provision.

Articles 12 to 15: 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.)

Article 16: No exchange control policy shall be applied in the HKSAR.

Article 17: Markets for foreign exchange, foreign currencies, gold, securities, and futures shall continue to open in the HKSAR.

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

Article 18: The Hong Kong dollar, as the legal tender of the HKSAR, shall continue to circulate and remain freely convertible.

Article 19: The authority to issue Hong Kong currency shall be vested in the HKSAR Government.

The issue of Hong Kong currency shall have sufficient 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 currency will be soundly based and that the arrangements for such issue are consistent with the maintenance of the stability of the currency.

Article 20: 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

Article 21: The HKSAR shall adopt a free external trade system.

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

Article 12: (Same as Article 16 in the Draft.)

Article 13: Markets for foreign exchange, gold, securities, and futures shall continue to open in the HKSAR.

[Note] Delete the expression "foreign currencies".

Article 14: (Same as Article 18 in the Draft.)

Article 15: (Same as Article 19 in the Draft.)

Article 16: (Same as Article 20 in the Draft.)

Article 17: The HKSAR shall continue to adopt a free trade policy, including the free movement of goods and capital.

[Note] Delete the word "external" to avoid the misunderstanding that internal trade will not be free.

Article 16: Extracted from Section 7 of Annex 1 of the Joint Declaration.

Article 17: Extracted from Section 7 of Annex 1 of the Joint Declaration.

Article 18: "The Hong Kong dollar" should read "The Hong Kong currency".

Article 19: Members suggested replacing the word "sufficient" with "100% and freely convertible".

A view was expressed regarding the Chinese term for "reserve". It was suggested that term commonly used in the PRC be adopted whereas the term used in Hong Kong be put in brackets.

Article 20: The CCBL members were of the same view.

Article 21: Members raised the following opinions:

(1) The expression "a free external trade system" is obscure. It is not a common economic term. Does it refer to "a free trade policy" or "the freedom to conduct external trade" or other meanings?

(2) "Intangible capital" is not a common economic term. Does it refer to "invisible trade" or "intellectual property" or other meanings? If "intangible capital" includes "intellectual property", the provision will be contrary to the view of the Working Group. Members held that the free movement of intellectual property should not be allowed as the HKSAR Government should be responsible for protecting the copyrights, patents and registration in the HKSAR.

Article 22: The HKSAR shall decide its external trade policy on its own.

The HKSAR may on its own maintain and develop economic and trade relations with all states and regions.

Article 23: The HKSAR shall be a free port.

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

Article 24: The HKSAR shall be a separate customs territory.

Article 25: 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 26: 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 18: The HKSAR Government shall on its own decide its economic and trade policies.

[Note] Amend "external" to "economic and" to cover a larger area and to avoid the misunderstanding that "internal trade" will not be decided by the HKSAR Government on its own.

Article 19: The HKSAR shall continue to be a free port. The HKSAR shall not impose any tariff unless otherwise stipulated by law.

[Note] Adding the words "continue to" will more precisely convey the meaning in Annex 1 of the Joint Declaration.

Article 20: (Same as Article 24 in the Draft.)

Article 21: (Same as Article 25 in the Draft.)

Article 22: Export quotas, tariff preferences and other similar arrangements obtained by the HKSAR shall be enjoyed exclusively by the HKSAR.

[Note] The amended version is more concise.

Members held that the provisions regarding trade policy should be re-drafted as follows:

- (1) The HKSAR shall practise a free trade policy and protect free trade. The features of a free trade policy are: free enterprise, minimum government intervention, no control on foreign exchange, free port status, free flow of capital, etc.
- (2) The HKSAR shall protect intellectual property such as copyrights, patents, and registration.
- (3) A view was expressed that it was preferable to allow the HKSAR Government to decide its economic and trade policies on its own.

Article 14: Extracted from Section 5 of Annex 1 of the Joint Declaration.

Article 25: Members were very much concerned that the HKSAR Government should have the right to fight for a seat in any international body with the purpose of promotion of trade.

Proposed article: The HKSAR shall have the right to negotiate with foreign governments for the furtherance of trading benefits provided that such right is not a breach to the PRC sovereignty on the diplomacy level.

Article 26: Members considered that the following should be stated in the part on industrial and commercial policies: "The HKSAR will:-

- 1) be entitled to export quotas, tariff preferences and other similar arrangements obtained by itself;
- ii) continue to operate as a separate customs territory.

A member held that Article 26 should be rewritten as follows: "Export quotas, tariff preferences and other similar arrangements obtained by the HKSAR under international agreements shall be enjoyed exclusively by the HKSAR."

Article 27: The HKSAR may issue its own certificates of origin for local products in accordance with prevailing rules of origin.

#### Section 4 The Various Industries and Commerce

Article 28: The HKSAR shall implement a free and open policy regarding industry and commerce.

Article 29: The HKSAR shall encourage industrial investment and technological advancement, and open up new industries in order to strengthen its competitiveness in the international arena.

Article 30: The HKSAR Government shall actively create the necessary environment and conditions to facilitate industrial development.

Article 23: (Same as Article 27 in the Draft.)

Article 24: (Stylistic amendment in the Chinese text only.)

Article 25: (Same as Article 29 in the Draft.)

Article 26: The HKSAR Government shall provide the necessary environment and conditions to facilitate industrial and commercial development.

[Note] Delete "actively create" to avoid possible controversy in future as to whether the government has carried out this duty. "Industrial development" is amended to "industrial and commercial development" to make it more appropriate.

Article 27: It was proposed that the following be stated in the part on industrial and commercial policy: The HKSAR shall have authority to issue its own certificates of origin for products manufactured locally, in accordance with prevailing rules of origin.

Article 28: Members held that the provision on "a free and open industrial policy" was hardly comprehensible and might be misleading. "A free and open industrial policy" refers to the absence of any established policy, that is, the government would not interfere in any matter affecting industry e.g. environmental control, labour legislation etc. The Working Group advocated "free enterprise" and "a fully competitive economy" instead of "a free and open industrial policy".

Proposed article: The HKSAR shall maintain the existing free enterprise policy to activate a free and fully competitive economy.

Article 29: Members' view: If the Drafting Committee was in favour of a free and open industrial policy, the ensuing provisions on the encouragement of industrial investment would be inconsistent.

Article 30: The article seems to have confused the terms "policy", "system", and "measure".

Proposed article: "The HKSAR Government shall continue to create the necessary environment and conditions for the development of industry and commerce."

"The HKSAR Government shall maintain the policy of giving investment incentives."

"The HKSAR shall promote:-

- 1) the development of industry (and take the role of small and medium industries into account);
- ii) the establishment of new industries; and
- iii) advances in technology capability."



Article 31: The HKSAR shall actively adopt appropriate policies to promote the development of commerce, tourism, real estate industry, transport industry, public utilities, service industries, agriculture and fishery, etc.

#### Section 5 Land Leases

Article 32: The HKSAR may on its own decide policies regarding the development, management and use of land.

Article 33: 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 34: From 1 July 1997, all leases of land granted or renewed (though previously not having a right of renewal) 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, shall not require payment of an additional premium but 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 35: 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 1998 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 27: The HKSAR Government shall adopt appropriate policies to regarding the various economic activities.

[Note] For the same reason as above the word "actively" is deleted. As it is technically impossible to list out all industries in a legal provision, a general term "economic activities" is adopted.

Article 28: (Same as Article 32 in the Draft.)

Article 29: (Same as Article 33 in the Draft.)

Article 30: All land leases granted or renewed between the dates 27 May 1985 and 30 June 1997, shall from 1 July 1997 onwards be charged an annual rent equivalent to 3 per cent of the rateable value of the property. The rent will be adjusted in step with any changes in the rateable value thereafter. However, no payment of premiums will be required on 1 July 1997 for such leases.

[Note] Strictly speaking, the meaning in this Article and Article 35 in the Draft is already included in Article 33 in the Draft. If this Article is to be retained, it should be amended as above.

The meaning of the amended version is consistent with that of Annex III of the Joint Declaration.

Article 31: (Same as Article 35 in the Draft.)

Article 31: The article seems to have confused the terms "policy", "system", and "measure".

Proposed article: "The HKSAR Government shall on its own decide policies regarding commerce and various industries such as transport, public utilities, service, tourism, real estate, and agriculture and fishery."

\* CCBL members held that the land policy was very important to the economy and should constitute a section in the Basic Law. The section could touch briefly on the essentials whereas the details could be included in the annex to the Basic Law.

Article 32

Proposed article: The HKSAR Government may on its own decide its land policy, including policies on transaction of land, lease of land, payment of additional premium and taxation, and the utilisation of the revenue thus accrued.

Article 29: Extracted from Annex III of the Joint Declaration.

Article 30: The CCBL members held that the Basic Law should mention: "Where leases of land not having a right of renewal expire after 30 June 1997, they shall be dealt with in accordance with the relevant land laws and policies of the HKSAR."

(i.e. part of the second paragraph of Annex III of the Joint Declaration)

Article 35: Members held that indigenous New Territories inhabitants should still be entitled to exempted houses. But this privilege need not be specified in the Basic Law.

Article 36: 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.

[Note] Some members considered that the specific issues on land leases should not be dealt with in detail by the Basic law. It was proposed that the relevant provisions under Annex III to the Joint Declaration be summarised into a single article and included in Section 4 of this Chapter.

#### Section 6 Shipping Management

Article 37: 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 38: 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 32: (Same as Article 36 in the Draft.)

Article 33: (Has yet to be decided.)

Article 34: (Same as Article 38 in the Draft.)

\* This special group has proposed 4 articles regarding shipping management, and considered that they should be contained in the Basic Law, rather than in the annex.

Article 37: The HKSAR shall have authority on its own to deal with all matters affecting the regulation of merchant shipping to its territory, to set up an autonomous shipping register in accordance with general principles agreed between the HKSAR and the Central People's Government (see Annex 000 "The Hong Kong register of shipping" -- published by the Economic Services Branch, Government Secretariat), to regulate shipping management, and to issue certificates in the name of "Hong Kong, China".

Article 38: Private shipping and shipping-related businesses and terminal facilities in Hong Kong may continue to operate freely. Shipping businesses owned or controlled by state organisations or similar bodies will be able to register ships on the HKSAR Register but will at all times be treated in law as private businesses and not enjoy sovereign immunity. Shipping businesses shall be entitled to but not be required to register or de-register ships from the HKSAR register in accordance with the laws and regulations of the HKSAR.

Note: "Sovereign immunity" means these state organisations should be able to be sued in the courts like private persons or corporations and cannot avoid legal liability by hiding behind their nature as state organisations.



Article 39: 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 40: 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 41: 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 35: (Same as Article 39 in the Draft.)

Article 36: (Same as Article 40 in the Draft.)

Article 37: (Same as Article 41 in the Draft.)

Article 39: Merchant ships registered on the HKSAR Register shall have Chinese nationality and fly both the national flag of the People's Republic of China and the emblem of the HKSAR. The ships shall enjoy free access to and the freedom to trade between all ports of the People's Republic of China. Access of foreign naval vessels to the territory of the HKSAR will require the permission of the Central People's Government.

Article 40: Jurisdiction over ships on the HKSAR Register and their personnel rests with the HKSAR Government. International protection of and responsibility for HKSAR-registered ships vis-a-vis foreign states rests with the Central People's Government. The HKSAR may retain or assume membership status with international maritime organisations, such as IMO, in its own name after informing the Central People's Government.

\* This special group has proposed 5 articles regarding civil aviation management, and considered that they should be contained in the Basic Law, rather than in the annex.

Article 41: The HKSAR shall maintain the status of Hong Kong as a centre of international and regional aviation. It shall keep its own aircraft register with the "VR" registration mark and the HKSAR emblem shown on the aircraft. The HKSAR shall have autonomy and responsibility for all operational and technical matters affecting aircraft on its register, the routine management of civil aviation including the management of airports, the provision of air traffic control services within the HKSAR FIR, and the discharge of all other responsibilities allocated under regional air navigation procedures of ICAO. The HKSAR has jurisdiction over HKSAR-registered aircraft, their crews, passengers, and cargo. International protection and responsibility for HKSAR-registered aircraft vis-a-vis foreign states rests with the Central People's Government.

Article 42: 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 43: 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 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 44: The HKSAR Government shall, in consultation with the HKSAR, make arrangement 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 38: (Same as Article 42 in the Draft.)

Article 39: The HKSAR shall be responsible on its own for matters of routine business and technical management of civil aviation, including the management of airports, the provision of air 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.

[Note] The word "including" is used after "technical management of civil aviation" in paragraph 1 of Section VI of Annex I of the Joint Declaration to indicate that a long list of items should follow but they were too numerous to be mentioned individually. This Article should faithfully reflect this point.

Article 40: (Same as Article 44 in the Draft.)

Article 42: The HKSAR shall have autonomy to issue Air Operator's Certificates to airlines incorporated and having their principal place of business in Hong Kong, to regulate on its own the licensing and designation procedures for such airlines for scheduled operations, and the granting of permits for non-scheduled flights to and from Hong Kong to HKSAR-registered and foreign aircraft not touching on other points within the People's Republic of China. Access of foreign military aircraft to the HKSAR shall require the permission of the Central People's Government.

Article 43: In consultation with the HKSAR, the Central People's Government shall make arrangements providing for air services between the HKSAR and other parts of the People's Republic of China for HKSAR and PRC airlines on the basis of an appropriate balance of opportunities for access to the PRC by HKSAR airlines, and to the HKSAR by PRC airlines.

Article 44: Acting under specific authorisations from the Central People's Government, the HKSAR has autonomy to negotiate, conclude, review, amend, or terminate Air Service Agreements or provisional arrangements for overflying rights, rights for technical stops, and for scheduled air services to, from, or through the HKSAR which do not operate to, from, or through the mainland of China. The result of such arrangements shall be reported to the Central People's Government for the record.

Article 45: 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 such services mentioned in the first paragraph of this Article.

Article 46: 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 (in principle, all such Agreements and arrangements may be renewed or amended with the rights contained in such previous Agreements and arrangements being as far as possible maintained);
- (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 shall be regulated by Air Service Agreements or provisional arrangements referred to in this Article.

Article 41: (Same as Article 45 in the Draft.)

Article 42: (Same as Article 46 in the Draft.)

Article 45: 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 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 this connection the Central People's government shall consult the HKSAR Government and take account of the special conditions and economic interests of the HKSAR and the HKSAR airlines, and the conditions established by Air Service Agreements entered into by the HKSAR in accordance with Article 44.

Representatives of the HKSAR may participate as members of delegations of the Central People's Government in air service consultations and negotiations with foreign governments concerning arrangements mentioned in this Article.

Article 47: 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 48: Airlines incorporated and having their principal place of business in Hong Kong and civil aviation related businesses may continue to operate.

[Note] Some members proposed Article 46 and 47 be combined as follows: "Acting under specific authorisations from the Central People's Government, the HKSAR Government may negotiate, amend, renew or conclude Air Service Agreements, arrangements, or provisional arrangements concerning the HKSAR Government, and make arrangements in accordance with law, and shall report to the Central People's Government for approval or record."

Article 43: (Same as Article 47 in the Draft.)

Article 44: (Same as Article 48 in the Draft.)

The Policy of Low Taxation

1. Low taxation may imply low tax rates or a narrow tax base and a small number of tax bases. But a low tax rate can be maintained in the longer run only if the tax base is broadened and/or the number of tax bases increased. Thus, we need a clearer definition of a low tax policy.
2. A low tax rate does not guarantee the amount of tax paid is also low if taxpayers have to pay more types of taxes.
3. A low tax rate ensures smaller distortion in the allocation of resources, making economic decision-making less dependent on the tax system. Thus a low tax rate is preferred even if the tax base has to be broadened and the number of tax bases increased. In doing so, the equity aspect should of course also be considered.
4. It is however difficult if not impossible to define what a low tax rate is. A low effective rate of tax (tax paid as a percentage of assessable income) should also be distinguished from a low marginal tax rate (the rate at which tax is levied on additional income earned).
5. In Hong Kong, business units have never paid tax at more than 18.5%, and households have lived with a marginal tax rate of 25% for many years. If past experience is a good indicator of the future, economic decision-making would not be seriously distorted even if the tax rate is increased to 20-25%. This implies that if a percentage figure is to be written into the Basic Law, it could be stipulated that "the income tax rate in the HKSAR shall not exceed (say) 22.5%".
6. Besides income or direct taxes, there are also indirect taxes on consumption expenditures. We must note that for some goods and services which are not meritorious, the tax rate should not be low.
7. The importance of a low tax rate in attracting foreign investment tends to be overstated. The results of many studies indicate that there are other more important considerations such as political and economic stability, physical, administrative and human infrastructures, local supply of raw materials and fuels, etc.
8. In conclusion, the simple statement of maintaining a low tax policy in Hong Kong has no real meaning. The conception is unclear and unspecific and therefore it cannot be interpreted unambiguously. The only justification for its inclusion in its present form in the Basic Law is to, psychologically, make investors feel better.
9. It is also not advisable to include in the Basic Law an elaborated clause on defining a low tax policy and setting a limit on the tax rate. This is too binding for the future government of the SAR.

E.K.Y. Chen

September 28, 1987.

# HongkongBank

The Hongkong and Shanghai Banking Corporation

Area Management Office: 1 Queen's Road Central, Hong Kong

P J Wrangham  
Executive Director Hong Kong

Miss Amy Ho  
Administrative Officer  
The Consultative Committee for  
the Basic Law  
8th Floor Lane Crawford House  
HONG KONG

25 September 1987

Dear Miss Ho,

I refer to your letter of 22nd September regarding the date of the next Special Group meeting on Finance, Business and Economy being on 2nd October.

On reading through again the draft Chapter 5 there are a number of issues which I consider are of sufficient importance to write to you.

Article 2. The spirit of Article 2 in particular "a basically balanced budget" is not intended as a straitjacket on the SAR government, but rather to maintain the current fiscal stance which has been an essential ingredient in Hong Kong's success. We should not take away this safeguard clause. We have discussed at length the need for a ceiling on the share of Government spending as a proportion of GDP; however this has been considered to be inflexible and inappropriate. It is necessary in my view to include some choice of words.

Furthermore, the Government's fiscal position affects Hong Kong's international credit rating which has already suffered from the 1997 issue. The government's fiscal position is one of the indicators that international credit rating agencies use to decide on the territory's credit rating which affects local enterprises' ability to raise capital abroad. One of Hong Kong's remaining strong points is the government's excellent fiscal position. If the future SAR government runs sustaining fiscal deficits, it would further lower Hong Kong's sovereign rating after 1997. It is important to remember that some institutions in Hong Kong have financial ratings internationally and it would have serious repercussions for their businesses.

Article 16. As I have indicated on several occasions I am worried by the finality of this article. However the wording has received some publicity so it may now be difficult to remove it.

Article 19. There does appear to be widespread agreement that currency notes at issue shall be covered by foreign currency reserves of 100% or more in value of readily convertible securities.

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# HongkongBank

Miss Amy Ho  
Administrative Officer  
The Consultative Committee for  
the Basic Law

25 September 1987

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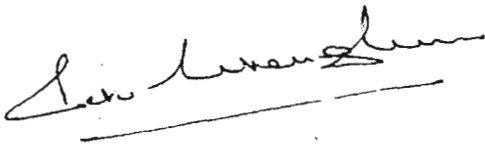
Article 28. The words 'free' and 'open' have been used a number of times in the proposal without a clear definition. I consider more definition should be sought for 'free' and 'open'.

There are some other issues which have been mentioned over the past eighteen months and which I think have been included in other Chapters.

- a. The role of expatriates in industry.
- b. The freedom of choice of occupation.
- c. Prices should be determined by market forces.
- d. The free flow of information both internally and externally.

Could you please advise me where these issues are included in other Chapters?

Yours sincerely



A handwritten signature in cursive script, appearing to read 'Amy Ho', is written over a horizontal line.



# 對基本法第五章「香港特別行政區的經濟」 條文草稿(一九八七年八月)的意見

(1987年11月4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

# 前 言

金融財務經濟專責小組曾在本年八月份向草委遞交了最後報告，至今兩個月內，小組曾開專責小組會議四次，深入討論了草委在第五次全體會議中發表的條文草稿，並曾兩度邀得草委經濟專題小組港方召集人黃保欣先生出席作交流。另外，容永道先生亦曾出席本組會議並提出他的條文修改稿供委員討論。本組統籌組亦曾與查良鏞先生會面，以加深瞭解草委會議的討論情況。

經多次討論後，本組提出建議條文多項供起草委員參考改寫。這些建議條文有部份已於本組最後報告內提出，是為十多次工作組會議的討論成果，在字眼方面亦曾反覆斟酌，望草委予之認真考慮。

各建議條文絕多皆為本組所有委員的一致共識，較具爭論性的題目只有兩項，即為第二條有關特區財政預算保持收支基本平衡和第四條有關低稅政策。本組個別委員已就此等問題寫成討論文件，加以詳細分析、探討。

為求方便起草委員對本組的建議條文作出參照和比較，本組特制成條文比較表作為討論基礎，使能一目瞭然。

另外，由個別委員寫成的討論文件，經討論後被本組條文化的已納入比較表內，其他的討論文件則附於表後供草委詳細參考。

此外，本組提出兩點，是為現時經濟運作的基石，故提議在總則內包涵此兩點的精神：

- (1) 香港特別行政區繼續實行自由競爭、市場經濟；
- (2) 香港特別行政區政府盡量避免在商場上與私人商號作商業競爭。

本組成員凡四十多人，皆為對本港經濟有深切認識和貢獻良多之人士。委員來自本港經濟之各個環節，有銀行界的、貿易界的、廠商界的、地產界的、稅務界的、航運、民航界的等等，亦有為扶助本港工商業發展的機構（如貿易發展局、生產力促進局等）的負責人士，和經濟學者的參予。本組望能協助草委經濟專題小組寫好基本法中有關經濟的條文。此工作至為重要，因本港的經濟對繁榮及安定實有舉足輕重的影響。

本文件內容：

- (1) 前言
- (2) 條文比較表
- (3) 附件.....「低稅政策」      --      陳坤耀委員撰寫  
        對條文的意見            --      雷興悟委員撰寫

## 建議條文比較表

### 第五章 香港特別行政區的經濟

#### 容永道建議修改稿

#### 諮委意見

#### 第一節 財政和稅收

第一條 香港特別行政區的財政獨立。  
香港特別行政區的財政收入全部用于自身需要，不上繳中央人民政府。

第二條 香港特別行政區的財政預算應保持收支基本平衡。  
香港特別行政區財政預算收支的增長率以不超過本地生產總值的增長率為原則。

(說明) 個別委員建議，將第二款的兩個“率”字刪去。有些委員則認為，第二款可不寫進基本法。

第三條 香港特別行政區實行獨立稅收制度。

第一條 (照草稿第一條)

(說明) 此條建議刪去。原因為實際執行起來恐有困難。例如怎樣才算「基本平衡」？若某年經濟情況突然變壞，不能取得預期收入，是否要立刻削減開支才算是符合此條規定？

第二條 香港特別行政區實行獨立的稅收制度。中央人民政府不在香港特別行政區徵稅。香港特別行政區稅種、稅率、稅

第一條 有委員認為應刪去第一款，以免使人誤解為特區不可向外借款。

第二條 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”比規定一個百分比來得妥當。  
有委員認為適宜，有委員建議取消此條，亦有委員建議將審慎理財之概念包括便可。

第三條 無特別意見。

第四條 香港特別行政區繼續實行低稅政策。

收寬免等等都由特別行政區的法律所規定。

第四條 諮委認為「低稅政策」一詞的意義並不明確，但為令保持投資人士的信心，寫入基本法內亦為可行，並提議改為「低稅制度」較為準確。另外，諮委認為亦應訂明香港特別行政區實行「簡單和貫徹始終的稅收制度」。貫徹始終的意思是稅制應長期保持穩定，不可因為要解決短暫的問題而隨意修改。

第五條 香港特別行政區稅種、稅率、稅收寬免，由特別行政區以法律規定。

(說明)有的委員主張把“香港特別行政區不向特別行政區居民的區外收入征收所得稅”的內容作為本條的第二款寫進基本法。有的委員不贊成將這樣的具體內容寫進基本法。

(說明)建議把第三、四、五、六條合為一條。

既然特別行政區的稅種、稅率、稅收寬免等等都由特別行政區的法律所規定，無需要再提「低稅政策」。何況怎樣才算低稅亦難以界定。

第五條 小組關心徵稅是否限於發生在本港的盈利等，現這一寫法較容易被人們接受。有提議為應多加一條付予香港特別行政區同中華人民共和國和其他國家簽訂互免相重課稅的協定。

第六條 中央人民政府不在香港特別行政區徵稅。

(說明)有的委員建議將本條文改為“香港特別行政區不承擔向中央人民政府納稅的義務”。

第六條 諮委建議寫成“中央人民政府不向香港特別行政區政府和居民徵稅”。有提議為應寫明中央人民政府不向香港特別行政區居民的海外收入徵稅。

第七條 香港特別行政區的財政預算，由特別行政區行政機關編制，特別行政區立法機關審議批准，並報中央人民政府備案。

第八條 香港特別行政區政府的開支必須符合預算的規定。  
超過預算的開支應提請特別行政區立法機關審議批准或者追認。

第十條 香港特別行政區的財政決算，由特別行政機關編制、審計，特別行政區立法機關審議，報中央人民政府備案。

第三條 香港特別行政區的財政預算，由特別行政區政機關編制，提交特別行政區立法機關審議批准，並報中央人民政府備案。

(說明)把「立法機關審議批准」改為「提交立法機關審議批准」，使立法機關可批可不批的權力更突出。

第四條 公共開支的管理制度繼續由香港特別行政區的法律所規定。

(說明)草稿第八條第一款含意欠清，似乎連開支預算也不可。第二款的内容在現行公共財政法例已有規定。但是只提此款，有忽略法例內其他條款之嫌。採用修改稿可免此毛病。

第五條 香港特別行政區的財政決算，每年由特別行政區行政機關編制。

(說明)既然已有審計機關負責審計工作，不需再提「行政機關審計」。又一般工作程序上為編制決算在前、審計在後，故把草稿第九和第十條互調。

第七條 摘自聯合聲明附件一。

第八至  
第十條 “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。”

第九條 香港特別行政區的公共開支帳目必須由特別行政區審計機關審核。  
特別行政區審計機關每年均必須將審核結果報告特別行政區立法機關。

第六條 香港特別行政區的財政決算（包括公共開支帳目）必須由特別行政區審計機關審核。此審計機關必須每年將已審核完的財政決算報告予特別行政區立法機關審議，報中央人民政府備案。

(說明)審計機關的審核範圍應是整個財政決算，不應限於公共開支帳目。

## 第二節 金融和貨幣

第十一條 香港特別行政區政府應提供必要條件和採取適當措施，以保持香港特別行政區的國際金融中心地位。

第七條 香港特別行政區政府提供適當的經濟及法律環境以促進香港特別行政區繼續為國際金融中心。

(說明)草稿原有的「必要條件」難以界定，建議刪除。

第十一條 委員認為“提供必要條件，採取適當措施”實太籠統，無需寫下。

第十二條 香港特別行政區自行制定貨幣金融制度。

第八條 香港特別行政區自行制定貨幣金融政策。

(說明)草稿上「制度」一詞，在聯合聲明附件一內原為「政策」。

第十二至第十五條 “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。）

第十三條 香港特別行政區繼續實行自由、開放的貨幣金融政策。

第九條 (照草稿第十三條)

第十四條 香港特別行政區政府保障金融企業和金融市場的經營自由，並依法進行管理和監督。

第十五條 香港特別行政區政府保障資金在香港特別行政區流動的自由和進出香港特別行政區的自由。

第十六條 香港特別行政區不實行外匯管制政策。

第十七條 香港特別行政區繼續開放外匯、外幣、黃金、證券、期貨市場。

(說明)有的委員認為，外匯本身就包含外幣在內，不必另加。

第十八條 港元為香港特別行政區法定貨幣，繼續流通，自由兌換。

第十條 原在香港實行的貨幣金融制度，包括對接受存款機構和金融市場的管理和監督制度，予以保留。

(說明)修改稿文字是參照聯合聲明附件一的。

第十一條 香港特別行政區政府保障金融企業的經營自由以及資金在香港特別行政區流動和進出香港特別行政區的自由。

(說明)草稿意思欠全。修改稿引用聯合聲明附件一原文。

第十二條 (照草稿第十六條)

第十三條 香港特別行政區繼續開放外匯、黃金、證券、期貨市場。

(說明)刪除「外幣」兩字。

第十四條 (照草稿第十八條)

第十六條 摘自《中英聯合聲明》附件一第七節。

第十七條 摘自《中英聯合聲明》附件一第七節。

第十八條 「港元」應為「港幣」。

第十九條 港幣的發行權屬於香港特別行政區政府。

港幣的發行，必須有充足的準備金。  
香港特別行政區政府在確知港幣的發行基礎健全和發行安排符合保持港幣穩定的條件下，可授權指定銀行根據法定權限發行或者繼續發行港幣。

第二十條 香港特別行政區的外匯基金由香港特別行政區政府管理和支配，主要用于調節港元匯價。

### 第三節 對外貿易

第二十一條 香港特別行政區實行自由的對外貿易制度。  
香港特別行政區政府保障對外貿易的自由，保障貨物、無形財產和資本的流動自由。

第十五條 (照草稿第十八條)

第十六條 (照草稿第二十條)

第十七條 香港特別行政區繼續實行自由貿易政策，包括貨物和資本的自由流動。  
(說明)刪去「對外」兩字，免招「對內不自由」之誤會。

第十九條 對“充份”兩字，委員建議改寫為“十足和可以自由兌換的”。  
有意見為因香港慣稱「準備金」為「儲備金」，故提議條文應為「港(儲)備金」。

第二十條 意見相同。

第二十一條 委員提出以下意見：

1. 「自由對外貿易政策」字眼含糊，並非經濟學上的慣用語；令人不明所指的是「自由貿易政策」還是「可自由地進行對外貿易」，還是其他意思。



2.無形資產一語亦非經濟學上慣用語，令人不明所指的是「無形的貿易」，還是「知識資產」，還是其他意思。若「無形資產」包括「知識資產」，則此條文與工作組意見相反。委員認為知識資產不可任自由流動，特區政府應有責任保障特區的版權，專利及登記等。

第二十二條 香港特別行政區自行制定對外貿易政策。  
香港特別行政區可單獨地同世界各國、各地區保持和發展經濟、貿易關係。

第十八條 香港特別行政區政府自行制定經濟和貿易政策。  
(說明)把「對外」改為「經濟和」涵蓋面更廣，又可免除「不對內」的誤會。

委員認為貿易政策條文應再行草擬如下：  
(1)香港特別行政區實行貿易自由政策，保障「自由市場」，其特色是：有自由企業，政府盡少干預，無外匯管制，自由港，資金自由流動等。  
(2)香港特別行政區保障版權、專利和登記等知識資產。  
(3)有意見認為以下條文更為可取：香港特別行政區自行決定經濟和貿易政策。

第二十三條 香港特別行政區為自由港。  
香港特別行政區除法律另有規定外不征收關稅。

第十九條 香港特別行政區繼續為自由港。  
香港特別行政區除法律另有規定外不征收關稅。  
(說明)加上「繼續」二字更貼切反映聯合聲明附件一原意。

第二十四條 香港特別行政區為單獨的關稅地區。

第二十五條 香港特別行政區可以“中國香港”的名義參加關稅和貿易總協定、關於國際紡織品貿易安排等有關國際組織和國際貿易協定，包括優惠貿易安排。

第二十六條 香港特別行政區根據所參加的國際協定取得的及以前取得仍繼續有效的出口配額、關稅優惠和達成的其他類似安排，全由香港特別行政區享有。

第二十條 (照草稿第二十四條)

第二十一條 (照草稿第二十五條)

第二十二條 香港特別行政區取得的出口配額、關稅優惠和達成的其他類似安排，全由香港特別行政區享有。

(說明)草稿原文較累贅。

第十四條 摘自聯合聲明附件一第五節。

第二十五條 委員很關注特區政府應有權在以促進貿易為目標的國際性機構保留及爭取席位。

建議條文：香港特別行政區有權與外國政府談判，以爭取貿易權益，但不得違反中國外交主權為原則。

第二十六條 委員認為應在工商業政策第一節內寫明：“香港特別行政區

i) 享有其本身取得的出口配額、特惠關稅及其他相類安排；

ii) 繼續維持獨立關稅地區的運作。

對於第二十六條，有委員認為應寫成：“香港特別行政區根據國際協定取得的出口配額、關稅優惠和達成的其他類似安排，全由香港特別行政區享有。”

第二十七條 香港特別行政區根據當時的產地規則，可對本地產品簽發產地來源証。

第二十三條 (照草稿第二十七條)

第二十七條 建議在工商業政策一節內寫明：香港特別行政區根據當時的產地規則，對在當地製造的產品簽發產地來源証。

#### 第四節 工商業和其他產業

第二十八條 香港特別行政區實行自由、開放的工業政策和商業政策。

第二十四條 香港特別行政區實行自由開放的工業和商業政策。

(說明)草稿原文有兩個「政策」，且刪其一。

第二十八條 委員認為“自由開放的工業政策”條文令人難於理解及容易被受誤導，自由開放工業政策的意義為沒有既定政策，即政府在任何影響工業，如環境控制、勞工法例等事宜上不加干預，本組主張「自由企業」及「競爭性經濟」，而非自由開放的工業政策。

建議條文：香港特別行政區政府維持現行自由企業政策，以促進自由及競爭性經濟。

第二十九條 香港特別行政區鼓勵工業投資、技術進步和開拓新興產業，以增強國際競爭能力。

第三十條 香港特別行政區政府積極創造必要的環境和條件，以利工業的發展。

第三十一條 香港特別行政區政府應積極採取適當政策，促進商業、旅遊業、房地產業、運輸業、公用事業、服務性行業、漁農業等產業的發展。

第二十五條 (照草稿第二十九條)

第二十六條 香港特別行政區政府提供必要的環境和條件，以利工商業的發展。

(說明)刪去「積極創造」，免日後有人爭論政府曾否盡此責任。又把「工業」改為「工商業」，更合理。

第二十七條 香港特別行政區政府應就各種經濟活動採取適當政策。

(說明)同樣不要「積極」二字，理由見上條。法律條文不能盡列各種產業，提議統稱為「各種經濟活動」。

二十九條：委員意見：倘起草委員主張自由開放的工業政策，則與此有關鼓勵工業投資的條文互相矛盾。

三十條：條文在區分政策及制度與措施上頗為混淆。

建議條文：“香港特別行政區繼續實行工業扶助計劃”及“香港特別行政區政府繼續創造必要環境和條件，以利工商業的發展。”

“香港特別行政區政府維持鼓勵投資的政策”

“香港特別行政區促進：

i) 工業的發展 (並須顧及中小型工業在香港扮演的角色)

ii) 新工業的設立

iii) 技術的進步

三十一條：條文在區分政策及制度與措施上頗為混淆。

建議條文：“香港特別行政區政府自行制訂商業政策及各行業的政策，例如：運輸業、公用事業、服務業、旅遊業、房地產業及漁農業。

## 第五節 土地契約

\* 諮委認為土地政策為經濟運作中很重要的一環，故應該在基本法中佔一節，但該節內容可以是提綱契領，較細節的可寫入附件。

第三十二條 香港特別行政區政府可自行制定有關土地的開發、管理和使用的政策。

第二十八條 (照草稿第三十二條)

三十二條

建議條文：香港特別行政區政府可自行制定土地政策，包括土地交易，補地價，徵稅等政策及其收入的運用。

第三十三條 香港特別行政區成立之前已經批出、決定、或者續期的超越一九九七年六月三十日年期的所有土地契約和與土地契約有關的一切權利，均按照香港特別行政區的法律繼續予以承認和保護。

第二十九條 (照草稿第三十三條)

二十九條：摘自中英聯合聲明附件三

第三十四條 從一九八五年五月二十七日至一九九七年六月三十日期間批出或者原沒有續期權利而獲得續期的超出一九九七年六月三十日期限而不超過二零四七年六月三十日的一切土地契約，承租人從一九九七年七月一日起不補地價，但需每年繳納相當于當日該土地應

第三十條 凡從一九八五年五月二十七日至一九九七年六月三十日期間批出或續期的土地契約，承租人從一九九七年七月一日起需每年繳納相當於該土地應課差餉租值百分之三的租金。此後，隨應課差餉租值的改變而調整租金，但承租人不需於一九九七年七月一日補地價。

三十條：諮委以為基本法應提出

“一九九七年六月三十日以後滿期而沒有續期權利的土地契約，將按照香港特別行政區有關的土地法律及政策處理。”

(即中英聯合聲明附件三第二段部份)

課差餉租值百分之三的租金。此後，隨應課差餉租值的改變而調整租金。

**第三十五條** 原舊批約地段、鄉村屋地、丁屋地和類似的農村土地，如該土地在一九八四年六月三十日的承租人，或在該日以後批出的丁屋地承租人，其父系為一八九八年在香港的原有鄉村居民，只要該土地的承租人仍為該人或其合法父系繼承人，原定租金維持不變。

**第三十六條** 香港特別行政區成立以後滿期而沒有續期權利的土地契約，由特別行政區自行制定法律及政策處理。

(說明)有些委員認為，有關土地契約的具體問題，在基本法中不必寫得過細，建議把《中英聯合聲明》附件三有關規定概括為一條，寫進本章第四節。

(說明)嚴格而言，本條及草稿第三十五條之義已包含在草稿第三十三條之內。如仍要保留，應作加上修改。

修改稿意義與聯合聲明附件三原義相合。

**第三十一條** (照草稿第三十三條)

**第三十二條** (照草稿第三十六條)

三十五條：委員認為在九七年後，新界原居民的應享有取得丁屋的特權，但不需要把這特權寫入基本法內。

※本組「航運管理」有具體的條文建議共四條，認為應該寫入基本法內，無須寫入附件。

第三十七條 香港特別行政區保持原在香港實行的航運經營和管理體制。香港特別行政區政府自行規定在航運方面的具體職能和責任。

第三十三條 (未定)

香港特別行政區有權自行處理所有影響其境內商船管理的事務；根據香港特別行政區與中央人民政府協議的一般原則（見附件000「香港船舶登記處進行修改時所採取的一般原則」——香港政府布政司署經濟科編制）設置獨立的船舶登記處；管理航運經營；以「中國香港」名義簽發證件。

第三十八條 香港特別行政區經中央人民政府授權繼續進行船舶登記，並可根據其法律以“中國香港”名義頒發有關證件。

第三十四條 (照草稿第三十八條)

香港的私營航運及與航運有關的企業和私營集裝箱碼頭，可繼續自由經營。由國家機構或類似機構擁有或控制的航運企業可在香港特別行政區船舶登記處登記，但在任何時候，其法律地位均與私營航運企業相同，不得享有主權豁免權。船舶企業有權根據香港特別行政區的法律與規則加入或退出香港的船舶登記，但不是硬性規定。

(說明)「不得享有主權豁免權」的意思是這些國家機構亦應像私人或私人公司一樣，可被起訴及在法庭內被審判；而不可因其為國家機構而躲避法律責任。

第三十九條 一切民用船舶可根據香港特別行政區法律進出其港口。  
外國軍用船隻進入香港特別行政區須經中央人民政府特別許可。

第三十五條 (照草稿第三十九條)

在香港特別行政區登記處登記的商船均屬中國籍，同時懸掛中華人民共和國國旗及香港特別行政區區旗。此等船隻享有進入中華人民共和國各港口的自由，及來往各港口經商的自由。外國軍用船隻進入香港特別行政區須經中央人民政府特別許可。

第四十條 香港特別行政區的私營航運企業、與航運有關的企業和私營集裝箱碼頭，可繼續自由經營。

第三十六條 (照草稿第四十條)

對在港登記船隻及其員工，香港特別行政區享有管轄權。唯在涉及外國的情況下，則由中央人民政府對在港登記船隻提供在國際上的保護及承擔責任。香港特別行政區在知會中央人民政府後，可以「香港特別行政區」的名義，成為或繼續作國際海事組織如IMO的成員。

※本組「民航管理」有具體的條文建議共五條，認為應寫入基本法內，無須寫入附件。

第四十一條 香港特別行政區政府應提供必要條件和採取適當措施，以保持其國際和區域航空中心的地位。

第三十七條 (照草稿第四十一條)

香港特別行政區保持其國際和區域航空中心的地位，繼續設置其飛機登記冊，並在已在港登記的飛機機身上顯示「VR」登記標誌及香港特別行政區區徽。香港特別行政區自行負責所有影響在港登記飛機的操作及技術事務、民航的日常管理，包括機場管理、在香港特別行政區飛行情報區內提供空中交通服務、及履行國際民用航空組織的區域性航行規劃程序所規定的其他職責。對在港登記的飛機及其機員、乘客、貨物，香港特別行政區享有管轄權。在涉及外國的情況下，則由中央人民政府對在港登記飛機提供在國際上的保護及承擔責任。

第四十二條 香港特別行政區繼續實行原在香港實行的民用航空管理制度，並按中央人民政府關於飛機國籍標誌和登記標誌的規定，設置自己的飛機登記冊。

第三十八條 (照草稿第四十二條)

香港特別行政區可自行向在香港註冊並以香港為主要營業地的航空公司簽發航空營業證書。凡不經停中華人民共和國其他地區而只往返香港的航班，香港特別行政區可自行為經營定期航班的航空公司制定頒發牌照及代理權程序，及為不定期航班自行簽發許可證。外國軍用飛機進入香港特別行政區須經中央人民政府特別許可。

外國軍用航空器進入香港特別行政區須經中央人民政府特別許可。

第四十三條 香港特別行政區自行負責民用航空的日常業務和技術管理，自行負責機場管理。

第三十九條 香港特別行政區自行負責民航空的日常業務和技術管理，包括機場管理，在香港特別行政區飛行情報區內提供空中交通服務，以及履行國際民用航空組織的區域性航行規劃程序所規定的其他職責。

中央人民政府經同香港特別行政區政府磋商作出安排，為香港特別行政區和中華人民共和國的航空公司提供香港特別行政區和中華人民共和國其他地區之間的往返航班，並須以下列原則為根據：中國的航空公司飛往香港特別行政區的航班數目與香港特別行政區的航空公司飛往中國的航班數目，應維持適當的平衡。

香港特別行政區負責在特別行政區飛行情報區提供空中交通服務，履行國際民用航空組織的區域性航行規劃程序所規定的其他職責。

(說明)聯合聲明附件一、第六節、第一段、第四句在「技術管理」後面用了「包括」一詞，意指其後面所含事項很多，難以盡列。基本法條文應如實反映此點。



第四十四條 中央人民政府經同香港特別行政區政府磋商作出安排，為在香港特別行政區註冊並以香港特別行政區為主要營業地的航空公司和中華人民共和國的其他航空公司，提供香港特別行政區和中華人民共和國其他地區之間的往返航班。

第四十五條 涉及中華人民共和國其他地區與其他國家和地區的往返並經停香港特別行政區的航班，和涉及香港特別行政區與其他國家和地區的往返並經停中華人民共和國其他地區航班的民用航空運輸協定，由中央人民政府簽訂。

在簽訂本條第一款所指國際民用航空運輸協定時，應考慮香港特別行政區的特殊情況和經濟利益，並同香港特別行政區政府磋商。

中央人民政府在同外國政府商談有關本條第一款所指航班的安排時，香港特別行政區政府的代表可作為中華人民共和國政府代表團成員參加。

第四十條 (照草稿第四十四條)

對提供過境權、技術停降權、及不往返、經停中國內地而只往返、經停香港航班的航空運輸協定和臨時協議，香港特別行政區經中央人民政府具體授權後，可自行談判、簽訂、檢討、修改、終止。有關結果須報中央人民政府備案。

第四十一條 (照草稿第四十五條)

凡涉及中華人民共和國其他地區與其他國家和地區的往返並經停香港特別行政區的航班，和涉及香港特別行政區與其他國家和地區的往返並經停中華人民共和國其他地區的民用航空運輸協定，由中央人民政府簽訂。為此，中央人民政府應同香港特別行政區磋商，並考慮香港特別行政區的特殊情況、經濟利益及由香港特別行政區根據第四十四條簽訂的航空運輸協定中的有關規定。

中央人民政府在同外國政府磋商及談判本條所述的航班安排時，香港特別行政區政府的代表可作為中華人民共和國政府代表團成員參加。

第四十六條 香港特別行政區政府經中央人民政府具體授權可：

- (一)續簽或者修改原有的民用航空運輸協定和協議（這些協定和協議原則上都可續簽或者修改，並盡可能保留原協定和協議規定的權利）；
- (二)簽訂新的民用航空運輸協定，為在香港特別行政區註冊並以香港特別行政區為主要營業地的航空公司提供航線，以及過境和技術停降權利；
- (三)同沒有簽訂民用航空運輸協定的外國或地區簽訂臨時協議。

不涉及往返、經停中國內地而只往返、經停香港特別行政區的定期航班，均可由本條所指的民用航空運輸協定或者臨時協議予以規定。

第四十七條 中華人民共和國授權香港特別行政區政府：

- (一)同其他當局商談並簽訂有關執行本法第四十六條所指民用航空運輸協定和臨時協議的各項安排；
- (二)對在香港特別行政區註冊並以香港特別行政區為主要營業地的航空公司簽發執照；
- (三)按照本法第四十六條所指民用航空運輸協定和臨時協議指定航空公司；

第四十二條（照草稿第四十六條）

第四十三條（照草稿第四十七條）

(四)對外國航空公司除往返、經停中國內地的航班以外的其他航班簽發許可証。

第四十八條 在香港註冊並以香港為主要營業地的航空公司和與民用航空有關的行業，可繼續經營。

(說明)有的委員建議，將第四十六條和第四十九條合併，並改寫為：“經中央人民政府具體授權，香港特別行政區政府對與香港特別行政區政府有關的民用航空運輸協定、協議或臨時協議，可以談判、修改、續簽或簽署，並依法作出安排，報中央人民政府批准或備案”。

第四十四條 (照草稿第四十八條)

# 低稅政策

陳坤耀

1. 低稅可指低稅率、或課稅範圍狹窄、或只有小量的課稅範圍。但要較長遠地維持低稅率，則必須擴大課稅範圍及(或)增加課稅範圍的數量。所以我們需要更清楚界定何謂「低稅政策」。
2. 低稅率不能保證納稅少，因為納稅人可能需要繳納更多種類的稅項。
3. 低稅率確保在資源分配方面較少出現歪曲情況，令經濟決策不必那麼倚賴稅制。所以即使課稅範圍擴大及課稅範圍的數量增加，低稅率都是可取的。但同時要考慮公平分配的問題。
4. 要界定何謂低稅率是近乎不可能的。低的有效稅率(佔可評估收入某一百分比的稅)實有別於低的邊際稅率(對某一限額以上的收入所徵收的稅)。
5. 在香港，商業單位從未繳納過多於18.5%的稅款，而一般家庭多年來的邊際稅率都是25%。如果過去的經驗可以作準，即使稅率增至20—25%，經濟決策也不會受嚴重歪曲。也即是說，如基本法要寫明稅率的百分比，可規定「香港特別行政區的所得稅稅率不得超過22.5%(這是舉例而已)。」
6. 除了所得稅或直接稅外，對消費支出還要徵收間接稅。我們必須注意，對某些不應獎勵的貨物或服務，不應採用低稅率。
7. 似乎我們高估了低稅率對吸引外資的作用。不少研究結果顯示，吸引外資還有其他更重要的因素，如政治及經濟穩定；物質、行政及人力方面的基本設施；原料及燃料在本地的供應情況等。
8. 總括來活，單規定香港維持低稅政策是沒有什麼真正意義的。這概念不夠清楚具體，因此可以有很多種解釋。把目前有關這規定的條文列入基本法只有一個理由，就是令投資者心理上覺得好過點。
9. 基本法亦不宜有詳細界定低稅政策的條款，或定出稅率的上限，因為這樣做會過份約束將來的特區政府。

一九八七年九月二十八日

## 雷興悟委員書面意見

重讀第五章條文草稿後，本人覺得有若干問題十分重要，須以書面指出。

第二條 第二條(尤其是「財政預算應保持收支基本平衡」)的精神並不是要束縛特區政府，而是為維持現行的財政狀態，這一向是香港成功的主要因素。我們不應刪去這保障條款。我們已詳細討論過以本地生產總值來規定政府支出上限是必須的。但有人卻認為這種規定不夠靈活，是不適當的。

此外，政府財政狀況能影響香港在國際上的信用評價，其實香港的國際信用評價已受九七問題影響。政府財政狀況是國際信用評價機構用來確定該地區信用評價的一個準則。一個地區的信用評價足以決定本地企業在海外籌集資本的能力。香港現在尚有的長處之一，就是政府財政狀況良好。如果將來特區政府的財政長期出現赤字，在九七年後香港的主權評價就會更為低落。我們要切記香港部份機構在國際上有財政評價，會對其業務造成嚴重影響。

第十六條 我曾多次提出，我擔心這條文寫得太絕對。但這寫法有不少人提過，現在恐怕很難改動。

第十九條 似乎以下一點已得到普遍贊同：鈔票的發行必須有至少百分之百的外幣儲備金，該儲備金應為可即時兌換的證券。

第二十八條 「自由」與「開放」在建議中曾出現多次，而且沒有清楚界定。我認為應更多說明「自由」與「開放」的定義。