

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

**Constitutional Basis of
Basic Law Provisions Regarding "Universal Suffrage"**

Introduction

The political structure of the Hong Kong Special Administrative Region ("HKSAR") is prescribed in Chapter IV of the Basic Law and Annexes I and II.

2. Article 45 of the Basic Law provides :

“The Chief Executive 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 Chief Executive 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 Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

The specific method for selecting the Chief Executive is prescribed in Annex I: 'Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region'.”

3. Article 68 of the Basic Law provides :

“The Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election.

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 is the election of all the members of the Legislative Council by universal suffrage.

The specific method for forming the Legislative Council and its procedures for voting on bills and motions are prescribed in Annex II: 'Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures'."

4. The above provisions clearly stipulate that the ultimate aim is the election of the Chief Executive ("CE") and all the members of the Legislative Council ("LegCo") by universal suffrage.

5. In order to understand the meaning of "universal suffrage" in the Basic Law, we must take the constitutional status of the HKSAR and the principles of design of its political structure as the starting point.

The Constitutional Status of the HKSAR

6. Upholding national unity and territorial integrity, maintaining the prosperity and stability of Hong Kong, and taking account of its history and realities, the State had decided that, upon its resumption of the exercise of sovereignty over Hong Kong, the HKSAR shall 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 will not be practised in Hong Kong. In accordance with the Constitution, the National People's Congress has 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.

7. Article 12 of the Basic Law explicitly provides :

"The Hong Kong Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government ("CPG")."

8. The People's Republic of China is a unitary state, and the HKSAR is a local administrative region under such a system. The high degree of autonomy enjoyed by the HKSAR is conferred by the NPC in accordance with the law. In other words, all powers exercised by the SAR are derived by way of authorization by the Central Authorities, and there are no "residual powers" on the part of the SAR. Furthermore, the Basic Law also provides that the HKSAR comes directly under the CPG, with no intermediate layer in between.

9. Given the above-mentioned constitutional status of the HKSAR, the Central Authorities have the constitutional powers and responsibilities to determine the model of political structure of the HKSAR. The role played by the Central Authorities in this regard is also realized in the Basic Law provisions relating to political structure. For example :

- (i) According to the Interpretation by the Standing Committee of the National People's Congress ("NPCSC") on 6 April 2004, as regards whether there is a need to make an amendment to the method for the selection of the CE and that for the formation of the LegCo for the terms subsequent to the year 2007 as stipulated in Annexes I and II to the Basic Law, the CE shall make a report to the NPCSC for it to make a determination. According to the Interpretation, after an amendment has been endorsed by the LegCo and has received the consent of the CE, it will still require the approval or acceptance for the record by the NPCSC before it may take effect. This realizes the ultimate power of the Central Authorities to determine the constitutional development of the HKSAR, including the timetable for attaining universal suffrage and the model and design of the universal suffrage system. Unlike sovereign states, the HKSAR cannot decide the political structure on its own.
- (ii) Article 45 of the Basic Law provides that the CE shall be selected by election or through consultation conducted locally and be appointed by the CPG. Article 43 provides that the CE shall be accountable to the CPG and the HKSAR. The appointment made by the CPG is substantive and not a formality. It may make the appointment or it may not. This arrangement realizes the fact that the State is a unitary state, and that the HKSAR is an integral part of the State with the constitutional status of a local administrative region which comes directly under the CPG and which enjoys a high degree of autonomy through authorization. Thus, irrespective as to how the CE is selected, including by means of universal suffrage ultimately, there can be no deviation from the constitutional requirement that a candidate winning an election must be appointed, in a substantive manner, by the CPG before assuming office.

Principles of Design of the Political Structure of the HKSAR

10. When submitting the draft Basic Law and related documents at the Third Session of the Seventh NPC on 28 March 1990, Director JI Pengfei made the following explanations on the political structure of the HKSAR :

“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.”

11. From the above Explanations of Director JI on political structure and the provisions in Article 45 and Article 68 of the Basic Law, four principles on constitutional development can be summarized :

- (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.

12. The considerations of four principles above have been elaborated in the paper entitled “An Overview of the Political Structure of the Hong Kong Special Administrative Region” (CSD/GC/1/2005) submitted at the last meeting.

Conclusion

13. Having regard to the constitutional basis and the principles of design of the political structure mentioned in this paper, members may further discuss the Basic Law provisions relating to universal suffrage.

Constitutional Affairs Bureau
January 2006