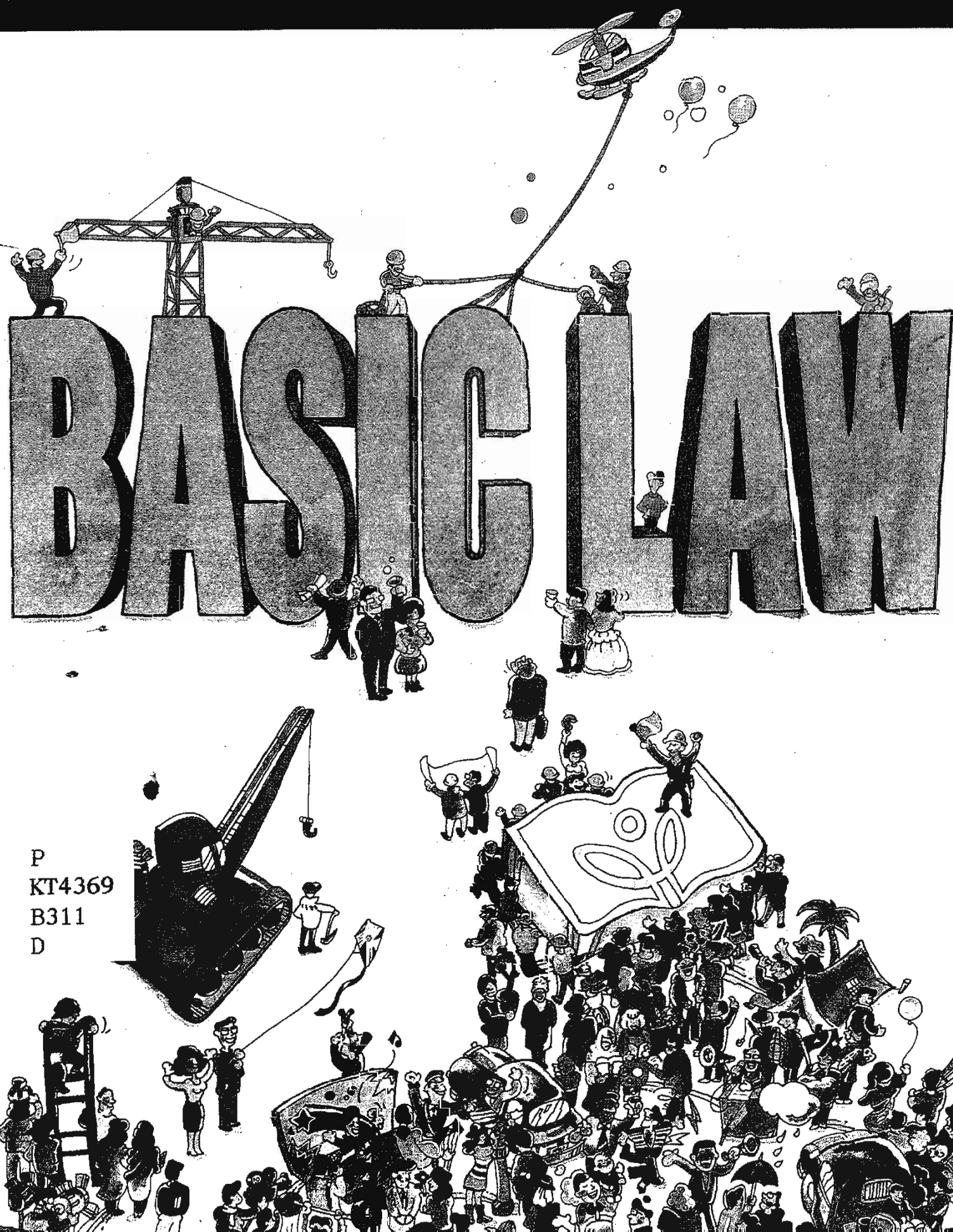


# Basic Law (Draft) Made Simple



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## INTRODUCTION

The Basic Law to be enforced in Hong Kong in 1997 is an important piece of legislation concerning you and everyone else in Hong Kong.

Last year, in the first consultation exercise for the drafting of the Basic Law, people in Hong Kong expressed their views regarding the Draft Basic Law for Solicitation of Opinions through various channels. The opinions collected by the Consultative Committee for the Basic Law were passed on to the Drafting Committee. There were positive results: on the basis of these opinions, the Drafting Committee amended 115 articles of the Draft Basic Law for Solicitation of Opinions in its preparation of the Basic Law (Draft). A final round of consultations with people in Hong Kong will be launched for the Basic Law (Draft) this year. It is hoped that those provisions which require further refinement will be amended so that the Basic Law to be promulgated in 1990 will meet the expectation of the general public.

Take this last opportunity and submit your views now !



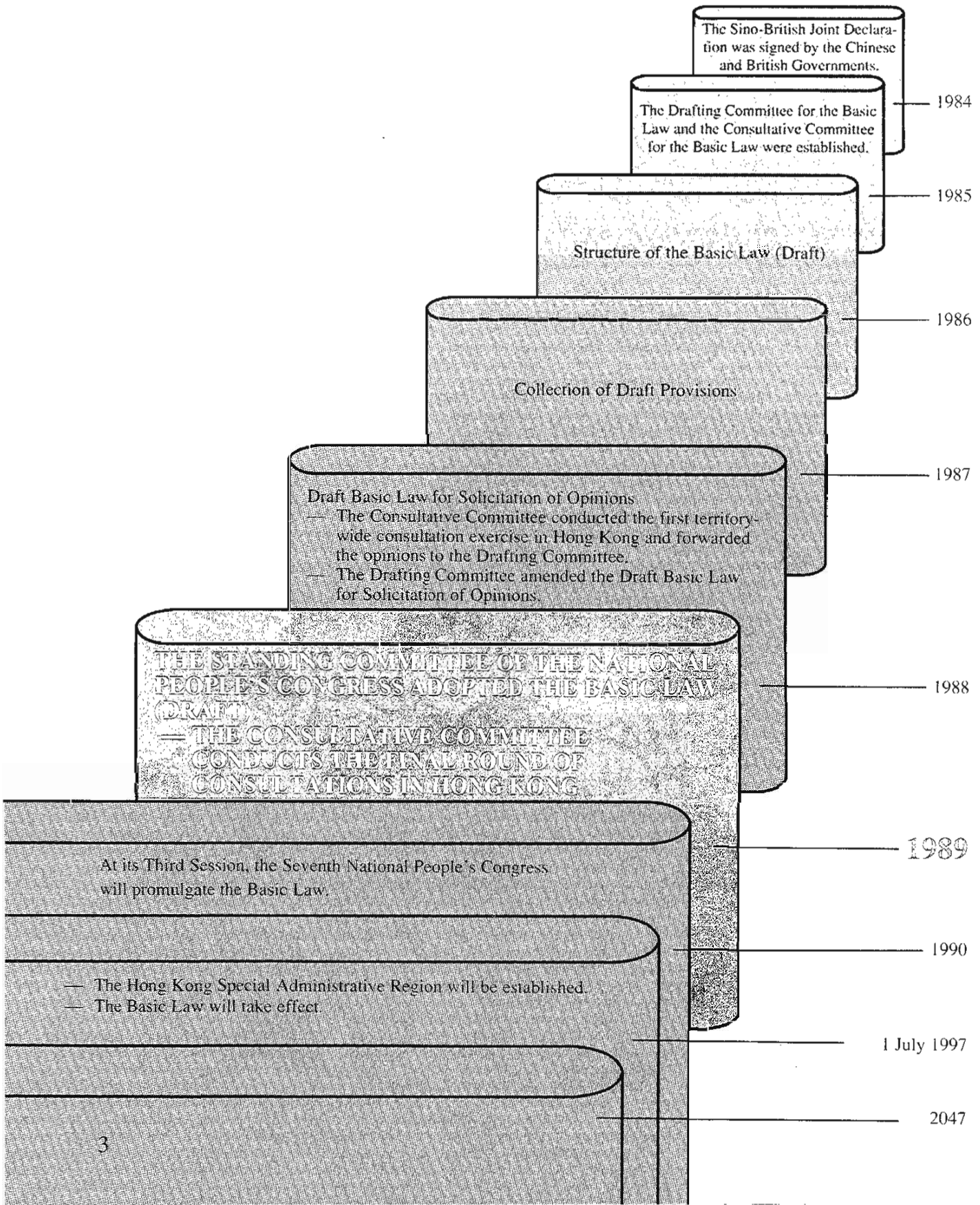
# THE BASIC LAW AND I







# 1989 - A CRUCIAL YEAR





## THE SPIRIT OF THE BASIC LAW

**(1) One country two systems —**

The Central Government will not practise the socialist system and policies in Hong Kong. The present capitalist system and way of life will remain unchanged for 50 years.

**(2) A high degree of autonomy—**

Hong Kong will exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication.





## RELATION BETWEEN THE CENTRAL AUTHORITIES AND THE HONG KONG SPECIAL ADMINISTRATIVE REGION

(1) The Hong Kong Special Administrative Region (HKSAR) will be directly under the Central Government.

(2) Powers vested in the Central Authorities and the HKSAR :

Powers	HKSAR	Central Authorities
Foreign affairs		- The Ministry of Foreign Affairs of China will establish an office in Hong Kong to deal with foreign affairs.
External Affairs	- may on its own develop relations and sign agreements with states in fields such as economy, trade, communications, tourism, culture and sports.	
Defence		- will send a garrison to be stationed in Hong Kong, with its expenditure borne by the Central Government.
Public order	- will be responsible for maintaining its own public order. - may ask for assistance from the garrison in times of need.	
Executive power	- will manage its own administrative affairs.	



<b>Powers</b>	<b>HKSAR</b>	<b>Central Authorities</b>
Legislative power	<ul style="list-style-type: none"> <li>- to be exercised by its legislature.</li> </ul>	<ul style="list-style-type: none"> <li>- Laws will be reported to the Standing Committee of the National People's Congress for the record.</li> <li>- Any law inconsistent with the relevant provisions of the Basic Law will be returned after consultation with the Committee for the Basic Law.</li> </ul>
Judicial power	<ul style="list-style-type: none"> <li>- will maintain the present legal system.</li> <li>- will have jurisdiction over all cases.</li> </ul>	<ul style="list-style-type: none"> <li>- will have jurisdiction over cases concerning the acts of state; will issue certificates to Hong Kong if questions concerning the facts of state arise in the legal proceedings in Hong Kong.</li> <li>- may decree the application of the relevant national laws in Hong Kong when Hong Kong is in a state of emergency.</li> <li>- will apply the six national laws in Hong Kong; will need to consult the Committee for the Basic Law should any law be added to or deleted from the list of national laws to be applied in Hong Kong.</li> </ul>
Power of final adjudication	<ul style="list-style-type: none"> <li>- to be exercised by its Court of Final Appeal.</li> </ul>	



### (3) Committee for the Basic Law

Nature —

working committee

Affiliation —

under the Standing Committee of the National People's Congress

Composition —

twelve members : six from the mainland and six from Hong Kong, including members of the legal profession

Function —

to submit its views to the Standing Committee of the National People's Congress on the following questions :

- (i) whether the laws enacted in Hong Kong are in conformity with the Basic Law
- (ii) addition to or deletion from the list of national laws applied in Hong Kong
- (iii) interpretation of the Basic Law
- (iv) amendment of the Basic Law

### (4) Laws in force in the HKSAR

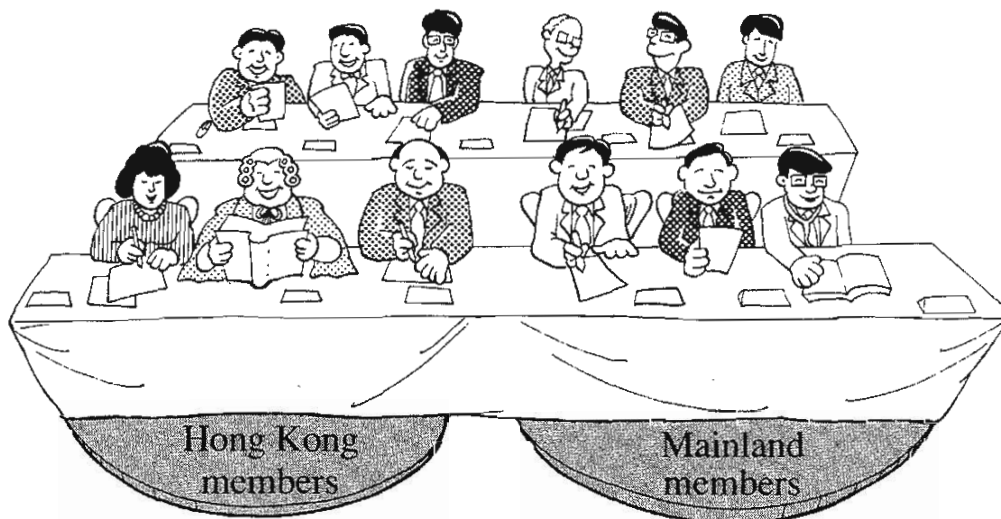
- Basic Law

- Laws in force in Hong Kong before 1997

- Laws enacted after 1997

- Six national laws —

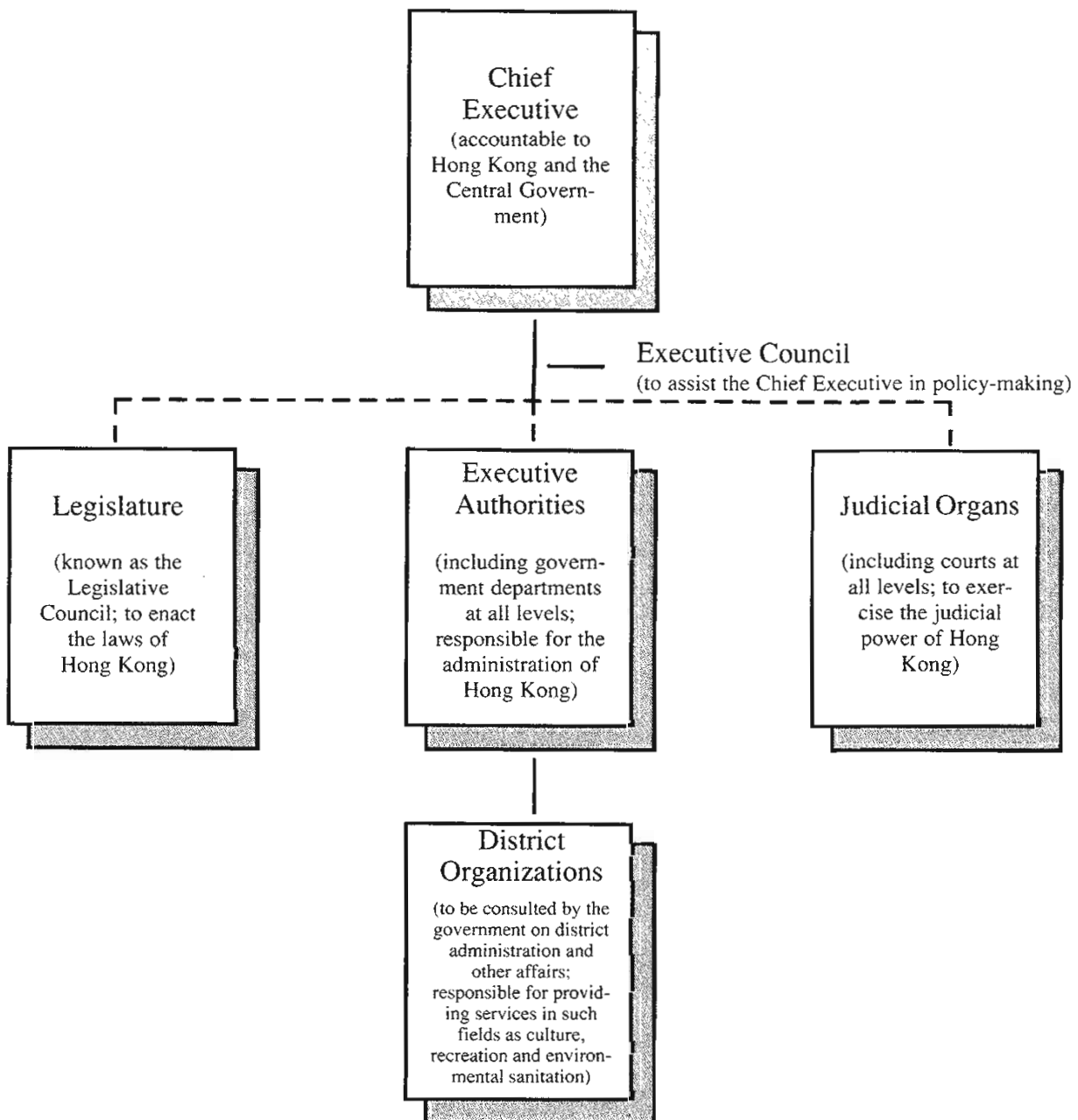
- (i) Resolution on the Capital, Calendar, National Anthem and National Flag
- (ii) Resolution on the National Day
- (iii) Order on the National Emblem
- (iv) Declaration on the Territorial Sea
- (v) Nationality Law
- (vi) Regulations on Diplomatic Privileges and Immunities





# POLITICAL STRUCTURE

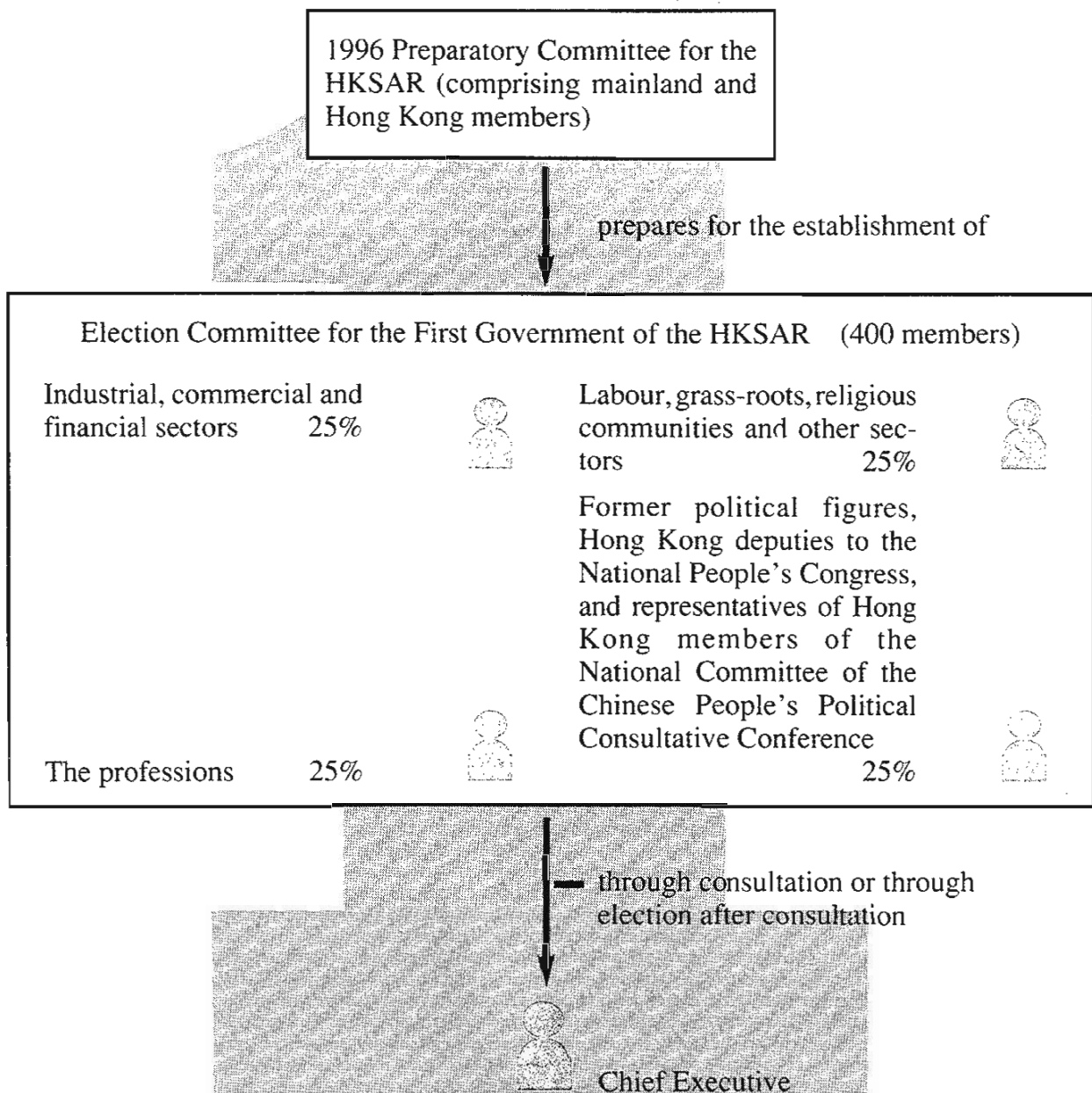
## (1) Political set-up





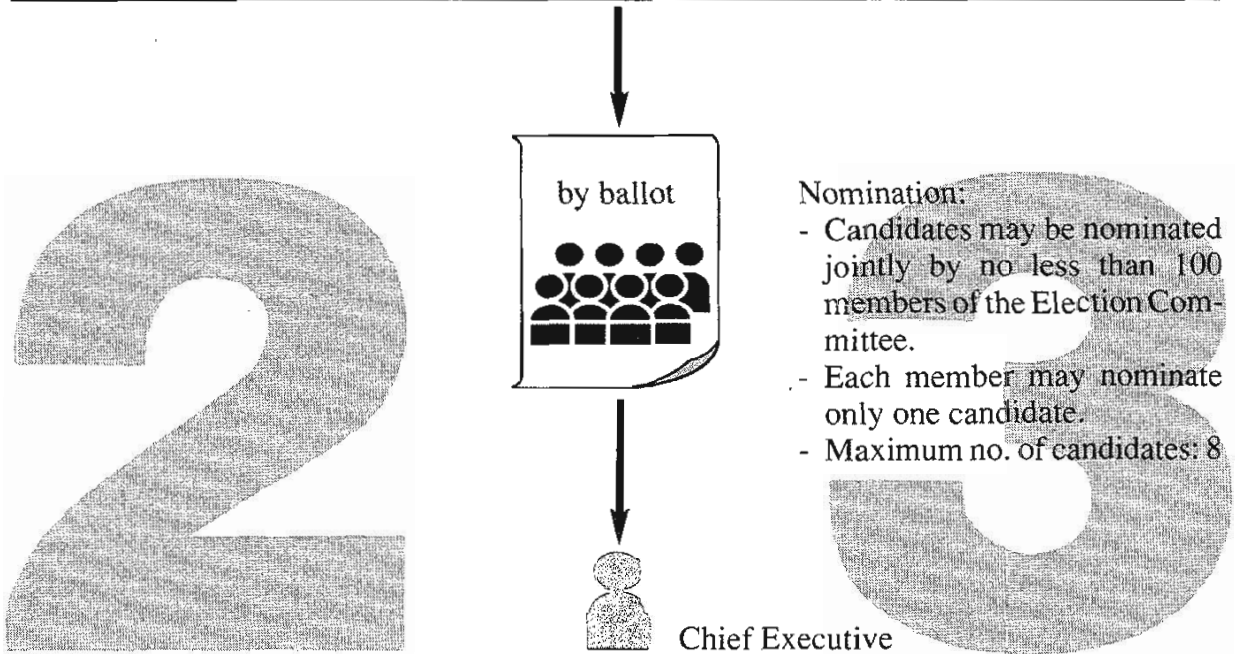
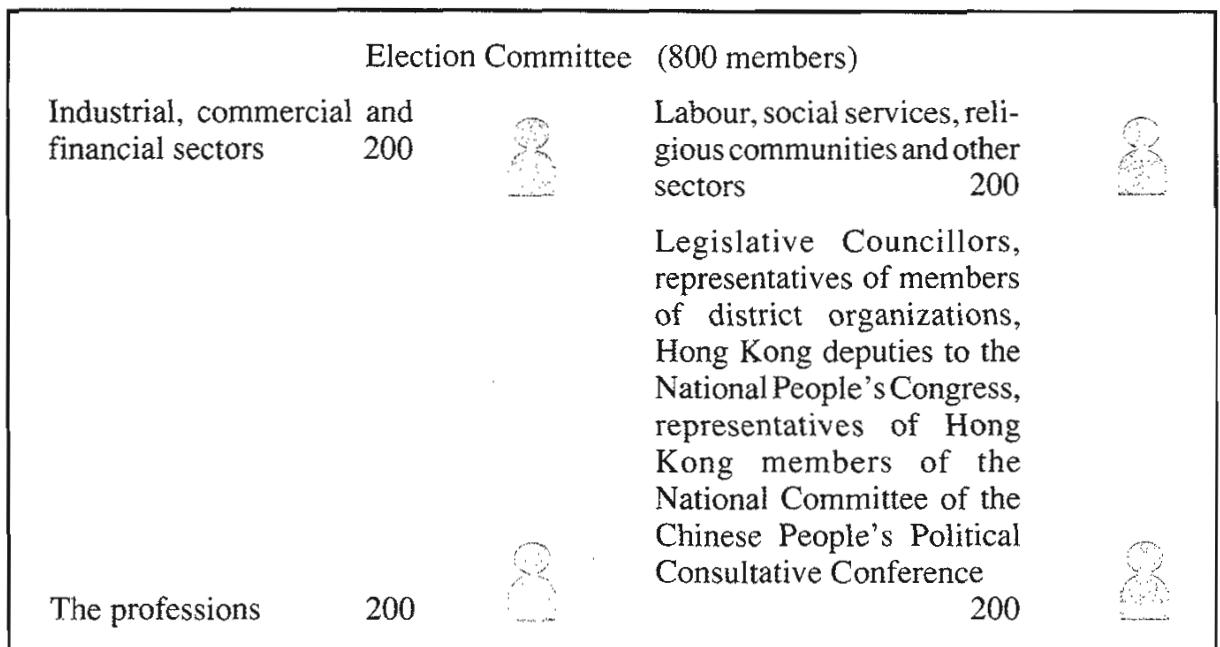
## (2) Selection of the Chief Executive (Term of office : five years)

### First Term





**Second and Third Terms**





Industrial, commercial and financial sectors



The professions



Labour, social services, religious communities, and other sectors

### (3) Formation of the Legislative Council

		(Two-year term)	(Four-year term)	
		First term*	Second Term	Third and Fourth Terms
District election		15	25	40
Election by sectors	Industrial, commercial and financial sectors	16	16	16
	The professions	12	12	12
	Labour, social services, religious communities, and other sectors	12	12	12
Total no. of members		55	65	80

\*- Members of the last pre-1997 Legislative Council who support the Basic Law, are willing to loyally serve Hong Kong, and meet the requirements set forth in the Basic Law will, upon the confirmation by the Preparatory Committee for the HKSAR, become

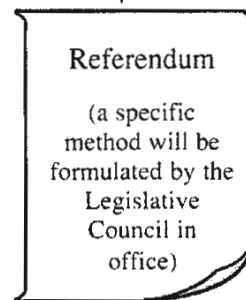
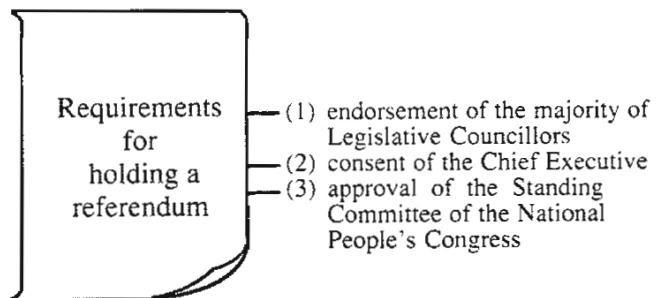
members of the first Legislative Council of the HKSAR.

- Any vacancy in the first Legislative Council will be filled through election conducted by the Election Committee for the first Government of the HKSAR.



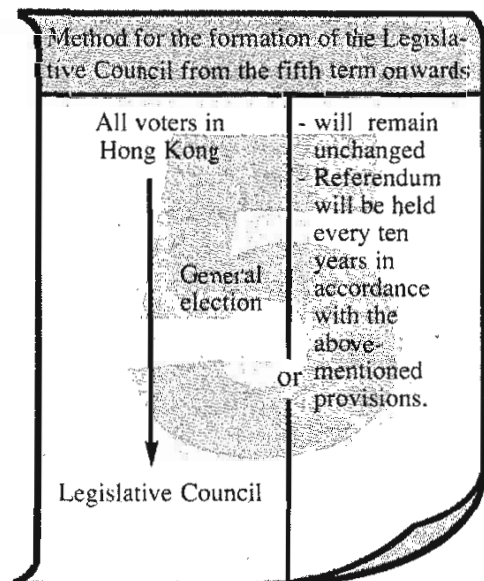
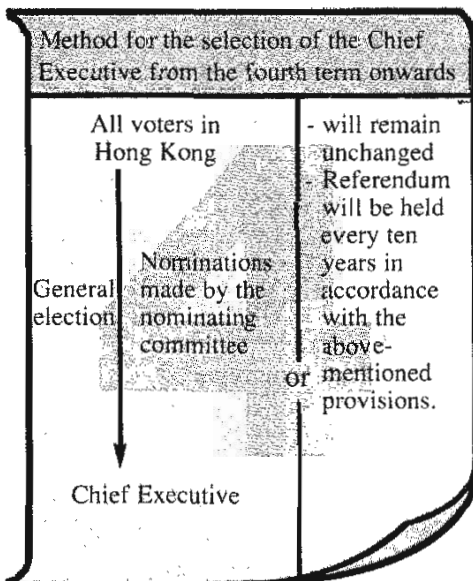
**(4) Referendum**

- to be held during the term of the third Chief Executive and during the term of the fourth Legislative Council.
- to decide the method for the selection of the Chief Executive from the fourth term onwards and the method for the formation of the Legislative Council from the fifth term onwards.



to decide

(Its validity will depend on the affirmative vote of more than 30% of the eligible voters.)





### (5) Relation between the Chief Executive and the Legislative Council

Coordinating with each other:

- A bill passed by the Legislative Council must be signed by the Chief Executive in order to take effect.

Monitoring each other:

- If the Chief Executive refuses to sign the bill passed by the Legislative Council for a second time, or the Council refuses to pass an important bill introduced by the government, the Chief Executive may dissolve the Council. But the Chief Executive may dissolve the Council only once in each term of his office.
- The Chief Executive must resign when, after the Legislative Council was dissolved, the new Legislative Council has again passed by a two-thirds majority the bill which the Chief Executive refused to sign, and the Chief Executive still refuses to sign it, or the new Legislative Council still refuses to pass the original bill in dispute.
- If the Chief Executive is guilty of serious breach of law or dereliction of duty and refuses to resign, the Legislative Council may impeach him.

### (6) Relation between the Legislative Council and the executive authorities

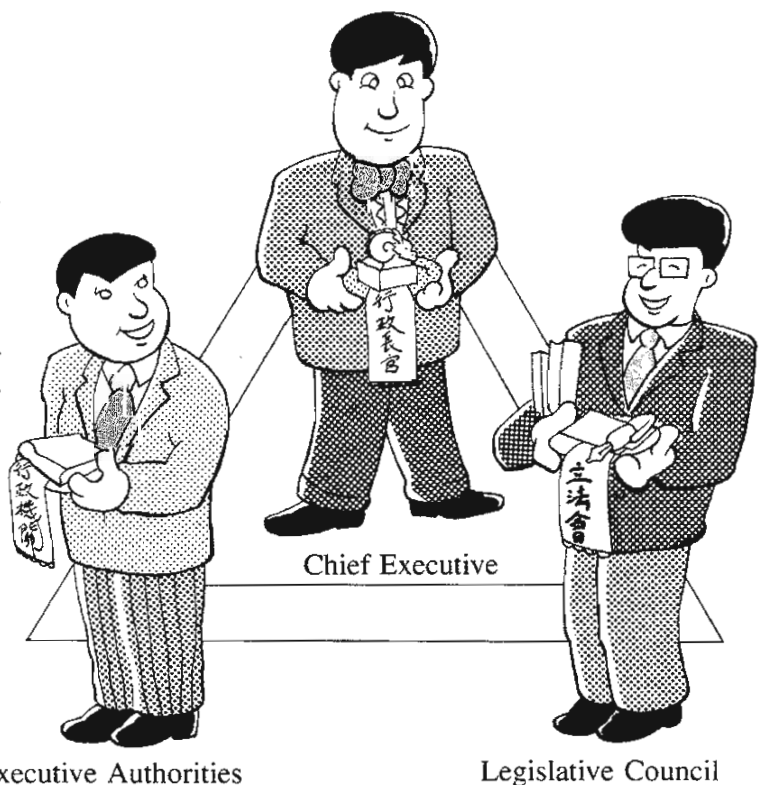
Coordinating with each other:

- The Legislative Council will pass the

bills introduced by the executive authorities.

The executive authorities will be accountable to the Legislative Council in the following ways:

- (i) implementing laws passed by the Council and already in force;
- (ii) presenting regular reports on their work to the Council;
- (iii) answering questions raised by members of the Council; and
- (iv) obtaining approval from the Council for taxation and public expenditure.



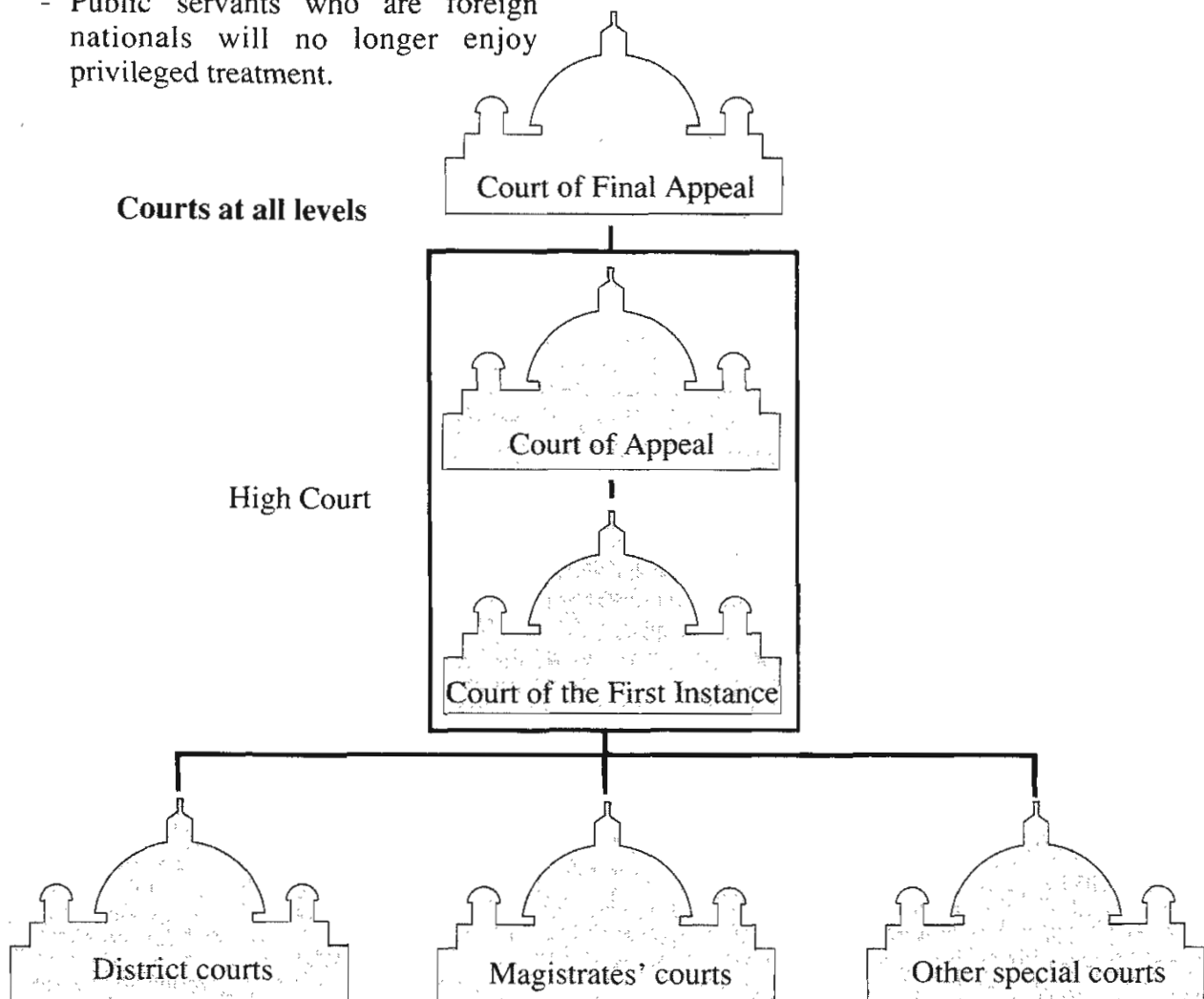


**(7) Recruitment and welfare of public servants**

- will remain basically unchanged; public servants who are permanent residents of Hong Kong may continue to be employed.
- Their pay, allowances, benefits and conditions of service will not be less favourable than before.
- Public servants who are foreign nationals will no longer enjoy privileged treatment.

**(8) Judicial system**

- The courts of Hong Kong will exercise judicial power independently and free from any interference.
- The present judicial system in Hong Kong will be maintained and the Court of Final Appeal will be established.





# RIGHTS AND DUTIES OF THE RESIDENTS

**(1) Hong Kong residents will include:**

(i) Permanent residents - with the right of abode; and



(ii) Non-permanent residents - without the right of abode



**(2) Requirements for acquiring the status of permanent resident:**

Place of birth	Year of birth	Period of residence in Hong Kong	Nationality	Other requirements	Status	Status of his / her child	
						born in Hong Kong	born in foreign countries
Hong Kong	before/after 1997	not stipulated	Chinese	Nil	permanent resident	permanent resident	permanent resident (must have Chinese nationality)
Foreign countries	before/after 1997	seven years	Chinese	Nil	permanent resident	permanent resident	permanent resident (must have Chinese nationality)
Hong Kong/ foreign countries	before/after 1997	seven years	non-Chinese	has taken Hong Kong as his/her place of permanent residence	permanent resident	permanent resident (under 21 years of age)	not stipulated
Hong Kong/ foreign countries	before 1997	not stipulated	not stipulated	had the right of abode only in Hong Kong before 1997	permanent resident	not stipulated	not stipulated



### (3) Rights and freedoms of Hong Kong residents

Hong Kong residents may also enjoy the rights safeguarded by the following international covenants and conventions:

International Covenant on Civil and Political Rights

International Covenant on Economic,

### Social and Cultural Rights

International labour conventions

- The provisions of these covenants and conventions as applied to Hong Kong will remain in force and will be implemented through the laws of Hong Kong. No restriction on the rights and freedoms of residents may contravene these provisions.





**(4) Rights and interests of the indigenous inhabitants of the New Territories**

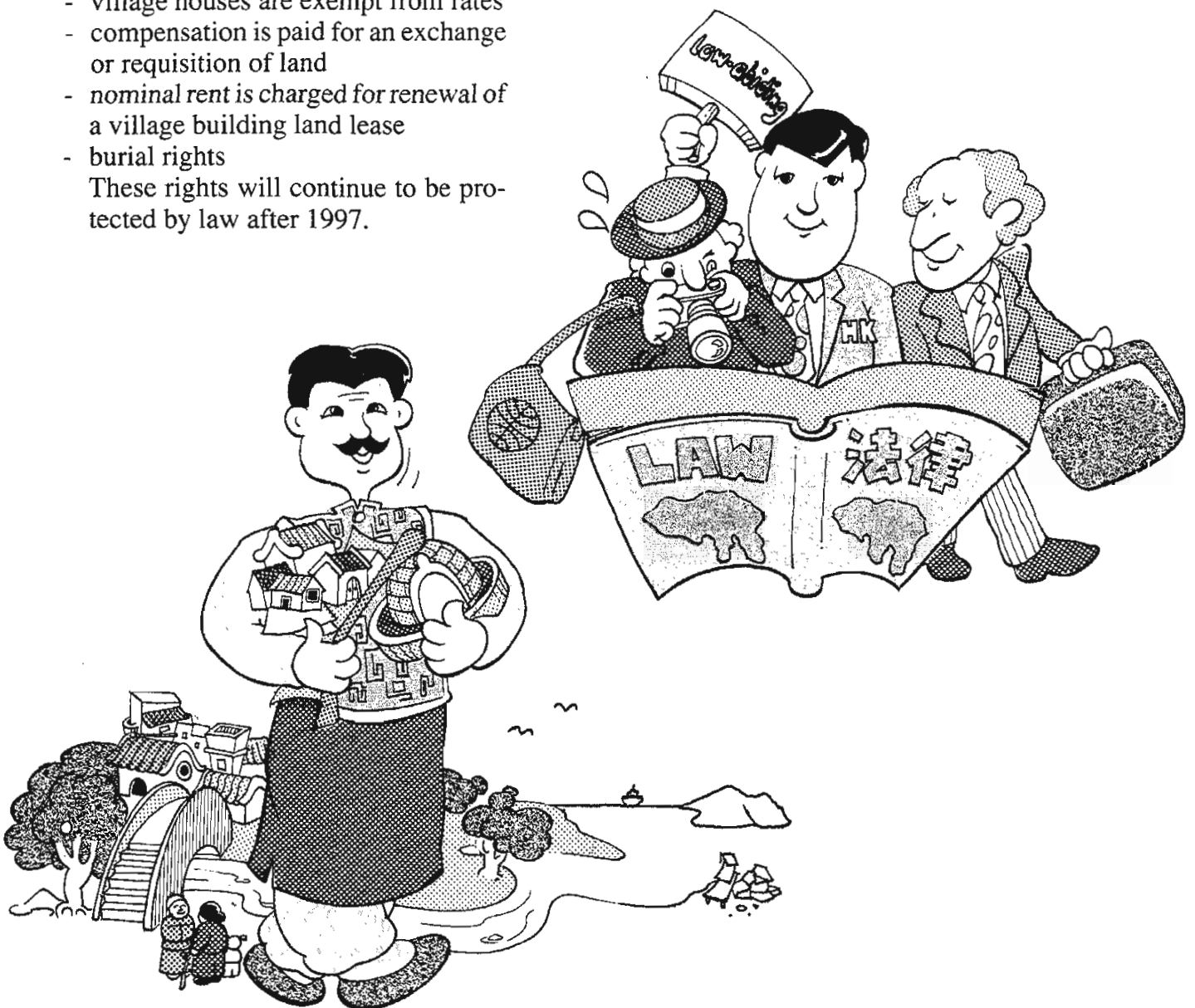
Existing rights enjoyed by indigenous inhabitants of the New Territories:

- a male indigenous inhabitant has the birthright to build a "small house"
- village houses are exempt from rates
- compensation is paid for an exchange or requisition of land
- nominal rent is charged for renewal of a village building land lease
- burial rights

These rights will continue to be protected by law after 1997.

**(5) Duty of Hong Kong residents**

- All Hong Kong residents and other persons in Hong Kong, such as tourists, foreign businessmen and those in transit, must abide by the laws of Hong Kong.





## SOCIETY

### (1) Languages

- Both Chinese and English will be the official languages of Hong Kong.

### (2) Educational system

- The government will on its own formulate policies regarding the language of instruction, the examination system, the system of academic awards and the recognition of educational qualifications.
- Community organizations (including religious organizations) and individuals may run educational undertakings of various kinds.
- Students will enjoy freedom to pursue their education in Hong Kong or overseas.

### (3) Qualifications of professionals

- The professional qualifications and qualifications for professional practice already obtained may be retained.
- The professional qualifications and qualifications for professional practice recognized before 1997 will

continue to be recognized.

- The recognized professional bodies may on their own assess and accredit professional qualifications.
- New professions and professional bodies will be recognized as required by social developments.

### (4) Social services

- Voluntary organizations (including religious organizations) providing social services may on their own decide their forms of service.

### (5) Cultural pursuits

- The achievements and the legitimate rights and interests of authors in their literary and artistic pursuits will be protected by law.
- The policy on subventions for non-governmental organizations in fields such as culture and art will be maintained.
- Non-governmental organizations in such fields as culture and art may maintain and develop relations with their overseas counterparts.





## ECONOMY

**(1) Right of private ownership of property**

- The right of individuals and legal persons to the private ownership of property will be protected in accordance with law in Hong Kong.

**(2) Taxation system**

- The Central Government will not levy taxes in Hong Kong.
- An independent taxation system and a low tax policy will be practised in Hong Kong.

**(3) Currency**

- The Hong Kong dollar will continue to circulate as the legal tender in Hong Kong.

**(4) Finance**

- No foreign exchange control will be imposed in Hong Kong; the Hong Kong dollar will be freely convertible.

Markets for foreign exchange, gold, securities and futures will continue.

**(5) Trade**

- Hong Kong will maintain the status of a free port and will not impose any tariff unless otherwise prescribed by law.
- Trades and industries, such as manufacturing, commerce, tourism, real estate, transport, public utilities, services, agriculture and fishery, will continue to develop.

**(6) Shipping**

- Hong Kong will maintain its present systems of shipping management and shipping regulation.

**(7) Civil Aviation**

- Hong Kong will maintain its status as a centre of international and regional aviation.

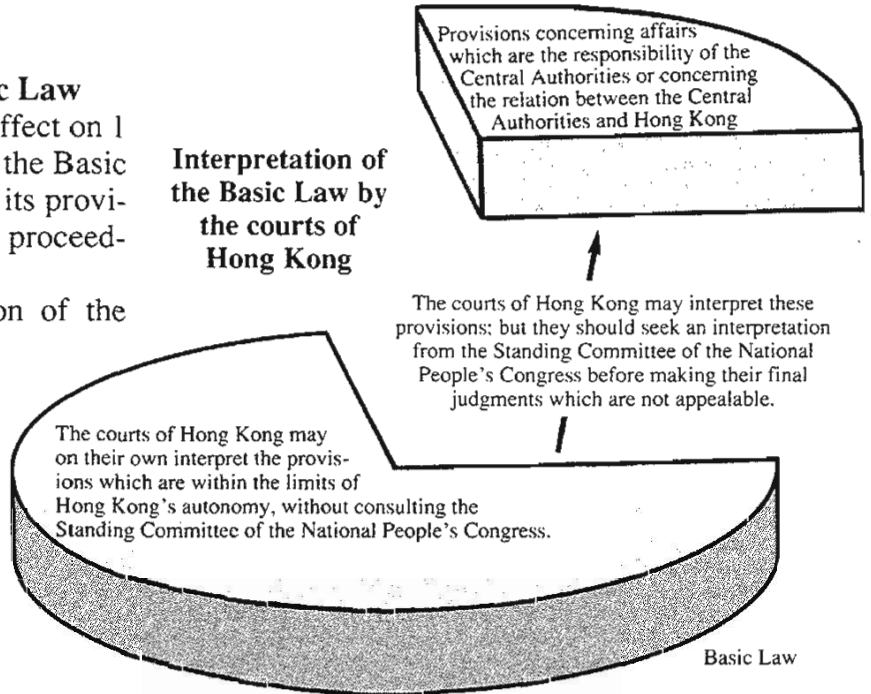




# INTERPRETATION AND AMENDMENT OF THE BASIC LAW

## (1) Interpretation of the Basic Law

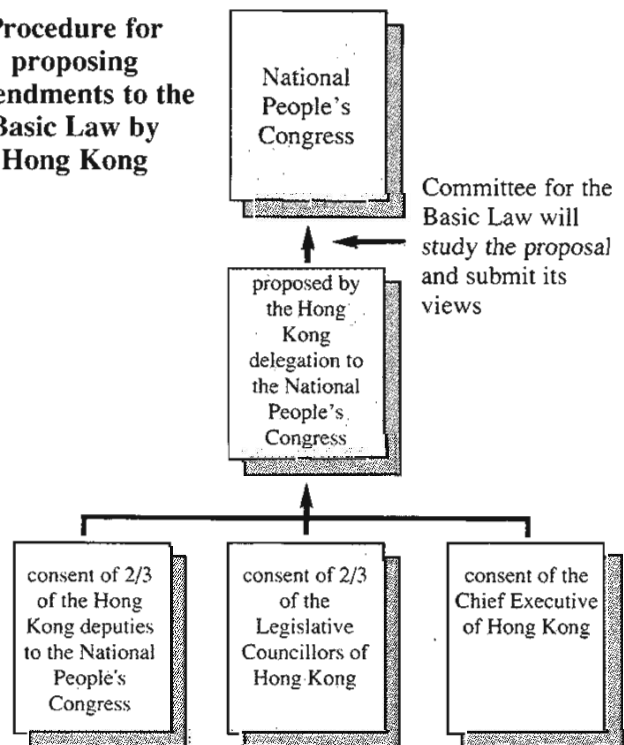
- After the Basic Law takes effect on 1 July 1997, interpretation of the Basic Law will be required when its provisions are involved in legal proceedings.
- The power of interpretation of the Basic Law will be vested in the Standing Committee of the National People's Congress.



## (2) Amendment of the Basic Law

- The provisions of the Basic Law may need to be amended in the light of new developments in Hong Kong after 1997. However, no amendment may contravene the established basic policies of China regarding Hong Kong.
- The power of amendment of the Basic Law will be vested in the National People's Congress.
- The power to propose amendments to the Basic Law will be vested in the Standing Committee of the National People's Congress, the State Council and Hong Kong.

### Procedure for proposing amendments to the Basic Law by Hong Kong





## RESULTS OF THE 1988 CONSULTATION EXERCISE

In the first round of consultations, people in Hong Kong put forward quite a number of suggestions on the Draft Basic Law for Solicitation of Opinions (DBLSO). The Drafting Committee has made considerable changes to the DBLSO. Altogether, 115 articles have been amended, covering these important points:

### (1) Relation between the Central Authorities and the HKSAR

- (i) Application of national laws in Hong Kong
  - The types and number of national laws to be applied in Hong Kong are specified and it will be possible to add to or delete from this list of national laws when necessary after 1997.
  - The concept of "giving expression to national unity and territorial integrity" which is too general has been removed from the Basic Law (Draft).
- (ii) Reviewing whether Hong Kong laws are consistent with the Basic Law
  - The scope to be reviewed by the Central Authorities has been narrowed down. The Central Authorities will only see to it that the laws of Hong Kong will be consistent with the provisions of the Basic Law regarding affairs within the responsibility of the Central Authorities or the relation between the Central Authorities and Hong Kong. Hong Kong will be responsible for reviewing whether its laws are consistent with other provisions of the Basic Law.
- (iii) Jurisdiction of the courts
  - The vague expression "executive acts of the Central People's Government" is replaced by "acts of state" and "facts of state", terms familiar to the legal profession in Hong Kong.
- (iv) Prohibition of subversion of the Central Government
  - The phrase "any act designed to undermine national unity or subvert the Central People's Government" is now expressed in more specific terms: "any act of treason, secession, sedition or theft of state secrets".

### (2) Interpretation of the Basic Law

- It is clearly provided that Hong Kong may on its own interpret the provisions which are within the limits of its autonomy, without consulting the Standing Committee of the National People's Congress.



### (3) Political Structure

- (i) Selection of the Chief Executive
  - The DBLSO contains five alternatives which suggest selecting the Chief Executive by an electoral college, through consultations, or by general election. These suggestions differ in the election and nomination procedures. After amendment, the Basic Law (Draft) provides that the Chief Executive of the first term will be recommended by a 400-member Election Committee, and the Chief Executive of the second and third terms will be elected by an 800-member Election Committee.
- (ii) Formation of the Legislative Council
  - The DBLSO contains four alternatives which are all in favour of forming the Legislative Council through general election and election by various sectors, but different proportions of representation are suggested. The Basic Law (Draft) now states that the Council will be formed by general election and election by various sectors and that the percentage of members selected by general election will be increased from 27% in the first term to 50% in the fourth term.

### (4) Rights and Duties of the Residents

- The conditions for restricting the rights and freedoms of the residents, i.e. "the maintenance of national security, public order, public safety, public health, public morals, and the safeguarding of the rights and freedoms of other persons", have been removed. After amendment, the Basic Law (Draft) states that the provisions of the two International Covenants and international labour conventions as applied to Hong Kong will remain in force and will be implemented through the laws of Hong Kong, and that no restriction on the rights and freedoms of Hong Kong residents may contravene these provisions.
- The following provision is added: the provisions of international labour conventions as applied to Hong Kong will remain in force and will be implemented through the laws of Hong Kong.

### (5) Economy

- The provisions are more flexible after amendment: Hong Kong will, taking the previous low tax policy as reference, enact its own laws concerning types of taxes, tax rates, etc. and will strive for a fiscal balance, avoid deficits and ensure that the budget is commensurate with the growth rate of the gross domestic product.



QUESTIONS ARISING FROM  
FURTHER EXPLORATION

Please help the Drafting Committee revise the Basic Law (Draft) by taking this last opportunity to state your views on the unresolved questions. The major questions in the Basic Law (Draft) still being debated are these:

**(1) Selection of the Chief Executive (Annex I)**

- The Chief Executive will be elected in the first three terms by an Election Committee. What do you think?
- What do you think of the composition of the Election Committee and the procedure for nominating the candidates?
- When do you think is the right time for selecting the Chief Executive by general election?

**(2) Formation of the Legislative Council (Annex II)**

- The percentage of popularly elected members in the Legislative Council will be increased from 27% in the first term to 50% in the fourth term. What do you think?
- What do you think of the delimitation of sectors in the Legislative Council?
- When do you think is the right time for selecting all Legislative Councillors by general election?

**(3) Referendum (Annexes I and II)**

- Referendums will be held to decide whether the Chief Executive and all Legislative Councillors will be selected by general election. What do you think?
- Do you think the time will be ripe for holding referendums around 2012?
- A referendum will only be held with the approval of the Chief Executive, the Legislative Council and the Standing Committee of the National People's Congress, and its result will only be valid with the affirmative vote of more than 30% of the voters. What do you think?

**(4) Relation between the Chief Executive and the executive authorities, and the Legislative Council (Sections 1-3 of Chapter IV)**

- Under the principle of coordinating with and monitoring each other, in what way should the relation between the executive and legislative branches be provided for?



**(5) Policy provisions**

- In the chapters on economy and on culture and education, some provisions are policies in nature. Some people note that these policy provisions may affect the functioning of the future government, while others argue that it is appropriate to provide for the functioning of the government in the Basic Law. What do you think?

**(6) Jurisdiction of the courts (Article 19)**

- This article was not adopted by a majority vote because the drafters disagreed over its wording. What do you think of its present wording?

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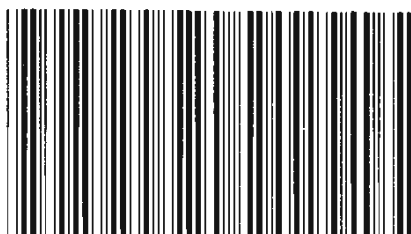
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DATE DUE

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**MEMORANDUM**

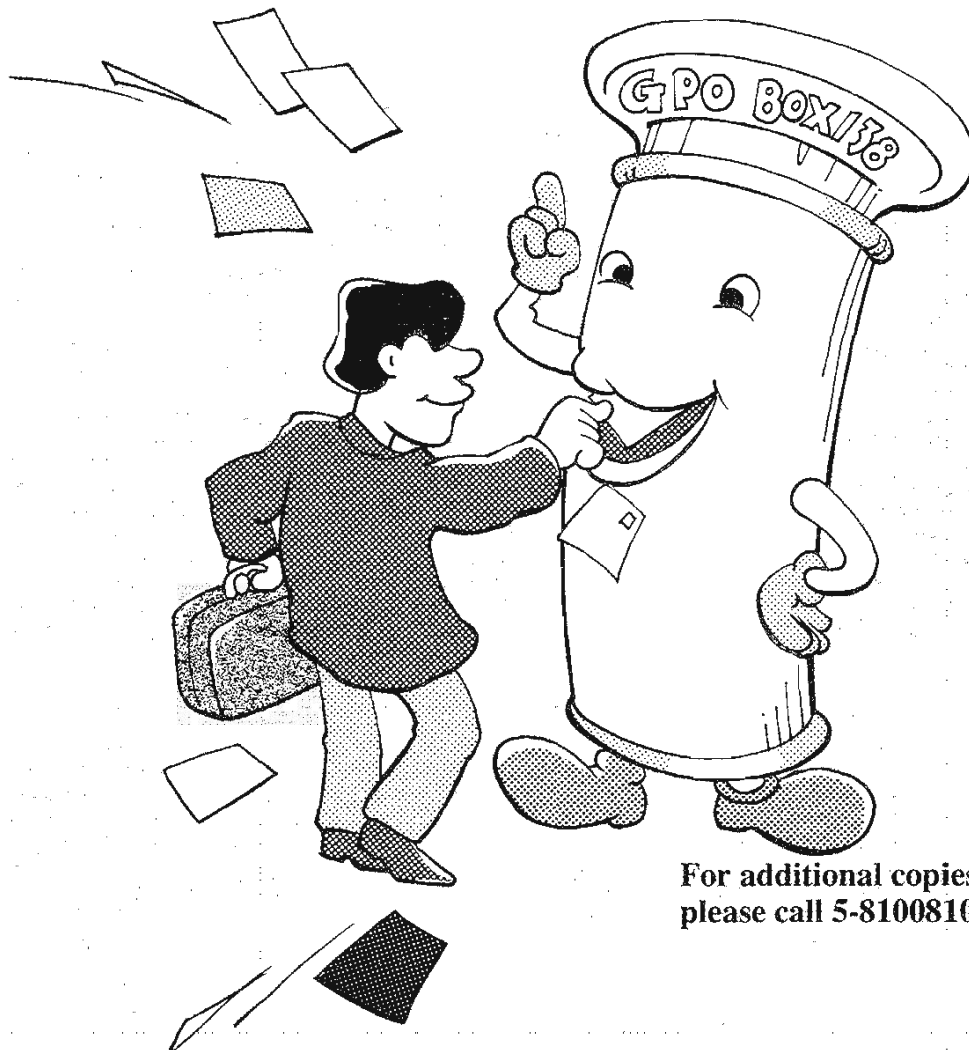
**Consultation period:**

21 February to 31 July 1989 (opinions sent to the Consultative Committee for the Basic Law before 30 June will be included in the consultation report)

**Way to express your opinions:**

Send your opinions together with your name, age, address, telephone number and identity card number to the Consultative Committee for the Basic Law at:  
8/F, Lane Crawford House,  
70 Queen's Road Central,  
Hong Kong, or G.P.O. Box 138, Hong Kong.  
Telephone enquiry: 5-8100810  
Look out for the coming activities organized by the Consultative Committee for the Basic Law in the consultation period.

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Basic Law (draft) made simple.  
[Hong Kong] : Secretariat of  
the Committee for the Basic  
Law, 1989.



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關心基本法