

## **Chapter Two: Constitutional Basis of the Constitutional Development and the Design Principles of the Political Structure of the Hong Kong Special Administration Region**

### **Constitutional and Legal Status of the HKSAR**

2.01 The constitutional basis of the HKSAR lies in the Constitution of the PRC and the Basic Law. The Constitution provides the ultimate basis for the Basic Law. The HKSAR was established by the decision of the NPC made pursuant to the provisions of Article 31 and paragraph 13 of Article 62 of the Constitution, and the Basic Law was enacted pursuant to the Constitution to prescribe the systems to be implemented in the HKSAR.

2.02 As to the constitutional status of the HKSAR, Article 1 of the Basic Law clearly stipulates that:

“The Hong Kong Special Administrative Region is an inalienable part of the People’s Republic of China.”

2.03 Article 12 of the Basic Law clearly stipulates that:

“The Hong Kong Special Administrative Region shall be a local administrative region of the People’s Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People’s Government.”

### **Constitutional Powers of the Central Authorities on the HKSAR**

2.04 The PRC is a unitary, multi-ethnic state. Under the unitary state structure, all administrative regions are established by the CPG according to the needs, and are local administrative regions. The systems to be implemented in the administrative regions are prescribed by the Constitution and by national laws, and all powers exercised by local administrative regions are derived by way of authorisation by the Central Authorities, which is distinctly different from the system of federal states under which local governments hand over certain powers to the federal government and retain “residual powers”. The Basic Law provides that the HKSAR comes directly under the CPG, with no intermediate layers in between.

2.05 Given the above-mentioned constitutional status of the HKSAR, the Central Authorities have the constitutional powers and responsibilities to determine the systems to be implemented in the HKSAR, including the model of political structure of the HKSAR. The role of the Central Authorities in this regard is reflected in the enactment and implementation of, and amendments to the Basic Law, for example:

- (i) according to the Interpretation adopted by the NPCSC in 2004, the CE should make a report to the NPCSC for determination as to whether there is a need to make an amendment to the methods for selecting the CE and for forming the LegCo for the terms subsequent to the year 2007 as stipulated in Annexes I and II to the Basic Law. The relevant amendment, after being endorsed by the LegCo and having received the consent of the CE, will still require the approval of or recording by the NPCSC before it may take effect. This reflects the constitutional power of the Central Authorities in amending the two methods, i.e. the ultimate power of the Central Authorities to determine the constitutional development of the HKSAR, including the timetable for attaining universal suffrage and the model and design of the universal suffrage system. As a local administrative region directly under the CPG, the HKSAR cannot decide its political structure on its own;
  
- (ii) Article 43 of the Basic Law provides that the CE shall be the head of the HKSAR and shall represent the Region and be accountable to the CPG and the HKSAR. Article 45 of the Basic Law provides that the CE shall be selected by election or through consultation held locally and be appointed by the CPG. The appointment by the CPG is a substantive power and not a mere formality. In other words, the CPG may make the appointment or it may not. This arrangement reflects the constitutional power of the Central Authorities in the actual implementation of the political structure of the HKSAR. The CE, irrespective of how he is selected, including ultimately by universal suffrage, is to be appointed by the CPG through the exercise of a substantive power of appointment before assuming office;

- (iii) Article 48 of the Basic Law provides that the CE shall lead the Government of the HKSAR, implement the directives issued by the CPG in respect of the relevant matters provided for in the Basic Law, as well as conduct, on behalf of the Government of the HKSAR, external affairs and other affairs as authorised by the Central Authorities, etc.; and
- (iv) Article 104 of the Basic Law requires the CE to swear to uphold the Basic Law and swear allegiance to the HKSAR of the PRC.

## **Design Principles of the Political Structure of the HKSAR**

- 2.06 The design of the political structure of the HKSAR relates to the exercise of sovereignty by the State over Hong Kong as well as the full implementation of “One Country, Two Systems” and the basic policies of the Central Authorities towards Hong Kong. The HKSAR does not have the power to unilaterally alter the system prescribed by the Central Authorities. The universal suffrage electoral method is an integral part of the political structure. Therefore, any proposals on universal suffrage must comply with the design and principles of the political structure as prescribed in the Basic Law.
- 2.07 In the course of attaining the ultimate aim of universal suffrage and in devising a model for implementing universal suffrage, we must ensure that they are consistent with the basic policies of the State regarding Hong Kong and the four major principles on constitutional development under the Basic Law<sup>1</sup>:

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<sup>1</sup> In submitting the Basic Law (Draft) and related documents at the Third Session of the Seventh NPC on 28 March 1990, the Chairman of the Drafting Committee for the Basic Law, Mr Ji Pengfei, explained as follows:

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

The four principles on constitutional development can be derived from the above explanations of Director Ji on the political structure and the provisions in Articles 45 and 68 of the Basic Law.

- (I) Meeting the Interests of Different Sectors of the Society;
- (II) Facilitating the Development of the Capitalist Economy;
- (III) Gradual and Orderly Progress; and
- (IV) Appropriate to the Actual Situation in the HKSAR.

**(I) Meeting the Interests of Different Sectors of Society**

2.08 As illustrated by the history of Hong Kong's development, the sustainability of the long-term economic prosperity of Hong Kong depends on the joint endeavours of all sectors of the society, people from all walks of life, including the industrial and commercial sectors, the middle class, professionals, and the working class, who work together to perform their functions industriously regardless of their positions. To maintain our long-term prosperity and stability, due regard must be given to the interests of different sectors of society.

2.09 The Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in the Year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008 adopted on 26 April 2004, apart from pointing out that the two methods shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress, with universal suffrage as the ultimate aim, also states that any change relating to the two methods "shall conform to principles such as being compatible with the social, economic, political development of Hong Kong, being conducive to the balanced participation of all sectors and groups of society, being conducive to the effective operation of the executive-led system, being conducive to the maintenance of the long-term prosperity and stability of Hong Kong."

Full text of the Decision of the NPCSC in 2004 is at [Annex III](#).

**(II) Facilitating the Development of the Capitalist Economy**

2.10 In submitting the Basic Law (Draft) and related documents at the Third Session of the Seventh NPC on 28 March 1990, the

Chairman of the Drafting Committee for the Basic Law, Mr Ji Pengfei, pointed out in his explanations that Chapter V of the Basic Law contains stipulations on the economic systems and policies of the HKSAR. These stipulations are indispensable to ensuring the normal operation of Hong Kong's capitalist economy and maintaining its status as an international financial centre and a free port. The relevant principles are implemented through Article 5 of the Basic Law and other relevant provisions.<sup>2</sup>

- 2.11 The political structure of the HKSAR should facilitate the development of the capitalist economy. This is to ensure the prosperity and stability of Hong Kong. The method for selecting the CE by universal suffrage and the method for forming the LegCo should ensure that the HKSAR can develop its economy and the livelihood of the people can be improved under "One Country, Two Systems".

### **(III) Gradual and Orderly Progress**

- 2.12 "Gradual and orderly progress" is generally understood to mean proceeding forward in different steps or stages in an orderly fashion. It involves a step by step transition and different stages of evolution over time. With regard to attaining the ultimate aims of electing the CE and all the Members of LegCo by universal suffrage, the evolutionary process could not be taken forward too rapidly, but should proceed in a gradual and orderly manner and in the light of the actual situation in the HKSAR, in order to preserve its prosperity and stability.

### **(IV) Appropriate to the Actual Situation in the HKSAR**

- 2.13 The "actual situation" in the HKSAR as referred to in the Basic Law includes the political, economic, and social conditions, as well as the evolution and current status of the electoral methods for the CE and the LegCo.
- 2.14 Since the establishment of the HKSAR, the political system of Hong Kong has been developing in a gradual and orderly manner in accordance with the provisions of the Basic Law. In considering the further development of the political structure, the current actual situation of Hong Kong must be examined. Hong

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<sup>2</sup> See Chapter V of the Basic Law.

Kong is an open economy, a cosmopolitan city, a financial centre, shipping and logistics centre, information centre as well as commercial centre. Our per capita Gross Domestic Product in 2012 already exceeded US\$36,500. The level of economic development in Hong Kong ranks among the highest in the world. The rule of law is the cornerstone and core value of Hong Kong. Hong Kong has a clean and dedicated civil service. There is a high degree of social mobility in Hong Kong. Our people are generally diligent and pragmatic, and are keen to enhance their educational and professional standards through continuous learning. In Hong Kong, there is free flow of information. The mass media is free and multi-faceted. The public in general take interest in public affairs and in their community.

- 2.15 Since the State resumed the exercise of sovereignty over Hong Kong, successive terms of the CE and the Administration under their leadership have been exercising executive powers as authorised by the Basic Law, and have been governing Hong Kong strictly in accordance with the provisions of the Basic Law. Over the past 16 years, the economy of Hong Kong has been undergoing a process of restructuring. Despite the challenges, the HKSAR Government has been devising economic policies and measures in light of the rising trend of globalisation, and taking full advantage of the development of our country. With years of hard work, we are gradually seeing the benefits of these strategies.
- 2.16 In addition, with closer links between the Mainland and Hong Kong, the Hong Kong public's identification with the country and their sense of belonging is enhancing by the day. With the safeguards of the Basic Law, the Hong Kong public continue to enjoy all the rights associated with a free and open society. They have high expectations of the HKSAR Government, and actively participate in public affairs and convey their demands through different channels. The HKSAR Government understands the expectations and demands of the Hong Kong public. Further enhancing and improving the quality of governance has all along been one of the major policy agendas of the HKSAR Government.
- 2.17 Against this background, different sectors of the community are eagerly looking forward to the smooth implementation of universal suffrage for the CE election in 2017, so that the CE-elect may be elected through one-person-one-vote.

## **Procedure to be Followed in Amending the Political Structure of the HKSAR**

2.18 According to the Basic Law and the Interpretation of the NPCSC in 2004, the “Five-step Process” must be followed in amending the methods for selecting the CE and for forming the LegCo. The making of a report by the CE to the NPCSC; the determination by the NPCSC whether to make amendments to the electoral methods; the decision by all Members of the LegCo whether to pass the Government’s resolution to amend the electoral methods; the consent by the CE or otherwise to the resolution passed by the LegCo; and the decision of the NPCSC to approve or record, or otherwise, the relevant amendments, are all necessary steps in the constitutional process. In handling issues relating to constitutional development, the Central Authorities, the CE, the HKSAR Government, the LegCo, and indeed all sectors of the community, must strictly follow the law. This is also the core value of Hong Kong.

### **Relevant Provisions of the Basic Law**

2.19 Article 11 of the Basic Law provides that the systems and policies practiced in the HKSAR shall be based on the provisions of the Basic Law. The political structure of the HKSAR is prescribed in Chapter IV of the Basic Law and Annexes I and II to the Basic Law.

2.20 Article 45 of the Basic Law provides that:

“The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People’s Government.

The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

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

2.21 Article 68 of the Basic Law provides that:

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

The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.

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

2.22 The above provisions of the Basic Law clearly stipulate the methods for selecting the CE and for forming the LegCo. In order to understand the background and meaning of relevant provisions of the Basic Law, we must take the constitutional status of the HKSAR and the principles of design of its political structure as the starting point.

### **Conclusion on the Design Principles of the Electoral Methods**

2.23 When discussing the methods for selecting the CE by universal suffrage, we should also take into account the constitutional status of the HKSAR and that of the CE, the constitutional powers of the Central Authorities as regards the HKSAR, the design principles of the political structure of the HKSAR, as well as the necessary steps to amend the political structure of the HKSAR. In dealing with the methods for selecting the CE in 2017 and for forming the LegCo in 2016, due regard has to be paid to the following three aspects:

- (i) the proposal should be strictly in accordance with the Basic Law and the Interpretation of the NPCSC in 2004 and relevant Decisions of the NPCSC;
- (ii) the proposal should stand a reasonable chance of gaining majority support of the Hong Kong community, securing passage by a two-thirds majority in the LegCo, and receiving the approval or record by the NPCSC; and

- (iii) in terms of actual operation, the electoral procedures under the proposal should be practical and practicable, simple and easy to understand, convenient to voters in exercising their voting rights, and conducive to maintaining an open, fair and honest electoral system.