

COLLECTION OF DOCUMENTS OF  
THE EIGHTH PLENARY SESSION OF  
THE DRAFTING COMMITTEE FOR THE BASIC LAW

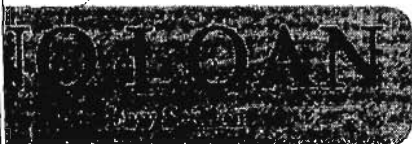
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## CONTENTS

Mr Ji Pengfei's Speech at the Eighth Plenary Session of the Drafting Committee for the Basic Law (9 January 1989).....	1
Report of the Subgroup on the Relationship between the Central Authorities and the HKSAR regarding the Amendments to the Articles (9 January 1989).....	3
Report of the Subgroup on Political Structure regarding the Amendments to the Articles (9 January 1989).....	7
Report of the Subgroup on the Fundamental Rights and Duties of Hong Kong Residents regarding the Amendments to the Articles (9 January 1989).....	12
Report of the Subgroup on Economy regarding the Amendments to Chapter V (9 January 1989).....	16
Report of the Subgroup on Education, Science, Culture, Religion, Labour and Social Services regarding the Amendments to the Articles (9 January 1989).....	19
Progress Report of the Judging Panel of the Design Competition for the Regional Flag and Emblem of the Hong Kong Special Administrative Region of the People's Republic of China (9 January 1989).....	21
Mr Hu Sheng's Report on the Enlarged Chairmen's Meeting (9 January 1989).....	24
Methods for Submitting and Voting on Amendment Proposals (10 January 1989).....	29
Voting Method for the Basic Law of the Hong Kong Special Administrative Region (Draft) (10 January 1989).....	31
Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Draft)* (Adopted on 14 January 1989 by the eighth plenary session of the Drafting Committee for the Basic Law).....	32
Decision of the National People's Congress of the People's Republic of China on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region (Draft drawn up for the National People's Congress)* (14 January 1989)....	33

Proposal by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region on the Establishment of the Committee for the Basic Law of the Hong Kong Special Administrative Region of the Standing Committee of the National People's Congress* (14 January 1989).....	34
Method Adopted by the Drafting Committee for the Basic Law for the Adjudication of the Designs for the Regional Flag and Emblem (15 January 1989).....	35
Mr Ji Pengfei's Closing Speech at the Eighth Plenary Session of the Drafting Committee for the Basic Law (15 January 1989).....	36
Communique of the Eighth Plenary Session of the Drafting Committee for the Basic Law (15 January 1989)....	38

\* Please refer to the booklet printed by the CCBL.

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MR JI PENGFEI'S SPEECH AT THE EIGHTH PLENARY SESSION  
OF THE DRAFTING COMMITTEE FOR THE BASIC LAW

第 八 次 全 體 會 議  
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(9 January 1989)

Members,

I now call the eighth plenary session of the Drafting Committee for the Basic Law to order.

Forty-nine members are present at today's session with six members absent with apologies. Three members have passed away since our last session. They are Mr Fei Yi Ming, Vice-Chairman, Mr Jia Shi and Mr Qian Changzhao. I express deep mourning for them on-behalf of the Drafting Committee.

Members, upon the adoption and publication of the "Draft Basic Law for Solicitation of Opinions" (DBLSO) at the seventh plenary session, the Drafting Committee launched a five-month consultation exercise in Hong Kong and on the mainland with tremendous help from and in close coordination with the Consultative Committee. During these five months, at the invitation of the Consultative Committee, Mr Hu Sheng, Mr Wang Hanbin and I led two delegations of mainland drafters to Hong Kong to listen to the views of people in Hong Kong together with our Hong Kong counterparts. Some drafters also went to provinces and cities like Beijing, Shanghai, Guangdong and Fujian to solicit the opinions of the local people there. The drafters in Hong Kong and the Consultative Committee have put a great deal of effort in the publicity of the DBLSO and in the solicitation of opinions. At the end of the consultation period, the Consultative Committee compiled a five-volume consultation report. All these prepare the ground for the revision of the DBLSO.

In mid and late November, the subgroups of the Drafting Committee made a number of important amendments to the DBLSO after studying the various opinions and suggestions seriously. In early December, the enlarged meeting of the chairmen examined the amendments proposed by the subgroups and decided to submit the revised DBLSO to this plenary session for discussion.

The main task of this session is to examine the "Revised Draft Basic Law of the Hong Kong Special Administrative Region for Solicitation of Opinions" and to prepare a Basic Law (Draft) which will be submitted to the Standing Committee of the National People's Congress for publication. The meeting will be conducted in this way: members will first discuss and pass the agenda as well as the procedures for raising amendment proposals and for voting on the Basic Law (Draft). Then, members will divide themselves into groups to discuss the revised DBLSO and raise amendment proposals. Finally, amendment proposals and the Basic Law (Draft) to be submitted to the Standing Committee of the National People's Congress will be put to a vote. In addition, this plenary session is to adjudicate the designs for the

regional flag and emblem. In consideration of the importance of this session and the large number of questions to be discussed, the chairmen's meeting decided tentatively that the session would last for seven days.

Members, we have been working together for three and a half years since the establishment of the Drafting Committee. In these years, eight plenary sessions and 62 subgroup meetings were held. From the proposal of work plan to the preparation of the Structure of the Basic Law (Draft), to the drafting of articles by the subgroups, and to the consolidation of the subgroups' drafts to form the DBLSO by the general working subgroup, adequate and repeated consultations and discussions were carried out to reach ultimately a consensus among the drafters, and the drafting process has thus advanced step by step. We also promptly informed the general public in Hong Kong and on the mainland of our progress in every stage, and listened to the opinions and suggestions from all quarters extensively. These constant exchanges produced remarkable results. Reviewing our work in the past years, I believe you will all agree that we have adopted a very democratic and open approach. Members have shown a strong sense of responsibility towards the country and Hong Kong. They have exerted themselves and put in much time and energy. With joint efforts, we have overcome one difficulty after another and have reaped our first fruits. The drafting has entered an important stage where we are faced with an arduous task. I hope you will keep up your strong sense of responsibility and work together in one heart to complete the Basic Law (Draft) which will be submitted to the Standing Committee of the National People's Congress.

Thank you.



REPORT OF THE SUBGROUP ON THE  
RELATIONSHIP BETWEEN THE CENTRAL AUTHORITIES AND THE HKSAR  
REGARDING THE AMENDMENTS TO THE ARTICLES

(9 January 1989)

Chairmen, Vice-Chairmen, Fellow Members,

Since the seventh plenary session held in last April, members of the Subgroup on the Relationship between the Central Authorities and the HKSAR have, in the months of consultation, extensively listened to the opinions and suggestions on the Draft Basic Law for Solicitation of Opinions (DBLSO) expressed by people from various sectors in Hong Kong and on the mainland. In particular, they have paid serious attention to those opinions and suggestions on the relationship between the Central Authorities and the HKSAR and read in detail the consultation report of the Consultative Committee for the Basic Law. At the 15th meeting of the Subgroup held from 16 to 18 November, members of the Subgroup studied these opinions and suggestions, the opinions put forward by drafters at the seventh plenary session of the Drafting Committee, especially those put forward by the Hong Kong drafters. Once again, they scrutinized the provisions in the Preamble, Chapters I, II, VII and IX of the DBLSO. In-depth discussions were held on some of the articles and a number of amendments were made. At the same time, they further discussed the composition of the Committee for the Basic Law and put forward several supplementary proposals. In this report, I will only focus on a few major amendments and the supplementary proposals on the the Committee for the Basic Law.

I. On legislative power

The third paragraph of Article 16 of the DBLSO provides: "If the Standing Committee of the National People's Congress, after consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region, considers that any law of the Region is not in conformity with this Law or legal procedures, it may return the law in question for reconsideration or revoke it, but it shall not amend it. Any law returned for reconsideration or revoked by the Standing Committee of the National People's Congress shall immediately cease to have force. This cessation shall not have retroactive effect." After discussion, members made three amendments to this provision: (1) The word "revoke" has been deleted and the phrase "return...for reconsideration" is replaced by the word "return". Whether the returned law should again be submitted to the Standing Committee after it has been amended by the Legislative Council or whether the bill should be revoked, will be up to the HKSAR to decide. (2) The scope of laws of the HKSAR which may be reviewed or returned by the Standing Committee has been narrowed down. Under the previous provisions, the Standing Committee of the National People's Congress may review any law of the HKSAR in connection with all

provisions of the Basic Law, and decide to return it for reconsideration or to revoke it. Under the amended provisions, the Standing Committee of the National People's Congress may review the law only in connection with the provisions of the Basic Law on affairs within the responsibility of the Central Authorities or on the relationship between the Central Authorities and the HKSAR, and decide whether or not to return it. That means, no laws enacted by the Legislative Council of the HKSAR will be interfered with by the Standing Committee of the National People's Congress, unless they have violated those provisions of the Basic Law on affairs within the responsibility of the Central Authorities or on the relationship between the Central Authorities and the HKSAR. (3) Taking into consideration the actual practice under Hong Kong's legal system, the provision that the cessation of force of the returned law shall have "no retroactive effect" has been changed to "[t]his cessation (of force) shall not have retroactive effect, unless otherwise provided for in the laws of the Hong Kong Special Administrative Region".

## II. On the application of national laws

The third paragraph of Article 17 of the DBLSO provides that the national laws to be applied in the HKSAR are those "which relate to defence and foreign affairs as well as other laws which give expression to national unity and territorial integrity and which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the Hong Kong Special Administrative Region". As some people considered that the legal implication of the phrase "give expression to national unity and territorial integrity" was not clear enough and could cause difficulty in interpretation, it was therefore proposed that all the national laws to be applied in the HKSAR be listed separately as an annex to the Basic Law. After discussion, members of the Subgroup have agreed to adopt this proposal: (1) The phrase "give expression to national unity and territorial integrity" has been deleted. The seven\* national laws up to now which, according to the members, should be applied in the HKSAR are listed separately as Annex III to the Basic Law. (2) Specific provisions have been laid down regarding the addition to or deletion from the list of laws in Annex III. (3) With regard to the "cases of emergency" stipulated in the fourth paragraph of the Article, more specific provisions have been made. It is now amended to provide: "In case the Standing Committee of the National People's Congress decides to declare a state of war or, by reason of turmoil within the Hong Kong Special Administrative Region which is beyond the control of the Region, decides that the Region is in a state of emergency, the State Council may decree the application of the relevant national laws in the Region."

\* Translator's note: Only six national laws are listed in Annex III to the Basic Law (Draft).

### III. On judicial jurisdiction

With regard to this issue, the opinions from various sources are not substantially different. The question is how to phrase the provisions to make them more precise in meaning. The third paragraph of Article 18 of the DBLSO provides: "Courts of the Hong Kong Special Administrative Region shall have no jurisdiction over cases relating to defence and foreign affairs, which are the responsibility of the Central People's Government, and cases relating to the executive acts of the Central People's Government. Courts of the Hong Kong Special Administrative Region shall seek the advice of the Chief Executive whenever questions concerning defence, foreign affairs or the executive acts of the Central People's Government arise in any legal proceedings. A statement issued by the Chief Executive regarding such questions shall be binding on the courts." In the solicitation of opinions, a great number of people in Hong Kong considered the term "executive acts of the Central People's Government" not specific enough and will bring difficulty in adjudication by the future courts. They proposed replacing the phrases "cases relating to defence and foreign affairs" and "cases relating to the executive acts of the Central Government" by the terms "acts of state" and "facts of state" which are commonly used under the common law. After research, members of the Subgroup have agreed to adopt the proposal from people in Hong Kong and amended the third paragraph accordingly.

### IV. On the power of interpretation of the Basic Law

With respect to the power of interpretation, two major amendments have been made: (1) In order to increase the power of the courts of the HKSAR in interpreting the Basic Law, the second paragraph of Article 169 of the DBLSO is amended to read: "The Standing Committee of the National People's Congress shall authorize the courts of the Hong Kong Special Administrative Region to interpret on their own, in adjudicating cases before them, the provisions of this Law which are within the limits of the autonomy of the Region." As a result of this authorization, the Standing Committee of the National People's Congress will not interpret those provisions of the Basic Law involved in the SAR courts' adjudication, which are within the limits of autonomy of the HKSAR. (2) In order to limit the number of requests submitted by the Hong Kong courts to the Standing Committee of the National People's Congress for an interpretation of the Basic Law, the third paragraph of Article 169 of the DBLSO has been amended. It now stipulates that the courts of the HKSAR, in adjudicating cases before them, may request the Standing Committee of the National People's Congress to give an interpretation of the provisions of the Basic Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the HKSAR on two conditions: (1) that the interpretation will "affect the judgements on the cases" and (2) that the requests are submitted through the Court of Final Appeal of the HKSAR.



## V. On the Committee for the Basic Law

Before the seventh plenary session, the Subgroup put forward a proposal for the establishment of a committee for the Basic Law. It included preliminary suggestions on the name of the committee, and its affiliation, function and composition. Upon the examination of the plenary session, the proposal was presented as Note 2 to the DBLSO. In the solicitation of opinions, many views were put forward by people in Hong Kong. They showed particular concern for the size of membership of the Committee, the proportion of representation of Hong Kong members and the method of selecting Hong Kong members. At the meeting of the Subgroup held in last November, members studied these views and proposed that mainland members and Hong Kong members should respectively be given a 50% representation in the Committee, and that Hong Kong members should be Chinese citizens who are permanent residents of the HKSAR and should be nominated jointly by the Chief Executive, the President of the Legislative Council and the Chief Justice of the Court of Final Appeal of the HKSAR for appointment by the Standing Committee of the National People's Congress. According to the Subgroup, this arrangement will ensure that persons from Hong Kong who are competent and can meet public expectation will sit on the Committee for the Basic Law to reflect fully the opinions and requests of the HKSAR to the Committee and play their role in the actual implementation of the Basic Law. At the enlarged chairmen's meeting held in last December, this question was further discussed. The proposal that the Committee for the Basic Law should comprise twelve members whose term of office will be five years was put forward.

Apart from the above-mentioned amendments, the Subgroup has also amended other provisions in varying degrees. However, as time is limited, these amendments will not be enumerated.

This concludes the report of the Subgroup on the Relationship between the Central Authorities and the HKSAR. We ask the plenary session to examine our report.

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

(9 January 1989)

Chairmen, Vice-Chairmen, Fellow Members,

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

Alternative 2 in Article 70 has been deleted.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

REPORT OF THE SUBGROUP ON THE FUNDAMENTAL RIGHTS AND DUTIES  
OF HONG KONG RESIDENTS  
REGARDING THE AMENDMENTS TO THE ARTICLES

(9 January 1989)

Chairman, Vice-Chairmen, Fellow Members,

The twelfth meeting of the Subgroup on the Fundamental Rights and Duties of Hong Kong Residents was held in Guangzhou on 25 and 26 November 1988. The meeting studied the opinions on the articles of Chapter III collected in the consultation period from various sectors in Hong Kong, and the opinions on Chapter III raised by members at the seventh plenary session of the Drafting Committee. The articles of Chapter III were discussed one by one and further amendments were made to some of them according to the opinions of the various parties. These amendment proposals were examined at the enlarged meeting of the chairmen held in Guangzhou from 6 to 8 December. The amendments to the Chapter on the Fundamental Rights and Duties of the Residents were reported as follows:

1. Article 25

The article in the Draft Basic Law for Solicitation of Opinions (DBLSO) reads: "All Hong Kong residents shall be equal before the law, regardless of their nationality, race, ethnic origin, language, sex, occupation, religious belief, political views, educational level and property status." It is indicated in some opinions that the list "regardless of their nationality..." can hardly be exhaustive. The list is therefore deleted and the amended article reads: "All Hong Kong residents shall be equal before the law." This statement is concise and comprehensive. Some opinions suggest adding "shall be free from discrimination". But since "shall be equal before the law" implies the freedom from discrimination, no addition is made.

2. Article 26

The article in the DBLSO reads: "Permanent residents of the Hong Kong Special Administrative Region who have reached the age of 21 shall have the right to vote and the right to stand for election as prescribed by law." There are three kinds of opinions regarding this article. The first kind is in favour of retaining the provision for the age of 21. The second kind maintains that 21 should read 18. The third kind suggests that the voting age should not be stipulated in the Basic Law at all as it would be prescribed by the law enacted by the legislature of the HKSAR. We have adopted the third kind of opinions and amended the article to read: "Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law." The amended article is more flexible.

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### 3. Article 27

The article in the DBLSO reads: "Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, to form and join trade unions, and to strike; and freedom of assembly and of demonstration." In accordance with the opinions raised, the following amendments have been made: (1) freedom of assembly and of demonstration should follow freedom of association, and freedom of procession is newly added. (2) The word "right" is added to the freedom to form and join trade unions and to strike. Thus the amended article reads: "Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration, and the right and freedom to form and join trade unions and to go on strike."

### 4. Article 28

Paragraph 2 of the article in the DBLSO reads: "Hong Kong residents shall not be unlawfully arrested, detained or imprisoned. Unlawful deprivation or restriction of the residents' freedom of the person by any means shall be prohibited. Unlawful search of the body of any resident shall be prohibited." In the DBLSO, some opinions note that the concept of arbitrariness is more appropriate to the actual conditions and needs in Hong Kong under the common law and should therefore be added to the article. Some opinions suggest adding the prohibition of torture of any resident and the prohibition of arbitrary and unlawful deprivation of a resident's life. According to these opinions, the article is amended to read: "No Hong Kong resident shall be arbitrarily or unlawfully arrested, detained or imprisoned. Arbitrary or unlawful search of the body of any resident or deprivation or restriction of his/her freedom of the person shall be prohibited. The torture of any resident or arbitrary or unlawful deprivation of his/her life shall be prohibited."

### 5. Article 29

The article in the DBLSO reads: "The homes and other premises of Hong Kong residents shall not be violated. Unlawful search of, or intrusion into, a resident's home or other premises is prohibited." According to the opinions raised, "arbitrary" is added. The amended article reads: "The homes and other premises of Hong Kong residents shall be inviolable. Arbitrary or unlawful search of, or intrusion into, a resident's home or other premises shall be prohibited."

### 6. Article 31

The last sentence of the article in the DBLSO reads: "Hong Kong residents who hold valid travel documents shall have the freedom to travel and the freedom of entry and exit and, unless restrained by law, shall be free to leave the Hong Kong Special Administrative Region without special authorization." Some opinions indicate that the provision is not precise because the



enjoyment of the freedom to travel and the freedom of entry and exit by Hong Kong residents is based on the provisions in the laws of Hong Kong, and the holding of valid travel documents should not be taken as the prerequisite. Accordingly the sentence is amended to read: "They shall have the freedom to travel and the freedom of entry and exit. Unless restrained by law, Hong Kong residents who hold valid travel documents shall be free to leave the Region without special authorization."

#### 7. Article 32

Translator's note: This amendment only applies to the Chinese version. According to the article in the DBLSO in Chinese, "in public" does not govern "to preach"; "in public" is now moved to a place in the Chinese article where it governs both "to preach" and "participate in religious activities".

#### 8. Article 35

Paragraph 2 of the article in the DBLSO reads: "Hong Kong residents shall have the right to challenge in the courts the actions of the executive organs or their personnel." According to the opinions of people in Hong Kong, the article is amended to read: "Hong Kong residents shall have the right to institute legal proceedings in the courts against the actions of the executive organs or their personnel." The expression "to challenge" is changed to "to institute legal proceedings... against".

#### 9. Article 36

The article in the DBLSO reads: "Hong Kong residents shall have the right to social welfare; the welfare benefits of the working people shall be protected by law." According to the opinions raised by people in Hong Kong, the article is amended to read: "Hong Kong residents shall have the right to social welfare as prescribed by law; the welfare benefits of the labour force shall be protected by law." The phrase "as prescribed by law" is added. [Translator's note: The punctuation mark is also amended in the Basic Law (Draft).]

#### 10. Article 39

The article in the DBLSO reads: "The provisions of the 'International Covenant on Civil and Political Rights' and the 'International Covenant on Economic, Social and Cultural Rights' as applied to Hong Kong shall be implemented through legislation by the Hong Kong Special Administrative Region." With regard to the DBLSO, some opinions suggest adding the International Labour Conventions; some opinions suggest adding "remain in force" according to Annex I to the Sino-British Joint Declaration. These opinions have been adopted. Article 39 in the DBLSO reads: "The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless prescribed by law. But such restrictions shall not go beyond the necessity for the maintenance of national

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security, public order, public safety, public health, public morals and for the safeguarding of the rights and freedoms of other persons." Some opinions point out that "[b]ut such restrictions shall not go beyond the necessity for the maintenance of... other people" is not totally consistent with the provisions of the two international covenants. According to these opinions, Article 39 is deleted and the contents of Article 39 are prescribed in Paragraph 2 of Article 38 after amendment: "The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article." With such amendment, the restriction on Hong Kong residents' rights and freedoms as prescribed by law is closely integrated with the provisions in Paragraph 1 of Article 30\* on the two international covenants, which will be favourable to the safeguarding of the rights and freedoms of the Hong Kong residents by the Government of the HKSAR in accordance with law.

\* Translator's note: It should be Article 39 in the Basic Law (Draft).

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

(9 January 1989)



Chairmen, Vice-Chairmen, Fellow Members,

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

REPORT OF THE SUBGROUP ON EDUCATION,  
SCIENCE, CULTURE, RELIGION, LABOUR AND SOCIAL SERVICES  
REGARDING THE AMENDMENTS TO THE ARTICLES

(9 January 1989)

Chairmen, Vice-Chairmen, Fellow Members,

After the seventh plenary session of the Drafting Committee for the Basic Law, a five-month consultation exercise was conducted in Hong Kong and on the mainland. From 23 to 24 November 1988, the eleventh meeting of the Subgroup on Education, Science, Culture, Sports, Religion, Labour and Social Services was held to discuss the opinions on Chapter VI of the Draft Basic Law for Solicitation of Opinions (DBLSO) collected by the drafters and those processed by the Consultative Committee for the Basic Law. After discussion, we amended the articles in Chapter VI and reduced the number of articles in the chapter from 16 to 14. The following is our report on the amendments:

1. In order to convey the meaning precisely, the expression "the Hong Kong Special Administrative Region shall maintain the...system" which appears in a number of articles in this Chapter has all been changed to "on the basis of the previous...system, the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies (or work out the methods)".

2. The three articles on education have been rearranged into two articles.

3. The article on medical and health services has been amended to read: "The Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies to develop Western and traditional Chinese medicine and to improve medical and health services. Community organizations and individuals may provide various medical and health services in accordance with law."

4. The two articles on religion have merged as one. The provision "the Government of the Hong Kong Special Administrative Region shall not restrict the freedom of religious belief" is added. Earlier on the religious organizations in Hong Kong proposed adding the provision "the Government of the Hong Kong Special Administrative Region shall not restrict religious belief through legislation". However, at the enlarged chairmen's meeting, it was pointed out that such a provision would be inconsistent with the provisions of the International Covenants on Human Rights, so it was decided that the proposed provision be replaced with the present one.

5. The first two paragraphs of the article on the professions have been amended to read: "The Government of the

Hong Kong Special Administrative Region shall, on the basis of maintaining the previous system concerning the professions, work out on its own the methods of assessing the qualifications for professional practice for the various professions." "Persons with professional qualifications or qualifications for professional practice obtained prior to the establishment of the Hong Kong Special Administrative Region may retain their previous qualifications, in accordance with the relevant regulations and codes of practice." The first sentence of its third paragraph has been amended to read: "The Government of the Hong Kong Special Administrative Region shall continue to recognize the professions and the professional organizations recognized prior to the establishment of the Region."

6. The article on labour has been amended to read: "The Government of the Hong Kong Special Administrative Region shall formulate labour laws and policies on its own."

7. With regard to the non-governmental organizations in the HKSAR, in addition to those in the fields of education, technology, culture, sports, the professions and social welfare and the religious organizations provided for in the previous draft, those in the fields of art, medicine and health, social work and labour have been included.

In addition, the wording of individual articles has been slightly modified.

The Subgroup intended to put Articles 156 and 157 of the DBLSO in the "annex" which contains policy provisions, but since it was decided at the enlarged chairman's meeting that such an annex would not be adopted for the time being, the two articles remain in Chapter VI.

This report is now submitted to the plenary session for examination.

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PROGRESS REPORT OF THE JUDGING PANEL  
OF THE DESIGN COMPETITION FOR THE REGIONAL FLAG AND EMBLEM  
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION  
OF THE PEOPLE'S REPUBLIC OF CHINA

(9 January 1989)

Chairmen, Vice-Chairmen, Fellow Members,

The Judging Panel of the Design Competition for the Regional Flag and the Regional Emblem has held four meetings since its establishment on 15 July 1987. The first and second rounds of adjudication on all entries have been carried out according to the method of adjudication prescribed by the Drafting Committee. The six designs thus selected for each item are submitted to the eighth plenary session of the Drafting Committee for final adjudication. By now the Judging Panel has accomplished the task given by the Drafting Committee. Our progress is reported as follows:

1. Collection and Adjudication of the Designs for the Regional Flag and Regional Emblem

On 20 May, the "Notice on Collection and Adjudication of the Designs for the Regional Flag and Emblem of the HKSAR of the PRC" was published on the mainland and Hong Kong simultaneously. The deadline for collecting the designs was 31 March 1988. A total of 7,147 entries (3,449 from the mainland and 3,698 from Hong Kong) were collected. Among them 4,489 were flag designs and 2,658 were emblem designs. Entrants include people on the mainland, Hong Kong and Macao compatriots, Taiwan compatriots and other residents of Hong Kong. Overseas Chinese from twelve countries such as the United States, Canada and Singapore also participated in the competition. A number of entrants expressed in their cover letters their love for their motherland, their love for Hong Kong, their support for one country two systems and their wish that China will soon be unified. This design competition can be described as an extensive one with mass participation.

From 21 to 23 April 1988, the third meeting of the Judging Panel carefully reviewed the 7000-odd entries and picked out 316 entries. According to the Method Adopted by the Judging Panel for the Adjudication of the Designs of the Regional Flag and Emblem. 26 designs were shortlisted for each item after two rounds of voting by secret ballot, using identification codes.

After the publication of the results of the first round of adjudication, the shortlisted entries were exhibited in Hong Kong and Beijing.

From 25 to 27 November 1988, the fourth meeting of the Judging Panel seriously discussed the shortlisted 26 designs for



each item and commented on each design before selecting six designs for each item.

Members of the Judging Panel all agree that the work of adjudication was executed conscientiously, that the process of adjudication was in accordance with the Adjudication Method, and that the six designs for each item include all kinds of artistic styles. Both mainland and Hong Kong judges as well as experts and other members of the Panel are cooperative, seeking common ground while reserving differences. All members of the Judging Panel are pleased with the adjudication.

With the approval of the Chairmen's meeting, there will be one first prize, five second prizes, and 20 merit awards. The first and second prizes will be chosen from the six designs selected in the second round of adjudication for each item: the one with the highest votes will be the first prize and the rest will be the second prizes. Gold medals (the gold content for different prizes varies) will be awarded to the winners of the first and second prizes. The merit awards will go to all designs shortlisted in the first round of adjudication except for the six designs mentioned above. Silver medals will be given to the winners of the merit awards. Certificates will be issued to the winners of all prizes and awards. The 144 entries which won more than one vote in the first round of adjudication will be awarded with souvenir certificates.

## 2. Opinions and Proposals on the Amendment to the Designs of Regional Flag and Emblem

After the exhibition of the shortlisted entries, the audience on the mainland and in Hong Kong has raised all kinds of opinions and proposals. The Judging Panel seriously discussed these opinions and proposals, and unanimously agreed that the regional flag and emblem should embody political as well as artistic qualities. According to the Panel, since appraising a work of art would involve different contending art schools and views, all these opinions and proposals would serve as reference for the Judging Panel. The Panel is of the view that each of the designs selected in the second of adjudication (six flags and six emblems) has its merits and inadequacies and none of them is perfect. The Judging Panel has supplied written appraisals of the designs (six flags and six emblems) which are submitted to this plenary session for final adjudication. We propose that if the best design chosen by this session fails to obtain a two-thirds majority vote which makes it qualified for submission to the National People's Congress, the Drafting Committee should resolve to ask the Judging Panel to mobilize the experts concerned to make modifications to the chosen design while awarding this design with the first prize. The modified design to be submitted to the National People's Congress for approval should be forwarded to the ninth plenary session of the Drafting Committee for examination and adoption.

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In the collection and adjudication of the designs of regional flag and emblem, the parties concerned on the mainland and in Hong Kong, especially the Consultative Committee for the Basic Law, offered us a great deal of assistance and support. We would like to take this opportunity to express our heartfelt gratitude.

This report is now submitted to the plenary session for examination.

MR HU SHENG'S REPORT ON THE ENLARGED CHAIRMEN'S MEETING

(9 January 1989)



Members,

Mr Ji, Chairman of the Drafting Committee, asked me to prepare a report on the enlarged chairmen's meeting held in December last year to be presented at this plenary session of the Drafting Committee.

After the consultation exercise on the "Draft Basic Law of the Hong Kong Special Administrative Region for Solicitation of Opinions" (DBLSO) ended, individual subgroups of the Drafting Committee for the Basic Law held meetings in November last year to seriously study the opinions and suggestions put forward by people from various sectors in Hong Kong and on the mainland regarding the amendment of the DBLSO. The subgroups then further amended the articles of the DBLSO. At the enlarged chairmen's meeting held in December last year, the articles amended by the subgroups were examined one by one. Having affirmed the amendments put forward by the subgroups, the enlarged chairmen's meeting made some modifications to the articles in its preparation of the "Revised Draft Basic Law of the Hong Kong Special Administrative Region for Solicitation of Opinions" to be submitted to this plenary session for discussion. In this revised draft, there are altogether 160 articles, twelve less than those in the DBLSO. As the convenors of the subgroups have already presented to you their reports on the amendments to the articles earlier on, I will not repeat those amendments but will give you a brief report on some of the modifications made to the articles by the enlarged chairmen's meeting. I ask the plenary session to examine my report together with those of the subgroups.

I. With respect to the General Principles, the enlarged chairmen's meeting made four modifications:

(1) The order of Articles 4 and 5 of the DBLSO has been reversed so that the previous Article 4 is grouped with Articles 6 and 7 on the economy. This is a more logical presentation.

(2) Article 6 of the DBLSO has been amended to read: "The Hong Kong Special Administrative Region shall protect the right of private ownership of property in accordance with law." The provisions of the previous Article 6, after slight modification, are presented as Article 104 in Chapter V on economy. This amendment has primarily taken into consideration the fact that general principles should be fundamental, hence they should not be too specifically written. The protection of private ownership of property is a fundamental principle of the capitalist system and should therefore be included in the chapter on general principles. It is more appropriate to provide for the details of

the protection of private ownership of property in the chapter on economy.

(3) Chapter VIII on the regional flag and regional emblem has been removed. The provisions on the regional flag and regional emblem are now presented as Article 10 under the General Principles.

(4) The phrase "the policies and systems practised in the Hong Kong Special Administrative Region" in the previous Article 10 is now amended to read "the systems and policies practised in the Hong Kong Special Administrative Region" in Article 11. The phrase "and the relevant policies" is added after "legislative and judicial systems". With these amendments, the provisions are expressed in a more precise manner.

II. With respect to Chapter II on the relationship between the Central Authorities and the HKSAR, only one amendment has been made: the order of the second and third paragraphs of Article 13 has been reversed so that the two paragraphs on the responsibility of the Central Authorities for foreign affairs are grouped together.

III. With respect to Chapter III on the fundamental rights and duties of the residents, two articles have been amended. The clause "to challenge in the courts" as in the provision "Hong Kong residents shall have the right to challenge in the courts the actions of the executive organs or their personnel" in the previous Article 34 has been amended to read: "to institute legal proceedings in the courts against the actions..." in the present Article 35. The provision "Hong Kong residents shall have the right to social welfare; the welfare benefits of the working people shall be protected by law" in the previous Article 36 has been amended to read: "Hong Kong residents shall have the right to social welfare as prescribed by law;\* The welfare benefits of the labour force shall be protected by law."

\* Translator's note: In the Basic Law (Draft), the punctuation mark ";" is replaced by a fullstop.

IV. With respect to Chapter IV on the political structure, the wording of three provisions has been amended. The provision: "The term of office of members of the Legislative Council of the Hong Kong Special Administrative Region shall be four years." in Article 68 has been amended to read: "The term of office of the Legislative Council of the Hong Kong Special Administrative Region shall be four years, except the first term which shall be two years." The amendment proposal to change Paragraph 2 of Article 71 to: "To decide on the agenda, but the bills introduced by the government must be given priority for inclusion in agenda." has been modified to read: "To decide on the agenda, giving priority to bills introduced by the government for inclusion in the agenda." The term "district organizations which are not local organs of political power" in Article 96 has been amended to "district organizations which are not organs of



political power".

With respect to the provision on legal practice in Article 93 in the present draft, some members put forward their view at the enlarged chairmen's meeting that it was not quite appropriate to lay down the provision on legal practice in the section on judicial organs because lawyers are not judicial personnel. They held the view that the provisions on professional organizations and professional qualifications in the present Article 141 should also be applicable to lawyers. The enlarged chairmen's meeting did not reach a decision on this question. It is hoped that this plenary session will discuss the issue.

V. With respect to Chapter V on the economy, the Subgroup on Economy proposed merging Sections 1, 2 and 3 of Chapter V of the DBLSO. The enlarged chairmen's meeting accepted this proposal. The new section is now entitled "Public Finance, Monetary Affairs, Trade, Industry and Commerce". In addition, the provision on the protection of property rights of legal persons is put under Article 104.

VI. With respect to Chapter VI on education, science, culture, sports, religion, labour and social services, two provisions have been amended:

(1) The first paragraph of Article 140 originally reads: "The government of the Hong Kong Special Administrative Region shall not interfere in the internal affairs of religious organizations and shall not restrict religious activities which do not contravene the laws of the Region." On the basis of the proposal put forward by the Subgroup concerned, the clause "restrict the freedom of religious belief" has been inserted before "interfere in the internal affairs of religious organizations".

(2) Article 144 now provides: "...shall, on its own, formulate laws and policies on the development and improvement of this system...." which is an improved version of the previous provision: "...shall formulate, on its own, policies on the development and improvement of this system...". This amendment has taken into consideration that the social welfare system is not only a government policy, many of its aspects are stipulated by law.

VII. With respect to the formation of the first Government and the first Legislative Council, it was discussed at the enlarged chairmen's meeting whether the issue should be presented as an annex to the Basic Law. Taking into consideration that the method for the formation of the first Government and the first Legislative Council must take effect before 1 July 1997, and that the Basic Law and its Annexes will only take effect on 1 July 1997, it was proposed that the method for the formation of the first Government and the first Legislative Council should be presented as a special decision of the National People's Congress to be published at the same time when the Basic Law is adopted.

Accordingly, the enlarged chairmen's meeting revised the wording of Article 159 in Chapter IX of the present draft.

VIII. With respect to the Committee for the Basic Law, the enlarged chairmen's meeting studied the proposal put forward by the Subgroup on the Relationship between the Central Authorities and the HKSAR regarding the establishment of the Committee for the Basic Law of the HKSAR under the Standing Committee of the National People's Congress. The meeting preliminarily decided on the following: the Committee will be a working committee under the Standing Committee of the National People's Congress. It will comprise twelve members appointed by the Standing Committee of the National People's Congress. Six of them will be from the mainland and six from Hong Kong (including members of the legal profession). The term of their office will be five years. It will be stipulated that: "Hong Kong members shall be Chinese citizens who are permanent residents of the Hong Kong Special Administrative Region and shall be nominated jointly by the Chief Executive, President of the Legislative Council and Chief Justice of the Court of Final Appeal of the Region for appointment by the Standing Committee of the National People's Congress". The function of the Committee for the Basic Law will be: "to study questions concerning the implementation of Articles 17, 18, 157 and 158 of the Basic Law of the Hong Kong Special Administrative Region and submit its views thereon to the Standing Committee of the National People's Congress."

IX. As to how policy provisions should be dealt with, during the consultation exercise, many people in Hong Kong and on the mainland proposed putting certain policy provisions in Chapters V and VI in an annex. The Subgroup on Economy and the Subgroup on Education, Science and Culture both studied the issue at their own meetings held in November last year. Members of the Subgroup on Economy were unanimous that these provisions should not be put in an annex whereas the Subgroup on Education, Science and Culture only agreed to put Articles 156 and 157 of the DBLSO in an annex. In the "Revised Draft Basic Law of the Hong Kong Special Administrative Region for Solicitation of Opinions" submitted to this plenary session for discussion, the policy provisions remain in Chapters V and VI. How to better handle this issue awaits further discussion and the decision of the plenary session.

The Secretariat of the Drafting Committee for the Basic Law has compiled three reference papers on the related issues for your consideration. The first reference paper is a collection of the opinions on the political structure and other issues put forward by individual members. The second reference paper is a collection of the opinions on the political structure and other issues put forward by members of the public and organizations in Hong Kong at the time of the enlarged chairmen's meeting. The third reference paper is a reprint of the explanation of the terms "acts of state" and "facts of state" supplied by the Consultative Committee for the Basic Law.

This report is now submitted to the plenary session for examination.

## METHODS FOR SUBMITTING AND VOTING ON AMENDMENT PROPOSALS

(Adopted on 10 January 1989 at the eighth plenary session of the Drafting Committee for the Basic Law)

I. Members of the Drafting Committee may submit proposals on any amendment they wish to make to the provisions of the Basic Law (Draft).

II. Amendment proposals may be submitted in the following ways:

-(1) An amendment proposal may be jointly submitted by five or more members of the Drafting Committee.

(2) An amendment proposal may be submitted after having been moved by a member of the Drafting Committee and seconded by four or more other members at the group discussion.

III. After an amendment proposal is submitted, the chairmen's meeting shall examine it and decide whether it will be put to a vote at the plenary session. If the chairmen's meeting resolves that the proposal will not be put to a vote, it should give an explanation to the plenary session and, when necessary, submit the proposal to the plenary session for a decision.

IV. Each member may not at the same time submit, jointly sign or second more than one amendment proposal on one article.

V. All amendments put forward must be specifically stated in the amendment proposals with a brief explanation. The proposers and the joint signatories or seconders must sign the proposals personally.

VI. The deadline for submission of amendment proposals is 5:30 pm on 11 January 1989.

VII. If a proposer declares his proposal abandoned before it is put to a vote, his proposal shall automatically be void. If a proposer wishes to further amend his proposal, he must submit his amended proposal before the deadline. If the chairmen's meeting resolves upon examination to put his amended proposal to a vote at the plenary session, his amended proposal shall replace his original proposal which shall automatically be void.

VIII. Proposals which have been resolved by the chairmen's meeting to be included in the agenda shall be put to a vote at the plenary session.

IX. The plenary session shall vote on the amendment proposals by secret ballot. An article with two or more amendment proposals shall have its proposals voted on in the reversed order of submission (i.e. the latest proposal will be voted on first).



An amendment proposal which has the votes of two-thirds of the members, that is adopted by 37 or more votes, shall replace the original article.

X. Members of the Drafting Committee may put forward amendment suggestions on the wording of the Basic Law (Draft) at the group discussion. With the approval of the majority of members in the group, the suggestions shall be submitted to the chairmen's meeting for decision and shall be reported to the plenary session by the chairmen's meeting.

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VOTING METHOD FOR THE BASIC LAW OF  
THE HONG KONG SPECIAL ADMINISTRATIVE REGION (DRAFT)

(Adopted on 10 January 1989 at the eighth plenary session of the  
Drafting Committee for the Basic Law)

I. The plenary session shall vote by secret ballot on the articles (and annexes) one by one of the Basic Law (Draft) to be submitted to and published by the Standing Committee of the National People's Congress. According to Paragraph 3.6 of the Working Rules of the Drafting Committee for the Basic Law, an article of the Basic Law (Draft) shall only be adopted with the votes of two-thirds of the members, that is 37 or more votes.

II. Any article which fails to have the votes of two-thirds of the members shall be returned to the subgroup concerned for reconsideration. Members may submit a new amendment proposal on the returned article. The deadline for submission of such new proposals shall be 10:00 am on 14 January 1989.

III. The plenary session shall again vote on the new amendment proposal submitted. If it has the votes of two-thirds of the members, it shall replace the original article. In case the new amendment proposal still fails to have the votes of two-thirds of the members, it shall be adopted as the official article if the number of votes it obtains exceed that obtained by the original article, otherwise the original article shall be retained. If it is the case mentioned above, an explanatory note must be appended to the article indicating that it was not adopted by a two-thirds majority vote.

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BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION  
OF THE PEOPLE'S REPUBLIC OF CHINA (DRAFT)

(Adopted on 14 January by the eighth plenary session of the  
Drafting Committee for the Basic Law)

\* Please refer to the booklet printed by the CCBL.

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DECISION OF THE NATIONAL PEOPLE'S CONGRESS  
OF THE PEOPLE'S REPUBLIC OF CHINA  
ON THE METHOD FOR THE FORMATION  
OF THE FIRST GOVERNMENT AND THE FIRST LEGISLATIVE COUNCIL  
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION  
(DRAFT DRAWN UP FOR THE NATIONAL PEOPLE'S CONGRESS)

(14 January 1989)

\* Please refer to the booklet printed by the CCBL.



PROPOSAL BY THE DRAFTING COMMITTEE FOR THE BASIC LAW  
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION  
ON THE ESTABLISHMENT  
OF THE COMMITTEE FOR THE BASIC LAW  
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION  
OF THE STANDING COMMITTEE  
OF THE NATIONAL PEOPLE'S CONGRESS

(14 January 1989)

\* Please refer to the booklet printed by the CCBL.

METHOD ADOPTED BY THE DRAFTING COMMITTEE FOR THE BASIC LAW  
FOR THE ADJUDICATION OF THE DESIGNS FOR  
THE REGIONAL FLAG AND EMBLEM



(Adopted on 15 January 1989 at the eighth plenary session of the Drafting Committee for the Basic Law)

According to the "Method for the Collection and Adjudication of the Designs for the Regional Flag and Regional Emblem of the Hong Kong Special Administrative Region" adopted at the fourth plenary session of the Drafting Committee for the Basic Law, the plenary session of the Drafting Committee will, by secret ballot, select one design for the regional flag and one design for the regional emblem. The method for adjudication is prescribed as follows:

I. Before adjudicating, the plenary session of the Drafting Committee shall recommend two members (one from the mainland and one from Hong Kong) as scrutineers.

II. Members of the Drafting Committee shall each be given a ballot paper which contains the numbers of the six selected designs for the regional flag and the six selected designs for the regional emblem. Each member shall put a "✓" against the numbers of the two designs which he selects for the regional flag and the regional emblem, and put the ballot paper into the ballot box.

III. Any ballot paper with more than one "✓" for each of the two items (the regional flag and the regional emblem) shall be deemed void. The adjudication result shall only be deemed valid if the number of ballot papers collected is equal to or less than the number of voters, otherwise the adjudication result shall be deemed void.

IV. A design for the regional flag or regional emblem which has more than 50% of the votes shall be awarded the first prize.

V. If no design for the regional flag or regional emblem has more than 50% of the votes, a second ballot shall be held for the designs which have the highest and the second-highest number of votes. The design which has more than 50% of the votes in the second ballot shall be awarded the first prize. The Judging Panel shall be commissioned to touch up the design to be submitted again to the Drafting Committee for examination.

VI. The touching up shall include: (1) touching up the colour, toning it up or down, (2) modifying the size or scale of individual parts, and (3) incorporating the symbols of "one country, two systems" and Hong Kong's special features. However, the structure of the original design must be retained.

MR JI PENGFEI'S CLOSING SPEECH  
AT THE EIGHTH PLENARY SESSION OF  
THE DRAFTING COMMITTEE FOR BASIC LAW

(15 January 1989)

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Members,

With our joint efforts, the eighth plenary session of the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region has basically dealt with all the items on the agenda.

At the plenary session, members seriously and conscientiously discussed the "Revised Draft Basic Law of the Hong Kong Special Administrative Region for Solicitation of Opinions" submitted by the enlarged chairmen's meeting. In addition to the revision of the wording of some of the articles, ten substantive amendment proposals were adopted to replace the corresponding articles in the previous draft. Then, by secret ballot, the preamble, articles and annexes of the "Basic Law of the Hong Kong Special Administrative Region (Draft)" were adopted. Except for three articles, the rest were adopted by a two-thirds majority vote. After further discussions in groups, new amendment proposals were submitted on those three articles which had not been adopted by a two-thirds majority. When put to a vote for the second time, two of these amended articles were adopted. Only the new amendment proposal on Article 19 was still not adopted as the votes it obtained were two votes short of those obtained by the original Article 19. According to the Voting Method for the Basic Law (Draft), the article will remain in the revised draft with an explanatory note when the revised draft is submitted to the Standing Committee of the National People's Congress. This plenary session also adjudicated the designs for the regional flag and emblem of the HKSAR but in the end no design was adopted by the members present. The chairmen's meeting resolved to refer the matter to the Judging Panel for Regional Flag and Emblem for further study.

This plenary session was conducted completely in accordance with democratic procedures. The articles and annexes of the Basic Law (Draft) were voted on individually by all members and adopted by a two-thirds majority vote. This shows that the draft legislation which will be submitted to the Standing Committee of the National People's Congress for publication has been dealt with by the Drafting Committee in a very conscientious, responsible and serious manner.

Members, this eighth plenary session has accomplished a very important task for the drafting of the Basic Law of the Hong Kong Special Administrative Region and that is, it has completed the "Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Draft)" to be submitted to the Standing Committee of the National People's Congress for

examination and publication. However, the work of the Drafting Committee will not finish until the "Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China" is passed by the National People's Congress. Not only are there individual articles of the Basic Law (Draft) yet to be adopted, those articles which were adopted are not immaculate. Once the Basic Law (Draft) is accepted and published by the Standing Committee of the National People's Congress, a second consultation exercise will be launched in Hong Kong and on the mainland. It is hoped that at that time members of both the Drafting Committee and the Consultative Committee will again do their best to extensively solicit the opinions and suggestions of people from various sectors. Those amendment proposals which were not adopted by this plenary session will also be submitted to the Standing Committee of the National People's Congress together with the Basic Law (Draft). The task of the Drafting Committee in the next stage and in the ninth plenary session will be determined according to the decision of the Standing Committee of the National People's Congress. Members will be notified in due course of the time and venue for the ninth plenary session. We believe that, through the second consultation exercise and further amendment, this draft legislation will come closer to perfection.

Now, I declare that the eighth plenary session of the Drafting Committee for the Basic Law is adjourned.



COMMUNIQUE OF THE EIGHTH PLENARY SESSION OF  
THE DRAFTING COMMITTEE FOR THE BASIC LAW

(Adopted on 15 January 1989 at the eighty plenary session of the  
Drafting Committee for the Basic Law)

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The eighth plenary session of the Drafting Committee for the Basic Law was held from 9 to 15 January 1989 in Guangzhou. Fifty-three members were present at the meeting with two members absent with apologies.

At the meeting, members discussed the "Revised Draft Basic Law of the Hong Kong Special Administrative Region for Solicitation of Opinions" prepared on the basis of the opinions collected extensively from members of various sectors in Hong Kong and on the mainland during the five-month consultation period. Altogether 58 amendment proposals were put forward at the meeting and twelve of them were adopted. By secret ballot, the session voted on the articles and documents one by one and adopted the "Basic Law of the Hong Kong Special Administrative Region (Draft)", the "Proposal by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region on the Establishment of the Committee for the Basic Law of the Hong Kong Special Administrative Region of the Standing Committee of the National People's Congress", and the "Decision of the National People's Congress of the People's Republic of China on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region (Draft)" drawn up for the National People's Congress. The session resolved to submit the "Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Draft)" to the Standing Committee of the National People's Congress for examination and publication. The session also adjudicated the designs for the regional flag and emblem of the Hong Kong Special Administrative Region. However, since no design was adopted, the chairmen's meeting resolved to refer the matter to the Judging Panel for the Regional Flag and Emblem of the Hong Kong Special Administrative Region for further study.

The plenary session held that it had accomplished an important task for the drafting of the Basic Law of the Hong Kong Special Administrative Region as it had completed the "Basic Law of the Hong Kong Special Administrative Region (Draft)" to be submitted to the Standing Committee of the National People's Congress for examination. The work of the Drafting Committee will not finish until the National People's Congress passes the "Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China". After the publication of the "Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Draft)", the Drafting Committee will, according to the decision of the Standing Committee of the National People's Congress, further solicit opinions from all quarters and make the necessary amendments.

The plenary session was of the view that the Consultative Committee for the Basic Law of the Hong Kong Special Administrative Region has accomplished a lot in the three years since its establishment. It has effectively ensured the smooth progress of the drafting of the Basic Law. The Drafting Committee would like to thank all members of the Consultative Committee as well as those people in Hong Kong and on the mainland who have shown concern for and given support to the drafting of the Basic Law.

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