

The Basic Law of the Hong Kong Special
Administrative Region (Draft)

(Consolidated Texts)

Secretariat of the Committee on the
Drafting of the Basic Law of the
Hong Kong Special Administrative
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of China

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 Special Administrative Region (Draft)

(Consolidated texts)

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Preamble

Hong Kong has since ancient times been part of the territory of China. It was occupied by Britain after the Opium War in 1840. On 19 December 1984, the Chinese and the British Governments signed the Joint Declaration on the Question of Hong Kong, confirming that the PRC Government would resume the exercise of sovereignty over Hong Kong on 1 July 1997, thus realising the long-standing common aspiration of the entire Chinese people to recover Hong Kong.

2. In order to uphold the national unity and territorial integrity and to maintain Hong Kong's stability and prosperity, and taking account of the history of Hong Kong and its realities, the state decided that upon resuming the exercise of sovereignty over Hong Kong, a Hong Kong SAR should be established in accordance with the provisions of Article 31 of the Constitution of the PRC and should, under the "one country, two systems" principle, practise systems and policies different from the mainland, and that this should remain unchanged for 50 years. The basic policies of the state regarding Hong Kong have been elaborated by our Government in the Sino-British Joint Declaration.

3. In accordance with the Constitution of the PRC, the Basic Law of the Hong Kong SAR of the PRC is enacted, prescribing the systems to be practised in the Hong Kong SAR, in order to ensure the implementation of the state's basic policies regarding Hong Kong.

[Explanatory Note] Members proposed that the State Council should publish a map of the administrative extent of the Hong Kong SAR when the NPC promulgated the Basic Law.

Chapter I : General Principles

Article 1

The Hong Kong SAR is an inseparable part of the PRC.

Article 2

The NPC authorises the Hong Kong SAR to exercise a high degree of autonomy in accordance with the provisions of this Law.

Article 3

The executive authorities and the legislature of the Hong Kong SAR shall be composed of Hong Kong permanent residents in accordance with the relevant provisions of this Law.

Article 4

The socialist system and socialist policies shall be practised in the Hong Kong SAR, the previous capitalist system and life-style shall be maintained. not

Article 5

The Hong Kong SAR shall protect the rights and freedoms of inhabitants and other persons in the Hong Kong SAR according to law.

Article 6

Rights concerning the ownership of property, including those relating to acquisition, use, disposal, inheritance and compensation for lawful deprivation shall continue to be protected by law. Compensation shall correspond to the real value of the property concerned, freely convertible and paid without undue delay.

Article 7

Land and natural resources within the territory of the Hong Kong SAR belong to the state. The Hong Kong SAR Government shall be responsible for their management and use and their lease or grant to individuals or legal persons for their use. The revenue derived shall be controlled exclusively by the Hong Kong SAR Government.

Article 8

The laws previously in force in Hong Kong, that is to say, the common law, rules of equity, ordinances, subordinate legislation and customary law, shall be maintained, save for any that contravene this Law and subject to any amendment by the Hong Kong SAR legislature.

Article 9

In addition to Chinese, English may also be used by the executive authorities, the legislature and the judicial organs of the Hong Kong SAR.

Article 10

In accordance with Article 31 of the Constitution of the PRC, the policies and systems in the Hong Kong SAR, including the social and economic systems; the system for protecting basic rights and freedoms; and the systems regarding executive, legislative and judicial matters shall be based on the provisions in this Law.

Laws enacted by the Hong Kong SAR legislature should not contravene this Law.

[Explanatory note] Other views put forward by members of the Special Group on the Relationship [between the Central Authorities and the Hong Kong SAR]:

On Article 2

A member suggested redrafting this article to read : "The NPC authorises the Hong Kong SAR to exercise a high degree of autonomy in accordance with the provisions of this Law. The power of supervision over the implementation of this Law is vested in the Standing Committee of the NPC. Any executive, legislative or judicial act which goes beyond the authority conferred by this Law may be declared invalid by the Standing Committee of the NPC."

Another member suggested that this article should be revised as follows : "The Hong Kong SAR shall enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the CPG."

A member suggested that a new article should be inserted after Article 2 as follows : "The Hong Kong SAR is vested with executive, legislative and independent judicial power, including that of final adjudication."

On Article 10

A member suggested that the last sentence of the first paragraph should be revised to read : "... shall ultimately be based on the provisions in this Law.", and that the second paragraph should become a separate article.

Chapter II : Relationship between the Central Authorities
and the Hong Kong SAR

Article 11

The Hong Kong SAR is a local administrative region of the PRC with a high degree of autonomy, and is directly under the authority of the CPG.

Article 12

The CPG shall appoint the chief executive and the principal officials of the executive authorities of the Hong Kong SAR in accordance with the provisions of Chapter IV of this Law.

Article 13

The CPG shall be responsible for the foreign affairs affecting the Hong Kong SAR.

The CPG authorises the Hong Kong SAR to conduct on its own the relevant external affairs in accordance with this Law.

The Ministry of Foreign Affairs of the PRC shall establish an organ in Hong Kong to deal with foreign affairs.

Article 14

The CPG shall be responsible for the defence of the Hong Kong SAR.

Military forces sent by the CPG to be stationed in the Hong Kong SAR for the purpose of defence shall not interfere in the local affairs of the Hong Kong SAR. The Hong Kong SAR Government may, in times of need, request

the CPG for the garrison to assist in maintaining public order and relieving disasters.

Members of the garrison shall not only abide by nation-wide statutes, they shall also abide by the laws of the Hong Kong SAR.

Expenditure for the garrison shall be borne by the CPG.

Article 15

The Hong Kong SAR is vested with executive power. It shall, in accordance with the relevant provisions of this Law, on its own deal with executive affairs relating to public finance, monetary matters, economy, industry and commerce, trade, taxation, postal service, civil aviation, maritime matters, traffic and transport, fishing industry, agriculture, personnel matters, civil affairs, labour, education, medical and health services, social welfare, culture and recreation, municipal facilities, urban planning, housing, real estate, public order, immigration [controls], meteorology, communications, science and technology, sports and other areas.

Article 16

The Hong Kong SAR is vested with legislative power.

Laws enacted by the legislature of the Hong Kong SAR shall be reported to the Standing Committee of the NPC for the record. The reporting for record shall not affect the entry into force of such laws.

If the Standing Committee of the NPC, after consulting the Basic Law Committee of the Hong Kong SAR, considers that any law of the Hong Kong SAR is not in accordance with this Law or legal procedures, it may return the law in question for reconsideration or revoke it, but it shall not make any amendment to it. Any law which is returned for reconsideration or revoked by the Standing Committee of the NPC shall immediately cease to have force. This cessation shall not have retrospective effect.

Article 17

The laws of the Hong Kong SAR shall be this Law, the laws previously in force in Hong Kong as provided for in Article 8 of [the chapter on] the General Principles in this Law, and laws enacted by the Hong Kong SAR legislature.

Laws enacted by the NPC or the Standing Committee of the NPC shall not be applied in the Hong Kong SAR, save for those set out in categories (i) and (ii) below:

- (i) laws relating to defence and foreign affairs;
- (ii) other laws which relate to the expression of the national unity and territorial integrity and which, in accordance with the provisions of this Law, are not within the limits of the high degree of autonomy of the Hong Kong SAR.

Of laws set out in (i) and (ii) in the preceding paragraph of this article, those which shall apply in the Hong Kong SAR shall be applied locally by the Hong Kong SAR Government by way of proclamation or legislation on the directive of the State Council.

Except in emergency situations, the State Council shall consult the Basic Law Committee of the Hong Kong SAR and the Hong Kong SAR Government before issuing the afore-mentioned directives.



If the Hong Kong SAR Government fails to comply with the directive of the State Council, the State Council may issue an order for the application of the afore-mentioned laws in the Hong Kong SAR.

Article 18

The Hong Kong SAR is vested with independent judicial power, including that of final adjudication.

Article 19

The Hong Kong SAR may enjoy other powers assigned to it by the NPC, the Standing Committee of the NPC or the State Council.

Article 20

Hong Kong SAR residents who are Chinese nationals may, in accordance with the law, take part in the management of the affairs of the state.

In accordance with the number and the manner of election of deputies specified by the Standing Committee of the NPC, the deputies of the Hong Kong SAR to the NPC shall be elected in Hong Kong by Hong Kong SAR residents who are Chinese nationals.

Article 21

Departments under the CPG as well as provinces, autonomous regions and municipalities under the Central Government shall not interfere in those affairs which the Hong Kong SAR, in accordance with this Law, deals with on its own.

If departments under the central authorities, provinces, autonomous regions or municipalities under the Central Government want to establish organs in Hong Kong, they shall have to obtain the agreement of the Hong Kong SAR Government and the approval of the CPG.

Organs established in Hong Kong by departments under the central authorities, as well as provinces, autonomous regions and municipalities under the Central Government and their staff should abide by the laws of the Hong Kong SAR.

People from other parts of China shall have to apply for approval for entry into the Hong Kong SAR.

The Hong Kong SAR may establish an office in Beijing.

Article 22

The Hong Kong SAR shall prohibit by law any act that damages the national unity or subverts the CPG.

[Explanatory Note]

Other views put forward by members of the Special Group on the Relationship [between the Central Authorities and the Hong Kong SAR]:

Members proposed the establishment of a consultative organ, tentatively called the Basic Law Committee of the Hong Kong SAR and comprising mainland and Hong Kong members, under the Standing Committee of the NPC. This organ would be responsible for advising the NPC or its Standing Committee on matters such as the interpretation and amendment of the Basic Law, whether laws enacted by the Hong Kong SAR were in accordance with the Basic Law and legal procedures, and the application in Hong Kong of a small number of nationwide statutes. The establishment and affiliation of this committee as well as its functions and composition should be left to the NPC to decide.

On Article 14

A member suggested that the handling of members of the garrison who have committed an offence should be separately provided for by law.

On Article 16, third paragraph

A member suggested that this article should be revised as follows : "If the Standing Committee of the NPC, after consulting the Basic Law Committee of the Hong Kong SAR, considers that there is a possibility that a law of the Hong Kong SAR is not in accordance with this Law or legal procedures, it may refer it to the court of final appeal of the Hong Kong SAR for consideration. If the court of final appeal considers that the law in question, either in part or in its entirety, is not in accordance with this Law or legal procedures, it may declare the relevant part of the law or the entire law invalid, but this cessation of force shall not have retrospective effect."

A member suggested that the last sentence of the third paragraph of Article 16 should be revised to read : "... This cessation shall not have retrospective effect, save in relation to criminal and constitutional matters."

On Article 17

A member suggested that this article should be revised as follows : "The laws of the Hong Kong SAR shall be this Law, the laws previously in force in Hong Kong as provided for in Article 8 of [the chapter on] the General Principles in this Law, and laws enacted by the Hong Kong SAR legislature.

Laws enacted by the NPC or the Standing Committee of the NPC shall not be applied in the Hong Kong SAR, save for those relating to defence and foreign affairs and

which, in accordance with the provisions of this Law, are not within the limits of the high degree of autonomy of the Hong Kong SAR.

Of those laws relating to defence and foreign affairs which are referred to above, those which shall apply in the Hong Kong SAR shall be applied by the Hong Kong SAR legislature by way of legislation on the directive of the Standing Committee of the NPC.

Except in emergency situations, the Standing Committee of the NPC shall consult the Basic Law Committee of the Hong Kong SAR and the Hong Kong SAR Government before issuing the afore-mentioned directives.

If the Hong Kong SAR legislature fails to comply with the directive of the Standing Committee of the NPC, the Standing Committee of the NPC may, through the chief executive of the Hong Kong SAR, apply the afore-mentioned laws in the Hong Kong SAR by way of proclamation.

Other than those laws relating to defence and foreign affairs which are referred to above, a small number of nationwide statutes relating to the expression of the national unity and territorial integrity, i.e. those set out in the Annex to this Law, shall apply in the Hong Kong SAR."

On Article 20

A member suggested that this should be revised as follows : "Hong Kong SAR permanent residents who are Chinese nationals may, in accordance with the law, take part in the management of the affairs of the state. In

accordance with the number and the manner of election of deputies specified by the Standing Committee of the NPC, Hong Kong SAR permanent residents who are Chinese nationals shall elect the deputies of the Hong Kong SAR to the NPC from amongst such Chinese nationals.

The deputies of the Hong Kong SAR to the NPC shall not interfere in those affairs which the Hong Kong SAR, in accordance with this law, deals with on its own."

Chapter III : The Basic Rights and Obligations
of the Hong Kong SAR Residents

Article 23

Hong Kong SAR residents include permanent residents and non-permanent residents.

Hong Kong SAR permanent residents are :

- (1) Chinese nationals born in Hong Kong before or after the establishment of the Hong Kong SAR;
- (2) Chinese nationals who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong SAR for a continuous period of seven years or more;
- (3) persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2);
- (4) persons who are not of Chinese nationality who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong SAR for a continuous period of seven years or more and who have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong SAR;
- (5) persons under 21 years of age who were born of those residents listed in category (4) in Hong Kong before or after the establishment of the Hong Kong SAR;
- (6) other than those residents listed in categories (1) to (5), persons who had the right of abode only in Hong Kong before the establishment of the Hong Kong SAR.

The above residents have the right of abode in the Hong Kong SAR and, in accordance with the law of the Hong Kong SAR, are qualified to obtain permanent identity cards which state their right of abode.

Non-permanent Hong Kong SAR residents are those who, in accordance with the law of the Hong Kong SAR, are qualified to obtain Hong Kong identity cards, but do not have the right of abode.

Article 24

All Hong Kong residents, regardless of their nationality, race, ethnic nationality, language, sex, occupation, religious belief, political opinion, educational level and property status, shall be equal before the law.

[Explanatory Note] A member suggested redrafting this article to read : "Hong Kong residents shall be equal before the law. No person shall be discriminated against on grounds of nationality, race, ethnic nationality, language, sex, occupation, religious belief, political opinion, educational level and property status."

Article 25

Hong Kong SAR permanent residents who have reached the age of 21 shall have the right to vote and to stand for election in accordance with the law.

[Explanatory notes] Some members suggested recasting this article as follows : "Hong Kong SAR permanent residents shall have the right to vote and to stand for election in accordance with the law."

Article 26

Hong Kong residents shall have:

- (1) freedom of speech, of the press and of publication;
- (2) freedom of association, to form and join trade unions, and of strike;
- (3) freedom of assembly and of demonstration.

[Explanatory note] Some members held that the expression : "Hong Kong residents shall, in accordance with the law, have ..." should be retained.

Article 27

Freedom of the person of Hong Kong residents shall be inviolable.

No Hong Kong resident may be unlawfully arrested, detained or imprisoned. Unlawful deprivation or restriction of residents' freedom of the person by any means shall be prohibited. Unlawful search of the body of residents shall be prohibited.

Article 28

The home of Hong Kong residents and their other premises shall be inviolable. Unlawful search of, or intrusion into, a resident's home or his other premises shall be prohibited.

[Explanatory Note] The unanimous view of the Group was that it would be inappropriate to add the words "arbitrarily or"/"arbitrary or" (無理或) in front of the word "unlawfully"/"unlawful" in Articles 27 and 28. The Group did not agree to replace "unlawfully"/"unlawful" by "wilfully"/"wilful" (任意) either.

Article 29

The freedom and privacy of communication of Hong Kong residents shall be protected by law. No department or individual may, on any ground, infringe upon the residents' freedom and privacy of communication except in cases where, to meet the needs of public security or of investigation into criminal offences, the relevant authorities are permitted to censor communication in accordance with legal procedures.

[Explanatory Note] A member suggested deleting the sentence which reads : "No department or individual ... in accordance with legal procedures." This sentence was retained after deliberation by the Group.

Article 30

Hong Kong residents shall have the freedom of movement within the territory of the Hong Kong SAR, and the freedom to migrate to foreign states and regions. Hong Kong residents holding valid travel documents shall have the freedom to travel and the freedom to enter and leave the territory. Unless restrained by law, [Hong Kong residents holding valid travel documents] shall be free to leave the Hong Kong SAR without special authorisation.

Article 31

Hong Kong residents shall have the freedom of belief.

Hong Kong residents shall have the freedom of religious belief, as well as the freedom to preach, and to organise and participate in religious activities in public.

[Explanatory Note]

1. Some members suggested that a third paragraph should be added to this Article as follows : "No person shall be discriminated against, or have his civic rights diminished, on grounds of religious beliefs."

2. Some members suggested that this Article should be recast as follows : "Hong Kong SAR residents shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, manifest his religion or belief in worship, observance, practice or teaching."

Article 32

Hong Kong residents shall have the freedom of choice of occupation.

Article 33

Hong Kong residents shall have the freedom of academic research, of literary and artistic creation, and of other cultural activities.

Article 34

Hong Kong residents shall have the right to confidential legal advice, access to the courts, timely protection of their legitimate rights and interests or representation in the courts by lawyers of their choice, and to obtain judicial remedies.

Hong Kong residents shall have the right to challenge the actions of the executive or the executive personnel in the courts.

[Explanatory note]

1. Some members suggested deleting the term "legitimate" from the expression "legitimate rights and interests".
2. Regarding the question whether Hong Kong residents had the right to take legal proceedings in a Hong Kong court against the action of the organs established in Hong Kong by the central authorities or their staff,

this Group suggested that the relevant Special Group should, in the context of the jurisdiction [of the SAR courts], make provisions for it.

Article 35

Hong Kong residents shall have the right to enjoy social welfare. Labour welfare benefits shall be protected by law.

Article 36

The freedom of Hong Kong residents to marry and their right to raise a family freely shall be protected by law.

Article 37

Hong Kong residents shall have other rights and freedoms as protected by the laws of the Hong Kong SAR.

Article 38

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 the law of the Hong Kong SAR.

Article 39

The rights and freedoms enjoyed by the Hong Kong residents may be subject only to such limitations as are prescribed by law and are necessary to protect state security, public order, public security, health or morals, or to safeguard the rights and freedoms of others.

Article 40

The legitimate traditional rights and interests of the indigenous "New Territories" residents shall be protected by the Hong Kong SAR.

Article 41

Persons in the Hong Kong SAR other than Hong Kong residents shall, in accordance with the law, enjoy the rights and freedoms of Hong Kong residents provided for in this Chapter.

[Explanatory Note] It has been suggested that this Article should be revised as follows : "Persons other than Hong Kong residents shall, in accordance with the law, have the rights and freedoms of Hong Kong residents provided for in this Chapter (save for the right to vote and to stand for election)." After deliberation, the Group found that apart from the right to vote and to stand for election, there were other rights such as the right to enter Hong Kong freely which "other persons" were not entitled to have. The Article therefore remains unchanged.

Article 42

Hong Kong residents and other persons in Hong Kong shall have the obligation to abide by the laws of the Hong Kong SAR.

Chapter IV : The Political System of the Hong Kong SAR

Section 1 : The Chief Executive

Article 43

The chief executive of the Hong Kong SAR is the head of the Hong Kong SAR. He shall be accountable to the CPG and the Hong Kong SAR in accordance with the provisions of this Law.

[Explanatory Note] A member suggested that the wording "in accordance with the provisions of this Law" could be deleted. A member suggested that the word "supreme" should be added before the word "head". A member suggested that the wording "representing the Hong Kong SAR". A member suggested adding the word "Government" after the words "Hong Kong SAR" in the second sentence.

A member suggested amending this Article to read "The chief executive of the Hong Kong SAR is the head of the Hong Kong SAR and the head of the executive authorities of the Hong Kong SAR. He shall represent the Hong Kong SAR and lead the executive authorities of the Hong Kong SAR. He shall be accountable to the CPG, the Hong Kong SAR and the Hong Kong SAR legislature in accordance with the provisions of this Law."

Article 44

The chief executive of the Hong Kong SAR shall be a Chinese national who is a Hong Kong SAR permanent resident of no less than 40 years of age and having ordinarily resided in Hong Kong for a continuous period of 20 years or more.

Article 45

(Paragraph 1) The chief executive of the Hong Kong SAR shall be selected by election or through consultations held locally and be appointed by the CPG.

[Explanatory Note] When the Article is finalised, the words "(Paragraph 1)" and "(Paragraph 2)" would be deleted.

(Paragraph 2) There are the following four formulae as regards the specific methods for selecting the chief executive:

1. The chief executive shall be elected by a grand electoral college with a wide basis of representation.
2. The chief executive shall be nominated by (e.g. one-tenth of) the members of the legislature and directly elected on a territory-wide "one-man-one-vote" basis.

[Explanatory Note] A member held that a nomination group with a wide basis of representation should nominate several candidates. The chief executive would be directly elected on a territory-wide "one-man-one-vote" basis.

3. The chief executive shall be elected by functional constituencies.
4. The first three chief executives shall be selected by an advisory council through consultations held locally and reported to the central authorities for appointment. For subsequent chief executives, three candidates should be nominated by the advisory council and, subject to the agreement of the central authorities, be elected by an electoral college.

[Explanatory Note] Some members supported the first formula. Some members supported the second formula. Some members supported the third formula while a member supported the fourth formula.

(Paragraph 3) The method of selection of the chief executive as specified in the preceding paragraph may be changed in accordance with the practical circumstances of the Hong Kong SAR. Such changes shall require the endorsement of a two-thirds majority of the members of the Hong Kong SAR legislature and the chief executive, and shall be reported to the Standing Committee of the NPC for approval.

[Explanatory Note] A member suggested that the order of paragraphs 2 and 3 should be reversed. Paragraph 3 should become paragraph 2 and be amended to read "Except for the first, the second and the third chief executives, the method of selection of the chief executive of the Hong Kong SAR may be changed in accordance with the practical circumstances of the Hong Kong SAR. Such changes shall require the endorsement of a two-thirds majority of the deputies of the Hong Kong SAR to the NPC, a two-thirds majority of the members of the Hong Kong SAR legislature and the chief executive of the Hong Kong SAR and shall be reported to the Standing Committee of the NPC for approval."

Article 46

The term of office of the chief executive of the Hong Kong SAR shall be five years. He may serve for no more than two terms.

[Explanatory Note] A member held that the term of office of the chief executive should be four years and that he could serve for no more than three terms.

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基本法
第23條

Some members held that the term of office of the chief executive should be considered in conjunction with the term of members of the legislature.

Some members held that the term of office of the chief executive should be the same as that of members of the legislature.

Article 47

The chief executive of the Hong Kong SAR shall exercise the following functions and powers:

- (1) to represent the Hong Kong SAR;
- (2) to lead the Hong Kong SAR Government;

[Explanatory Note] Members considered that there should be a common understanding of the meaning of the term "Government" mentioned in this Chapter. Some members held that "the Government" should merely mean the executive authorities. Some members held that a broader concept of government should be adopted. Most members agreed that this should only be decided after further deliberation and that for the time being, provisions of this Chapter could be drafted on the basis of a broader concept of government.

Some members opined that if a broader concept of government were adopted, this sub-paragraph should read "to lead the executive authorities of Hong Kong SAR".

- (3) to be responsible for the implementation of this Law and other laws which, in accordance with this Law, apply in the Hong Kong SAR.

[Explanatory Note] Some members held that the contents of this sub-paragraph should be incorporated into Article 1 (sic).

香港特別行政區
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- (4) to sign bills passed by the legislature and to promulgate laws;

If the chief executive considers that a bill passed by the legislature is not compatible with the overall interest of the Hong Kong SAR, he may return it within three months for reconsideration. If the legislature passes the bill for a second time with no less than a two-thirds majority, the chief executive shall have to sign and promulgate it within one month; or alternatively dissolve the legislature by exercising the power provided for in sub-paragraph (13) of this article.

- (5) to decide on government policies and to issue executive orders;

- (6) to nominate the following principal officials and report them to the CPG for appointment : those heading the various "ting's" (廳) and their deputies, those heading the various "si's" (司), the Commissioner of ICAC, the Director of Audit, the Head of the Police Bureau, the Head of the External Affairs Bureau; to make recommendations to the CPG on the removal of the afore-mentioned officials;

to employ (or terminate the employment of) advisers at or above Secretary-level, subject to the approval of the CPG and according to needs;

[Explanatory Note] Those heading the various "ting's" are equivalent to the existing Chief Secretary, Financial Secretary, and Attorney General. Their tentative titles are the Head of the Administrative Ting, the Head of the Financial Ting and the Head of the Legal Ting. Those heading the various "si's" are equivalent to the responsible officials of the existing policy branches.

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Some members considered that as the Director of Audit would not be a Secretary-level official, it would be unnecessary for him to be reported to the Central Government for appointment. However, such appointment should be subject to the endorsement of the legislature and be made by the chief executive.

A member considered that as there would be no Political Adviser in future, the functions and powers of the head of the External Affairs Bureau should be clearly specified beforehand.

Some members considered that this Article should follow broadly the wording of the Joint Declaration and that it was not necessary to list out the various posts.

- (7) to appoint or remove judges of the courts at various levels in accordance with legal procedures;
- (8) to appoint or remove public officers in accordance with legal procedures;
- (9) to implement the directives issued by the CPG in respect of the relevant matters provided for in this Law;
- (10) on behalf of the Hong Kong SAR Government to conduct external affairs and other affairs authorised by the central authorities;
- (11) to approve the introduction of motions relating to taxation and public expenditure to the legislature;
- (12) out of consideration for security and public interest, to decide whether government officials should testify or give evidence before the courts or the legislature;

香港
基本
法
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[Explanatory Notes] A member proposed the following alternative text : "to approve (or to disapprove) the appearance of public officers before committees under the legislature to testify or to give evidence with regard to matters relating to the navy, the army or the air forces, the security of Hong Kong, or the responsibility of the CPG over the administration of the Hong Kong SAR."

A member suggested that sub-paragraphs (11) and (12) of this Article should be deleted.

(13) may dissolve the legislature after consultation with the executive assembly in either of the circumstances specified below :

1. In the event that the legislature refuses to approve the budget, the Appropriation Bill or other important bills which the chief executive considers to be in the interest of the Hong Kong SAR, and no consensus is reached even after consultation;
2. The chief executive considers that the contents of a bill formulated or amended by the legislature are not in the interest of the Hong Kong SAR and returns it to the legislature for reconsideration. The legislature passes the original bill for a second time with a two-thirds majority and the chief executive again refuses to sign it;

The chief executive may dissolve the legislature only once during each term of his office.

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If the legislature refuses to approve the budget or the Appropriation Bill, or if appropriation of public funds cannot be approved because the legislature has already been dissolved, the chief executive may, during the period prior to the election of the new legislature, provisionally approve short-term appropriation so as to meet the expenditure of the Government.

[Explanatory Note] A member held that the chief executive should not be allowed to dissolve the legislature. If this sub-paragraph were to be retained, the following provision : "may cast a vote of non-confidence against the chief executive or the principal officials" should be added to the functions and powers of the legislature.

Some members considered that the "consultation" mentioned in 1. had to be held according to prescribed procedures. They suggested that 1. should be amended to read "In the event that the legislature refuses to approve the budget, the Appropriation Bill or other important bills which the chief executive considers to be essential, a special committee comprising (9) members of the legislature holds consultation with the executive authorities and proposes a solution within 60 days, but the legislature or the chief executive refuses to accept the proposal of the special committee".

(14) to approve in accordance with the law the deportation of criminals endangering public security;

[Explanatory Note] A member pointed out that in ratifying the International Covenant on Civil and Political Rights, the United Kingdom made a reservation on the application in Hong Kong of the following provision in the Covenant: "any alien lawfully in the territory ... may be expelled therefrom only in pursuance of a decision reached in

accordance with the law ... " Therefore, the drafting of this Article required further consideration. Some members agreed that this provision could be retained for the time being, pending further consideration.

A member suggested amending this Article to read, "to decide, not in pursuance of a decision reached in accordance with the law, on the expulsion of individual alien lawfully in the territory of the Hong Kong SAR therefrom, and to refuse the submission by the expelled person of the reasons against his expulsion, the review of his case or representation to make his case."

(15) to pardon or remit the punishment of persons convicted of criminal offences;

(16) to deal with petitions and complaints from residents;

(17) other powers which are necessary for carrying out his duties in accordance with this Law.

[Explanatory Note] A member held that sub-paragraph (17) should be deleted.

Article 48

The chief executive of the Hong Kong SAR should carry out his work dutifully.

The chief executive shall, on taking up his office, declare his financial assets to the chief judge of the court of final appeal of the Hong Kong SAR. This shall be put on record in strict confidence.

[Explanatory Note] Some members pointed out that the question concerning the post-retirement restrictions on the occupations of ex-chief executive and ex-principal officials remained to be examined.



Article 49

The chief executive shall have to resign under any of the following circumstances:

- (1) inability to discharge the functions of his office for a prolonged period due to serious illnesses or other reasons;
- (2) [the chief executive] has dissolved the legislature on twice refusing to sign a bill passed by the legislature. The new legislature passed the original bill, which was the subject of debate, with a two-thirds majority;
- (3) [the chief executive] has dissolved the legislature since the legislature refuses to approve the budget or other important bills. The new legislature continues to refuse to pass the original bill, which is the subject of debate.

[Explanatory Note] A member considered that sub-paragraph (1) should be worded as "being incapable of discharging his functions ...". A member considered that it should be worded as "being unsuitable" to discharge his functions.

A member held that a sub-paragraph (4) which read "a vote of non-confidence against the chief executive endorsed by a two-thirds majority of the members of the legislature" should be added to this Article. A member held that if such a provision were to be included in the Article, it had to be specified that the chief executive could dissolve the legislature when the legislature cast a vote of the non-confidence against him, but the chief executive would have to resign if the newly-elected legislature again cast a vote of non-confidence against him.

Article 50

If the chief executive of the Hong Kong SAR is not able to discharge his duties for a brief period, such duties shall temporarily be assumed by the Head of the Administrative "Ting", the Head of the Financial "Ting" and the Head of the Legal "Ting" in descending order of priority.

In the event that the post of the chief executive becomes vacant, a new chief executive should be selected within six months. Prior to the selection of the new chief executive, the provision of the preceding paragraph shall apply.

Article 51

The executive assembly of the Hong Kong SAR (this term is subject to change) shall be an organ to assist the chief executive in policy-making.

[Explanatory Note] A member suggested that the article on the executive assembly be incorporated into the section on the executive authorities. A member disapproved the establishment of an executive assembly. Some members considered the executive assembly as an advisory body of the chief executive but not part of the executive authorities.

Article 52

Members of the executive assembly of the Hong Kong SAR shall be appointed by the chief executive from amongst the principal officials of the executive authorities, members of the legislature and members of the public. Their term of office and the termination of their appointment before their term has expired shall be decided by the chief executive. The term of office of members of the executive assembly shall not exceed that of the chief executive appointing them.

Members of the executive assembly of the Hong Kong SAR shall be Hong Kong SAR permanent residents who are Chinese nationals. They shall pledge allegiance to the Hong Kong SAR.

The chief executive may invite the persons concerned to attend the meetings [of the executive assembly] as he deems necessary.

[Explanatory Note] Some members held that members of the legislature who sat on the executive assembly should be selected by election held among members of the legislature. Members of the public sitting on the executive assembly should require the endorsement of over half of the members of the legislature. A member held that members of the legislature should not attend the executive assembly if they were not elected to it from amongst themselves.

As regards question such as the size of the executive assembly and whether there should be a ratio between various groups of members, a member held that membership of the executive assembly should be constituted exclusively by principal officials. A member held that not less than half of the executive assembly should be members of the legislature. Members agreed not to make any provision for the time being, pending further consideration.

Article 53

The executive assembly of the Hong Kong SAR shall be chaired by the chief executive.

Except for the appointment, dismissal and disciplining of public officers and in emergency situations, the chief executive shall have to consult the

executive assembly before making important decisions, or introducing a bill into the legislature, or enacting subordinate rules and regulations, or dissolving the legislature.

If the chief executive does not adopt a majority opinion of the executive assembly, he ought to put his specific reasons on record.

Article 54

The Hong Kong SAR shall establish an anti-corruption organ, which shall work independently and be accountable to the chief executive.

Article 55

The Hong Kong SAR shall establish an audit authority which shall work independently and be accountable to the chief executive.

[Explanatory Note] A member suggested that this article be amended as "The chief executive may appoint the Director of Audit or remove him from office with the approval of the legislature of the Hong Kong SAR. In discharging their functions in accordance with the law, the Director of Audit and the Audit Department under him shall not be subject to any directive or control of any person or organ."

[Explanatory Note]. Some members suggested that an article which read, "Advisers above the Secretary-level may form an advisory council to discharge functions conferred by this Law." be added to this Section.

Section 2 : The Executive Authorities

Article 56

The XXX (name to be decided) of the Hong Kong SAR shall be the executive authorities of the Hong Kong SAR.

The chief executive of the Hong Kong SAR shall be the head of the executive authorities of the Hong Kong SAR.

[Explanatory Note] Regarding the name of the executive authorities of the Hong Kong SAR, some members suggested "the government", a member suggested "行政總署", some suggested "行政公署" while one suggested "行政管理署" (translator's note: the last three options may be translated as the "General Administration") or "行政管理局" (translator's note: this may be translated as the "administrative bureau for executive affairs").

Article 57

The principal officials of the executive authorities of the Hong Kong SAR shall be nominated by the chief executive of the Hong Kong SAR and reported to the CPG for appointment.

The principal officials of the Hong Kong SAR shall be Chinese nationals who are Hong Kong permanent residents, having ordinarily resided in Hong Kong for a continuous period of 15 years or more.

[Explanatory Note] Members considered that, in general, principal officials should be selected from among public servants. Principal officials could, however, also be selected from members of the public other than public servants. Principal officials selected in the latter way would be remunerated as public servants on contract terms. They would leave the service on expiry of their term of office. Deployment of principal officials and

expansion of the establishment of Secretary-level officials had to be reported to the CPG for approval.

Regarding the period of residence in Hong Kong required of principal officials, there are still some members who held that it should be 20 years while a member held that no restriction should be imposed.

Article 58

The composition of the executive authorities of the Hong Kong SAR is as follows :

the chief executive;
the heads of the "ting's" (廳); and
the heads of the "si's" (司) and other officials whose rank corresponds to the Secretary-level.

The organisation of the executive authorities of the Hong Kong SAR shall be prescribed by law.

[Explanatory Note] The establishment of the various departments under the executive authorities of the Hong Kong SAR shall be prescribed by law. Heads of the executive departments, i.e. the equivalents of the existing Heads of Departments, will according to the nature and scope of their responsible areas of work be called heads of "ju" (局) e.g. Head of the Police Bureau, Head of the External Affairs Bureau; heads of "chu" (處) e.g. Director of Marine, Director of Immigration; and heads of "shu" (署) e.g. Registrar General, Director of Accounting Services. It is for consideration that the Secretary for Civil Service (政務司) be retitled as the Head of the Personnel "si" (人事司長).

A member suggested that this article should be amended to read, "Members of the executive authorities include (1) the chief executive; (2) principal officials



(equivalent to Secretaries) nominated by the chief executive and appointed by the Central Government; (3) an executive council constituted by the chief executive and the principal officials appointed by the chief executive."

Some members had reservations on the term "Heads of Ting's".

Article 59

The executive authorities of the Hong Kong SAR shall exercise the following functions and powers:

- (1) to decide and implement government policies;
- (2) to deal with the executive affairs specified in Article 15 of this Law;
- (3) to conduct the external affairs authorised by the CPG as specified in Chapter VII of this Law;
- (4) to draw up and to introduce budgets and final accounts;
- (5) to draft and introduce bills, motions and subordinate rules and regulations;
- (6) other powers which are essential and reasonable for carrying out its duties in accordance with the provisions of this Law.

[Explanatory Note] Some members held that sub-paragraph (6) should be deleted.

Article 60

A prosecuting authority under the executive authorities of the Hong Kong SAR shall independently deal with criminal prosecutions free from any interference.

Article 61

The executive authorities of the Hong Kong SAR shall abide by the law, and be accountable to the legislature of the Hong Kong SAR: [it shall] implement laws passed by the legislature and which have taken effect, submit regular policy addresses to the legislature, answer questions addressed by members of the legislature; taxation and public expenditure shall be subject to approval by the legislature.

[Explanatory Note] Some members did not agree to the use of the colon after the words "accountable to the legislature of the Hong Kong SAR" on the grounds that the scope of matters for which the executive authorities would be accountable would be wider than that covered by this article.

Some members suggested amending this Article to read: "The executive authorities of the Hong Kong SAR shall abide by the law and be accountable to the Hong Kong SAR legislature. The executive authorities shall : (1) implement laws passed by the legislature and which have taken effect; (2) submit regular policy addresses to the legislature; (3) be subject to the supervision of the legislature; (4) answer questions addressed by members of the legislature, and be subject to or assist in the investigation by the legislature on special issues; (5) seek approval from the legislature for taxation and public expenditure, and be subject to supervision by the legislature in respect of public expenditure."

But most members did not support the above comments.

Article 62

The system of advisory bodies to be established by the chief executive and the executive authorities shall continue to be maintained.

Section 3 : The Legislature

Article 63

The XXX (name to be decided) of the Hong Kong SAR shall be the legislature of the Hong Kong SAR.

[Explanatory Note] Regarding the title of the legislature, members made the following proposals: Legislative Committee, Legislative Bureau, Legislative Council, Legislative Conference and Legislative Assembly.

Some members suggested adding to this article a second paragraph which read : "The legislative power of the Hong Kong SAR is vested in the legislature of the Hong Kong SAR." A member suggested the following alternative: "the legislative power of the Hong Kong SAR is vested in the Hong Kong SAR."

Article 64

(Paragraph 1) The legislature of the Hong Kong SAR shall be constituted by elections.

(Paragraph 2) There are the following three formulae as regards the specific methods of formation of the legislature:

- (1) 50% to be elected by functional constituencies, 25% by direct election by geographical constituencies and 25% by election by a grand electoral college.

- (2) No less than 50% by popular and direct election, no more than 25% to be elected by functional constituencies, and no more than 25% by election by regional/ district councils e.g. District Boards, the Urban Council and the Regional Council.

- (3) 30% to be elected by an advisory council from persons who are not advisers. Of this, at least one-third will be principal officials, the rest being members of the executive assembly and public figures. Another 40% to be elected by functional constituencies, and the remaining 30% by direct election on a geographical basis.

[Explanatory Note] Most members favoured a combination of different methods of election. A greater number of them favoured Formula 1, some favoured Formula 2 while one favoured Formula 3. Those who proposed Formulae 1 and 3 held that the various methods of selecting members of the legislature constituted a "package" proposal, i.e. whether there would be direct election on a geographical basis would depend on whether the other two methods of election were accepted as well.

In addition, some members proposed that all members of the Hong Kong SAR legislature should be elected by functional constituencies.

A member proposed that all members of the Hong Kong SAR legislature should be returned by popular elections on a geographical, "one-man-one-vote" basis.

(Paragraph 3) The methods of election provided for in the preceding paragraph may be changed in accordance with the practical circumstances in the Hong Kong SAR. Such changes shall require the endorsement of a



two-thirds majority of the members of the Hong Kong SAR legislature and the chief executive, and shall be reported to the Standing Committee of the NPC for approval.

[Explanatory Note] A member suggested that the order of Paragraphs 2 and 3 of this Article should be reversed, i.e. Paragraph 3 should be reordered as Paragraph 2, and be amended as : "The specific method of formation of the Hong Kong SAR legislature may be gradually changed from that of the first legislature in accordance with the practical circumstances in the Hong Kong SAR. Such changes shall require the endorsement of a two-thirds majority of the deputies of the Hong Kong SAR to the NPC, a two-thirds majority of the members of the Hong Kong SAR legislature and the chief executive, and shall be reported to the Standing Committee of the NPC for approval."

Article 65

The term of office of members of the Hong Kong SAR legislature shall be four years.

Article 66

If the legislature of the Hong Kong SAR is dissolved by the chief executive in accordance with the provisions of this Law, it shall be reconstituted by election within six months in accordance with the provisions of Article 64 of this Law.

Article 67

Formula 1: The president of the Hong Kong SAR legislature shall be elected from amongst members of the legislature.

Formula 2: The chief executive shall concurrently be the president of the Hong Kong SAR legislature.

[Explanatory Note] More members were in favour of Formula 1, some members favoured Formula 2.



Article 68

The president of the Hong Kong SAR legislature shall be a Chinese national who is a Hong Kong SAR permanent resident of no less than 40 years of age and having ordinarily resided in Hong Kong for a continuous period of 20 years or more.

Article 69

The president of the Hong Kong SAR legislature shall exercise the following functions and powers:

- (1) to preside over meetings of the legislature;
- (2) to decide on and to control the agenda;
- (3) to decide on the adjournment, recess and the duration of meetings;
- (4) to convene special meetings during the recess; and
- (5) other functions and powers as prescribed in the standing orders of the legislature.

[Explanatory Note] Some members pointed out that whether the legislature should set up committees and whether the president of the legislature should have the right to nominate members and chairmen to these committees remained to be examined.

Article 70

The Hong Kong SAR legislature shall exercise the following functions and powers :

- (1) to enact, repeal and amend laws in accordance with the provisions of this Law and legal procedures;

- (2) to examine and to pass budgets and final accounts as proposed by the executive authorities;
- (3) to approve taxation and public expenditure;
- (4) to receive the policy address of the executive authorities and to debate on it;
- (5) to address questions to the executive authorities on their work;

[Explanatory Note] A member suggested amending this sub-paragraph as "to examine and question the work of the executive authorities".

- (6) to hold debates on any issue of public interest;
- (7) to endorse the appointment and removal of the judges of the court of final appeal and the chief judge of the Supreme Court;
- (8) to receive complaints from Hong Kong residents and to deal with them;
- (9) in the event of serious breach of law or dereliction of duty by the chief executive and on a motion moved jointly by one-quarter of the members of the legislature, an independent investigating committee, to be chaired by the chief judge of the court of final appeal, may be established in accordance with the law to carry out investigations and to report to the legislature. If the committee considers that there is sufficient evidence to establish the above charge, the legislature may, with a two-thirds majority, pass an impeachment motion, which shall be reported to the CPG for decision.

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[Explanatory Note] A member proposed that the legislature should be able to introduce a non-confidence motion against the chief executive or any principal officials if the motion was moved jointly by one-quarter of the members of the legislature and endorsed by a two-thirds majority. The non-confidence motion would be reported to the CPG for the removal of the chief executive or the principal officials concerned. But most members did not agree.

In addition, a member suggested adding a sub-paragraph : "The legislature and its committees shall have the power to summon the people concerned to testify and give evidence before them. But the approval of the chief executive shall have to be sought if such people are government officials."

A member pointed out that a sub-paragraph which provided that the legislature could set up standing committees and special committees should be added to this Article. But a member considered that it would be more appropriate for such a provision to be prescribed by the standing orders of the legislature.

(10) other powers which are necessary for carrying out its duties in accordance with the provisions of this Law.

[Explanatory Note] Some members suggested that sub-paragraph (10) should be deleted.

Article 71

Formula 1:

"Members of the legislature of the Hong Kong SAR may, in accordance with the provisions of this Law and legal procedures, individually or jointly introduce bills. However, the prior consent of the chief executive in writing shall have to be obtained before the following three items are introduced:

- (1) those relating to taxation and public expenditure;
- (2) those relating to government policies;
- (3) those relating to the structure and operation of the executive authorities."

Formula 2: "Members of the legislature of the Hong Kong SAR shall, in accordance with the provisions of this Law and legal procedures, introduce bills to enact and amend laws. Bills which do not relate to public expenditure or public policies may be introduced individually or jointly by members of the legislature.

[Explanatory Note] A member held that bills which related to public expenditure or public policies had to be introduced jointly by not less than one-tenth of the members of the legislature, but the written approval from the chief executive was not required.

Article 72

The Hong Kong SAR legislature shall form a quorum of no less than half of its members for a meeting to be held.

Unless otherwise provided for in this Law, voting on bills and motions in the Hong Kong SAR legislature shall only be passed with a majority of the members present.

The standing orders of the legislature shall be enacted by the legislature on its own, but they ought not contravene this Law.

[Explanatory Note] Some members pointed out that the legislature should be able to hold a meeting even with less than half, or no less than one-third, of its members. It would be difficult to call a meeting if the stipulated number of people forming a quorum was too high.

Article 73

Bills passed by the Hong Kong SAR legislature shall only take effect after it has been signed and promulgated by the chief executive.

Article 74

Members of the Hong Kong SAR legislature shall not be legally liable for speeches made at the sittings of the legislature.

Article 75

Members of the Hong Kong SAR legislature shall not be subject to arrest when attending a meeting [of the legislature] or on their way to a meeting [of the legislature]

Article 76

Members of the Hong Kong SAR legislature shall pledge allegiance to the Hong Kong SAR.

Article 77

The chief executive shall announce that a member of the Hong Kong SAR legislature will no longer be qualified for such an office under any of the following circumstances:

- (1) inability to discharge the functions of his office for a prolonged period due to serious illness or other reasons;

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- (2) non-attendance at meetings of the legislature for three consecutive months without the consent of the president of the legislature;
- (3) deprivation or renunciation of his status as a Hong Kong SAR permanent resident;
- (4) bankruptcy or inability to honour the courts' judgement to repay debts;
- (5) being dismissed by the legislature, with the consent of two-thirds of the members of the legislature present members, for having been convicted of a criminal offence either within or outside the Hong Kong SAR and sentenced to imprisonment for one month or more;
- (6) being reproached for misbehaviour, with the consent of more than two-thirds of the members of the legislature present;
- (7) being reproached with the consent of two-thirds of the members of the legislature present for contravention of his pledge of allegiance.

[Explanatory Note] Whether a member of the legislature would have to resign from the legislature once he/she is appointed as a principal official of the executive authorities remains to be examined.

Section 4 : The Judicial Organs

Article 78

The courts of the Hong Kong SAR at various levels shall be the judicial organs of the Hong Kong SAR, exercising the judicial power of the Hong Kong SAR.

Article 79

The court of final appeal, the Supreme Court, District Courts, Magistrates' Courts and other special

courts shall be established in the Hong Kong SAR. The Supreme Court shall comprise the Court of Appeal and the High Court.

The judicial system previously practised in Hong Kong shall be maintained except for those changes consequent upon the establishment of the court of final appeal in the Hong Kong SAR.

Article 80

The power of final adjudication of the Hong Kong SAR is vested in the court of final appeal in the Hong Kong SAR, which may as required invite judges from other common law jurisdictions to sit on the court of final appeal.

Article 81

Except for cases relating to defence, foreign affairs, or the executive acts of the Central Government over which the courts of the Hong Kong SAR do not have jurisdiction in accordance with the legal system previously in force in Hong Kong, the courts of the Hong Kong SAR are vested with judicial power in respect of all other cases within the territory of the Hong Kong SAR.

Where a question relating to defence, foreign affairs, or the executive acts of the Central Government is raised in any proceedings before the courts of the Hong Kong SAR, the chief executive should be consulted, and a certificate issued by the chief executive as to such a question shall be binding on the courts.

The chief executive shall, before issuing the afore-mentioned certificate, obtain a certificate by the Standing Committee of the NPC or the State Council.

[Explanation Note] On this article, members have put forward the following formulae:

Formula 1 :

Except for cases relating to defence, foreign affairs, or executive acts of a purely political nature over which the courts of the Hong Kong SAR at all levels do not have jurisdiction in accordance with the common law and precedents, the courts of the Hong Kong SAR at various levels are vested with judicial power in respect of all other cases in the Hong Kong SAR.

Where the courts of the Hong Kong SAR are doubtful as to whether certain cases relate to defence, foreign affairs, or executive acts of a purely political nature, the chief executive shall be consulted, and a certificate issued by the chief executive as to such a question shall be binding on the courts.

The chief executive should, before issuing the afore-mentioned certificate, obtain a certificate by the Standing Committee of the NPC or the State Council.

Formula 2 :

Save for restrictions on the jurisdiction of the courts under the legal system previously in force in Hong Kong, the courts of the Hong Kong SAR are vested with judicial power in respect of all other cases within the territory of the Hong Kong SAR.

In adjudicating a case before them, the courts of the Hong Kong SAR shall have the power to decide whether it has jurisdiction, free from any external influence.

Formula 3 :

The courts of the Hong Kong SAR have jurisdiction over cases relating to :

- (1) the internal administration of the Hong Kong SAR; or
- (2) the rights and obligations of individuals and legal persons within the territory of the Hong Kong SAR; or
- (3) properties within the territory of the Hong Kong SAR

save in respect of the following issues:

- (1) the relationship between the central authorities and the Hong Kong SAR;
- (2) the validity of the executive acts of the central authorities;
- (3) the validity of executive acts performed in accordance with the provisions of this Law by the Hong Kong SAR Government for the implementation of the directives of the central authorities relating to defence and foreign affairs;
- (4) in respect of executive acts performed by the Hong Kong SAR Government on its own in the conduct of external affairs, acting under the authorisation of the central authorities and in accordance with the provisions of this Law, the validity of those acts which, in accordance with the laws previously in force in Hong Kong, are of the nature of "acts of state" or the substance of those acts which, in accordance with the laws previously in force in Hong Kong, are of the nature of "facts of state";
- (5) questions relating to the basic responsibilities of the citizens towards the state (treason-type cases).

In adjudicating cases before them, the courts of the Hong Kong SAR should consult the chief executive in respect of questions relating to any of the categories (1) to (4) above. The certificate issued by the chief executive as to such questions shall be binding on the courts.

The chief executive shall, before issuing the afore-mentioned certificate, obtain a certificate by the Standing Committee of the NPC or the State Council.

In respect of cases touching on questions in category (5), the courts should notify the chief executive. The chief executive shall, after consulting the Standing Committee of the NPC, decide whether the case should be tried by the people's court under the central authorities; or by a Hong Kong SAR court under specific authorisation of the people's courts under the central authorities, or by a court established by some other methods.

Formula 4 :

Except for cases relating to defence, foreign affairs, or the acts of the central authorities or the Hong Kong SAR Government performed in the name of the state over which the courts of the Hong Kong SAR do not have jurisdiction in accordance with the legal system previously in force in Hong Kong, ... [the rest of this formula is the same as Formula 1 except that the expression "executive acts of a purely political nature" is replaced by "acts ... committed in the name of the state.]

Article 82

The delineation of the powers and functions of the courts of the Hong Kong SAR at various levels shall be prescribed by the law of the Hong Kong SAR.

Article 83

The courts of the Hong Kong SAR shall decide cases in accordance with the laws applicable in the Hong Kong SAR as provided for in Article 17 of this Law and may refer to precedents in other common law jurisdictions.

Article 84

Judges of the Hong Kong SAR courts shall be appointed by the chief executive acting in accordance with the recommendation of an independent commission composed of local judges, persons from the legal profession and other eminent persons.

[Explanatory Note] "Judges of the Hong Kong SAR courts" are judges of District Courts and above. "Other judicial officers" are officers with adjudicatory functions at the Magistrates' Courts and special courts. The other staff of the judicial organs are public servants.

Article 85

A judge of the Hong Kong SAR courts may be removed for inability to discharge the functions of his office, or for misbehaviour by the chief executive acting in accordance with the recommendation of a tribunal appointed by the chief judge of the court of final appeal, consisting of not fewer than three local judges.



The chief judge of the court of final appeal in the Hong Kong SAR may be removed for inability to discharge the functions of his office or for misbehaviour by the chief executive, acting in accordance with the recommendation of a tribunal appointed by the chief executive and consisting of not fewer than five local judges, and in accordance with the procedures provided for in this Law.

Article 86

In addition to the procedures prescribed in Articles 84 and 85 of this Law, the appointment and removal of judges of the court of final appeal and the chief judge of the Supreme Court in the Hong Kong SAR shall be made by the chief executive with the endorsement of the Hong Kong SAR legislature and reported to the Standing Committee of the NPC for the record.

Article 87

The previous system of appointment and removal of judicial officers other than judges of the Hong Kong SAR shall be maintained.

Article 88

Judges and other judicial officers of the Hong Kong SAR shall be chosen by reference to their judicial and professional qualities and may be recruited from other common law jurisdictions.

Article 89

Judges and other judicial officers serving in Hong Kong before the establishment of the Hong Kong SAR may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.

Article 90

The Hong Kong SAR Government shall pay to those judges and judicial officers who retire or leave the service in compliance with regulations, as well as those who have retired or left the service before the establishment of the Hong Kong SAR, or to their dependents, all pensions, gratuities, allowances and benefits due to them on terms no less favourable than before, and irrespective of their nationality or place of residence.

Article 91

The courts of the Hong Kong SAR shall exercise judicial power independently and free from any interference. Members of the judiciary shall be immune from legal action in respect of their judicial functions.

Article 92

The principles of the jury system as previously practised in Hong Kong shall be maintained.

Article 93

The principles previously applied, and the rights previously enjoyed by parties concerned, in Hong Kong shall be maintained for the conduct of criminal and civil proceedings in the Hong Kong SAR.

[Explanatory Note] A member suggested that the principles and rights referred to in the above article should be set out in Chapter III.

Article 94

The Hong Kong SAR may, through consultation, maintain juridical links with, and render assistance to, judicial organs in other regions of the state in accordance with the law.



Article 95

Under the assistance or authorisation of the CPG, the Hong Kong SAR Government may make appropriate arrangements for reciprocal juridical assistance with foreign states.

[Explanatory Note] A member asked whether this Law should make express provision for the independent finances or separate funding of the judicial organs.

Section 5 : Regional/District Organisations

Article 96

Regional/district organisations which are not of the nature of local organs of power may be established in the Hong Kong SAR to be consulted by the Hong Kong SAR Government on district management and other affairs, or to be responsible for the provision of services, including those relating to culture, recreation and environmental sanitation.

[Explanatory Note] Members considered that if the three-tier structure were to be retained, the District Boards should remain as local consultative organs.

Article 97

The specific functions and powers of the regional/district organisations, and their composition shall be prescribed by law.

Section 6 : Public Service

Article 98

Public servants serving in all departments of the Hong Kong SAR Government shall have to be Hong Kong SAR permanent residents, save as otherwise provided in Article 100 of this Law and save for those below a certain salary point as prescribed by law.

Public servants shall carry out their work dutifully, and shall be responsible to the Hong Kong SAR Government.

Article 99

Public servants serving in all departments in the Hong Kong Government, including the police department, before the establishment of the Hong Kong SAR, may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.

Article 100

The Hong Kong SAR Government may employ British and other foreign nationals previously serving in the public service in Hong Kong, and may recruit British and other foreign nationals holding permanent identity cards of the Hong Kong SAR to serve as public servants at all levels, except as officers at the following ranks: heads of "ting's" (廳) and their deputies; heads of "si's" (司); the deputy heads of the Security "si", the Personal Affairs "si" and the Administrative Services and Information "si"; the Commissioner of ICAC; the Director of Audit; the Head of the Police Bureau and his deputy; the head of the External Affairs Bureau and his deputy; the Director of Immigration and the Commissioner of Customs and Excise.

The Hong Kong SAR Government may also employ British and other foreign nationals as advisers to government departments and, when there is a need, may recruit qualified candidates from outside the Hong Kong SAR to professional and technical posts in government departments. The above expatriate officers shall be employed only in their individual capacities and be responsible to the Hong Kong SAR Government.

[Explanatory Note] A member asked whether consideration could be given to allow foreign nationals to become deputy to the Secretary for Personnel Affairs and deputy to the Secretary for Administrative Services and Information.

A member pointed out that whether restrictions should be imposed on the posts of the Director of Immigration and the Commissioner of Customs and Excise could be further considered as these two posts were not ranked at Secretary-level.

Article 101

The Hong Kong SAR Government shall pay to such public servants who retire or leave the service in compliance with regulations, as well as to those public servants who have retired or left the service in compliance with regulations before the establishment of the Hong Kong SAR, or to their dependents, all pensions, gratuities, allowances and benefits (including Widows and Orphans Pension) due to them on terms no less favourable than before, and irrespective of their nationality or place of residence.

Article 102

The appointment and promotion of public servants shall be on the basis of qualifications, experience and ability. Hong Kong's previous system of recruitment,

employment, assessment, discipline, training and management for the public service (including special bodies for appointment, pay and conditions of service) shall, save for any provisions providing privileged treatment for foreign nationals, be maintained.

[Explanatory Note] A member held that the following should be added at the end of this Article : "The Hong Kong SAR Government may in accordance with the law, develop and improve the above system according to the practical situation for the purpose of improving efficiency and the quality of the public service".

Chapter V: The Economy of the Hong Kong SAR

Section 1 : Public Finance and Taxation

Article 103

The Hong Kong SAR shall have independent finances.

The Hong Kong SAR shall use its financial revenues exclusively for its own purposes and they shall not be handed over to the CPG.

Article 104

The drawing up of the budget of the Hong Kong SAR Government shall follow the principle of basically balancing the revenue and the expenditure.

The growth rate of the expenditure and the revenue in the budget of the Hong Kong SAR shall not, in principle, exceed the growth rate of the GDP.

[Explanatory Note] Some members considered that the second paragraph could be excluded from the Basic Law.

Article 105

The Hong Kong SAR shall practise an independent taxation system.

The CPG shall not levy taxes on the Hong Kong SAR.

Article 106

The Hong Kong SAR shall continue to practise a low tax policy.

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Article 107

The types of taxes, the tax rates and tax exemptions in the Hong Kong SAR shall be prescribed by law by the SAR.

Section 2 : Money and Finance

Article 108

The Hong Kong SAR Government shall provide the necessary conditions and adopt appropriate measures to retain the status of the Hong Kong SAR as an international financial centre.

Article 109

The Hong Kong SAR shall decide its monetary and financial systems on its own, and shall continue to practise free and open monetary and financial policies.

Article 110

No exchange control policy shall be applied in the Hong Kong SAR. Markets for foreign exchange, foreign currencies, gold, securities and futures shall continue.

[Explanatory Note] A member considered that "foreign exchange" would encompass "foreign currencies", therefore there was no need to insert the latter into this Article.

Article 111

The Hong Kong SAR Government shall safeguard the free flow of capital within, into and out of the Hong Kong SAR.

Article 112

The Hong Kong SAR Government shall safeguard the free operation of financial business and financial markets, and shall regulate and supervise them in accordance with the law.



Article 113

The Hong Kong dollar, as the legal tender in the Hong Kong SAR, shall continue to circulate and remain freely convertible.

Article 114

The authority to issue Hong Kong currency is vested in the Hong Kong SAR Government.

The system regarding the issue of Hong Kong currency shall be prescribed by the law of the SAR.

The issue of Hong Kong currency shall be backed up by a reserve fund of no less than 100 per cent freely convertible foreign currency.

The Hong Kong SAR Government may, after satisfying itself that any issue of currency will be soundly based and that the arrangements for such issue are consistent with the object of maintaining the stability of the currency, authorise designated banks to issue or continue to issue Hong Kong currency under statutory authority.

Article 115

The Exchange Fund of the Hong Kong SAR shall be managed and controlled by the Hong Kong SAR Government, primarily for regulating the exchange value of the Hong Kong dollar.

Section 3 : External Economy and Trade

Article 116

The Hong Kong SAR shall practise a free economic and trade system. It shall on its own decide policies on external economy and trade.

The Hong Kong SAR Government shall safeguard the free movement of goods, invisible property and capital.

Article 117

The Hong Kong SAR shall be a free port.

The Hong Kong SAR shall not levy customs duty unless provided for by law.

Article 118

The Hong Kong SAR shall be a separate customs territory.

The Hong Kong SAR may, using the name "Hong Kong, China", participate in relevant international organisations and international trade agreements (including preferential trade agreements), such as GATT and arrangements regarding international trade in textiles.

Article 119

Export quotas, tariff preferences and other similar arrangements obtained by the Hong Kong SAR in accordance with international agreements of which it is a party, or obtained previously in accordance with such agreements and which remain valid, shall be enjoyed exclusively by the Hong Kong SAR.

Article 120

The Hong Kong SAR may issue its own certificates of origin for products manufactured locally, in accordance with prevailing rules of origin.

Section 4 : Industry, Commerce and Other Trades

Article 121

The Hong Kong SAR shall practise free and open policies on industry, commerce and other trades.

Article 122

The Hong Kong SAR Government shall provide the necessary environment and conditions to encourage industrial investment, technological progress and the development of new industries.

Article 123

The Hong Kong SAR Government shall decide appropriate policies to promote the development of various trades such as the commercial sector, tourism, the real estate sector, the transport sector, the public utilities, the service sector, and the fishing and agricultural sector.

Section 5 : Land Leases

Article 124

The Hong Kong SAR Government may on its own decide policies for the development, management and use of land.

Article 125

All leases of land granted, decided upon or extended before the establishment of the Hong Kong SAR and which extend beyond 30 June 1997, and all rights in relation to such leases, shall continue to be recognised and protected under the law of the Hong Kong SAR.

Article 126

In relation to leases of land granted on or after 27 May 1985 but not later than 30 June 1997 and leases of land which originally do not contain a right of renewal but have been extended beyond 30 June 1997 for a period not later than 30 June 2047, from 1 July 1997 onwards, the lessee is not required to pay an additional premium, but an annual rent equivalent to 3 per cent of the rateable value of the property at that date, adjusted in step with changes in the rateable value thereafter, shall be charged.

Article 127

In the case of old schedule lots, village lots, small houses and similar rural holdings, where the property was on 30 June 1984 held by, or in the case of small houses granted after that date, the property is granted to, a person descended through the male line from a person who was in 1898 a resident of an established village in Hong Kong, the previous rent shall remain unchanged so long as the property is held by that person or by one of his lawful successors in the male line.

Article 128

Where leases of land not having a right of renewal expire after the establishment of the Hong Kong SAR, they shall be dealt with in accordance with laws and policies decided by the SAR on its own.

Section 6 : Shipping Management

Article 129

The Hong Kong SAR shall maintain Hong Kong's previous systems of shipping management and shipping regulation.

The specific functions and responsibilities of the Hong Kong SAR Government in the field of shipping shall be defined by the Hong Kong SAR Government on its own.

Article 130

The Hong Kong SAR shall be authorised by the CPG to continue to maintain a shipping register and issue related certificates under its own legislation in the name of "Hong Kong, China".

Article 131

All civilian ships shall enjoy access to the ports [of the Hong Kong SAR] in accordance with the laws of the Hong Kong SAR. Access for foreign warships to the Hong Kong SAR shall require the permission of the CPG.

Article 132

Private shipping businesses and shipping-related businesses and private container terminals in the Hong Kong SAR may continue to operate freely.

Section 7 : Civil Aviation Management

Article 133

The Hong Kong SAR Government should provide the necessary conditions and adopt the appropriate measures to maintain its status as a centre of international and regional aviation.

Article 134

The Hong Kong SAR shall continue to practise the previous system of civil aviation management in Hong Kong, and keep its own aircraft register in accordance with provisions laid down by the CPG concerning nationality marks and registration marks of aircraft.

Access for foreign military aircraft to the Hong Kong SAR shall require the permission of the CPG.

Article 135

The Hong Kong SAR shall be responsible on its own for matters of routine business and technical management of civil aviation. It shall be responsible on its own for the management of airports.

The Hong Kong SAR shall be responsible for the provision of air traffic services within the flight information region of the SAR, and the discharge of other responsibilities allocated under the regional air navigation procedures of the International Civil Aviation Organisation.

Article 136

The CPG shall, in consultation with the Hong Kong SAR Government, make arrangements providing for air services between the Hong Kong SAR and other parts of the

PRC for airlines incorporated and having their principal place of business in the Hong Kong SAR and other airlines of the PRC.

Article 137

Air Service Agreements providing for air services between other parts of the PRC and other states and regions with stops at the Hong Kong SAR and air services between the Hong Kong SAR and other states and regions with stops at other parts of the PRC shall be concluded by the CPG.

When concluding the international Air Service Agreements referred to in the first paragraph of this Article, the CPG should take account of the special conditions and economic interests of the Hong Kong SAR and consult the Hong Kong SAR Government.

Representatives of the Hong Kong SAR Government may participate as members of delegations of the Government of the PRC in air service consultations with foreign governments concerning arrangements for those services referred to in the first paragraph of this Article.

Article 138

Acting under specific authorisations from the CPG, the Hong Kong SAR Government may :

- (1) renew or amend Air Service Agreements and arrangements previously in force;
- (2) conclude new Air Service Agreements providing routes for airlines incorporated and having their principal place of business in the Hong Kong SAR and rights for overflights and technical stops; and

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- (3) conclude provisional arrangements where no Air Service Agreement with a foreign state or other region is in force.

All scheduled air services to, from or through the Hong Kong SAR which do not operate to, from or through the mainland of China may be regulated by Air Service Agreements or provisional arrangements referred to in this Article.

Article 139

The CPG authorises the Hong Kong SAR Government to:

- (1) negotiate and conclude with other authorities all arrangements concerning the implementation of the Air Service Agreements and provisional arrangements referred to in Article 138 of this Law;
- (2) issue licences to airlines incorporated and having their principal place of business in the Hong Kong SAR;
- (3) designate such airlines under the Air Service Agreements and provisional arrangements referred to in Article 138 of this Law;
- (4) issue permits to foreign airlines for services other than those to, from or through the mainland of China.

Article 140

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

Chapter VI : Education, Science, Technology,
Culture, Sports and Religion in the
Hong Kong SAR

Article 141

The Hong Kong SAR shall maintain the educational system previously practised in Hong Kong.

Article 142

The Hong Kong SAR Government shall on its own decide this Administrative Region's policies in the field of education, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, and the recognition of educational qualifications.

Community organisations and individuals may, in accordance with the law, run educational undertakings in the Hong Kong SAR.

Article 143

Educational institutions of all kinds may retain their autonomy and academic freedom. They may continue to recruit staff and use teaching materials from outside the Hong Kong SAR. Schools run by religious bodies may continue to provide religious education, including running courses on religious education.

Students shall enjoy freedom of choice of education and freedom to pursue their education outside the Hong Kong SAR.

Article 144

The Hong Kong SAR Government shall develop medical and health services, promote Chinese and Western medicine, encourage the provision of medical and health services by community organisations and individuals.

Article 145

The Hong Kong SAR Government shall on its own decide policies on science and technology. The laws of the Hong Kong SAR shall protect achievements in research, patent, discoveries and inventions relating to science and technology.

The Hong Kong SAR Government shall on its own decide the scientific and technological standards and specifications applicable in Hong Kong.

Article 146

The Hong Kong SAR Government shall on its own decide policies on culture. It shall protect achievements and legitimate rights and interests resulting from the authorship of literary or artistic creation.

Article 147

The Hong Kong SAR Government shall not interfere in the internal affairs of religious bodies, or impose restrictions on religious activities which do not contravene the laws of the Hong Kong SAR.

Religious bodies shall, in accordance with the law, enjoy rights concerning the acquisition, use, disposal and inheritance of property, and the right to receive financial assistance. The previous rights and interests concerning property shall be maintained and protected.

Religious bodies may, in accordance with the previous practice, continue to establish and run theological institutes and other schools, hospitals and welfare institutions and to provide other social services.

Article 148

Religious organisations and believers of the Hong Kong SAR may maintain and develop their relations with religious organisations and believers elsewhere.

Article 149

The Hong Kong SAR Government shall on its own decide the methods of assessing and accrediting qualifications for professional practice for the various professions. The methods of assessing and accrediting qualifications for professional practice for the various professions previously practised in Hong Kong shall be maintained and improved.

Persons who obtained professional qualifications or qualifications for professional practice prior to the establishment of the Hong Kong SAR may maintain their previous qualifications.

The Hong Kong SAR shall maintain the professions and professional bodies which were recognised prior to the establishment of the SAR. Those professional bodies shall, in accordance with the previous practice, assess and accredit professional qualifications.

The Hong Kong SAR Government may, in accordance with the needs arising from social developments and in consultation with the sectors concerned, give recognition to new professions and professional bodies.

[Explanatory Note] A member considered that the two sentences in the first paragraph of this Article were contradictory and suggested that the second sentence be deleted. A member considered that Section X of Annex I to the Joint Declaration provided that "the Hong Kong SAR Government shall on its own decide policies in the fields of culture, education, science and technology, including policies regarding ... technological qualifications". In the spirit of the Joint Declaration set out above, the Hong Kong SAR Government should on its own decide the methods of assessing and accrediting professional qualifications. Furthermore, the Basic Law should only provide that "the Hong Kong SAR Government shall on its own decide the methods of assessing and accrediting professional qualifications", it should not however prescribe the functions and powers of the professional bodies. It was suggested that the words "those professional bodies shall, in accordance with the previous practice, assess and accredit professional qualifications" in the third paragraph be deleted. Some members suggested that the aforesaid proposal should be included in this article as Formula 2, and be submitted to the plenary session for discussion.

Article 150

The Hong Kong SAR Government shall on its own decide policies in the field of sports. Previous non-governmental sporting organisations in Hong Kong may, in accordance with the law, continue to exist and develop.

Article 151

The Hong Kong SAR shall maintain the policy previously practised in Hong Kong in respect of subventions for organisations such as educational, medical, cultural, artistic, recreational, sporting,

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social welfare and social work organisations. After the establishment of the Hong Kong SAR, staff previously serving in subvented organisations in Hong Kong may continue their employment in accordance with the previous system.

Article 152

The Hong Kong SAR Government shall maintain the previous social welfare system and shall, in the light of the financial conditions and social needs, decide on its own policies on its development and improvement.

Article 153

Voluntary agencies providing social services in the Hong Kong SAR may on their own decide their modes of service.

[Explanatory Note] A member queried whether it would be appropriate for voluntary agencies to decide on their own their modes of service without being subject to the control of the government. It was suggested that the phrase "under relevant government regulations" be added after the word "may". Some members suggested that the relevant organisations amongst the voluntary agencies in Hong Kong should be invited to put forward proposals on the drafting of this Article. A member considered that this Article could be deleted.

Article 154

The Hong Kong SAR shall on its own decide laws and policies on labour matters in the light of economic development, social needs and the specific circumstances of labour-management consultation.

Article 155

The principles of non-subordination, non-interference and mutual respect shall be observed in respect of the relationship between non-governmental bodies in the Hong Kong SAR in all fields, including education, science, technology, culture, sports, the professions and social welfare as well as religious organisations, and their counterparts in the mainland.

Article 156

Organisations in all fields, including education, science, technology, culture, sports, health, the professions, social welfare and religion, in the Hong Kong SAR may, using the name of "Hong Kong, China", maintain and develop relations with states, regions and relevant international organisations.

[Explanatory Note] If the contents of this Article were included in the relevant provisions of Chapter VII on the "External Affairs of the Hong Kong SAR", this Article could be deleted.

Chapter VII : External Affairs of the Hong Kong SAR

Article 157

Representatives of the Hong Kong SAR may participate, as members of delegations of the Government of the PRC, in negotiations at the diplomatic level directly affecting the Hong Kong SAR conducted by the CPG.

Article 158

The Hong Kong SAR may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with states, regions and relevant international organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, touristic, cultural and sporting fields.

Article 159

The Hong Kong SAR may send representatives to participate, as members of delegations of the Government of the PRC, in international organisations or conferences in appropriate fields limited to states and affecting the Hong Kong SAR, or may attend in such other capacity as may be permitted by the CPG and the organisation or conference concerned, and may express their views in the name of "Hong Kong, China".

The Hong Kong SAR may, using the name "Hong Kong, China", participate in international organisations and conferences not limited to states.

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The CPG shall take the necessary steps to ensure that the Hong Kong SAR shall continue to retain its status in an appropriate capacity in those international organisations of which the PRC is a member and in which Hong Kong participates in one capacity or another.

The CPG shall, where necessary, facilitate the continued participation of the Hong Kong SAR in an appropriate capacity in those international organisations in which Hong Kong is already a participant in one capacity or another, but of which the PRC is not a member.

Article 160

The application to the Hong Kong SAR of international agreements to which the PRC is or becomes a party shall be decided by the CPG, in accordance with the circumstances and needs of the Hong Kong SAR and after seeking the views of the Hong Kong SAR Government.

International agreements to which the PRC is not a party but which are implemented in Hong Kong may remain implemented in the Hong Kong SAR. The CPG shall, as necessary, authorise or assist the Hong Kong SAR Government to make appropriate arrangements for the application to the Hong Kong SAR of other relevant international agreements.

Article 161

The CPG shall authorise the Hong Kong SAR Government to issue, in accordance with the law, passports of the Hong Kong SAR of the PRC to all Chinese nationals who hold permanent identity cards of the Hong Kong SAR, and travel documents of the Hong Kong SAR of the PRC to all other persons lawfully residing in the Hong Kong SAR. The above passports and documents shall be valid for all states and regions and shall record the holder's right to return to the Hong Kong SAR.

The Hong Kong SAR Government may apply immigration controls on entry, stay in and departure from the Hong Kong SAR by persons from foreign states and regions.

Article 162

The CPG shall assist or authorise the Hong Kong SAR Government to conclude visa abolition agreements with states or regions.

Article 163

The Hong Kong SAR may, as necessary, establish official and semi-official economic and trade missions in foreign countries, reporting the establishment of such missions to the CPG for the record.

Article 164

Foreign consular and other official or semi-official missions may be established in the Hong Kong SAR with the approval of the CPG.

Consular and other official missions established in Hong Kong by states which have already established formal diplomatic relations with the PRC may be maintained.

According to the circumstances of each case, consular and other official missions of states having no formal diplomatic relations with the PRC may either be maintained or changed to semi-official missions.

States not recognised by the PRC can only establish non-governmental institutions.

Chapter VIII : The Regional Flag and
Regional Emblem of
the Hong Kong SAR

Article 165

Apart from displaying the national flag and emblem, the Hong Kong SAR may use the regional flag and emblem (to be drafted).

Article 166

The regional flag of the Hong Kong SAR (to be drafted).

Article 167

The regional emblem of the Hong Kong SAR (to be drafted).

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Chapter IX : The Interpretation and Amendment of the
Basic Law of the Hong Kong SAR

Article 168

The power of interpretation of the Basic Law is vested in the Standing Committee of the NPC.

If the Standing Committee of the NPC has made an interpretation of a provision of the Basic Law, the courts of the Hong Kong SAR should, in applying that provision, follow the interpretation of the Standing Committee of the NPC. Judgments previously given shall not, however, be affected.

The courts of the Hong Kong SAR may, in adjudicating cases before them, interpret the provisions of the Basic Law. If the case involves an interpretation of those provisions of the Basic Law concerning defence, foreign affairs and other affairs managed by the central authorities, the courts of the Hong Kong SAR should, before making a final judgement on the case, seek an interpretation of the relevant provisions by the Standing Committee of the NPC.

The Standing Committee of the NPC shall consult the Basic Law Committee of the Hong Kong SAR before giving an interpretation of this Law.

Article 169

The power of amendment of this Law is vested in the NPC.

The power to propose amendment to this Law is vested in the Standing Committee of the NPC, the State Council and the Hong Kong SAR. Amendment proposals from

the Hong Kong SAR shall be made to the NPC by the Hong Kong SAR's delegation to the NPC after obtaining the agreement of a two-thirds majority of the Hong Kong SAR's deputies to the NPC, a two-thirds majority of the members of the Hong Kong SAR legislature and the chief executive of the Hong Kong SAR.

Before a proposal to amend this Law is included in the agenda of an NPC [session], the Basic Law Committee of the Hong Kong SAR shall first study it and give advice on it.

Any amendment to this Law should not contravene the PRC's established basic policies regarding Hong Kong.

[Explanatory Note] Other views put forward by members of the Special Group on the Relationship [between the Central Authorities and the Hong Kong SAR]:

On Article 168

A member suggested revising this article as follows : "The power of interpretation of this Law is vested in the Standing Committee of the NPC. The courts of the Hong Kong SAR may interpret all the provisions of this Law.

In respect of those provisions in of this Law which are within the limits of the Hong Kong SAR's autonomy, the Standing Committee of the NPC shall give full authority to the courts of the Hong Kong SAR to interpret them in adjudicating cases before them.

If the Standing Committee of the NPC has made an interpretation of a provision of this Law which is outside the limits of the Hong Kong SAR's autonomy, the courts of the Hong Kong SAR shall, in applying that provision,

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follow the interpretation of the Standing Committee of the NPC. Pending cases and judgments previously given shall not, however, be affected.

The Standing Committee of the NPC shall consult the Basic Law Committee of the Hong Kong SAR before giving an interpretation of this Law.

All the provisions in Chapters III, IV, V, VI and X of this Law are within the limits of the Hong Kong SAR's autonomy. Whether or not the articles in the other Chapters are within the limits of the Hong Kong SAR's autonomy may be determined by the courts of the Hong Kong SAR or the Standing Committee of the NPC. The Standing Committee of the NPC shall consult the Basic Law Committee of the Hong Kong SAR before making a decision. The decision of the Standing Committee of the NPC shall be final."

On Article 169

A member suggested revising this article as follows : "The power of amendment of this Law is vested in the NPC.

The power to propose amendment to this Law is vested in the Standing Committee of the NPC, the State Council and the Hong Kong SAR. Amendment proposals from the Hong Kong SAR shall be made to the NPC by the State Council after obtaining the agreement of a two-thirds majority of the members of the Hong Kong SAR legislature and the chief executive of the Hong Kong SAR.

Before a proposal to amend this Law is included in the agenda of an NPC [session], the Basic Law Committee of the Hong Kong SAR shall first study it and give advice on it. Any amendment to this Law should not contravene the PRC's established basic policies regarding Hong Kong as stated in the Preamble."

A member suggested redrafting the second paragraph as follows : "The power to propose amendment to this Law is vested in the Standing Committee of the NPC, the State Council and the Hong Kong SAR. Amendment proposals from the Hong Kong SAR shall be made to the NPC by the Hong Kong SAR's delegation to the NPC after obtaining the agreement of a two-thirds majority of the Hong Kong SAR's deputies to the NPC and the chief executive of the Hong Kong SAR."

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Chapter X : Appendix

Article 170

There are the following six formulae regarding the formation of the first Hong Kong SAR Government:

Formula 1 :

1. An advisory council, consisting of not less than 50 persons from the various sectors in Hong Kong, shall be appointed by the central authorities before 1997 to select, through consultation held locally, the chief executive, who shall be reported to the central authorities for appointment.

2. The chief executive shall organise the executive assembly and nominate principal officials for appointment by the central authorities

3. A provisional legislative assembly shall be formed by legislative members nominated by the chief executive in conjunction with the executive assembly, and elected by the advisory council.

4. The term of office of all the members of the first [SAR] Government shall not exceed three years. A regular government shall have to be constituted within three years in accordance with this Law.

Formula 2 :

The candidate for the first chief executive designate of the Hong Kong SAR shall on 1 December 1996 be selected through consultation held locally in accordance with the method set out in Annex 1. The selected candidate shall, upon endorsement by the CPG, become the first chief executive designate.

The first chief executive designate shall by 1 April 1997 nominate candidates to become prospective members of the first executive assembly.

The first chief executive designate shall, in conjunction with the prospective members of the first executive assembly, form the "Preparatory Committee for the Formation of the First Government". At zero hour on 1 July 1997, the first chief executive shall, upon formal appointment by the CPG and with the assistance of members of the first executive assembly, proclaim in accordance with the provisions of this Law the establishment of the first Hong Kong SAR Government. Under the authority of the central authorities, he shall take over the administration of the Hong Kong SAR from the Standing Committee of the NPC. Prior to the formation of the first legislature, the provisional legislature shall execute provisional legislative power and, if necessary, enact provisional legislation.

[Explanatory Note] The provisional legislature shall be constituted by elections held locally by the electoral college in accordance with the method stated in the Annex. Members of the previous Legislative Council in Hong Kong whose term expires on 30 June 1997 shall not be excluded from candidacy.

Within six months after the establishment of the first Hong Kong SAR Government, elections for the first District Boards and the first Urban/Regional Councils shall be held in accordance with the method stated in the Annex. Within 12 months [after the establishment of the first Hong Kong SAR Government], election of the first legislature shall be held in accordance with the method stated in Annex II to form the first legislature.

Annex I : Procedures for the selection of the first chief executive through consultation held locally among various sectors in Hong Kong.

After the promulgation of the Basic Law, the NPC shall appoint no less than 50 members to form a "Preparatory Committee for the Implementation of the Basic Law". The duties of the Committee would be diverse, including the formulation (by itself or by a subordinate special group), after consultation with various sectors, of a "Consultation Procedures" Bill for examination and endorsement by the NPC.

On 1 July 1995, members of the "Preparatory Committee for the Implementation of the Basic Law" shall elect from amongst themselves not less than 10 members to form a "Consultative Committee", which shall conduct open consultation in accordance with the "consultation procedures". Members of the "Consultative Committee" cannot run for the chief executive post nor can they nominate or support any candidate for the chief executive post. The "Consultative Committee" shall promote and supervise the conduct of consultation. It shall have to remain objective and fair.

The candidate for the first chief executive designate shall be selected on 1 December 1996, reported to the central authorities for endorsement and be formally appointed on 1 July 1997.

Annex II : Method of election of the first legislature

Electoral College : half [of the members of the legislature] shall be elected by a grand electoral college with a wide basis of representation. No less than two-thirds of them should be Chinese nationals.

Indirect Election : one-quarter shall be elected from among District Board members and Urban/Regional Councillors who are Chinese nationals.

Direct elections by functional constituencies : one-quarter shall be directly elected by functional constituencies (functional constituencies shall be registered as legal persons in accordance with local legislation and shall have Chinese nationality. Members of the legislature directly elected by functional constituencies shall, by virtue of the Chinese nationality of their functional constituencies, exercise civil rights enjoyed by Chinese nationals during their terms of office, irrespective of their own nationalities.)

Formula 3 :

1. At an appropriate time before 1 July 1997, the NPC shall set up a preparatory committee for the Hong Kong SAR, consisting of mainland and Hong Kong members, which shall be responsible for matters concerning the establishment of the Hong Kong SAR.

2. The first chief executive of the Hong Kong SAR shall be selected through consultation or by election held locally by a representative body formed by persons from various sectors in Hong Kong. The selected candidate shall be reported to the CPG for appointment. The representative body shall be established by the preparatory committee for the Hong Kong SAR.

The first Hong Kong SAR Government shall be formed by the chief executive of the Hong Kong SAR in accordance with the provisions of this Law.

3. The first legislature of the Hong Kong SAR shall be constituted by election in accordance with the provisions of this Law within one or two years after the establishment of the Hong Kong SAR.

Before the formation of the first legislature of the Hong Kong SAR, a provisional legislature of the Hong Kong SAR shall execute its functions and powers on its behalf. The provisional legislature shall be constituted by election in accordance with the method prescribed in the preceding paragraphs."

Formula 4 :

"The first Hong Kong SAR Government shall be formed in accordance with the provisions of "The Method of the Formation of the First Hong Kong SAR Government" at Annex.

Annex :

1. A "Preparatory Committee for the First Hong Kong SAR Government" shall be appointed by the Standing Committee of the NPC of the PRC. Members of the Preparatory Committee shall have to be Chinese nationals. Half of them shall be mainland residents and half of them shall be Hong Kong permanent residents. The chairman of the Committee shall be a member of the Standing Committee of the NPC.
2. The "Preparatory Committee for the First Hong Kong SAR Government" shall entrust its Hong Kong members to invite people of broad representation from various sectors in Hong Kong to form a "Recommendation Committee for the first chief executive of the Hong Kong SAR".
3. The first chief executive designate of the Hong Kong SAR shall be selected through consultations or by election held locally by the "Recommendation Committee", and be reported to the CPG for appointment.

4. The CPG shall, on the basis of the candidate recommended by the "Recommendation Committee", appoint that chief executive designate as the first chief executive of the Hong Kong SAR.

5. The first chief executive shall appoint members of the executive assembly to form the executive assembly. The chief executive shall nominate the principal officials of the executive authorities of the Hong Kong SAR, and report them to the central authorities for appointment.

6. The President of the PRC shall declare that the PRC resumes the exercise of sovereignty over Hong Kong with effect from 1 July 1997, that the entire "Basic Law of the Hong Kong SAR" enters into force, and that the chief executive shall, in accordance with the provisions of this Law, exercise a high degree of autonomy in the Hong Kong SAR.

(Items 1 to 6 above shall be accomplished before 1 July 1997).

7. The chief executive and all the principal officials shall be sworn in.

8. The first chief executive of the Hong Kong SAR shall proclaim that public servants of various ranks serving in the previous government in Hong Kong (except principal officials), judges and judicial officers of the courts at various levels shall continue in employment in their previous posts until new appointments or removal are made.

9. The chief executive shall proclaim that the first legislature of the Hong Kong SAR shall be formed within one year in accordance with the provisions of Section 3, Chapter IV of this Law.

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10. Until the first legislature is constituted and approves the budget, public expenditure of the first Hong Kong SAR Government shall be paid out of the provisional appropriations proposal proposed by the Head of the Financial "Ting" and approved by the chief executive. Such expenditure shall be introduced for retrospective endorsement after the establishment of the first legislature.

11. The chief executive shall appoint the chief judge of the court of final appeal and the chief judge of the Supreme Court in accordance with the provisions of Articles 84 and 86 of this Law.

(Items 7 to 11 above shall be accomplished on or after 1 July 1997).

Formula 5 :

1. The Standing Committee of the NPC of the PRC shall appoint a "Preparatory Committee for the First Hong Kong SAR Government". All members of the Preparatory Committee shall be Chinese nationals, including mainland residents and Hong Kong permanent residents. The chairman of the Committee shall be a member of the Standing Committee of the NPC.

2. The "Preparatory Committee for the First Hong Kong SAR Government" shall entrust its Hong Kong members to establish an electoral college in Hong Kong. Members of the electoral college shall include representatives of the legislature and of district/regional organisations prior to the establishment of the Hong Kong SAR, representatives of various statutory bodies and permanent non-statutory bodies, and representatives from various sectors of the community. The electoral college shall have a wide representation and shall be named "The Electoral College for the First Hong Kong SAR Government".

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3. The Electoral College for the First Hong Kong SAR Government shall be responsible for drawing up the procedures for the selection of the first chief executive through consultations, or by election following nomination through consultations.

(The qualifications, functions and powers etc of the chief executive shall be in accordance with the provisions of Chapter IV of this Law.)

4. The Electoral College for the First Hong Kong SAR Government shall draw up the procedures for the election of the first SAR legislature. Serving members of the legislature immediately prior to the establishment of the Hong Kong SAR may, if they conform with the provisions set out in Chapter IV of this Law, be elected to become members of the first SAR legislature.

(The qualifications, functions and powers of members of the legislature shall be in accordance with the provisions of Chapter IV of this Law.)

5. Serving government officials, public servants and judicial officers prior to the establishment of the Hong Kong SAR shall, if they conform with the provisions set out in this Law, serve in the first Government.

(The composition, functions and powers of the executive authorities shall be in accordance with the provisions of Chapter IV of this Law.)"

Formula 6 :

1. The chief executive

The Standing Committee of the NPC of the PRC shall appoint a "Preparatory Committee for the First Hong Kong SAR Government". Members of the Preparatory Committee shall have to be Hong Kong permanent residents who are Chinese nationals. The chairman of the Preparatory Committee shall be elected from amongst its own members.

In mid-1996 or at the end of 1996, the Preparatory Committee for the First Hong Kong SAR Government shall hold an election in Hong Kong in accordance with the provisions of this Law. The chief executive designate shall be directly elected on a "one-man-one-vote" basis.

On 1 July 1997, the chief executive designate shall accept appointment by the CPG and be formally sworn in.

2. Principal officials

Before 1 July 1997, the chief executive designate shall nominate the principal officials of the executive authorities of the Hong Kong SAR and report them to the CPG for appointment. The principal officials shall be sworn in on 1 July 1997.

3. The legislature

Serving members of the Legislative Council in Hong Kong as in June 1997 shall automatically become members of the first legislature of the Hong Kong SAR on 1 July, until their term of office expires. Apart from such ceremonies as swearing allegiance to the Hong Kong SAR, no other ceremony will be arranged."

Article 171

Formula 1 :

On the establishment of the Hong Kong SAR, laws previously in force in Hong Kong (i.e. the common law, rules of equity, ordinances, subordinate legislation and customary law) shall become the laws of the Hong Kong SAR, save for those set out in the Annex.

The adoption of the above-stated laws which were previously in force in Hong Kong shall not, after the establishment of the Hong Kong SAR, affect the power of the Standing Committee of the NPC to, in the exercise of its power of interpretation of this Law, declare invalid any of the above-stated laws previously in force in Hong Kong which is subsequently found to be in contravention of this Law.

Documents, certificates, contracts, rights and obligations valid under the laws previously in force in Hong Kong shall, subject to the prerequisite that they do not contravene this Law, continue to be valid, and shall be recognised and protected by the laws of the Hong Kong SAR."

[Explanatory Note] Laws listed in the Annex are laws previously in force in Hong Kong which the Standing Committee of the NPC considers to be clearly in contravention of the Basic Law.

Formula 2 :

The laws previously in force in Hong Kong may be reported to the Standing Committee of the NPC if the Basic Law Committee considers them to be in contravention of the Basic Law after examination. The Standing Committee of the NPC shall repeal them on the establishment of the Hong Kong SAR.

Documents, certificates, contracts, rights and obligations valid under the laws previously in force in Hong Kong shall, subject to the prerequisite that they do not contravene this Law, continue to be valid, and recognised and protected by the laws of the Hong Kong SAR.

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Formula 3 :

The ordinances and subordinate legislation previously in force in Hong Kong, save for those that the Standing Committee of the NPC, in accordance with the provisions of Article 168 of this Law, declares on the establishment of the Hong Kong SAR to be in contravention of this Law, shall be treated as continuing in force for the purposes of Article 8 of this Law until repealed or amended in accordance with the procedures provided for in this Law.

Rights and obligations valid under those laws previously in force in Hong Kong, which continue in force after the establishment of the Hong Kong SAR, shall continue to be valid and be protected and recognised by the laws of the Hong Kong SAR.

Article 172

This Law shall become law after it has been passed by the NPC of the PRC and promulgated by the President of the PRC. Except for the relevant provisions in Articles 170 and 171 of this Law, it shall enter into force at zero hour on 1 July 1997.

[Explanatory Note] Some members considered that this Law should enter into force upon its promulgation by the President of the PRC.