

**Commission on Strategic Development
Committee on Governance and Political Development**

**An Overview of the Political Structure
of the Hong Kong Special Administrative Region**

I. Constitutional Basis of the Political Structure of the Hong Kong Special Administrative Region

The Constitution of the People's Republic of China ("PRC") and the Basic Law form the constitutional basis of the political structure of the HKSAR. The Constitution is the basic law of the State. It enjoys the highest legal status and is applicable to the whole country. In accordance with the Constitution, the National People's Congress decide on the establishment of the HKSAR and the systems to be instituted. It is stated in the Preamble to the Basic Law that upholding national unity and territorial integrity, preserving the prosperity and stability of Hong Kong, and taking account of its history and realities, the State decided that, upon its resumption of the exercise of sovereignty over Hong Kong, the HKSAR should be established in accordance with the provisions of Article 31 of the Constitution. Under the principle of "One Country, Two Systems", the socialist system and policies would not be practised in Hong Kong. In accordance with the Constitution, the National People's Congress ("NPC") enacted the Basic Law, prescribing the systems to be practised in the HKSAR, in order to ensure the implementation of the basic policies of the State regarding Hong Kong.

2. On 4 April 1990, the Seventh NPC at its Third Session adopted the "Decision of the National People's Congress on the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China". It is clearly stated in the Decision that "the Basic Law of the Hong Kong Special Administrative Region is constitutional as it is enacted in accordance with the Constitution of the People's Republic of China and in the light of the specific conditions of Hong Kong. The systems, policies and laws to be instituted after the establishment of the Hong Kong Special Administrative Region shall be based on the Basic Law of the Hong Kong Special Administrative Region." The Basic Law is a national law enacted

by the National People's Congress. It is binding on the HKSAR as well as the whole country.

3. Chapter IV of the Basic Law and Annexes I and II prescribe the political structure of the Region. The political structure as well as the other systems to be practised in the HKSAR are to ensure the implementation of the basic policies of the People's Republic of China regarding Hong Kong

Note 1

II. Principles of Design of the Political Structure

4. In submitting the Basic Law (Draft) and related documents at the Third Session of the Seventh NPC on 28 March 1990, Director JI Pengfei made the following explanation on the political structure of the HKSAR :

Note 1 The Government of the PRC explained its basic policies regarding Hong Kong in Article 3 and Annex I to the "Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong". Besides, in his Report on the Work of the Government delivered at the Second Session of the Sixth NPC on 15 May 1984, the Premier of the State Council announced : "Our country will, in 1997, resume the exercise of sovereignty over Hong Kong. This is our unswerving decision and policy. In order to preserve the stability and prosperity of Hong Kong, we will adopt, upon our resumption of the exercise of sovereignty, a series of special policies regarding Hong Kong which will remain unchanged for 50 years. These policies include : in accordance with Article 31 of our Constitution, to set up the Hong Kong Special Administrative Region, which will be managed by Hong Kong people themselves and will enjoy a high degree of autonomy; the original social and economic systems and way of life will remain unchanged, and the laws previously in force in Hong Kong will remain basically the same; Hong Kong's status as a free port and an international financial and trading centre will be maintained, and Hong Kong will continue to maintain and develop its economic relations with various countries and places as well as relevant international organization; the economic interest of Britain and other countries in Hong Kong will be taken into consideration. The above policies of the Government of the PRC take into full account the history and present situation of Hong Kong, accord with the fundamental interests of all people in China, including the compatriots in Hong Kong, and are pragmatic and reasonable. We hope and believe that the question of Hong Kong can be fully resolved shortly."

“The political structure of the Hong Kong Special Administrative Region should accord with the principle of ‘One Country, Two Systems’ and aim to maintain stability and prosperity in Hong Kong in line with its legal status and actual situation. To this end, consideration must be given to the interests of the different sectors of society and the structure must facilitate the development of the capitalist economy in the Region. While the part of the existing political structure proven to be effective will be maintained, a democratic system that suits Hong Kong’s reality should gradually be introduced.”

5. Article 45 of the Basic Law provides that “the Chief Executive (“the CE”) of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People’s Government. The method for selecting the CE 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 is the selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures. The specific method for selecting the CE is prescribed in Annex I: ‘Method for the Selection of the CE of the Hong Kong Special Administrative Region’.”

6. Article 68 of the Basic Law provides that “the Legislative Council (“LegCo”) of the Hong Kong Special Administrative Region shall be constituted by election. The method for forming the LegCo 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 is the election of all the members of LegCo by universal suffrage. The specific method for forming the LegCo and its procedures for voting on bills and motions are prescribed in Annex II: ‘Method for the Formation of the LegCo of the Hong Kong Special Administrative Region and Its Voting Procedures’.”

7. The following four principles on constitutional development can be derived from the above Explanation of Director JI on political structure and the provisions in Article 45 and Article 68 of the Basic Law :

- (i) meeting the interests of different sectors of society;
- (ii) facilitating the development of the capitalist economy;

- (iii) gradual and orderly progress; and
- (iv) appropriate to the actual situation in the HKSAR.

(i) Meeting the interests of different sectors of society

8. Director JI Pengfei mentioned in his Explanation delivered on 28 March 1990 that, with regard to the political structure of the HKSAR, consideration must be given to the interests of different sectors of society. As can be seen from the history of Hong Kong's economic development, economic prosperity is largely dependent on the joint efforts of the industrial and business sectors, the middle class, professionals, the working class, and other sectors of society. Therefore, this principle concerns how to meet the interests of different sectors in a proper way, with the aim of preserving prosperity and stability. In accordance with this principle and the actual situation at that time, half of the seats in LegCo would be reserved for functional constituencies after reunification. In his statement, Director JI also cited the voting procedures in LegCo stipulated in Annex II to the Basic Law as an example of meeting the interests of different sectors of society.

(ii) Facilitating the Development of the Capitalist Economy

9. In his statement, Director JI said that Chapter V of the Basic Law contained stipulations on the economic system and policies of the HKSAR. These provisions are indispensable to the normal operation of the capitalist economy in Hong Kong and the preservation of the status of Hong Kong as an international financial centre and a free port. The aim of these measures is to preserve the prosperity and stability of Hong Kong. The relevant principles have been implemented through Article 5 and other relevant provisions of the Basic Law (see Chapter 5 of the Basic Law). To preserve the prosperity and stability of Hong Kong, the previous capitalist system and way of life should remain unchanged. Constitutional development should not proceed in a direction which affects the operation of the capitalist system.

(iii) Gradual and Orderly Progress

10. It is generally understood that “gradual and orderly progress” means proceeding step by step in an orderly fashion to move forward. It involves a step by step transition, and different stages of evolution over time. With regard to arriving at the ultimate aim of selecting the CE and electing all members of LegCo by universal suffrage, the evolutionary process should proceed in stages, and the process could not be taken forward too rapidly

Note 2

(iv) Actual Situation

11. The “actual situation” of the HKSAR referred to in the Basic Law includes political, economic, and social conditions. In his speech delivered on 26 April 2004 titled “Striving for the truth in a pragmatic spirit in finding the right path for the constitutional development of Hong Kong”, Mr QIAO Xiaoyang, Deputy Secretary-General of Standing Committee of the National People’s Congress (“NPCSC”) mentioned that when the NPCSC considered the Decision on the same day, it was of the view that the following actual situation must be given due consideration in Hong Kong’s constitutional development :

- (1) many people of Hong Kong still had an inadequate understanding of “one country, two systems” and the Basic Law. The concepts of “one country”, national identity, the legal status of Hong Kong and meaning of universal suffrage were not so clear to the general public;

Note 2 Reference can be made to page 447 – 448 of the “Introduction to the Basic Law of the Hong Kong Special Administrative Region” written by Wang Shuwen (chief editor): “The election system for the HKSAR cannot remain as it was....., nor can it develop too fast. If it remains unchanged, the demand of part of the Hong Kong residents for more democratic participation cannot be met and the ultimate aim for electing all the members of the Legislative Council of the HKSAR by universal suffrage would be neglected. The aim cannot be attained unless direct election is adopted gradually and conditions are created step by step to enhance the awareness of Hong Kong residents of the need to participate in political activities and to accumulate experience in election. However, it is impossible to have the Legislative Council constituted immediately by universal suffrage..... without a process of gradual and orderly progress, such development would be too fast to ensure participation by representatives of all social sectors in the Legislative Council or to have the interests of the various social strata taken into consideration - - which would give rise to social unrest and adversely affect social stability and economic development.”

- (2) the status of the Basic Law as the constitutional law of Hong Kong had not been really established, or alternatively put, had not been securely entrenched;
- (3) Hong Kong was a highly market-oriented and international society, and was a rather mature capitalist society. To maintain the previous capitalist system, Hong Kong's political system must cater to the interests of different strata, sectors and groups, including the interests of the working class as well as those of the industrial and business sectors, balancing the participation of each group;
- (4) Hong Kong was an economic city, and an international trading centre, financial centre, etc. Hong Kong's constitutional development had to be in line with such economic status;
- (5) executive-led government was an important principle underlying the HKSAR's political system as stipulated in the Basic Law. Since Hong Kong's reunification some six years ago, the operation of the political system had still not met the requirements of the Basic Law. The co-ordination between the executive authorities and the legislature was still in a stage of mutual adjustment; and
- (6) at the present time there were major disagreements in the Hong Kong community over the introduction of universal suffrage in 2007/08.

III. An Executive-led System

12. Apart from the four principles on constitutional development mentioned above, we should also have regard to the fact that according to the design of the Basic Law, the political structure of the HKSAR is an executive-led system headed by the CE^{Note 3}. According to the Basic Law, the CE shall be accountable to the CPG and the HKSAR. The CE is the head of the HKSAR. At the same time, he leads the HKSAR Government. The CE is responsible for implementing the Basic Law, and is responsible for developing and implementing the systems and policies of the HKSAR,

Note 3 This is mainly realized in the following areas :

- (i) the CE shall be the head of the HKSAR and shall represent the Region (Article 43 of the Basic Law);
- (ii) the CE is at the same time the head of the HKSAR Government (that is, the executive authorities) (Article 60 of the Basic Law);
- (iii) in accordance with Article 48 of the Basic Law, the CE is responsible for the implementation of the Basic Law;
- (iv) in accordance with Article 48 of the Basic Law, the CE leads the government of the Region, decides on government policies, nominates and reports to the CPG for appointment the principal officials and recommends to the CPG the removal of them, to conduct, on behalf of the HKSAR, external affairs and other affairs as authorized by the Central Authorities;
- (v) according to Article 62 of the Basic Law, the CE leads the HKSAR Government to exercise relevant powers and functions, including drawing up and introducing budgets, and drafting and introducing bills, motions and subordinate legislation;
- (vi) the CE plays an important role in the legislative process, including the signing of bills and the promulgation of laws (Articles 48 and 76 of the Basic Law), as well as other relevant provisions (Articles 49, 50 and 51 of the Basic Law);
- (vii) according to Article 74 of the Basic Law, Members of the LegCo may not introduce bills relating to public expenditure or political structure or the operation of the government. The written consent of the CE shall be required before bills relating to government policies are introduced by members;
- (viii) independent organizations, such as the Independent Commission Against Corruption and the Commission of Audit, shall be accountable to the CE (Articles 57 and 58 of the Basic Law); and
- (ix) the CE also plays an important role in relation to the judiciary, for instance, by appointing judges of the courts at all levels (Article 48 of the Basic Law); as well as other relevant provisions (Articles 90 and 19 of the Basic Law etc.).

including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judiciary systems, and the relevant policies. To meet these requirements, we must implement an executive-led system.

Relationship between the Executive Authorities and Legislature

13. Under the principle of an executive-led system, Director JI Pengfei mentioned in the Explanations that, as regards the relationship between the executive authorities and the legislature, “[t]he executive authorities and the legislature should regulate each other as well as coordinate their activities. To maintain Hong Kong’s stability and administrative efficiency, the CE must have real power which, at the same time, should be subject to some restrictions.” The provisions in the Basic Law on political structure realize the relationship between the executive authorities and the legislature that they should regulate each other as well as coordinate their activities.

IV. Process of Constitutional Development

(i) Before Reunification

14. Before reunification, the Governors of Hong Kong were appointed by the British Government to implement colonial rule in Hong Kong. After reunification, in accordance with the principle of “Hong Kong people ruling Hong Kong” and the relevant provisions of the Basic Law, the CE is a permanent resident of the HKSAR, and is elected by the Election Committee (“EC”). The number of EC members has also increased from 400 in the election of the first term CE, to 800 in the election of the second term CE. The EC is selected, in accordance with the law, by around 202 000 registered voters from different subsectors.

15. Before reunification, Hong Kong was under colonial rule, and for many years before the early 1980s, there was not much progress in democratization. It was not until 1985 that elections through functional constituencies and an electoral college were introduced in respect of LegCo. In 1991, the seats returned by the electoral college were abolished; the seats returned by functional constituencies were retained; and seats returned by geographical constituencies through direct elections were introduced.

(ii) After reunification

16. Several years before reunification in 1995, the LegCo was formed by way of unilaterally introduced constitutional reform in the absence of an agreement, the “through train” arrangement for LegCo Members could not be realized. To avoid the problem of not having a legislature that could begin to operate immediately upon the establishment of HKSAR, the NPC Preparatory Committee for the HKSAR adopted on 24 March 1996 the “Decision of the Preparatory Committee on the Establishment of a Provisional Legislature of the Hong Kong Special Administrative Region”. The Provisional LegCo was established to handle matters as necessary in order to ensure a smooth transition for Hong Kong during the transitional period and the normal operation of the HKSAR.

17. Since then, Hong Kong’s political structure has been developing in accordance with the provisions of the relevant Annexes to the Basic Law, and has been making progress towards the ultimate aim of universal suffrage in a gradual and orderly manner. The number of seats returned by direct geographical elections increased from 20 in 1998, to 24 in 2000, and to 30 in 2004. The proportion of seats returned by direct geographical elections has been increased by 50% in the seven years since reunification, and accounts for half of all 60 seats in LegCo. All eligible permanent residents have the right to elect, under the “one person one vote” system, members of the LegCo in geographical constituency elections. Within a few years after the establishment of the HKSAR, the level of democratic representation in Hong Kong’s political structure exceeds that which pertained before reunification.

(iii) Electoral Arrangement for 2007/2008

18. Annexes I and II to the Basic Law stipulate how the specific methods for selecting the CE and for forming the LegCo should evolve in the ten years from 1997 to 2007. Thereafter, if there is a need to amend the electoral methods, such amendments must be made with the endorsement of a two-thirds majority of all the members of LegCo and the consent of the CE, and they shall be reported to the Standing Committee of the National People’s Congress (“NPCSC”) for approval or for the record. To take forward the relevant work, the CE established on 7 January 2004 the Constitutional Development Task Force (“the Task Force”) headed by the Chief Secretary for Administration, with the Secretary for Justice and the Secretary for Constitutional Affairs as members. (With effect from

20 October 2005, the Task Force members include the Secretary for Constitutional Affairs and Ms Elsie LEUNG.)

19. Since its establishment, the Task Force has published five reports and has held several rounds of public consultation. The Task Force published on 19 October 2005 its Fifth Report, which puts forth a package of proposals for amending the methods for selecting the CE in 2007 and for forming the LegCo in 2008 which is consistent with the relevant provisions of the Basic Law and the Decision of the NPCSC of 26 April 2004⁴. The key feature of the package is to broaden the participation of District Council members in the EC and in LegCo. The Task Force plans to submit the package to LegCo for endorsement this December. Since its release, different public opinion polls show that the proposed package has a definite level of support and acceptance by the community. At the same time, there is expectation in the community for universal suffrage to be implemented as soon as possible.

Note 4 On 26 April 2004, in accordance with the relevant provisions of the Basic Law and “The Interpretation by the Standing Committee of the National People’s Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China”, the Standing Committee of the NPC made the following Decision:

1. The election of the third Chief Executive of the Hong Kong Special Administrative Region to be held in the year 2007 shall not be by means of universal suffrage. The election of the Legislative Council of the Hong Kong Special Administrative Region in the fourth term in the year 2008 shall not be by means of an election of all the members by universal suffrage. The ratio between members returned by functional constituencies and members returned by geographical constituencies through direct elections, who shall respectively occupy half of the seats, is to remain unchanged. The procedures for voting on bills and motions in the Legislative Council are to remain unchanged.
2. Subject to Article 1 of this Decision not being contravened, appropriate amendments that conform to the principle of gradual and orderly progress may be made to the specific method for selecting the third Chief Executive of the Hong Kong Special Administrative Region in the year 2007 and the specific method for forming the Legislative Council of the Hong Kong Special Administrative Region in the fourth term in the year 2008 according to the provisions of Articles 45 and 68 of the Hong Kong Basic Law and the provisions of Article 7 of Annex I and Article III of Annex II to the Hong Kong Basic Law.

(iv) Roadmap for Universal Suffrage

20. The Decision of the NPCSC in April 2004 has clearly stipulated that the election of the CE in 2007 shall not be by means of universal suffrage and that the election of LegCo in 2008 shall not be by means of an election of all the members by universal suffrage. On the issue of setting a “timetable for universal suffrage”, the HKSAR Government is of the view that different sectors of the community should first work together to formulate a “roadmap for attaining universal suffrage”. The HKSAR Government proposes that the Committee on Governance and Political Development may study and discuss the following issues.

- (i) In the process of constitutional development and when the ultimate aim of universal suffrage is attained, how should we ensure that the principles and provisions of the Basic Law mentioned above, such as “gradual and orderly progress”, “in the light of the actual situation”, “meeting the interests of different sectors of society” and “facilitating the development of the capitalist economy” would be fully realized?
- (ii) How should the current LegCo functional constituencies evolve before the ultimate aim of the election of all members of LegCo by universal suffrage is attained?
- (iii) Upon attaining the ultimate aim of the election of all members of LegCo by universal suffrage, what should be the composition of LegCo and which model should be adopted for the legislature? For example, should a unicameral or a bicameral system be adopted? (For background information on this subject, please see Paper Ref: CSD/GC/2/2005)

21. The HKSAR Government believes that after the issues set out above have been examined and discussed by different sectors of the community, it would help build a consensus and facilitate setting a realistic “timetable on universal suffrage” at an early juncture.

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