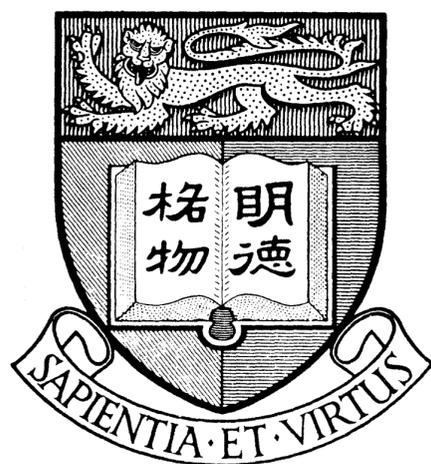


The Basic Law of the Hong Kong Special  
Administrative Region of the People's  
Republic of China : a Compilation of  
Preparatory Materials



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**Volume 3**

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77	14-Jan-89	(Translation) The Draft Basic Law of the Hong Kong SAR of the PRC

This compilation is based on materials collected by Professor Johannes Chan, who has generously lent it to the Law Library to make a duplicate set for its Basic Law Collection.

Lui Che Woo Law Library  
30-Oct-02

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對基本法第四章部份條文草稿  
(一九八七年八月)的意見

(1987年11月4日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會  
政制專責小組

## I. 整體意見

1. 有委員認為條文顯示未來特區的立法與行政關係中，行政有較大的權力，而這些權力又未有適當監察的渠道；而立法則有較少的權力，而這些權力又不足以監察行政。  
另外，條文只反映了衆多行政立法關係之其中一種。至於其他政體模式（例如以立法機關與行政有互相制衡、權力較為平衡的政治模式或以立法權力較大的另一種政治模式）。在條文中難以反映。這種編排方式，會令諮委及市民大眾，不能從整體角度去比較二種或多種政治模式的優劣。
2. 中文版中「負責」一詞，英文版有譯為"responsible to"及"accountable to"，有委員認為應按中英聯合聲明的英文版譯法，就是"accountable to"，但亦有委員認為應將這問題交草委解決，以致對這詞有共通的理解。另有委員認為「負責」一詞已具體地在第二節第五條列明。
3. 有委員希望草委能清楚界定行政機關是否包括行政長官及行政會議。
4. 有委員希望草委解釋為何還未看過本組的最後報告。

## II. 第一節

### (1) 第一條

1. 有建議將之改為：  
「香港特別行政區行政長官是香港特別行政區政府的最高行政首長，依照本法規定對中央人民政府和香港特別行政區人民負責。」以致「首長」的意思及負責的對象更明確，不致太空泛，沒有意思。
2. 亦有認為應對「中央政府」及「香港特別行政區政府」負責。
3. 但有意見認為對「特別行政區」負責更有概括性。
4. 亦有認為應清楚寫明「對中央效忠」、「對香港特別行政區效忠」及「對香港特別行政區立法機關負責」。
5. 而有意見認為在其他條文，已反映了他向誰負責。

### (2) 第二條

1. 有意見認為「通常連續居住」所指含糊。故有建議只寫「連續居滿」，亦有建議只寫「通常居住」。但有委員認為本港已有對這詞的判例。亦有委員建議草委應在法律上對這詞盡量釐定清楚。
2. 有委員認為「行政長官由....擔任」及「主要官員由....擔任」這表達方式有問題。有建議用西式的句法，如「除非....，否則不可擔任....」。亦有建議改為「行政長官須要....」。總的來說對這條文意思沒有異議，只需字眼上的修改。

### (3) 第四條

1. 有委員認為任期應與其產生方法一併考慮，例如其產生是基於立法機關，便宜與立法機關的任期相配合。

2. 有委員認為現暫建議行政長官的任期不超過五年，不可連任多於一次，以供草委參考，但寫在基本法則須明確年期。
3. 有委員認為其任期不需配合立法機關，因這種掛鈎現象只於中國大陸與香港現時情況有異。
4. 有委員則建議草委可考慮行政長官與立法機關的上任與落任期的交接期。

(4) 第六條

1. 有委員認為應有明文規定代理人，而不是只用小字提。
2. 有委員認為必須有一個代理人的順序名單。

(5) 第七條

1. 有委員認為「為自己謀私利」寫得不夠清楚，因可為妻子謀私利。
2. 有不少委員認為應取銷此條文，因在行政長官宣誓時或對他的彈劾規定已可規定其行為了。
3. 但另有意見認為謀私利可能不算是犯法行為，而是嚴重的貪污行為，故這條文是需要的。

(6) 第十一條

1. 有認為行政會議成員應可連任一次。
2. 有認為其任期應與行政長官的一致。
3. 但有委員認為行政會議的成員與行政長官的離任期一致是沒有問題，但上任期則不同，因為行政會議成員是在行政長官上任後才委任的。
4. 有委員認為行政會議成員的任期未必能一致，因其中成員可以是公職人員，他們的退休期是各異的。
5. 有認為行政會議成員的任期是難定的，因為他們是顧問，行政長官離任不等於他們不可以留任。
6. 有意見認為「會議」一詞用來形容類似現在的「行政局」是不適留的。而現時的行政局成員任期是沒有規定的，故將來亦應按現行的處理方法，行政長官可在任期內委任或不委任他們。

(7) 第十三條

1. 有委員認為保留廉政機構是應該的，但廉政機構應是依法成立的一個政府機關，不須寫在基本法上，否則很多其他的機構也要寫於基本法上。
2. 但亦有委員認為應在基本法內強調這個機構的設立，因基本法是寫給世界各地看的。
3. 亦有認為既然廉政機構對香港這麼重要，便應要寫明現在的廉政機構「基本保持不變」。

(8) 第十四條

1. 有委員認為基本法是法律，不能寫「繼續保留」。
2. 有委員質疑「諮詢組織」是否屬於政府組織，希望草委能對此澄清。

II. 第二節

(1) 第一條

1. 有委員認為應列明行政機關包括之範圍。其個人意見認為行政機關應包括行政長官、行政會議、主要官員及一般公務員。

2. 但有委員認為行政會議就已包括了行政長官及行政機關。

### III. 第三節

#### 第七條

1. 有委員認為如規定立法機關會議要有法定人數，可能會令立法機關不能運作。如有一定數目的成員反對某議案或提案，或對該議案或提案不感興趣，他們只要不出席會議，即能令立法機關無法審議或通過該議案或提案。因此該委員對法定人數的規定有所保留，並認為該規定只對那些不甚盡責的立法機關成員有利。
2. 但有意見認為一般的會議都是需要法定人數才能舉行。

### IV. 第六節

#### (1) 第一條

1. 有委員認為有關公務人員必須是香港特別行政區永久性居民的規定，應該只有第四條規定者不在此限。「或法律規定某一薪級點以下者」一句應刪去，因為這會令香港的最大僱主可以從香港以外地區引進廉價勞工，開了這先例便會很危險，有損香港特別行政區本地低薪工人的利益。
2. 亦有委員認為現時香港亦有此等情況，將來亦應如是。但亦有意見認為這現象只由於是英國政府的統治，但將來則不應如此。

#### (2) 第三條

1. 有委員認為「不低於原來的標準」一句雖可用於聯合聲明，但不宜用於基本法。這說法太空泛，不夠明確，在數年間便會變得毫無意義。因此該委員建議把它刪去。
2. 但有委員認為這種寫法是對公務員的一種最低保障，取銷這句就更沒有保障了。
3. 亦有委員認為這是英文版本的問題，中文是指在特區成立前，即以九七年為界限，而非指八四年中英聯合聲明簽署時。

#### (3) 第四條

1. 有委員建議英籍和其他外籍人士所不能擔任的職位應該一一列出，好讓英籍和其他外籍人士更清楚自己的情況，而且也保障他們所不能擔任的職位不會愈來愈多。
2. 但亦有委員認為沒有政府可能有這遠見，能預見將來的事，既然我們對現時政府有信心，對將來政府亦應有信心。
3. 另外，有委員認為這條文很長，不易閱讀，且易產生不同的傳釋，故建議最好能用標點符號將之點斷，或用精簡語法改寫，使之更為清楚。
4. 但亦有委員擔心改寫後會異於聯合聲明的寫法，會產生不必要之憂慮。

#### (4) 第六條

1. 有委員認為「原有....制度」一詞雖可用於聯合聲明，但不宜用於基本法。在聯合聲明公佈以後，招聘制度已有改變，在數年間「原有」一詞便會全無意義。該委員希望這條文寫得更正面，具體說明既定的制度(程序)。否則整個制度便可隨意變動，不夠確切。

2. 有委員指出將來草委是會整體地重新處理用詞的。
3. 另外，有委員建議「除有關給予外籍人員特權待遇的規定外」一句應刪去。如果需要招聘外籍專家，則有理由以特權待遇吸引人才。如果這句另有其他意思，則應清楚說明。
4. 亦有委員認為，在中英聯合聲明已有列明。
5. 有委員建議在這節加上一條列明公務員應是政治中立，不受立法機關及行政機關變動之影響。
6. 但有委員補充，這條文亦應對「公務員」的定義及「政治中立」的範圍界定清楚。
7. 有委員建議公務員的定義為：中英聯合聲明提到的，由行政長官提命，由中央委任的主要官員為公職人員，除此以外的為公務員，他們應保持政治中立。

OPINIONS ON SOME OF THE ARTICLES  
OF CHAPTER 4 OF  
THE DRAFT (AUGUST 1987) OF THE BASIC LAW

(passed by the Executive Committee on 4 November 1987)

Special Group on  
The Political Structure of the SAR

I Overall comments

1. A member held that the provisions indicated that the executive branch assumed a dominant role in the relationship between the legislature and the executive branch in the future SAR, and there was no appropriate channels to check the powers enjoyed by the executive branch. On the other hand, the legislature enjoyed relatively less powers which were not sufficient to monitor the executive branch.

The provisions only reflected one of the many relationships between the executive branch and the legislature. Other kinds of political structures (such as a structure where the executive and legislative branches exercised mutual checks and balances; a structure where the legislature assumed a dominant role) were hardly reflected by the provision. With this arrangement, the CCBL or members of the public would not be able to have an overall view of the various political structures and compare their pros and cons.

2. The term "負責" in the Chinese text has been translated as either "responsible to" or "accountable to" in the English version. A member held that the expression used in the English version of the Joint Declaration i.e. "accountable to" should be adopted. But a member maintained that this problem should be referred to the Drafting Committee in order to arrive at a common understanding of this term. Another member noted that what the term denoted had already been listed out in Article 5 of Section 2.
3. A member hoped that the Drafting Committee would clearly specify whether the executive authorities included the Chief Executive and the Executive Assembly.
4. A member hoped that the Drafting Committee would explain why its members had not yet read the final reports submitted by this Special Group of the CCBL.

II Section 1

(1) Article 1

1. It was proposed that the article be rewritten as follows: "The Chief Executive shall be the supreme executive head of the HKSAR and shall be accountable to the Central People's Government and the people of the HKSAR in accordance with the provisions of this Law". In this way, the meaning of the word "head" and the target of accountability would be more specific.

2. It was also proposed that the Chief Executive be accountable to the "Central Government" and the "HKSAR Government".
3. But another view was that it would cover a broader scope if accountability was directed to the SAR in general.
4. It was also proposed that it be clearly stated that the Chief Executive should "pledge allegiance to the Central Government", "pledge allegiance to the HKSAR" and "be accountable to the HKSAR legislature".
5. It was maintained that other provisions had already revealed to whom he should be accountable.

(2) Article 2

1. It was held that the meaning of "having ordinarily resided in Hong Kong for a continuous period of ...." was obscure. It should read "having resided in Hong Kong for a continuous period of at least ...". Another suggestion was that it should read "having ordinarily resided in Hong Kong for .... years". But a member noted that there were precedents in Hong Kong regarding such an expression. A member suggested the Drafting Committee try their best to define the expression in law.
2. A member held that in describing who would be eligible for the post, the wording "The Chief Executive shall be ..." or "Principal officials shall be ...." was not acceptable. It was suggested the English structure "..... shall not be .... unless ...." be adopted. It was also suggested that the wording be amended to "the Chief Executive is required to ...." In short, there was no objection to the meaning of the article; only the wording needed amendment.

(3) Article 4

1. A member held that the term of office of the Chief Executive should be considered in relation to the selection method of the Chief Executive. For example, if he was selected from the legislature, his term of office should coincide with that of the legislators.
2. A member held that for the reference of the Drafting Committee, we should tentatively propose that the term of office be not more than 5 years and the Chief Executive might serve not more than two consecutive terms. But the actual provisions in the Basic Law should specify the exact number of years and terms.
3. A member held that the term of office of the Chief Executive need not coincide with that of the legislators because such coincidence was only the practice in China and not the present practice in Hong Kong.

4. A member suggested the Drafting Committee consider whether the term of office of the Chief Executive and that of the legislators should commence/terminate at the same time.

(4) Article 6

1. A member held that the acting governor should be expressly specified in the provision, instead of being mentioned in small prints.
2. A member held that there should be a list naming the candidates for the acting governor in order of priority.

(5) Article 7

1. A member held that the meaning of the phrase "take advantage of his office to seek personal benefits" was not clear because it might imply that seeking benefits for his wife was permissible.
2. A number of members proposed that this article be deleted because the oath of allegiance taken by the Chief Executive and the provisions regarding his impeachment already kept his conduct in check.
3. Another view held that seeking personal benefits was a case of serious corruption, but might not be a case of breach of law. Hence, this article should be retained.

(6) Article 11

1. A view held that members of the Executive Assembly should be allowed extend their term of office once.
2. A view held that their term of office should coincide with that of the Chief Executive.
3. But a member noted that the term of office of members of the Executive Assembly and that of the Chief Executive could terminate at the same time. But they could not commence at the same time because members of the Executive Assembly were appointed by the Chief Executive after the latter had assumed office.
4. A member held that the terms of office of various members of the Executive Assembly were not necessarily the same because some of them might be public servants who would retire at different times.

5. It was held that it was difficult to fix the term of office of members of the Executive Assembly. Since they were advisors, even if the term of office of the Chief Executive terminated, they could still stay on.

6. A view held that it was not appropriate to call a body similar to the existing Executive Council an "Assembly". At present, the term of office of Executive Councillors was not fixed. Hence, this practice should continue in the future: the Chief Executive could appoint them or discontinue their appointment during his term of office.

(7) Article 13

1. A member considered that it was necessary to retain an anti-corruption body. But as the anti-corruption body was established in accordance with law, it need not be provided for under the Basic Law, or else other bodies should also be mentioned by the Basic Law.
2. A member held that the existence of this anti-corruption body should be emphasised in the Basic law as the Basic law was intended to be read also by people of other parts of the world.
3. It was held that since the anti-corruption body was so important to Hong Kong, the Basic Law should specify that the existing anti-corruption body should "remain basically unchanged".

(8) Article 14

1. As the Basic Law is a law, the expression "shall be maintained" was not appropriate.
2. A member questioned whether the "advisory bodies" were government organisations. It was hoped that the Drafting Committee would clarify this point.

III Section 2

(1) Article 1

1. A member held that what were included in the executive authorities should be specified. According to the member, the executive authorities should include the Chief Executive, the Executive Assembly, principal officials and the public service.
2. But another member considered that the Executive Assembly alone should include the Chief Executive and the executive authorities.

IV Section 3

(1) Article 7

1. A member noted that the quorum requirement might result in inability of the legislature to function. If sufficient members objected or just did not have an interest in a proposal or subject they could affect the consideration or application by the simple process of absenting themselves from the meeting. The member had reservations therefore about a requirement for a quorum. Quorum requirements worked to the advantage of the least dedicated members.
2. But a view held that all meetings normally required a quorum.

V Section 6

(1) Article 1

1. A member felt that the only exception to public servants being permanent inhabitants of the HKSAR should be those provided for in Article 4. The words "or those below a certain point of the pay scale prescribed by law" should be deleted, as this would amount to giving effect to importing cheap labour by the biggest employer and set a dangerous precedent which would adversely affect the prosperity of the HKSAR's lower paid workers.
2. Another member maintained that it applied to the present practice in Hong Kong and it would remain to be so in the future. But another view maintained that such phenomenon was attributable to the rule of the British Government and it should not be so in the future.

(2) Article 3

1. A member held that the term "no less favourable than before" was acceptable for the Joint Declaration but not for the Basic Law. In a few years this term would become meaningless, as it was too vague and uncertain. The member suggested the term be deleted.
2. But another member held that the term was to provide minimum guarantee to public servants. If this term was deleted, there would not be any guarantee at all.

(3) Article 4

1. A member suggested that the excepted posts not to be held by British and other foreign nationals be listed out so that the position of British and other foreign nationals was quite clear and there was no subsequent expansion of the posts they might not hold.
2. But a member held that no government would have such foresight to predict matters of the future. If we had confidence in the present government, we should also have confidence in the future government.
3. A member considered that the first sentence in the Chinese text was too long and could be subject to different interpretations. It was therefore proposed that the sentence be broken into clauses or a simpler sentence structure be adopted.
4. A member was concerned that if it was rewritten, it would read different from the provision under the Joint Declaration and cause unnecessary worry.

(4) Article 6

1. A member maintained that the term "previous system" was acceptable for the Joint Declaration but not for the Basic Law. The system of recruitment had already changed since the Joint Declaration was issued and in a few years this term would become meaningless. The member would like to see this article written in a more positive way by reference to specifically laid down and established systems (procedures). To do otherwise would leave the whole system too flexible and uncertain.
2. A member pointed out that the Drafting Committee would refine the wording of the whole draft.
3. A member held that the term "save for any provisions providing privileged treatment for foreign nationals" should be deleted. If foreign experts were required they might well have to have privileged treatment to attract them. If this term had some other meaning this should be stated.
4. A member maintained that this article was stated in the Joint Declaration.
5. A member proposed adding an article in this section, stating that public servants should be politically neutral and would not be affected by any changes in the legislature or the executive authorities.

6. But a member added that the article should also define the term "public servants" and the scope of "politically neutral".

7. A member suggested the following definition for "public servants": Principal officials nominated by the Chief Executive and appointed by the Central Government as mentioned in the Joint Declaration are public officeholders. public servants do not include these public officeholders and should remain politically neutral.

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

法律專責小組對基本法第四章第四節  
「司法機關」條文草稿  
(一九八七年八月)的意見

(1987年11月4日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會  
法律專責小組

本組曾就基本法第四章第四節條文草稿召開兩次會議，並邀得起草委員會中法律界委員參加討論。茲將本組委員在會議中發表的意見整理如下，供起草委員會參考。

關於第一條： 委員對這條沒有異議。

關於第二條： 有的委員擔心「其他專門法庭」意義含糊，令人不知其所指的是哪些法庭；另有委員建議編寫一些在基本法內常見的辭彙，使各名詞的定義能一目了然。

關於第三條： 有委員建議把「終審權」的定義在此條文中作一解釋，使其他提及特區終審權的條文都以此解釋為準。

關於第四條： 有委員指出此條文並無列明哪些香港法庭有權解釋基本法，建議寫明「香港特別行政區的終審法院有權解釋基本法」。

關於第五條：1. 有委員指出，根據現時的法律制度，當某項國家行為影響居民的權益時，法庭才可受理該類案件；否則法庭無權判別某項國家行為的合法性。該委員並建議，法庭若遇有難題不知應否受理某些案件時，可徵詢行政長官的意見。

2. 有委員對說明中的第三段提出疑問，希望可以明確指出「應征詢行政長官的意見」一句意思是「必須」征詢抑或是「可以」征詢其意見。此外，亦有委員問及「中央政府」的定義為何，是否包括國家機構？

3. 關於「國家行為」及「國家事實」之區別，有委員指出法庭可向行政機關領取證明書，證明某事件屬於「國家事實」；至於「國家行為」，法庭可有權自行判別。換言之，法庭對「國家行為」具有某程度的管轄權，但對「國家事實」則全無管轄權，必須接受政府的說明。

4. 有委員指出在普通法體系中，現時香港的法律制度已經對法庭對「國家行為」及「國家事實」的處理有所規定，所以基本法只需列明特區將保留現有法律制度便可。

5. 但有委員則主張用清晰的條文列明特區法庭對有關「國家行為」及「國家事實」之案件的處理方法，並列明誰人或哪些部門有權對「國家事實」頒佈說明書，及特區法庭對此等說明書的處理方法等。並有委員建議把有關「國家行為」及「國家事實」的解釋和安排詳細列作附件。
6. 有委員擔心將來的行政長官既由香港人選出，若由行政長官對「國家事實」頒佈說明書，他的判斷會否有偏差？但亦有委員表示不放心單由中央政府頒佈有關國家事實的說明書。
7. 有委員提出以下三點建議：(1)在第五條中列明將來特區法院的管轄權按照香港法律的規定；遇有爭議時，則轉交基本法委員會處理；(2)對一些特別案件，例如只有部份涉及國防和外交的案件，中央政府可授權特區法庭處理；(3)至於一些案情嚴重和涉及重要國防和外交事務的案件，草委會應考慮如何由特區交中央政府處理。
8. 此外，有委員提出以下數點意見：(1)有關特區法院管轄權的條文不應訂得太細緻，以免日後運作上缺乏彈性；(2)在特區設立的中央政府機關應在特區法庭的管治範圍之內，不應因其為中央政府機關便享有任何特別待遇；(3)九七年後特區法庭的運作應與九七年前一樣；(4)特區法庭應可決定某些案件是否涉及國防和外交事務；而香港和中國應被視為兩個不同的法律地區，遇有法律衝突時，可按此原則處理。

關於第六條： 委員對這條沒有異議。

關於第七條： 有委員認為該「獨立的委員會」的成員、權力等問題均無規定，建議用附件形式把這些問題詳述。

關於第八條： 委員認為「行為不檢」一辭的定義必須界定，但有委員指出這種辭句很難清楚界定，況且在「英皇制誥」中現已有採用此詞。

關於第九條： 有委員問及條文所指「終審法院及高等法院首席法官」是否包括臨時性從外地邀請來港的法官。委員認為草委會及諮委會對這條條文的理解好像有點不同，建議清楚闡釋一下。此外，有委員指出高等法院其他法官及區域法院法官的任免安排在此條文中沒有提及。

關於第十條： 有委員指出「原有的任免制度」一詞意義含糊，沒有清楚指出哪個時候的制度才算是「原有」的制度。有委員建議改用「在特區成立以前的制度」，但有委員表示，在基本法中有些條文所用「原有」或「現有」等詞是指九七年以前，但另一些條文用這些詞句卻是指八四年《中英聯合聲明》簽署之時，所以該委員對以上建議表示保留。此外，有委員建議清楚寫出現時司法人員的任免制度，而條文則可規定九七年後將繼續保持此制度。

關於第十一條：委員對這條沒有異議。

關於第十二條：委員認為「原來的標準」一詞意義含糊，加以現時的公務員制度正在不斷地改變，而且每況愈下，假設此制度一直發展到九七年時已是一個很不合理的制度，是否仍以此為「原來的標準」？有委員認為基本法應避免採用此類含糊字句。另有委員則建議在基本法中清楚列明「原有」、「現有」等詞在哪些條文中是指九七年之前，哪些條文是指八四年之前。有委員卻認為基本法中所有此類詞句都應該指九七年以前而不應是八四年聯合聲明簽署之時。

關於第十三條：有委員指出條文只規定退休法官及其他司法人員的經濟保障，卻沒有保障在職法官及其他司法人員的財政獨立問題。有委員建議用獨立的章節列出所有過渡性而非永久適用的條文。

關於第十四條：委員對這條沒有異議。

關於第十五條：委員對這條沒有異議。

關於第十六條：有委員認為應把有關居民權利的國際公約納入基本法中，但為免基本法過於冗長，可把公約的條文列作附件。其他委員並補充說，列明居民的權利的義務可避免日後發生衝突。

關於第十七條：委員對這條沒有異議。

關於第十八條：委員對這條沒有異議。

OPINIONS OF THE SPECIAL GROUP ON LAW  
REGARDING SECTION 4 OF CHAPTER 4  
"THE JUDICIAL ORGANS"  
OF THE DRAFT (AUGUST 1987) OF THE BASIC LAW

(passed by the Executive Committee on 4 November 1987)

Special Group on Law

The Special Group on Law held two meetings to discuss the draft articles of Section 4 of Chapter 4 of the Basic Law, and drafters from the legal sector were invited to the meetings. The following is a collation of the views expressed by members of this Special Group during the meetings. These views are now submitted for the reference of the Drafting Committee.

On Article 1:

Members had no objection to this article.

On Article 2:

Members noted that term "other special courts" was obscure as the reader would not know what courts the term referred to. A member suggested to compile a glossary of common terms in the Basic Law so that their definitions could be clear at a glance.

On Article 3:

A member suggested defining the term "final adjudication" in this article so that the definition could apply to the same term used in subsequent articles.

On Article 4:

A member pointed out that there was no stipulation as to which courts in Hong Kong could interpret the Basic Law. It was proposed that this article specify that "the court of final appeal of the HKSAR shall have the right to interpret the Basic Law".

On Article 5:

1. A member pointed out that under the present legal system, a case involving an act of state could be judged by the courts only if that act of state affected the rights and interests of the people; under other circumstances, the courts had no right to judge the legitimacy of any act of state. The member also held that the courts should consult the Chief Executive if they were not sure whether they should handle certain cases or not.
2. A member was dubious about paragraph 3 of the note and asked if the sentence "the Chief Executive shall be consulted" meant that the Chief Executive "must be" consulted or "may be" consulted. In addition, a member asked about the definition of "the Central Government" and wondered if state organisations were included.
3. As regards the difference between an "act of state" and a "fact of state", a member pointed out that the courts could obtain a certificate from the executive authorities, which proved that a certain matter was an "act of state"; but the courts could decide on its own whether a matter was a "fact of state". In other words, the courts had a certain extent of jurisdiction over only the "acts of state" but not the "facts of state". The courts had to accept the Government's certification regarding the "facts of state".
4. A member noted that since within the common Law framework the courts' handling of the "facts of state" and "the acts of state" was already provided for under the present Hong Kong legal system, a provision under the Basic Law stipulating the maintenance of the present legal system would suffice.
5. However, a member maintained that there should be clear stipulations as to how the courts would handle cases regarding "facts of state" and "acts of state", and it should be specified who or what departments would have the power to issue certificates regarding "facts of state" and what the SAR courts were supposed to do after receiving the certificates. Another member proposed that the definitions of a "fact of state" and an "act of state" as well as the arrangement for handling cases of such nature be listed out in an appendix to the Basic Law.
6. A member wondered if the Chief Executive who was to be elected by Hong Kong people would be impartial in issuing certificates regarding the "facts of state"? But there were members who said that they would feel anxious if only the Central Government would be involved in the issue of certificates regarding the "facts of state".

7. A member raised the following three points: 1) Article 5 should specify that the future jurisdiction of the SAR courts would be in accordance with the laws of Hong Kong; should disputes arise, they would be referred to the Basic Law Committee for settlement; 2) The Central Government could authorise the SAR courts to handle certain special cases, e.g. those which partly involved defence and foreign affairs; 3) as to the more serious cases that involved defence and foreign affairs, the Drafting Committee should consider how the SAR could refer them to the Central Government.

8. The following points were raised by another member: 1) The provisions regarding the jurisdiction of the SAR courts should not be too detailed lest they should lack flexibility in the future; 2) Any organisations of the Central government set up in the SAR should be under the jurisdiction of the SAR courts and should not be subject to any privileged treatment; 3) The operation of Hong Kong courts after 1997 should be the same as that before 1997; 4) The HKSAR courts should be allowed to decide whether a case involved defence and foreign affairs; and since Hong Kong and China had two distinct jurisdictions, any conflict of laws should be settled in accordance with this principle.

On Article 6:

Members had no objection to this article.

On Article 7:

A member pointed out that the membership, terms of reference, etc. of the "independent commission" mentioned in this Article were not elaborated on. It was proposed that these issues be stipulated in an appendix.

On Article 8:

A member held that the word "misbehaviour" had to be defined, but another member maintained that it was difficult to define this kind of words, and that the word was already used in the Royal Instructions.

On Article 9:

A member asked if the phrase "chief judges of the court of final appeal and the supreme court of the HKSAR" included judges invited from overseas who are serving on a temporary basis. Members found that the Consultative Committee's interpretation of this article seemed to be different from that of the Drafting Committee. It was suggested that this article be clearly explained. In addition, a member noted that the appointment and removal of other judges of the supreme court and of the judges regional courts were not mentioned in this Article.

On Article 10:

A member pointed out that the phrase "the previous system of appointment and removal" was obscure, and it was not clear which point of time the word "previous" referred to. A member suggested replacing the phrase with "the system before the establishment of the HKSAR", but another member expressed reservations about this suggestion on the ground that in some articles in the Basic Law, the terms "previous" or "existing" referred to the time before 1997 whereas in other articles, they pointed to 1984 when the Joint Declaration was signed. A member proposed that the present system of appointment and removal of judicial officers be clearly written down, and the article could just stipulate that this system would remain in force after 1997.

On Article 11:

Members had no objection to this article.

On Article 12:

A member pointed out that the word "before" was too vague. Besides, the present civil service was undergoing constant changes, in fact it was changing for the worse; if such a system developed into a very unreasonable system by 1997, would the system be retained and treated as the norm? A member held that the Basic law should avoid using such ambiguous term. Another member proposed that the Basic Law should have clear indication as to in which articles the term "previous"/"existing" referred to the system before 1997, and in which articles it referred to that before 1984. However, a member maintained that these terms used in the Basic Law should always refer to the systems before 1997 instead of those of 1984 (when the Joint Declaration was signed).

On Article 13:

A member pointed out that the article only provided for the economic protection of judges and other judicial officers who retired, but there was no provision for the financial independence of incumbent judges and other judicial officers. A member suggested all the articles that were provisional but not permanent in nature should be listed in a separate section.

On Article 14:

Members had no objection to this article.

On Article 15:

Members had no objection to this article.

On Article 16:

A member suggested incorporating the international covenant regarding rights of inhabitants into the Basic Law; in order to prevent the Basic Law from being too lengthy, the articles of the international covenant could be laid down as an appendix. Other members added that by listing out the rights and duties of the inhabitants, future conflicts could be avoided.

On Article 17:

Members had no objection to this article.

On Article 18:

Members had no objection to this article.

對基本法第五章「香港特別行政區的經濟」  
條文草稿(一九八七年八月)的意見

(1987年11月4日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會  
金融財務經濟專責小組

# 前 言

金融財務經濟專責小組曾在本年八月份向草委遞交了最後報告，至今兩個月內，小組曾開專責小組會議四次，深入討論了草委在第五次全體會議中發表的條文草稿，並曾兩度邀得草委經濟專題小組港方召集人黃保欣先生出席作交流。另外，容永道先生亦曾出席本組會議並提出他的條文修改稿供委員討論。本組統籌組亦曾與查良鏞先生會面，以加深瞭解草委會的討論情況。

經多次討論後，本組提出建議條文多項供起草委員參考改寫。這些建議條文有部份已於本組最後報告內提出，是為十多次工作組會議的討論成果，在字眼方面亦曾反覆斟酌，望草委予之認真考慮。

各建議條文絕多皆為本組所有委員的一致共識，較具爭論性的題目只有兩項，即為第二條有關特區財政預算保持收支基本平衡和第四條有關低稅政策。本組個別委員已就此等問題寫成討論文件，加以詳細分析、探討。

為求方便起草委員對本組的建議條文作出參照和比較，本組特制成條文比較表作為討論基礎，使能一目瞭然。

另外，由個別委員寫成的討論文件，經討論後被本組條文化的已納入比較表內，其他的討論文件則附於表後供草委詳細參考。

此外，本組提出兩點，是為現時經濟運作的基石，故提議在總則內包涵此兩點的精神：

- (1) 香港特別行政區繼續實行自由競爭、市場經濟；
- (2) 香港特別行政區政府盡量避免在商場上與私人商號作商業競爭。

本組成員凡四十多人，皆為對本港經濟有深切認識和貢獻良多之人士。委員來自本港經濟之各個環節，有銀行界的、貿易界的、廠商界的、地產界的、稅務界的、航運、民航界的等等，亦有為扶助本港工商業發展的機構（如貿易發展局、生產力促進局等）的負責人士，和經濟學者的參予。本組望能協助草委經濟專題小組寫好基本法中有關經濟的條文。此工作至為重要，因本港的經濟對繁榮及安定實有舉足輕重的影響。

本文件內容：

- (1) 前言
- (2) 條文比較表
- (3) 附件.....「低稅政策」 —— 陳坤耀委員撰寫  
對條文的意見 —— 雷興悟委員撰寫

## 建議條文比較表

### 第五章 香港特別行政區的經濟

### 容永道建議修改稿

### 諮委意見

#### 第一節 財政和稅收

第一條 香港特別行政區的財政獨立。  
香港特別行政區的財政收入全部用于  
自身需要，不上繳中央人民政府。

第一條 (照草稿第一條)

第一條 有委員認為應刪去第一款，以免使  
人誤解為特區不可向外借款。

第二條 香港特別行政區的財政預算應保持收  
支基本平衡。  
香港特別行政區財政預算收支的增長  
率以不超過本地生產總值的增長率為  
原則。

(說明)此條建議刪去。原因為實際執行起來恐  
有困難。例如怎樣才算「基本平衡」？  
若某年經濟情況突然變壞，不能取得預  
期收入，是否要立刻削減開支才算是符  
合此條規定？

第二條 多數委員認為“財政支出繼續與本  
地國民生產總值保持適當比例”比  
規定一個百分比例來得妥當。  
有委員認為適宜，有委員建議取消  
此條，亦有委員建議將審慎理財之  
概念包括便可。

(說明)個別委員建議，將第二款的兩個“率”字  
刪去。有些委員則認為，第二款可不寫進  
基本法。

第三條 香港特別行政區實行獨立稅收制度。

第二條 香港特別行政區實行獨立的稅收制度。  
中央人民政府不在香港特別行政區征  
稅。香港特別行政區稅種、稅率、稅

第三條 無特別意見。

第四條 香港特別行政區繼續實行低稅政策。

收寬免等等都由特別行政區的法律所規定。

第四條 諮委認為「低稅政策」一詞的意義並不明確，但為令保持投資人士的信心，寫入基本法內亦為可行，並提議改為「低稅制度」較為準確。另外，諮委認為亦應訂明香港特別行政區實行「簡單和貫徹始終的稅收制度」。貫徹始終的意思是稅制應長期保持穩定，不可因為要解決短暫的問題而隨意修改。

第五條 香港特別行政區稅種、稅率、稅收寬免，由特別行政區以法律規定。

(說明)有的委員主張把“香港特別行政區不向特別行政區居民的區外收入征收所得稅”的內容作為本條的第二款寫進基本法。有的委員不贊成將這樣的具體內容寫進基本法。

(說明)建議把第三、四、五、六條合為一條。

既然特別行政區的稅種、稅率、稅收寬免等等都由特別行政區的法律所規定，無需要再提「低稅政策」。何況怎樣才算低稅亦難以界定。

第五條 小組關心徵稅是否限於發生在本港的盈利等，現這一寫法較容易被人們接受。

有提議為應多加一條付予香港特別行政區同中華人民共和國和其他國家簽訂互免相重課稅的協定。

第六條 中央人民政府不在香港特別行政區徵稅。

(說明)有的委員建議將本條文改為“香港特別行政區不承擔向中央人民政府納稅的義務”。

第六條 諮委建議寫成“中央人民政府不向香港特別行政區政府和居民徵稅”。有提議為應寫明中央人民政府不向香港特別行政區居民的海外收入徵稅。

第七條 香港特別行政區的財政預算，由特別行政區行政機關編制，特別行政區立法機關審議批准，並報中央人民政府備案。

第八條 香港特別行政區政府的開支必須符合預算的規定。  
超過預算的開支應提請特別行政區立法機關審議批准或者追認。

第十條 香港特別行政區的財政決算，由特別行政機關編制、審計，特別行政區立法機關審議，報中央人民政府備案。

第三條 香港特別行政區的財政預算，由特別行政區政機關編制，提交特別行政區立法機關審議批准，並報中央人民政府備案。

(說明)把「立法機關審議批准」改為「提交立法機關審議批准」，使立法機關可批可不批的權力更突出。

第四條 公共開支的管理制度繼續由香港特別行政區的法律所規定。

(說明)草稿第八條第一款含意欠清，似乎連開支預算也不可。第二款的內容在現行公共財政法例已有規定。但是只提此款，有忽略法例內其他條款之嫌。採用修改稿可免此毛病。

第五條 香港特別行政區的財政決算，每年由特別行政區行政機關編制。

(說明)既然已有審計機關負責審計工作，不需再提「行政機關審計」。又一般工作程序上為編制決算在前、審計在後，故把草稿第九和第十條互調。

第七條 摘自聯合聲明附件一。

第八至第十條 “香港特別行政區保持財政獨立，自行管理財務事務，包括支配財政資源，編制財政預算和決算。”

第九條 香港特別行政區的公共開支帳目必須由特別行政區審計機關審核。  
特別行政區審計機關每年均必須將審核結果報告特別行政區立法機關。

第六條 香港特別行政區的財政決算（包括公共開支帳目）必須由特別行政區審計機關審核。此審計機關必須每年將已審核完的財政決算報告予特別行政區立法機關審議，報中央人民政府備案。

(說明)審計機關的審核範圍應是整個財政決算，不應限於公共開支帳目。

## 第二節 金融和貨幣

第十一條 香港特別行政區政府應提供必要條件和採取適當措施，以保持香港特別行政區的國際金融中心地位。

第七條 香港特別行政區政府提供適當的經濟及法律環境以促進香港特別行政區繼續為國際金融中心。

(說明)草稿原有的「必要條件」難以界定，建議刪除。

第十一條 委員認為“提供必要條件，採取適當措施”實太籠統，無需寫下。

第十二條 香港特別行政區自行制定貨幣金融制度。

第八條 香港特別行政區自行制定貨幣金融政策。

(說明)草稿上「制度」一詞，在聯合聲明附件一內原為「政策」。

第十二至第十五條 “香港特別行政區自行制訂貨幣和金融政策，繼續實行自由開放的貨幣金融制度，以保持國際金融中心地位。”（特別寫明「繼續」即為表示保持現行的情況。）

第十三條 香港特別行政區繼續實行自由、開放的貨幣金融政策。

第九條 (照草稿第十三條)

第十四條 香港特別行政區政府保障金融企業和金融市場的經營自由，並依法進行管理和監督。

第十五條 香港特別行政區政府保障資金在香港特別行政區流動的自由和進出香港特別行政區的自由。

第十六條 香港特別行政區不實行外匯管制政策。

第十七條 香港特別行政區繼續開放外匯、外幣、黃金、證券、期貨市場。

(說明)有的委員認為，外匯本身就包含外幣在內，不必另加。

第十八條 港元為香港特別行政區法定貨幣，繼續流通，自由兌換。

第十條 原在香港實行的貨幣金融制度，包括對接受存款機構和金融市場的管理和監督制度，予以保留。

(說明)修改稿文字是參照聯合聲明附件一的。

第十一條 香港特別行政區政府保障金融企業的經營自由以及資金在香港特別行政區流動和進出香港特別行政區的自由。

(說明)草稿意思欠全。修改稿引用聯合聲明附件一原文。

第十二條 (照草稿第十六條)

第十三條 香港特別行政區繼續開放外匯、黃金、證券、期貨市場。

(說明)刪除「外幣」兩字。

第十四條 (照草稿第十八條)

第十六條 摘自《中英聯合聲明》附件一第七節。

第十七條 摘自《中英聯合聲明》附件一第七節。

第十八條 「港元」應為「港幣」。

第十九條 港幣的發行權屬于香港特別行政區政府。  
港幣的發行，必須有充足的準備金。  
香港特別行政區政府在確知港幣的發行基礎健全和發行安排符合保持港幣穩定的條件下，可授權指定銀行根據法定權限發行或者繼續發行港幣。

第二十條 香港特別行政區的外匯基金由香港特別行政區政府管理和支配，主要用于調節港元匯價。

### 第三節 對外貿易

第二十一條 香港特別行政區實行自由的對外貿易制度。  
香港特別行政區政府保障對外貿易的自由，保障貨物、無形財產和資本的流動自由。

第十五條 (照草稿第十八條)

第十六條 (照草稿第二十條)

第十七條 香港特別行政區繼續實行自由貿易政策，包括貨物和資本的自由流動。  
(說明)刪去「對外」兩字，免招「對內不自由」之誤會。

第十九條 對“充份”兩字，委員建議改寫為“十足和可以自由兌換的”。  
有意見為因香港慣稱「準備金」為「儲備金」，故提議條文應為「准(儲)備金」。

第二十條 意見相同。

第二十一條 委員提出以下意見：

1. 「自由對外貿易政策」字眼含糊，並非經濟學上的慣用語；令人不明所指的是「自由貿易政策」還是「可自由地進行對外貿易」，還是其他意思。

第二十二條 香港特別行政區自行制定對外貿易政策。  
香港特別行政區可單獨地同世界各國、各地區保持和發展經濟、貿易關係。

第二十三條 香港特別行政區為自由港。  
香港特別行政區除法律另有規定外不征收關稅。

第十八條 香港特別行政區政府自行制定經濟和貿易政策。

(說明)把「對外」改為「經濟和」涵蓋面更廣，又可免除「不對內」的誤會。

第十九條 香港特別行政區繼續為自由港。  
香港特別行政區除法律另有規定外不征收關稅。

(說明)加上「繼續」二字更貼切反映聯合聲明附件一原意。

2. 無形資產一語亦非經濟學上慣用語，令人不明所指的是「無形的貿易」，還是「知識資產」，還是其他意思。若「無形資產」包括「知識資產」，則此條文與工作組意見相反。委員認為知識資產不可任自由流動，特區政府應有責任保障特區的版權，專利及登記等。

委員認為貿易政策條文應再行草擬如下：

- (1) 香港特別行政區實行貿易自由政策，保障「自由市場」，其特色是：有自由企業，政府盡少干預，無外匯管制，自由港，資金自由流動等。
- (2) 香港特別行政區保障版權、專利和登記等知識資產。
- (3) 有意見認為以下條文更為可取：香港特別行政區自行決定經濟和貿易政策。

第二十四條 香港特別行政區為單獨的關稅地區。

第二十五條 香港特別行政區可以“中國香港”的名義參加關稅和貿易總協定、關於國際紡織品貿易安排等有關國際組織和國際貿易協定，包括優惠貿易安排。

第二十六條 香港特別行政區根據所參加的國際協定取得的及以前取得仍繼續有效的出口配額、關稅優惠和達成的其他類似安排，全由香港特別行政區享有。

第二十條 (照草稿第二十四條)

第二十一條 (照草稿第二十五條)

第二十二條 香港特別行政區取得的出口配額、關稅優惠和達成的其他類似安排，全由香港特別行政區享有。

(說明)草稿原文較累贅。

第十四條 摘自聯合聲明附件一第五節。

第二十五條 委員很關注特區政府應有權在以促進貿易為目標的國際性機構保留及爭取席位。

建議條文：香港特別行政區有權與外國政府談判，以爭取貿易權益，但以不違反中國外交主權為原則。

第二十六條 委員認為應在工商業政策第一節內寫明：“香港特別行政區  
i) 享有其本身取得的出口配額、特惠關稅及其他相類安排；  
ii) 繼續維持獨立關稅地區的運作。

對於第二十六條，有委員認為應寫成：“香港特別行政區根據國際協定取得的出口配額、關稅優惠和達成的其他類似安排，全由香港特別行政區享有。”

第二十七條 香港特別行政區根據當時的產地規則，可對本地產品簽發產地來源証。

第二十三條 (照草稿第二十七條)

第二十七條 建議在工商業政策一節內寫明：香港特別行政區根據當時的產地規則，對在當地製造的產品簽發產地來源證。

#### 第四節 工商業和其他產業

第二十八條 香港特別行政區實行自由、開放的工業政策和商業政策。

第二十四條 香港特別行政區實行自由開放的工業和商業政策。

(說明)草稿原文有兩個「政策」，且刪其一。

第二十八條 委員認為“自由開放的工業政策”條文令人難於理解及容易被受誤導，自由開放工業政策的意義為沒有既定政策，即政府在任何影響工業，如環境控制、勞工法例等事宜上不加干預，本組主張「自由企業」及「競爭性經濟」，而非自由開放的工業政策。

建議條文：香港特別行政區政府維持現行自由企業政策，以促進自由及競爭性經濟。

第二十九條 香港特別行政區鼓勵工業投資、技術進步和開拓新興產業，以增強國際競爭能力。

第三十條 香港特別行政區政府積極創造必要的環境和條件，以利工業的發展。

第三十一條 香港特別行政區政府應積極採取適當政策，促進商業、旅遊業、房地產業、運輸業、公用事業、服務性行業、漁農業等產業的發展。

第二十五條 (照草稿第二十九條)

第二十六條 香港特別行政區政府提供必要的環境和條件，以利工商業的發展。

(說明)刪去「積極創造」，免日後有人爭論政府曾否盡此責任。又把「工業」改為「工商業」，更合理。

第二十七條 香港特別行政區政府應就各種經濟活動採取適當政策。

(說明)同樣不要「積極」二字，理由見上條。法律條文不能盡列各種產業，提議統稱為「各種經濟活動」。

二十九條：委員意見：倘起草委員主張自由開放的工業政策，則與此有關鼓勵工業投資的條文互相矛盾。

三十條：條文在區分政策及制度與措施上頗為混淆。

建議條文：“香港特別行政區繼續實行工業扶助計劃”及“香港特別行政區政府繼續創造必要環境和條件，以利工商業的發展。”

“香港特別行政區政府維持鼓勵投資的政策”

“香港特別行政區促進：

i) 工業的發展 (並須顧及中小型工業在香港扮演的角色)

ii) 新工業的設立

iii) 技術的進步

三十一條：條文在區分政策及制度與措施上頗為混淆。

建議條文：“香港特別行政區政府自行制訂商業政策及各行業的政策，例如：運輸業、公用事業、服務業、旅遊業、房地產業及漁農業。

## 第五節 土地契約

第三十二條 香港特別行政區政府可自行制定有關土地的開發、管理和使用的政策。

第三十三條 香港特別行政區成立之前已經批出、決定、或者續期的超越一九九七年六月三十日年期的所有土地契約和與土地契約有關的一切權利，均按照香港特別行政區的法律繼續予以承認和保護。

第三十四條 從一九八五年五月二十七日至一九九七年六月三十日期間批出或者原沒有續期權利而獲得續期的超出一九九七年六月三十日期期而不超過二零四七年六月三十日的一切土地契約，承租人從一九九七年七月一日起不補地價，但需每年繳納相當于當日該土地應

第二十八條 (照草稿第三十二條)

第二十九條 (照草稿第三十三條)

第三十條 凡從一九八五年五月二十七日至一九九七年六月三十日期間批出或續期的土地契約，承租人從一九九七年七月一日起需每年繳納相當於該土地應課差餉租值百分之三的租金。此後，隨應課差餉租值的改變而調整租金，但承租人不需於一九九七年七月一日補地價。

\* 諮委認為土地政策為經濟運作中很重要的一環，故應該在基本法中佔一節，但該節內容可以是提綱契領，較細節的可寫入附件。

三十二條

建議條文：香港特別行政區政府可自行制定土地政策，包括土地交易，補地價，徵稅等政策及其收入的運用。

二十九條：摘自中英聯合聲明附件三

三十條：諮委以為基本法應提出

“一九九七年六月三十日以後滿期而沒有續期權利的土地契約，將按照香港特別行政區有關的土地法律及政策處理。”

(即中英聯合聲明附件三第二段部份)

# 低稅政策

陳坤耀

1. 低稅可指低稅率、或課稅範圍狹窄、或只有小量的課稅範圍。但要較長遠地維持低稅率，則必須擴大課稅範圍及(或)增加課稅範圍的數量。所以我們需要更清楚界定何謂「低稅政策」。
2. 低稅率不能保證納稅少，因為納稅人可能需要繳納更多種類的稅項。
3. 低稅率確保在資源分配方面較少出現歪曲情況，令經濟決策不必那麼倚賴稅制。所以即使課稅範圍擴大及課稅範圍的數量增加，低稅率都是可取的。但同時要考慮公平分配的問題。
4. 要界定何謂低稅率是近乎不可能的。低的有效稅率(佔可評估收入某一百分比的稅)實有別於低的邊際稅率(對某一限額以上的收入所徵收的稅)。
5. 在香港，商業單位從未繳納過多於18.5%的稅款，而一般家庭多年來的邊際稅率都是25%。如果過去的經驗可以作準，即使稅率增至20—25%，經濟決策也不會受嚴重歪曲。也即是說，如基本法要寫明稅率的百分比，可規定「香港特別行政區的所得稅稅率不得超過22.5%(這是舉例而已)。」
6. 除了所得稅或直接稅外，對消費支出還要徵收間接稅。我們必須注意，對某些不應獎勵的貨物或服務，不應採用低稅率。
7. 似乎我們高估了低稅率對吸引外資的作用。不少研究結果顯示，吸引外資還有其他更重要的因素，如政治及經濟穩定；物質、行政及人力方面的基本設施；原料及燃料在本地的供應情況等。
8. 總括來活，單規定香港維持低稅政策是沒有什麼真正意義的。這概念不夠清楚具體，因此可以有很多種解釋。把目前有關這規定的條文列入基本法只有一個理由，就是令投資者心理上覺得好過點。
9. 基本法亦不宜有詳細界定低稅政策的條款，或定出稅率的上限，因為這樣做會過份約束將來的特區政府。

一九八七年九月二十八日

# 雷興悟委員書面意見

重讀第五章條文草稿後，本人覺得有若干問題十分重要，須以書面指出。

第二條 第二條(尤其是「財政預算應保持收支基本平衡」)的精神並不是要束縛特區政府，而是為維持現行的財政狀態，這一向是香港成功的主要因素。我們不應刪去這保障條款。我們已詳細討論過以本地生產總值來規定政府支出上限是必須的。但有人卻認為這種規定不夠靈活，是不適當的。

此外，政府財政狀況能影響香港在國際上的信用評價，其實香港的國際信用評價已受九七問題影響。政府財政狀況是國際信用評價機構用來確定該地區信用評價的一個準則。一個地區的信用評價足以決定本地企業在海外籌集資本的能力。香港現在尚有的長處之一，就是政府財政狀況良好。如果將來特區政府的財政長期出現赤字，在九七年後香港的主權評價就會更為低落。我們要切記香港部份機構在國際上有財政評價，會對其業務造成嚴重影響。

第十六條 我曾多次提出，我擔心這條文寫得太絕對。但這寫法有不少人提過，現在恐怕很難改動。

第十九條 似乎以下一點已得到普遍贊同：鈔票的發行必須有至少百分之百的外幣儲備金，該儲備金應為可即時兌換的証券。

第二十八條 「自由」與「開放」在建議中曾出現多次，而且沒有清楚界定。我認為應更多說明「自由」與「開放」的定義。

OPINIONS ON CHAPTER 5  
"THE ECONOMY OF THE HKSAR"  
OF THE DRAFT (AUGUST 1987) OF THE BASIC LAW

(passed by the Executive Committee on 4 November 1987)

Special Group on  
Finance, Business, and Economy

CCBL-SG/FBE-00-RP01-871016(E)

## Introduction

The Special Group on Finance, Business, and Economy submitted its final reports to the Drafting Committee in August. During the last two months, the Special Group held four meetings to discuss in-depth the draft articles released by the fifth plenary session of the Drafting Committee. In addition, Mr Wong Po Yan, Hong Kong co-convenor of the Subgroup on Economy of the Drafting Committee, was invited to our exchange sessions on two occasions. Mr Sanford Yung also attended a meeting of the Special Group and provided an amended version to our members for discussion. At a meeting with Mr Louis Cha, the co-ordinating group of the Special Group had the opportunity to know more about the discussion of the Drafting Committee.

After rounds of discussion, our Special Group has come up with a number of proposed articles for the consideration and possibly redrafting of the Drafting Committee. Some of these proposed articles were already published in our final reports. They are the results of discussions at more than ten working group meetings. Even the wording has been deliberated carefully again and again. It is hoped that the drafters will consider them seriously.

Most of the proposed articles reflect the consensus of the Special Group. Our members are divided only on two articles, namely, Article 2 on the basically balanced budget of the SAR and Article 4 on the policy of low tax rate. Individual members have also submitted discussion papers which analyse and explore these issues thoroughly.

To facilitate a comparison between the draft articles and our proposed articles, we have prepared a table of comparison on which discussion can be based.

In addition, some discussion papers prepared by our members have been incorporated into the table in the form of provisions. Other papers submitted by members are appended to this report for the reference of the Drafting Committee.

The Special Group has also brought up two points which are the cornerstones of the present economy of Hong Kong. It is therefore proposed that the spirit of these two points be included in the General Provisions of the Basic Law:

- (1) The HKSAR shall continue to practise free competition and market economy.
- (2) The HKSAR Government shall as far as possible avoid competing with private firms in the market.

The 40-odd members of the Special Group are all well-informed about the economy of Hong Kong and have made considerable contribution to it. These members are from different sectors of the economy such as banking, trade, industry, real estate, taxation-related business, shipping, and civil aviation. Some are in charge of organisations which support the development of industry and commerce in Hong Kong (e.g. Trade Development Council and Hong Kong Productivity Council), and some are scholars of economics. Members of the Special Group would like assist to the Subgroup on Economy of the Drafting Committee in drafting the articles on economy. This is particularly important as the economy of Hong Kong has significant bearing on the prosperity and stability of Hong Kong.

## Contents of this report

- (1) Introduction
- (2) Table of Comparison
- (3) Appendices -- "The Policy of Low Taxation" by Dr Edward Chen  
-- Comments on the draft articles by Mr Peter J. Wrantham

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

Comparison of Proposed Articles

Chapter 5 The Economy of the Hong Kong Special Administrative Region (Draft)	Amended version as suggested by Mr Sanford Yung	Views of CCBL members
<p><b>Section 1 Public Finance and Taxation</b></p> <p><b>Article 1:</b> The HKSAR shall be financially independent.</p> <p>The HKSAR shall use its financial revenue exclusively for its own purposes and they shall not be handed over to the Central People's Government.</p> <p><b>Article 2:</b> The HKSAR shall maintain a basically balanced budget.</p> <p>The growth rate of the HKSAR budget shall not exceed the growth rate of the Gross Domestic Product.</p> <p>[Note] A member proposed to delete the word "rate" which appeared twice in the second paragraph. Some members considered that it was unnecessary to include the second paragraph in the Basic Law.</p> <p><b>Article 3:</b> The HKSAR shall adopt an independent taxation system.</p> <p><b>Article 4:</b> The HKSAR shall continue to maintain a policy of low tax rate.</p> <p><b>Article 5:</b> The type, rate, and exemption of tax of the HKSAR shall be stipulated by the HKSAR in law.</p> <p>[Note] Some members held that the following provision should be added as the second paragraph: "The HKSAR shall not impose tax on Hong Kong inhabitants on their extra-territorial income." Some members opposed to the inclusion of such specific provision in the Basic Law.</p>	<p><b>Article 1:</b> (Same as Article 1 in the Draft)</p> <p>[Note] It is suggested that Article 2 in the Draft be deleted because there may be difficulties in its implementation. For example, what is meant by "basically balanced"? If in a certain year the economy suddenly changes for the worse and the income of the HKSAR falls short of the expected level, does it mean that it must immediately reduce expenses in order to be in accordance with this Article?</p> <p><b>Article 2:</b> The HKSAR shall adopt an independent taxation system. The Central People's Government shall not levy taxes on the HKSAR. The type, rate, and exemption of tax of the HKSAR shall be stipulated by the laws of the HKSAR.</p> <p>[Note] It is suggested that Articles 3, 4, 5, and 6 be combined into one. Since the type, rate, and exemption of tax etc. are all to be stipulated by HKSAR laws, it is unnecessary to mention the "policy of law tax rate". Moreover, it is difficult to lay down what exactly qualifies as low tax rate.</p>	<p><b>Article 1:</b> A member proposed that the first paragraph be deleted lest there should be the misunderstanding that the SAR could not make any loans from outside Hong Kong.</p> <p><b>Article 2:</b> Most members considered that it would be more appropriate to provide that "The expenditure shall be maintained at an appropriate ratio to the Gross Domestic Product" than to set down a definite percentage. However a member maintained that the percentage should be laid down. Also, there was a view that this article should be deleted. Another member held that it would be adequate just to mention the concept that the government should maintain its finance prudently.</p> <p><b>Article 3:</b> No particular comment.</p> <p><b>Article 4:</b> CCBL members held that the meaning of "a policy of low tax rate" was obscure but to maintain the investors' confidence, its inclusion in the Basic Law was feasible. CCBL members held that to be more accurate, the term should read "a low tax regime".</p> <p>In addition, CCBL members proposed that it be stated that the HKSAR should adopt "a simple and consistent tax system". The word "consistent" means that the tax system should remain permanently stable and should not be amended to solve temporary problems.</p> <p><b>Article 5:</b> The group was concerned whether tax would only be levied on the profit derived from Hong Kong. The present article was more acceptable.</p> <p>It was suggested that a new article be added to authorise the HKSAR to sign agreements with the PRC and other states on mutual exemption of double taxation.</p>

Article 6: The Central People's Government shall not levy taxes on the HKSAR.

[Note] Some members proposed to amend the wording to "The HKSAR shall not have the duty to pay tax to the Central People's Government."

Article 7: The budgets of the HKSAR shall be drawn up by the SAR executive authorities, examined and approved by the SAR legislature, and reported to the Central People's Government for the record.

Article 8: The expenditure of the HKSAR Government shall be in accordance with the budget.

Any expenditure which exceeds the budget shall be submitted to the legislature for examination and approval or subsequent endorsement.

Article 10: The final accounts of the HKSAR shall be drawn up and audited by the SAR executive authorities, examined by the SAR legislature, and reported to the Central People's Government for the record.

Article 3: The budgets of the HKSAR shall be drawn up by the SAR executive authorities, and submitted to the SAR legislature for examination and approval, and reported to the Central People's Government for the record.

[Note] Amend "examined and approved by the SAR legislature" to "submitted to the SAR legislature for examination and approval" in order to emphasise the fact that the legislature has the power to approve or reject the budgets.

Article 4: The management system of public expenditure shall continue will be stipulated by HKSAR laws.

[Note] The meaning of paragraph 1 of Article 8 in the Draft is unclear; it seems as though even an expenditure smaller than that in the budget is unacceptable.

The content of paragraph 2 is already stipulated in the present legislation regarding public finance. If this clause is singled out, it may seem that other clauses in the legislation are neglected. This problem will not arise if the amended version is adopted.

Article 5: The final accounts of the HKSAR shall be drawn up annually by the SAR executive authorities.

[Note] Since the auditing authorities will be responsible for auditing, it is unnecessary by the executive authorities."

The normal work procedure is to first draw up the final accounts and then carry out the auditing. Therefore, the order of Articles 9 and 10 in the Draft should be reversed.

Article 6: Members proposed that this article be rewritten as follows: "The Central People's Government shall not levy taxes on the HKSAR Government and inhabitants."

It was suggested that following be clearly laid down: the Central People's Government should not levy taxes on extra-territorial income of HKSAR inhabitants.

Article 7: Extracted from Annex 1 of the Joint Declaration.

Articles 8 to 10: "The HKSAR shall maintain its financial independence and shall manage its financial matters on its own, including the allocation of financial resources and preparation of financial budgets and final accounts."

Article 9: Public accounts of the HKSAR shall be verified by the SAR auditing authorities.

The SAR auditing authorities shall report to the SAR legislature annually.

## Section 2 Finance and Monetary Affairs

Article 11: The HKSAR Government shall provide the necessary conditions and take appropriate measures to maintain the status of the HKSAR as an international financial centre.

Article 12: The HKSAR shall decide its monetary and financial systems on its own.

Article 13: The HKSAR shall maintain a free and open policy regarding finance and monetary affairs.

Article 14: The HKSAR Government shall safeguard the free operation of financial businesses and financial markets, and regulate and supervise such businesses and markets in accordance with law.

Article 15: The HKSAR Government shall safeguard the free flow of capital within, into and out of the HKSAR.

Article 6: The final accounts (including public accounts) of the HKSAR shall be audited by the auditing authorities of the SAR.

The auditing authorities shall annually submit the auditing report on the final accounts to the SAR legislature for examination, and report to the Central People's Government for the record.

[Note] The terms of reference of the auditing authorities should encompass the entire final accounts, and should not be limited to only the public expenditure accounts.

Article 7: The HKSAR Government shall provide appropriate economic and legal conditions to facilitate the maintenance of the HKSAR as an international financial centre.

[Note] It is difficult to define what are "necessary conditions" as in the Draft. It is suggested that the expression be deleted.

Article 8: The HKSAR shall decide on its own its monetary and financial policies.

[Note] The word "systems" in the Draft is a replacement of the word "policies" in Annex 1 of the Joint Declaration.

Article 9: (Same as Article 13 in the Draft.)

Article 10: The monetary and financial systems previously practised in Hong Kong, including the systems of regulation and supervision of deposit taking institutions and financial markets, shall be maintained.

[Note] The amended version is taken from Annex 1 of the Joint Declaration.

Article 11: The HKSAR Government shall safeguard the free operation of financial business and the free flow of capital within, into and out of the HKSAR.

[Note] The meaning of the Draft is incomplete. The amended version is taken from Annex 1 of the Joint Declaration.

Article 11: Members held that the expression "shall provide the necessary conditions and take appropriate measures" was too vague to be laid down as a provision.

Articles 12 to 15: The HKSAR shall decide its own monetary and financial policy, and continue the practice of a free and open monetary and financial system to maintain its status as an international financial centre." (The word "continue" means to maintain the current condition.)

DRAFT

Article 16: No exchange control policy shall be applied in the HKSAR.

Article 17: Markets for foreign exchange, foreign currencies, gold, securities, and futures shall continue to open in the HKSAR.

[Note] Some members considered that as foreign exchange already included foreign currencies, the mention of the latter was unnecessary.

Article 18: The Hong Kong dollar, as the legal tender of the HKSAR, shall continue to circulate and remain freely convertible.

Article 19: The authority to issue Hong Kong currency shall be vested in the HKSAR Government.

The issue of Hong Kong currency shall have sufficient currency reserve.

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

Article 20: The Exchange Fund of the HKSAR shall be managed and controlled by the HKSAR Government, primarily for regulating the exchange rate of the Hong Kong dollar.

Section 3 External Trade

Article 21: The HKSAR shall adopt a free external trade system.

The HKSAR shall protect the freedom of external trade and the free movement of goods, intangible property and capital.

YUNG'S VERSION

Article 12: (Same as Article 16 in the Draft.)

Article 13: Markets for foreign exchange, gold, securities, and futures shall continue to open in the HKSAR.

[Note] Delete the expression "foreign currencies".

Article 14: (Same as Article 18 in the Draft.)

Article 15: (Same as Article 19 in the Draft.)

Article 16: (Same as Article 20 in the Draft.)

Article 17: The HKSAR shall continue to adopt a free trade policy, including the free movement of goods and capital.

[Note] Delete the word "external" to avoid the misunderstanding that internal trade will not be free.

CCBL'S VIEWS

Article 16: Extracted from Section 7 of Annex 1 of the Joint Declaration.

Article 17: Extracted from Section 7 of Annex 1 of the Joint Declaration.

Article 18: "The Hong Kong dollar" should read "The Hong Kong currency".

Article 19: Members suggested replacing the word "sufficient" with "100% and freely convertible".

A view was expressed regarding the Chinese term for "reserve". It was suggested that term commonly used in the PRC be adopted whereas the term used in Hong Kong be put in brackets.

Article 20: The CCBL members were of the same view.

Article 21: Members raised the following opinions:

(1) The expression "a free external trade system" is obscure. It is not a common economic term. Does it refer to "a free trade policy" or "the freedom to conduct external trade" or other meanings?

(2) "Intangible capital" is not a common economic term. Does it refer to "invisible trade" or "intellectual property" or other meanings? If "intangible capital" includes "intellectual property", the provision will be contrary to the view of the Working Group. Members held that the free movement of intellectual property should not be allowed as the HKSAR Government should be responsible for protecting the copyrights, patents and registration in the HKSAR.

Article 22: The HKSAR shall decide its external trade policy on its own.

The HKSAR may on its own maintain and develop economic and trade relations with all states and regions.

Article 23: The HKSAR shall be a free port.

The HKSAR shall not impose any tariff unless otherwise stipulated by law.

Article 24: The HKSAR shall be a separate customs territory.

Article 25: The HKSAR may, using the name "Hong Kong, China", participate in relevant international organisations and international trade agreements (including preferential trade arrangements), such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles.

Article 26: Export quotas, tariff preferences and other similar arrangements which are obtained by the HKSAR under international agreements or which were obtained in the past but still remain effective shall be enjoyed exclusively by the HKSAR.

Article 18: The HKSAR Government shall on its own decide its economic and trade policies.

[Note] Amend "external" to "economic and" to cover a larger area and to avoid the misunderstanding that "internal trade" will not be decided by the HKSAR Government on its own.

Article 19: The HKSAR shall continue to be a free port. The HKSAR shall not impose any tariff unless otherwise stipulated by law.

[Note] Adding the words "continue to" will more precisely convey the meaning in Annex 1 of the Joint Declaration.

Article 20: (Same as Article 24 in the Draft.)

Article 21: (Same as Article 25 in the Draft.)

Article 22: Export quotas, tariff preferences and other similar arrangements obtained by the HKSAR shall be enjoyed exclusively by the HKSAR.

[Note] The amended version is more concise.

Members held that the provisions regarding trade policy should be re-drafted as follows:

- (1) The HKSAR shall practise a free trade policy and protect free trade. The features of a free trade policy are: free enterprise, minimum government intervention, no control on foreign exchange, free port status, free flow of capital, etc.
- (2) The HKSAR shall protect intellectual property such as copyrights, patents, and registration.
- (3) A view was expressed that it was preferable to allow the HKSAR Government to decide its economic and trade policies on its own.

Article 14: Extracted from Section 5 of Annex 1 of the Joint Declaration.

Article 25: Members were very much concerned that the HKSAR Government should have the right to fight for a seat in any international body with the purpose of promotion of trade.

Proposed article: The HKSAR shall have the right to negotiate with foreign governments for the furtherance of trading benefits provided that such right is not a breach to the PRC sovereignty on the diplomacy level.

Article 26: Members considered that the following should be stated in the part on industrial and commercial policies: "The HKSAR will:-

- i) be entitled to export quotas, tariff preferences and other similar arrangements obtained by itself;
- ii) continue to operate as a separate customs territory.

A member held that Article 26 should be rewritten as follows: "Export quotas, tariff preferences and other similar arrangements obtained by the HKSAR under international agreements shall be enjoyed exclusively by the HKSAR."

Article 27: The HKSAR may issue its own certificates of origin for local products in accordance with prevailing rules of origin.

**Section 4 The Various Industries and Commerce**

Article 28: The HKSAR shall implement a free and open policy regarding industry and commerce.

Article 29: The HKSAR shall encourage industrial investment and technological advancement, and open up new industries in order to strengthen its competitiveness in the international arena.

Article 30: The HKSAR Government shall actively create the necessary environment and conditions to facilitate industrial development.

Article 23: (Same as Article 27 in the Draft.)

Article 24: (Stylistic amendment in the Chinese text only.)

Article 25: (Same as Article 29 in the Draft.)

Article 26: The HKSAR Government shall provide the necessary environment and conditions to facilitate industrial and commercial development.

[Note] Delete "actively create" to avoid possible controversy in future as to whether the government has carried out this duty. "Industrial development" is amended to "industrial and commercial development" to make it more appropriate.

Article 27: It was proposed that the following be stated in the part on industrial and commercial policy: The HKSAR shall have authority to issue its own certificates of origin for products manufactured locally, in accordance with prevailing rules of origin.

Article 28: Members held that the provision on "a free and open industrial policy" was hardly comprehensible and might be misleading. "A free and open industrial policy" refers to the absence of any established policy, that is, the government would not interfere in any matter affecting industry e.g. environmental control, labour legislation etc. The Working Group advocated "free enterprise" and "a fully competitive economy" instead of "a free and open industrial policy".

Proposed article: The HKSAR shall maintain the existing free enterprise policy to activate a free and fully competitive economy.

Article 29: Members' view: If the Drafting Committee was in favour of a free and open industrial policy, the ensuing provisions on the encouragement of industrial investment would be inconsistent.

Article 30: The article seems to have confused the terms "policy", "system", and "measure".

Proposed article: "The HKSAR Government shall continue to create the necessary environment and conditions for the development of industry and commerce."

"The HKSAR Government shall maintain the policy of giving investment incentives."

"The HKSAR shall promote:-

- i) the development of industry (and take the role of small and medium industries into account);
- ii) the establishment of new industries; and
- iii) advances in technology capability."

Article 31: The HKSAR shall actively adopt appropriate policies to promote the development of commerce, tourism, real estate industry, transport industry, public utilities, service industries, agriculture and fishery, etc.

#### Section 5 Land Leases

Article 32: The HKSAR may on its own decide policies regarding the development, management and use of land.

Article 33: All leases of land granted, decided upon or renewed before the establishment of the HKSAR, 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 HKSAR.

Article 34: From 1 July 1997, all leases of land granted or renewed (though previously not having a right of renewal) within the period from 27 May 1985 to 30 June 1997, which extend beyond 30 June 1997 and expire not later than 30 June 2047, shall not require payment of an additional premium but an annual rent equivalent to three 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 35: 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 1998 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 27: The HKSAR Government shall adopt appropriate policies to regarding the various economic activities.

[Note] For the same reason as above the word "actively" is deleted. As it is technically impossible to list out all industries in a legal provision, a general term "economic activities" is adopted.

Article 28: (Same as Article 32 in the Draft.)

Article 29: (Same as Article 33 in the Draft.)

Article 30: All land leases granted or renewed between the dates 27 May 1985 and 30 June 1997, shall from 1 July 1997 onwards be charged an annual rent equivalent to 3 per cent of the rateable value of the property. The rent will be adjusted in step with any changes in the rateable value thereafter. However, no payment of premiums will be required on 1 July 1997 for such leases.

[Note] Strictly speaking, the meaning in this Article and Article 35 in the Draft is already included in Article 33 in the Draft. If this Article is to be retained, it should be amended as above.

The meaning of the amended version is consistent with that of Annex III of the Joint Declaration.

Article 31: (Same as Article 35 in the Draft.)

Article 31: The article seems to have confused the terms "policy", "system", and "measure".

Proposed article: "The HKSAR Government shall on its own decide policies regarding commerce and various industries such as transport, public utilities, service, tourism, real estate, and agriculture and fishery."

\* CCBL members held that the land policy was very important to the economy and should constitute a section in the Basic Law. The section could touch briefly on the essentials whereas the details could be included in the annex to the Basic Law.

Article 32

Proposed article: The HKSAR Government may on its own decide its land policy, including policies on transaction of land, lease of land, payment of additional premium and taxation, and the utilisation of the revenue thus accrued.

Article 29: Extracted from Annex III of the Joint Declaration.

Article 30: The CCBL members held that the Basic Law should mention: "Where leases of land not having a right of renewal expire after 30 June 1997, they shall be dealt with in accordance with the relevant land laws and policies of the HKSAR."

(i.e. part of the second paragraph of Annex III of the Joint Declaration)

Article 35: Members held that indigenous New Territories inhabitants should still be entitled to exempted houses. But this privilege need not be specified in the Basic Law.

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Article 36: Where leases of land not having a right of renewal expire after the establishment of the HKSAR, they shall be dealt with in accordance with the laws and policies decided by the HKSAR on its own.

[Note] Some members considered that the specific issues on land leases should not be dealt with in detail by the Basic Law. It was proposed that the relevant provisions under Annex III to the Joint Declaration be summarised into a single article and included in Section 4 of this Chapter.

Section 6 Shipping Management

Article 37: The HKSAR shall maintain Hong Kong's previous systems of shipping management and shipping regulation. The specific functions and responsibilities of the HKSAR Government in the field of shipping shall be defined by the HKSAR Government on its own.

Article 38: The HKSAR shall be authorised by the Central People's Government to continue to maintain a shipping register and issue related certificates under its own legislation in the name of "Hong Kong, China".

Article 32: (Same as Article 36 in the Draft.)

Article 33: (Has yet to be decided.)

Article 34: (Same as Article 38 in the Draft.)

\* This special group has proposed 4 articles regarding shipping management, and considered that they should be contained in the Basic Law, rather than in the annex.

Article 37: The HKSAR shall have authority on its own to deal with all matters affecting the regulation of merchant shipping to its territory, to set up an autonomous shipping register in accordance with general principles agreed between the HKSAR and the Central People's Government (see Annex 000 "The Hong Kong register of shipping" -- published by the Economic Services Branch, Government Secretariat), to regulate shipping management, and to issue certificates in the name of "Hong Kong, China".

Article 38: Private shipping and shipping-related businesses and terminal facilities in Hong Kong may continue to operate freely. Shipping businesses owned or controlled by state organisations or similar bodies will be able to register ships on the HKSAR Register but will at all times be treated in law as private businesses and not enjoy sovereign immunity. Shipping businesses shall be entitled to but not be required to register or de-register ships from the HKSAR register in accordance with the laws and regulations of the HKSAR.

Note: "Sovereign immunity" means these state organisations should be able to be sued in the courts like private persons or corporations and cannot avoid legal liability by hiding behind their nature as state organisations.

Article 39: All ships for civil use shall enjoy access to the ports of the HKSAR in accordance with the laws of the HKSAR.

Access of foreign warships to the HKSAR shall require the permission of the Central People's Government.

Article 40: Private shipping businesses and shipping-related businesses and private container terminals in Hong Kong may continue to operate freely.

#### Section 7 Civil Aviation Management

Article 41: The HKSAR Government shall provide necessary conditions and take appropriate measures to maintain the status of Hong Kong as a centre of international and regional aviation.

Article 35: (Same as Article 39 in the Draft.)

Article 36: (Same as Article 40 in the Draft.)

Article 37: (Same as Article 41 in the Draft.)

Article 39: Merchant ships registered on the HKSAR Register shall have Chinese nationality and fly both the national flag of the People's Republic of China and the emblem of the HKSAR. The ships shall enjoy free access to and the freedom to trade between all ports of the People's Republic of China. Access of foreign naval vessels to the territory of the HKSAR will require the permission of the Central People's Government.

Article 40: Jurisdiction over ships on the HKSAR Register and their personnel rests with the HKSAR Government. International protection of and responsibility for HKSAR-registered ships vis-a-vis foreign states rests with the Central People's Government. The HKSAR may retain or assume membership status with international maritime organisations, such as IMO, in its own name after informing the Central People's Government.

\* This special group has proposed 5 articles regarding civil aviation management, and considered that they should be contained in the Basic Law, rather than in the annex.

Article 41: The HKSAR shall maintain the status of Hong Kong as a centre of international and regional aviation. It shall keep its own aircraft register with the "VR" registration mark and the HKSAR emblem shown on the aircraft. The HKSAR shall have autonomy and responsibility for all operational and technical matters affecting aircraft on its register, the routine management of civil aviation including the management of airports, the provision of air traffic control services within the HKSAR FIR, and the discharge of all other responsibilities allocated under regional air navigation procedures of ICAO. The HKSAR has jurisdiction over HKSAR-registered aircraft, their crews, passengers, and cargo. International protection and responsibility for HKSAR-registered aircraft vis-a-vis foreign states rests with the Central People's Government.

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Article 42: The HKSAR shall maintain the previous system of civil aviation management in Hong Kong, and keep its own aircraft register in accordance with provisions laid down by the Central People's Government concerning nationality marks and registration marks of aircraft.

Access of foreign military aircraft to the HKSAR shall require permission of the Central People's Government.

Article 43: The HKSAR shall be responsible on its own for matters of routine business and technical management of civil aviation, and the management of airports.

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

Article 44: The HKSAR Government shall, in consultation with the HKSAR, make arrangement providing for air services between the HKSAR and other parts of the People's Republic of China for airlines incorporated and having their principal place of business in the HKSAR and other airlines of the People's Republic of China.

Article 38: (Same as Article 42 in the Draft.)

Article 39: The HKSAR shall be responsible on its own for matters of routine business and technical management of civil aviation, including the management of airports, the provision of air services within the flight information region of the HKSAR, and the discharge of other responsibilities allocated under the regional air navigation procedures of the International Civil Aviation Organisation.

[Note] The word "including" is used after "technical management of civil aviation" in paragraph 1 of Section VI of Annex I of the Joint Declaration to indicate that a long list of items should follow but they were too numerous to be mentioned individually. This Article should faithfully reflect this point.

Article 40: (Same as Article 44 in the Draft.)

Article 42: The HKSAR shall have autonomy to issue Air Operator's Certificates to airlines incorporated and having their principal place of business in Hong Kong, to regulate on its own the licensing and designation procedures for such airlines for scheduled operations, and the granting of permits for non-scheduled flights to and from Hong Kong to HKSAR-registered and foreign aircraft not touching on other points within the People's Republic of China. Access of foreign military aircraft to the HKSAR shall require the permission of the Central People's Government.

Article 43: In consultation with the HKSAR, the Central People's Government shall make arrangements providing for air services between the HKSAR and other parts of the People's Republic of China for HKSAR and PRC airlines on the basis of an appropriate balance of opportunities for access to the PRC by HKSAR airlines, and to the HKSAR by PRC airlines.

Article 44: Acting under specific authorisations from the Central People's Government, the HKSAR has autonomy to negotiate, conclude, review, amend, or terminate Air Service Agreements or provisional arrangements for overflying rights, rights for technical stops, and for scheduled air services to, from, or through the HKSAR which do not operate to, from, or through the mainland of China. The result of such arrangements shall be reported to the Central People's Government for the record.

Article 45: All Air Service Agreements providing for air services between other parts of the People's Republic of China and other states and regions with stops at the HKSAR and air services between the HKSAR and other states and regions with stops at other parts of the People's Republic of China shall be concluded by the Central People's Government.

In concluding the Air Service Agreements mentioned in the first paragraph of this Article, the Central People's Government shall take account of the special conditions and economic interests of the HKSAR and consult the HKSAR Government.

Representatives of the HKSAR Government may participate as members of delegations of the Government of the People's Republic of China in air service consultations with foreign governments concerning arrangements for such services mentioned in the first paragraph of this Article.

Article 46: Acting under specific authorisations from the Central People's Government, the HKSAR Government may:

- (1) renew or amend Air Service Agreements and arrangements previously in force (in principle, all such Agreements and arrangements may be renewed or amended with the rights contained in such previous Agreements and arrangements being as far as possible maintained);
- (2) conclude new Air Service Agreements providing routes for airlines incorporated and having their principal place of business in the HKSAR and rights for overflights and technical stops; and
- (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 HKSAR which do not operate to, from, or through the mainland of China shall be regulated by Air Service Agreements or provisional arrangements referred to in this Article.

Article 41: (Same as Article 45 in the Draft.)

Article 42: (Same as Article 46 in the Draft.)

Article 45: All Air Service Agreements providing for air services between other parts of the People's Republic of China and other states and regions with stops at the HKSAR, and air services between HKSAR and other states and regions with stops in other parts of the People's Republic of China shall be concluded by the Central People's Government. In this connection the Central People's government shall consult the HKSAR Government and take account of the special conditions and economic interests of the HKSAR and the HKSAR airlines, and the conditions established by Air Service Agreements entered into by the HKSAR in accordance with Article 44.

Representatives of the HKSAR may participate as members of delegations of the Central People's Government in air service consultations and negotiations with foreign governments concerning arrangements mentioned in this Article.

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Article 47: The Central People's Government shall give the HKSAR Government the authority to:

- (1) negotiate and conclude with other authorities all arrangements concerning the implementation of the Air Service Agreements and provisional arrangements mentioned in Article 46 of this Law;
- (2) issue licences to airlines incorporated and having their principal place of business in the HKSAR;
- (3) designate such airlines under the Air Service Agreements and provisional arrangements mentioned in Article 46 of this Law; and
- (4) issue permits to foreign airlines for services other than those to, from, or through the mainland of China.

Article 48: Airlines incorporated and having their principal place of business in Hong Kong and civil aviation related businesses may continue to operate.

[Note] Some members proposed Article 46 and 47 be combined as follows:  
"Acting under specific authorisations from the Central People's Government, the HKSAR Government may negotiate, amend, renew or conclude Air Service Agreements, arrangements, or provisional arrangements concerning the HKSAR Government, and make arrangements in accordance with law, and shall report to the Central People's Government for approval or record."

Article 43: (Same as Article 47 in the Draft.)

Article 44: (Same as Article 48 in the Draft.)

The Policy of Low Taxation

1. Low taxation may imply low tax rates or a narrow tax base and a small number of tax bases. But a low tax rate can be maintained in the longer run only if the tax base is broadened and/or the number of tax bases increased. Thus, we need a clearer definition of a low tax policy.
2. A low tax rate does not guarantee the amount of tax paid is also low if taxpayers have to pay more types of taxes.
3. A low tax rate ensures smaller distortion in the allocation of resources, making economic decision-making less dependent on the tax system. Thus a low tax rate is preferred even if the tax base has to be broadened and the number of tax bases increased. In doing so, the equity aspect should of course also be considered.
4. It is however difficult if not impossible to define what a low tax rate is. A low effective rate of tax (tax paid as a percentage of assessable income) should also be distinguished from a low marginal tax rate (the rate at which tax is levied on additional income earned).
5. In Hong Kong, business units have never paid tax at more than 18.5%, and households have lived with a marginal tax rate of 25% for many years. If past experience is a good indicator of the future, economic decision-making would not be seriously distorted even if the tax rate is increased to 20-25%. This implies that if a percentage figure is to be written into the Basic Law, it could be stipulated that "the income tax rate in the HKSAR shall not exceed (say) 22.5%".
6. Besides income or direct taxes, there are also indirect taxes on consumption expenditures. We must note that for some goods and services which are not meritorious, the tax rate should not be low.
7. The importance of a low tax rate in attracting foreign investment tends to be overstated. The results of many studies indicate that there are other more important considerations such as political and economic stability, physical, administrative and human infrastructures, local supply of raw materials and fuels, etc.
8. In conclusion, the simple statement of maintaining a low tax policy in Hong Kong has no real meaning. The conception is unclear and unspecific and therefore it cannot be interpreted unambiguously. The only justification for its inclusion in its present form in the Basic Law is to, psychologically, make investors feel better.
9. It is also not advisable to include in the Basic Law an elaborated clause on defining a low tax policy and setting a limit on the tax rate. This is too binding for the future government of the SAR.

E.K.Y. Chen

September 28, 1987.

# HongkongBank

The Hongkong and Shanghai Banking Corporation  
Area Management Office: 1 Queen's Road Central, Hong Kong

P J Wrangham  
Executive Director Hong Kong

Miss Amy Ho  
Administrative Officer  
The Consultative Committee for  
the Basic Law  
8th Floor Lane Crawford House  
HONG KONG

25 September 1987

Dear Miss Ho,

I refer to your letter of 22nd September regarding the date of the next Special Group meeting on Finance, Business and Economy being on 2nd October.

On reading through again the draft Chapter 5 there are a number of issues which I consider are of sufficient importance to write to you.

Article 2. The spirit of Article 2 in particular "a basically balanced budget" is not intended as a straitjacket on the SAR government, but rather to maintain the current fiscal stance which has been an essential ingredient in Hong Kong's success. We should not take away this safeguard clause. We have discussed at length the need for a ceiling on the share of Government spending as a proportion of GDP; however this has been considered to be inflexible and inappropriate. It is necessary in my view to include some choice of words.

Furthermore, the Government's fiscal position affects Hong Kong's international credit rating which has already suffered from the 1997 issue. The government's fiscal position is one of the indicators that international credit rating agencies use to decide on the territory's credit rating which affects local enterprises' ability to raise capital abroad. One of Hong Kong's remaining strong points is the government's excellent fiscal position. If the future SAR government runs sustaining fiscal deficits, it would further lower Hong Kong's sovereign rating after 1997. It is important to remember that some institutions in Hong Kong have financial ratings internationally and it would have serious repercussions for their businesses.

Article 16. As I have indicated on several occasions I am worried by the finality of this article. However the wording has received some publicity so it may now be difficult to remove it.

Article 19. There does appear to be widespread agreement that currency notes at issue shall be covered by foreign currency reserves of 100% or more in value of readily convertible securities.

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# HongkongBank

Miss Amy Ho  
Administrative Officer  
The Consultative Committee for  
the Basic Law

25 September 1987

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Article 28. The words 'free' and 'open' have been used a number of times in the proposal without a clear definition. I consider more definition should be sought for 'free' and 'open'.

There are some other issues which have been mentioned over the past eighteen months and which I think have been included in other Chapters.

- a. The role of expatriates in industry.
- b. The freedom of choice of occupation.
- c. Prices should be determined by market forces.
- d. The free flow of information both internally and externally.

Could you please advise me where these issues are included in other Chapters?

Yours sincerely

# 對基本法第六章條文草稿 (一九八七年八月)的意見

(1987年11月4日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會  
文化教育科技宗教專責小組

## 前言

本組在討論第六章條文草稿時，基本上是根據以下的原則：《中英聯合聲明》所載明的規定必須在基本法中有所體現。基於此，本組對草委就第六章發表的一些意見（見於“意見匯集”）不能全完同意，例如有關第一條：“香港特別行政區政府保持原在香港實行的教育制度”，有的草委認為在“保持”一詞前加上“可”字，本組認為這建議不符合《中英聯合聲明》附件一第十節的規定：“香港特別行政區保持原在香港實行的教育制度”。還有，對於第十一條：“香港特別行政區保持原在香港實行的對教育、醫療、文化、藝術...的資助政策”，有的草委建議去掉“保持”二字，本組也基於上述原則予以反對。

對於草委就第六章發表的“意見匯集”，本組不會就每項內容提出意見，但本組已將匯集中可取的意見採納為本組的建議（見於下文），對於其他建議，經本組與討論稿條文相比後，本組仍比較接受後者。有關本組在上一階段提交的“社會生活方式”最後報告，本組發覺第六章並沒有將有關內容包括，希望草委可說明處理這問題的方法。

以下為本組對第六章（一九八七年八月稿）的具體建議。

條文草稿	諮委建議
<p>標題： 香港特別行政區的教育、科學、技術、文化、體育和宗教</p> <p>第一條 香港特別行政區保持原在香港實行的教育制度。</p> <p>香港特別行政區教育事業的發展和改進，由香港特別行政區自行決定。</p> <p>第二條 香港特別行政區政府自行制定本行政區教育方面的政策，包括教育體制及管理、教學語言、經費分配、考試制度、學位制度和承認學歷等政策。</p> <p>各社會團體和私人可依法在香港特別行政區興辦各教育事業。</p>	<p>標題： 香港特別行政區的教育、科學、技術、文化、體育、宗教、勞工和福利</p> <p>第一條 除香港特別行政區政府自行制定有關教育制度的發展和改進的政策外，香港特別行政區政府保持原在香港實行的教育制度。</p> <p>香港特別行政區自行制定本行政區教育方面的政策，包括教育體制及管理、教學語言、經費分配、考試制度、學位制度和承認學歷等政策。</p> <p>（會後有委員提出書面意見，建議將本條修改為：“香港特別行政區保持原在香港實行的教育制度。”）</p> <p>第二條 各社會團體和私人可依法在香港特別行政區興辦各種教育事業。</p> <p>各類院校均可保留其自主性及享有學術自由，並可繼續從香港特別行政區以外招聘教職員和選用教材。</p>

第三條 各類院校均可保留其自主性並享有學術自由，可繼續從香港特別行政區以外招聘教職員和選用教材。宗教團體所辦的學校可繼續開設宗教課程。學生享有選擇院校和在香港特別行政區以外求學的自由。

第四條 香港特別行政區政府發展醫療衛生事業，發展現代醫藥和我國傳統醫藥，鼓勵和支持社會團體和私人機構舉辦各種醫療衛生事業。

第五條 香港特別行政區政府發展科學、技術事業，獎勵和保護科學、技術的研究成果和發明創造。香港特別行政區政府自行決定科學、技術的各類標準和規格。

第六條 香港特別行政區政府發展文化事業，獎勵和保護作者在文化創作中所獲得的成果、榮譽和合法權益。

宗教團體所辦的學校可繼續開設宗教課程。學生享有選擇院教和在香港特別行政區以外求學的自由。

(有委員建議將第二款首句修改為：“各類院校在符合香港特別行政區政府制定的教育政策下，均可保留其自主性並享有學術自由”。會後有委員提出書面意見，建議將本條修改為：“香港特別行政區自行制定教育方面的政策，包括教育體制及管理、教學語言、經費分配、考試制度、學位制度和承認學歷等政策，同時，自行決定教育事業的發展和改進。”)

(會後有委員提出書面意見，建議將本條修改為：“各類院校均可保留其自主性並享有學術自由，可繼續從香港特別行政區以外招聘教職員和選用教材。

宗教團體所辦的學校可繼續開設宗教課程。學生享有選擇院校和在香港特別行政區以外求學的自由。

各社會團體和私人可依法在香港特別行政區興辦各種教育事業。”)

第三條 香港特別行政區政府自行制定醫療衛生政策，發展現代醫藥和我國傳統醫藥。各社會團體和私人可依法在香港特別行政區興辦各種醫療衛生事業。

第四條 香港特別行政區政府自行制定科學技術方面的政策。香港特別行政區以法律保護科學技術的研究成果和發明創造。

第五條 香港特別行政區政府自行制定文化政策。香港特別行政區以法律保護作者在文化領域中創作所獲得的成果和利益。

第七條 香港特別行政區政府不干預、不限制宗教活動和宗教團體的內部事務。宗教活動不得與香港特別行政區法律相抵觸。

宗教團體依法享有財產的取得、使用、處置、繼承以及接受資助的權利。財產方面的原有權益仍予保持和保護。宗教團體所辦的宗教院校和其他院校以及醫院、福利機構和其他社會事業，可按照原有的辦法繼續存在和發展。

(說明) 有些委員建議，本條應增寫“香港特別行政區政府得將宗教紀念日及民間節日，例如佛誕、聖誕節復活節等，統一編列為公眾假期”。有些委員則認為，如特別規定宗教假日，各界可能要求增寫本界的節假日，故不宜特別規定。

有的委員建議，應增寫“香港特別行政區政府依據法律保障宗教及慈善團體的各種固有權利，如有關撥地、批續地契、豁免差餉與稅項等，均予繼續保持”。有些委員認為上述內容屬經濟範疇，建議由經濟專題小組研究解決。

第八條 宗教組織和教徒可同其他地方的宗教組織和教徒保持原有的關係。

第九條 香港特別行政區政府自行制定關於各種專業執業資格的審定和授予辦法。在香港特別行政區成立以前原已取得專業執業資格者，可以保持原有的資格。

香港特別行政區保留在特別行政區成立以前已承認的專業和專業團體，並根據社會發展需要承認新的專業和專業團體。

第六條 香港特別行政區政府不干預宗教團體的內部事務，不限制與香港特別行政區法律沒有抵觸的宗教活動。

宗教團體依法享有財產的取得、使用、處置、繼承以及接受資助的權利。財產方面的原有權益仍予保持和保護。

宗教團體所辦的宗教院校和其他院校以及醫院、福利機構和其他社會事業，可按照原有的辦法繼續存在和發展。

(有建議將宗教自由的詳細內容寫在基本法的附件中。另有委員建議在第二款刪去“財產方面的原有權益仍予保持和保護。”一句。)

第七條 宗教組織和教徒可同其他地方的宗教組織和教徒保持原有的關係。

第八條 香港特別行政區政府自行制定關於各種執業資格的審定和授予辦法。原在香港實行的各種執業資格的審定和授予辦法則予保留。

在香港特別行政區成立以前原已取得專業和執業資格者，可以保持原有的資格。香港特別行政區保留在特別行政區成立以前已承認的專業和專業團體，照原有辦法由該等專業團體審定和授予專業資格。

(說明) 有的委員提出，條文還應寫明專業團體可自行制定專業資格，確定有關的專業水平和制定及執行專業守則。多數委員認為這是專業團體內部事務，不宜寫在基本法內。

第十條 香港特別行政區政府支持和發展體育事業。香港原有的民間體育團體可依法繼續存在和發展。

第十一條 香港特別行政區保持原在香港實行的對教育、醫療、文化、藝術、康樂、體育、社會福利、社會工作等機構的資助政策。香港特別行政區成立後、原在香港各資助機構任職的人員均可根據原有制度繼續聘用。

第十二條 香港特別行政區政府保持原有的社會福利，並根據經濟條件和社會需要，自行決定其發展和改進。

第十三條 香港特別行政區從事社會服務的志願團體可自行決定其服務方式。

第十四條 香港特別行政區根據經濟發展、社會需要和勞資協商的實際情況，自行制定有關勞工的法律和政策。

香港特別行政區可根據社會發展需要及有關專業團體意見，承認新的專業和專業團體。

第九條 香港特別行政區政府自行制定體育及康樂活動方面的政策。  
香港原有的民間體育團體可依法繼續存在和發展。

第十條 香港特別行政區保持原在香港實行的對教育、醫療、文化、藝術、康樂、體育、社會福利、社會工作等機構的資助政策，並根據經濟條件和社會需要，自行決定其發展和改進。  
香港特別行政區成立後，原在香港各資助機構任職的人員均可根據原有制度繼續聘用。

第十一條 香港特別行政區政府保持原有的社會服務\*，並按社會的實際情況，自行決定其發展和改進。

第十二條 香港特別行政區從事社會服務\*的志願團體可自行決定其服務方式。  
\*(根據現時政府的定義，社會服務包括房屋、福利、勞工、醫療和教育這五方面。)

第十三條 香港特別行政區按社會的實際情況，並參照香港的現行勞工法例，自行制定有關勞工的法律和政策。  
(有委員建議在本條寫上“國際勞工公約適用於香港的規定繼續有效。”)

第十五條 香港特別行政區的教育、科學、技術、文化、體育、專業、社會福利等方面的民間團體以及宗教團體同內地相應的團體的關係，應遵守互不隸屬、互不干涉和互相尊重的原則。

第十六條 香港特別行政區的教育、科學、技術、文化、體育、衛生、專業、社會福利以及宗教等組織可以“中國香港”的名義，同世界各國、各地區及有關國際組織保持和發展關係

(說明) 如果第七章“香港特別行政區的對外事務”的有關條文中增列上述教育、科學、技術、衛生、專業、社會福利以及宗教等內容，則本條可刪去。

第十四條 香港特別行政區的教育、科學、技術、文化、體育、專業、社會福利等方面的民間團體以及宗教團體同內地相應的團體互不隸屬、互不干涉和互相尊重。

(有委員認為應將“互相尊重”刪去，因為這不是法律概念，故不應寫在基本法內。)

第十五條 香港特別行政區的教育、科學、技術、文化、體育、衛生、專業、社會福利以及宗教等民間組織可以“中國香港”的名義，同世界各國、各地區及有關國際組織保持和發展關係。

OPINIONS ON CHAPTER 6  
OF THE DRAFT (AUGUST 1987) OF THE BASIC LAW

(passed by the Executive Committee on 4 November 1987)

Special Group on  
Culture, Technology, Education, and Religion

**Foreword**

The discussion of this Special Group on the draft provisions of Chapter 6 was generally based on the following principle: all provisions under in the Sino-British Joint Declaration should be reflected in the Basic Law. Consequently, our Special Group do not entirely accept the opinions expressed by members of the Drafting Committee on Chapter 6 as recorded in the "summary of the drafters' opinions". For instance, on Article 1: "The HKSAR shall maintain the educational system previously practised in Hong Kong", a drafter held that the phrase "shall maintain" could be amended to "may maintain". Our members thought that this view was not in accordance with the provision under Section 10 of Annex I of the Sino-British Joint Declaration: "The Hong Kong Special Administration Region shall maintain the educational system previously practised in Hong Kong". Moreover, on Article 11: "The HKSAR shall maintain the policy previously practised in Hong Kong regarding the provision of subventions to organisations in all fields, including education, medicine, culture, arts ..... previously implemented in Hong Kong", a drafter suggested deleting the word "maintain". According to the principle stated above, our members expressed objection.

Our Special Group would not comment on every single opinion of the drafters on Chapter 6 as recorded in the "summary of the drafters' opinions". But the drafters' opinions which we accept have already been included into our suggestions as below. As to other views, after comparing them with the draft articles, we still favour the latter. As regards the final report on "lifestyle" which was submitted at the previous stage, we find that the contents relevant to this chapter has not been included. Thus, we hope that members of the Drafting Committee will explain to us how this issue will be dealt with.

The following are our concrete suggestions on the draft of Chapter 6 of August 1987.

Draft Articles

Title: Education, Science, Technology, Culture, Sports, and Religion in the HKSAR

Article 1: The HKSAR shall maintain the educational system previously practised in Hong Kong.

The development and improvement of educational undertakings in the HKSAR shall be decided by the HKSAR Government on its own.

Article 2: The HKSAR Government shall on its own decide policies of this SAR 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, the system of academic awards and the recognition of educational and technological qualifications.

Community organisations and individuals may run different kinds of educational undertakings in the HKSAR in accordance with law.

Article 3: Educational institutions of all kinds may retain their autonomy and have academic freedom. They may continue to recruit staff and use teaching material from outside the HKSAR. Educational institutions run by religious organisations may continue to offer courses on religious education.

Students shall enjoy freedom of choice of education and freedom to pursue their education outside the HKSAR.

CCBL members' suggestions

Title: Education, Science, Technology, Culture, Sports, and Religion, Labour and Welfare in the HKSAR

Article 1: Apart from the policies decided by the HKSAR Government on its own regarding the development and improvement of the educational system, the HKSAR Government shall maintain the educational system previously practised in Hong Kong.

The HKSAR shall on its own decide policies of this SAR 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, the system of academic awards and the recognition of educational and technological qualifications.

(After the meeting, a member, by written submission, proposed that the article be amended as follows: "The HKSAR shall maintain the educational system previously practised in Hong Kong.")

Article 2: Community organisations and individuals may run different kinds of educational undertakings in the HKSAR in accordance with law.

Educational institutions of all kinds may retain their autonomy and have academic freedom. They may continue to recruit staff and use teaching material from outside the HKSAR.

Educational institutions run by religious organisations may continue to offer courses on religious education.

Students shall enjoy freedom of choice of education and freedom to pursue their education outside HKSAR.

(A member proposed that the first sentence of the second paragraph be amended as follows: "Educational institutions of all kinds, so far as they are consistent with the educational policy decided by the HKSAR Government, may retain their autonomy and have academic freedom." After the meeting a member, by written submission, proposed that this article be re-written as follows: "The HKSAR Government shall on its own decide 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, the system of academic awards and the recognition of educational and technological qualifications. At the same time, the development and improvement of educational undertakings in the HKSAR shall be decided by the HKSAR on its own.")

Article 4: The HKSAR Government shall develop medical and health services, develop modern medicine and traditional Chinese medicine, encourage and support community and private organisations to set up medical and health facilities of all kinds.

Article 5: The HKSAR Government shall promote the development of scientific and technological undertakings. It shall reward and protect achievements, inventions and discoveries in scientific and technological researches, and scientific and technological innovations.

The HKSAR Government shall decide on its own standards and specifications relating to science and technology.

Article 6: The HKSAR Government shall promote the development of cultural undertakings. It shall reward and protect achievements, honours and legitimate rights and interests acquired by authors in cultural creation.

Article 7: The HKSAR Government shall not interfere with or restrict religious activities or internal affairs of religious organisations. Religious activities shall not contravene the laws of the HKSAR.

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

Religious educational institutions and other educational institutions, hospitals, welfare institutions, and other social services run by religious organisations may be continued and developed in accordance with previous practice.

(After the meeting a member, by written submission, proposed that the article be amended as follows: "Education institutions of all kinds may retain their autonomy and have academic freedom. They may continue to recruit staff and use teaching material from outside the HKSAR.

Educational institutions run by religious organisations may continue to offer courses on religious education.

Students shall enjoy freedom of choice of education and freedom to pursue their education outside the HKSAR.

Community organisations and individuals may run different kinds of educational undertakings in the HKSAR in accordance with law.")

Article 3: The HKSAR Government shall on its own decide medical and health policies, develop modern medicine and traditional Chinese medicine.

Community organisations and individuals may run different kinds of medical and health undertakings.

Article 4: The HKSAR Government shall on its own decide policies regarding science and technology.

The HKSAR shall protect by laws the achievements, inventions and discoveries in scientific and technological researches.

Article 5: The HKSAR shall on its own decide policy regarding culture.

The HKSAR shall protect by laws achievements and interests acquired by authors with creative works in the field of culture.

Article 6: The HKSAR Government shall not interfere with the internal affairs of religious organisations, or restrict religious activities which do not contravene the laws of the HKSAR.

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

Religious educational institutions and other educational institutions, hospitals, welfare institutions, and other social services run by religious organisations may be continued and developed in accordance with previous practice.

Draft Articles

[Note] Some members proposed that the following clause be added to this Article: "The HKSAR Government shall list as public holidays religious commemoration days and folk festivals such as Buddhist festival, Christmas, and Easter." On the other hand, some members held that if the Basic Law specifically provided for religious holidays, other sectors might demand the provision for the holidays relevant to their sectors as well. Hence, it would not be appropriate to have any specific provision on this issue.

A member proposed that the following provision be added: "The HKSAR Government shall protect the existing rights of religious and charitable organisations in accordance with law, for example, those relating to the allocation of land, renewal of land leases, exemption from tax and rates payment, etc., shall be retained." Some members held that the foregoing proposal was within the scope of economy and should be dealt with by the Subgroup on Economy.

Article 8: Religious organisations and believers may maintain their previous relations with religious organisations and believers elsewhere.

Article 9: The HKSAR Government shall on its own decide the way to accredit and confer qualifications for professional practice.

Those who have obtained qualifications for professional practice before the establishment of the HKSAR may maintain their previous qualifications.

The HKSAR shall maintain the professions and professional organisations which have been recognised before the establishment of the HKSAR, and shall recognise new professions and professional organisations in accordance with the needs in social development.

[Note] A member suggested that the provision should also state that professional organisations may on their own decide professional qualifications, determine the standards of their respective professions, and decide and implement the codes of practice of their respective professions. The majority of members considered that such questions were internal affairs of professional organisations and should not be written in the Basic Law.

CCBL's suggestions

(It was proposed that the details of religious freedom be written in an annex to the Basic Law. Another member suggested deleting the following clause in the second paragraph: "The previous rights and interests in respect of property shall be maintained and protected.")

Article 7: Religious organisations and believers may maintain their previous relations with religious organisations and believers elsewhere.

Article 8: The HKSAR Government shall decide on its own the way to accredit and confer licensing qualifications. The way to accredit and confer licensing qualifications previously adopted in Hong Kong shall be maintained.

Those who have obtained professional and licensing qualifications before the establishment of the HKSAR may maintain their previous qualifications.

The HKSAR shall maintain the professions and professional organisations which have been recognised before the establishment of the HKSAR, and professional qualifications shall be accredited and conferred by those professional organisations in accordance with the previous practice.

The HKSAR may recognise new professions and professional organisations in accordance with the needs in social development and the opinions of the professional organisations concerned.

Draft Articles

Article 10: The HKSAR Government shall support and develop sporting activities. Previous non-governmental sports organisations may continue to exist and develop in accordance with law.

Article 11: The HKSAR shall maintain the policy previously practised in Hong Kong regarding the provision of subventions to organisations in all fields, including education, medicine, culture, arts, recreation, sports, social welfare, and social work. After the establishment of the HKSAR, personnel previously serving in subvented organisations in Hong Kong may remain in employment in accordance with the previous system.

Article 12: The HKSAR Government shall maintain the previous social welfare in Hong Kong and decide on its own the development and improvement of social welfare in accordance with economic conditions and social needs.

Article 13: Voluntary organisations engaged in social service in the HKSAR may on their own decide their forms of service.

Article 14: The HKSAR shall on its own formulate laws and policies regarding labour in the light of economic development, social needs, and the actual circumstances of labour-management consultations.

Article 15: The relationship between non-governmental organisations of all fields, including education, science, technology, culture, sports, the professions, and social welfare, in the HKSAR as well as religious organisations in the HKSAR, and their counterparts in the mainland shall abide by the principles of non-subordination, non-interference, and mutual respect.

CCBL's suggestions

Article 9: The HKSAR Government shall on its own decide policies regarding sports and recreational activities.

Previous non-governmental sports and recreational organisations in Hong Kong may continue to exist and developed in accordance with law.

Article 10: The HKSAR shall maintain the policy previously practised in Hong Kong regarding the provision of subventions to organisations in all fields, including education, medicine, culture, arts, recreation, sports, social welfare, and social work, and shall decide on its own their development and improvement in the light of economic conditions and social needs.

After the establishment of the HKSAR, personnel previously serving in subvented organisations in Hong Kong may remain in employment in accordance with the previous system.

Article 11: The HKSAR Government shall maintain the previous social service\* in Hong Kong and decide on its own the development and improvement of social service\* the light of actual social conditions.

Article 12: Voluntary organisations engaged in social service\* in the HKSAR may on its own decide their forms of service.

\*(According to the definition adopted by the Government at present, social service includes the following five aspects, namely, housing, welfare, labour, medicine and education.)

Article 13: The HKSAR shall, in the light of actual social conditions and with reference to the existing labour legislation in Hong Kong, on its own formulate laws and policies regarding labour.

(A member proposed that the following clause be added: "The provisions of the International Labour Convention which are applicable to Hong Kong shall remain in force.")

Article 14: Non-governmental organisations of all fields, including education, science, technology, culture, sports, the professions, and social welfare, in the HKSAR as well as religious organisations in the HKSAR, and those in the mainland shall not be subordinate to each other or interfere with each other, but shall respect each other.

(A member held that the phrase "shall respect each other" should be deleted because it was not a legal concept and should not be written into the Basic Law.)

Draft Articles

Article 16: Organisations in all fields, including education, science, technology, culture, sports, health, the professions, social welfare and religion, in the HKSAR may, using the name "Hong Kong, China", maintain and develop relations with states, regions and relevant international organisations.

[Note] If the above contents regarding organisations in all fields, including education, science, technology, sports, health, the professions, social welfare and religion were added to a relevant provision in Chapter 7 on External Affairs of the HKSAR, this Article could be deleted.

CCBL's suggestions

Article 15: Non-governmental organisations of all fields, including education, science, technology, culture, sports, health, the professions, social welfare, and religion, in the HKSAR may, using the name "Hong Kong, China", maintain and develop relations with states, regions and relevant international organisations.

法律專責小組對基本法第九章  
「香港特別行政區基本法的解釋和修改」  
條文草稿(一九八七年八月)的意見

(1987年11月4日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會  
法律專責小組

本組曾就基本法第九章條文草稿舉行會議，並邀得起草委員會中法律界委員參加討論。茲將本組委員在會議中發表的意見整理如下，供起草委員會參考。

- 關於第一條：
1. 有委員認為此條文削弱了現時法院解釋法律的權力，而把基本法解釋權賦予人大常委會。該委員指出，根據現行的制度，立法機關制訂法律而司法機關則可獨立地、全權地解釋法律。這樣的安排可使法律的解釋不受政治壓力所影響。該委員並指出，聯合聲明規定特區將有獨立的司法權和終審權；現在這條文的第一段：「基本法的解釋權屬於全國人民代表大會常務委員會」便違反了聯合聲明。
  2. 有委員指出國內及香港現行的法律制度有基本的分別：國內立法權及法律解釋權均集於立法機關，但香港則由立法機關立法，司法機關解釋。所以該委員建議除有關國防外交的法律，其他均由特區法院解釋；遇有爭議時，便交由基本法委員會（有一半國內的委員及一半香港委員）決定某條法律是否涉及國防和外交事務，應由香港抑或是中國方面作解釋。另有委員補充強調基本法委員會將是個負責區別法律種類的委員會，只負責決定某些法律是否涉及國防和外交事務。
  3. 此外，有委員建議在基本法上寫明解釋權屬於人大常委會，但人大常委會應抑制對特區內部事務的法律作解釋。
  4. 有委員認為不論是人大或是特區的法律解釋均應無回溯力。
  5. 有委員認為第二段規定特區法院只可解釋特區自治權範圍內的條款應該刪除。
  6. 有委員認為既然聯合聲明規定特區將擁有終審權，便不應在這終審權中開洞，特區應可擁有真正的最終審判權。
  7. 有委員提出以下問題：誰人有權要求人大常委會解釋基本法？在甚麼情況下可作出此要求？人大常委會是否可隨時作出解釋？

關於第二條： 委員對這條沒有異議。

OPINIONS OF THE SPECIAL GROUP ON LAW  
REGARDING CHAPTER 9  
"THE INTERPRETATION AND AMENDMENT OF THE BASIC LAW OF THE HKSAR"  
OF THE DRAFT (AUGUST 1987) OF THE BASIC LAW

(passed by the Executive Committee on 4 November 1987)

Special Group on Law

The Special Group on Law held a meeting to discuss the draft articles of Chapter 9 of the Basic Law, and drafters from the legal sector were invited to the meetings. The following is a collation of the views expressed by members of this Special Group during the meetings. These views are now submitted for the reference of the Drafting Committee.

On Article 1:

1. A member held that the power enjoyed by the courts at present regarding the interpretation of laws would be eroded by this article which gave the power of interpretation of the Basic Law to the NPC Standing Committee. The member pointed out that under the present system, the legislature enacted laws whereas the judiciary enjoyed full power to interpret laws independently. Such an arrangement ensured that the interpretation of laws would not be affected by political pressure. The member maintained that paragraph 1 of this article, "The power of interpretation of the Basic Law shall be vested in the NPC Standing Committee", contravened the Joint Declaration which provided that the HKSAR would have independent judicial power, including that of final adjudication.
2. A member pointed out that the legal systems practised in China and in Hong Kong were basically different: in the mainland, the legislative power and interpretation power were both vested in the legislature, whereas in Hong Kong, the legislature enacted laws and the judiciary interpreted them. Hence, the member proposed that all laws except for those concerning defence and foreign affairs would be interpreted by the courts of the SAR; should any dispute arise, they would be referred to the Basic Law Committee (comprising Hong Kong and mainland members of equal number) which would decide whether the law in question involved defence and foreign affairs, and whether it should be interpreted by China or Hong Kong. Another member emphasised that the Basic Law Committee would be a committee for classifying laws, only responsible for deciding whether certain laws involved defence and foreign affairs.

3. In addition, a member proposed that the Basic Law specify the following: the power of interpretation of the Basic Law should be vested in the NPC Standing Committee, but the NPC Standing Committee should refrain from interpreting any laws regarding the internal affairs of the SAR.
4. A member held that neither the interpretation of the NPC nor that of the SAR should have any retrospective effect.
5. A member proposed deleting the provision in paragraph 2 that the SAR courts could interpret only those articles of the Basic Law which were within the scope of autonomy of the SAR.
6. A member pointed out that since the Joint Declaration provided that the SAR would enjoy the power of final adjudication, there should not be any restriction on the power. The SAR should be allowed to enjoy the real power of final adjudication.
7. A member raised the following questions: Who had the right to request the NPC Standing Committee to interpret the Basic Law? Under what circumstances could such request be made? Was the NPC Standing Committee supposed to interpret the Basic Law at any time?

On Article 2:

Members had no objection to this article.

# 對香港特別行政區全國人大代表問題的意見

(1987年11月4日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會  
中央與香港特別行政區的關係專責小組

### 香港特別行政區全國人大代表產生的原則

1. 有委員認為，香港居民百分之九十以上是中國籍人士，因此應該有代表進入人大代表會參與管理國家事務。但因為香港是特別行政區，故本地選舉人大代表的的方法應不用與大陸其他省市看齊。
2. 國內地方人大代表會是地方的最高權力機關，可以任命地方的長官，但香港的制度不同，故有委員不贊成將來在港設有「香港全國人民代表大會」，因為恐怕它會變成第二個權力中心。而且香港的全國人大代表只會代表香港參與管理全國事務，不會影響香港內政。
3. 有委員認為將來香港很多政治機構都會舉行選舉，比如立法局、區議會等，若香港人大代表亦以選舉形式產生，可能令到選舉次數不勝其煩，故希望人大代表若以選舉產生，其方法應該仔細考慮，免引起市民太多麻煩。
4. 有委員認為若現有的人大代表選舉方法並不完全適合香港情況，應建議人大代表會在未來十年內，仔細考察香港和澳門的情況，訂立一套適合香港的人大代表選舉法。

### 香港特別行政區全國人大代表產生的辦法

- 甲) 由香港立法局議員中的中國公民身份議員互選產生。
1. 有委員認為國內的地方人大代表的權力來自當地的最高權力架構，故此香港的人大代表亦應該從香港的立法局中產生，使他們能代表香港最高權力架構的意見，而且這樣可使本地全國人大代表與立法機構有更緊密的聯系。
  2. 有委員認為因為將來的立法議員會由多途徑選出，故若由立法機關中選出人大代表，亦保障能反映各類意見。
  3. 有委員認為不應要求香港人大代表要兼顧本地各階層利益，本地不同階層的利益應由立法局成員代表。而香港的人大代表的主要工作是代表香港整地區的利益。另有委員認為他們的主要工作是立足於香港，放眼看整個中國的利益。
  4. 有委員不贊成由立法局議員中的具中國公民身份議員互選產生，因為雖然他們是中國公民，但選舉他們的人卻未必全是中國公民，故這樣可能會違反人大的組織法。而且這方法未能包括香港各階層的代表，因為如解放軍及婦女界未必就有代表在香港立法局，但委員同意立法局議員可以個人身份參加競選。
  5. 有委員不贊成經立法機關選人大代表，因為太轉折，直選是更好的方法。
  6. 有委員不贊成由立法局成員中選出人大代表，因為他覺得兩者是有明確分工的，立法議員主要負責香港事務，人大代表就參與管理全國問題。而且香港實行資本主義制度，國內卻奉行社會主義。委員認為很難選出一些能充份了解兩種制度的代表，故應該由不同的人負責兩項工作。
- 乙) 由香港中國公民直接選舉產生
1. 有委員贊成應由分區直接選舉產生香港的全國人大代表，因為將來的立法局也可能會有分區直接選舉，而且這方法可保障能照顧不同階層的利益。

2. 有委員認為長遠而言，本地的全國人大代表應全部由直接選舉產生，因為中國的縣、市已全部用直選產生人大代表，沒理由香港不能進行直接選舉。
3. 有委員認為這樣可增加公眾對人大代表的工作的關注。
4. 有委員認為香港的全國人大代表不應全部由選舉方法選出。

丙) 大選舉團

1. 有委員認為應由香港特別行政區政府依各階層及界別劃定選舉團，然後由選舉團自行選出自己階層或界別的代表。委員認為單只從立法局中選出人大代表，不能保證各界的意見都被反映。
2. 有委員不贊成大選舉團的形式，因為選舉團成員的代表性不足，而且若如某些建議所提，此選舉團可同時選出行政長官及立法局成員，它的權力將會過大。
3. 若中國有份參與選舉團的組成，則可能在香港引起內部不和。

丁) 其他產生方法

1. 有委員贊成應以混合方式產生人大代表。即包括：
  - a. 由香港立法局議員中的中國公民身份議員互選產生。
  - b. 由香港中國公民直接選舉產生。
  - c. 由香港各界組成大選舉團選舉產生。以及其他在立法局中不具代表的團體的成員共同組成。
2. 有建議小部份人大代表應由主要官員出任。

香港全國人大代表的角色

1. 有委員認為雖然人大代表的主要工作乃參與管理國家事務，但何謂國家或特區事務，有時可能界限不清，比如關於香港特別行政區基本法的解釋權，便可能牽涉香港及國家的利益衝突，在此情況下，特區的人大代表便可能處身兩難的境況。
2. 有委員認為將來香港人大代表的角色有三方面：第一是代表香港特別行政區參與管理全國事務，以貫徹一國的精神。第二項是在全國人大代表會上向其他代表反映香港人民的意見。第三項是將全國人大代表會的意見及決定向香港人報告。
3. 有委員認為將來的人大代表應該兼顧特區及全國的利益，所謂兼顧，即是當特區利益等於全國利益時，人大代表應該極力爭取；但如果地方利益與國家利益有矛盾時，地方利益應要服從於國家利益。
4. 有委員認為若不所提及的原則被確認，他將對香港全國人民代表產生的任何方法都持保留態度。不過，另一委員卻指出若香港的全國人大代表只以地方的利益為重，他將會非常質疑他們作代表的資格。

香港特別行政區全國人大代表與立法局的關係

1. 香港人大代表的工作是代表香港參與管理全國事務，而立法局議員的主要工作乃負責香港內政，兩者有明確分工。但由於人大代表熟悉中國情況，他們亦是溝通中港關係的重要橋樑，故他們可作立法局的顧問。

OPINIONS ON THE QUESTION OF  
HKSAR DELEGATES TO THE NATIONAL PEOPLE'S CONGRESS

(passed by the Executive Committee on 4 November 1987)

Special Group on  
The Relationship between the Central Government and the SAR

**The Principles of Selection of the HKSAR Delegates to the National People's Congress (NPC)**

1. A member holds that there should be Hong Kong delegates to the NPC participating in the management of the country's affairs since over 90% of Hong Kong inhabitants are Chinese nationals. However, as Hong Kong is a special administrative region, it should not be necessary for the way by which delegates are elected in Hong Kong to concur with that adopted by other municipalities and provinces in the mainland.
2. In the PRC, the local people's congresses are the highest local organs of power, and may appoint officials. In Hong Kong, however, the system is different. There is therefore an objection to the establishment of a Hong Kong local people's congress for fear that it would become the second centre of power. Furthermore, the Hong Kong delegates to the NPC would represent Hong Kong to participate in the management of the country's affairs only. They would not influence the internal affairs of Hong Kong.
3. A member points out that there would be a lot of elections in Hong Kong in future e.g. the Legislative Council elections, the district boards elections. If the delegates to the NPC are to be selected by election as well, the public may be pestered by the numerous elections. It is therefore felt that if the delegates are to be elected, the method of the election must be thoroughly thought out to avoid creating too much trouble for the public.
4. Another member remarks that if the existing method of electing delegates to the NPC is not considered entirely appropriate to the conditions in Hong Kong, the NPC should closely observe the conditions in Hong Kong and Macau in the next decade so that an election method suitable for Hong Kong can be devised.

**The Method of Selection of the HKSAR Delegates to the National People's Congress**

- A) By election from among the Legislative Councillors who are Chinese nationals in Hong Kong.
1. A member believes that since the delegates of local people's congresses derive their power from the highest local power structure, the Hong Kong delegates should also be selected from the Legislative Council so that they can represent the opinions of the highest power structure in Hong Kong. In this way, the relationship between the delegates and the legislature may also become closer.
  2. A member thinks that since the future Legislative Councillors would be elected through various channels, the reflection of views from the different sectors will be ensured if the delegates are to be selected from the legislature.
  3. A member, on the other hand, thinks that the delegates should not be expected to take into consideration the interests of various sectors in Hong Kong. This is essentially the task of the members of the Legislative Council. The Hong Kong delegates should primarily represent the interests of Hong Kong as a region. Another member feels that the delegates' main job is to have their feet planted at Hong Kong while keeping in view the interests of the entire China.
  4. A member objects to the selection of delegates by election from among Legislative Councillors who are Chinese nationals. The point is that though they are Chinese nationals, those who have elected them may not necessarily be Chinese nationals, thereby the Organic Law of the NPC may be contravened. In addition, this method of election may not be able to cater for representatives of all sectors, for instance, the People's Liberation Army and women may not be represented in the Legislative Council. However, it is agreed that the Legislative Councillors may stand for election of the delegates to the NPC in their personal capacities.
  5. A member does not approve of the selection of delegates from the legislature because the method is too indirect. It is felt that direct election would be a better method.

f. A member objects to the selection of delegates from members of the Legislative Council on the ground that there is a distinct difference between the work of the two. A Legislative Councillor is responsible for the affairs of Hong Kong whereas a delegate participates in the management of the whole country. Moreover, Hong Kong adopts a capitalist system while socialism prevails in the mainland. Members feel that it is very difficult to select people who have adequate knowledge of both systems. The two jobs should therefore be undertaken by different people.

B) By direct election among Hong Kong Chinese nationals

1. A member supports the suggestion that the delegates be selected through direct election from geographical constituencies because in future, Legislative Councillors may be directly elected from geographical constituencies as well. It can also assure that the interests of the various sectors are taken care of.

2. Another member thinks that in the long run the local delegates should all be selected through direct election. The reason is that all provinces and municipalities in the PRC are already directly electing their NPC delegates. There is no reason why direct election should not be adopted in Hong Kong.

3. A member holds that this would increase the public's interest in the work of the NPC delegates.

4. A member thinks that not all Hong Kong delegates should be selected by election.

C) By a grand electoral college

1. A member suggests that the HKSAR Government should draw up a grand electoral college according to the strata and sectors in society. The grand electoral college should elect its own representatives. The member feels that the reflection of the views of different sectors cannot be ensured if the delegates are to be selected solely from the Legislative Council.

2. A member objects to this form of election on the ground that the membership of the grand electoral college is not sufficiently representative. In addition, if the grand electoral college is to elect both the Chief Executive and the members of the Legislative Council as has been suggested, it would be much too powerful.

3. If the PRC takes part in the formation of the grand electoral college, internal conflicts may arise in Hong Kong.

D) By other methods of selection

1. A member agrees that the delegates should be selected by a variety of methods including:

- a. election from among Hong Kong Legislative Councillors who are Chinese nationals;
- b. direct election among Chinese nationals in Hong Kong;
- c. an election by a grand electoral college comprising all sectors in Hong Kong;

and composed of members of the organisations which are not represented in the Legislative Council.

2. There is a suggestion that principal officials should take up the posts of a small number of delegates.

The Role of the HKSAR Delegates to the National People's Congress

1. A member points out that although the delegates' work mainly concerns with the participation in the management of the affairs of the country, it is sometimes difficult to draw the line between the affairs of the country and those of the SAR. An example would be the power of interpretation of the Basic Law of the HKSAR. This would involve the conflict of interest between the country and Hong Kong. Under such circumstances, the delegates of the SAR would be in a dilemma.

2. A member reckons that the role of the future Hong Kong delegates to the NPC should be three-fold: Firstly they represent the HKSAR in the participation of the management of affairs of the whole country so that the spirit of one country can be put into effect. Secondly they are to reflect the views of the people of Hong Kong to other delegates to the NPC. Thirdly, they are to report to the people of Hong Kong the views and decisions of the NPC.
3. A member holds that the future delegates should take care of the interests of both the country and the SAR. By so saying, it means that when the interests of the SAR concur with those of the country as a whole, the delegates should fight for them. If, however, the interests of the SAR conflict with those of the country, the SAR should succumb to the country.
4. A member expresses that if the principle stated in 3 above is to be adopted, he would have reservations about whatever ways of selecting the delegates. However, another member argues that if the delegates put the interests of the SAR first, he would be doubtful as to whether they are qualified to be delegates at all.

#### The Relationship between the HKSAR Delegates to the National People's Congress and the Legislative Council

1. There is a clear distinction between the work of the delegates and that of the Legislative Councillors: the former represent Hong Kong to take part in the management of the country's affairs while the latter are responsible for the internal administration of Hong Kong. Nevertheless, since the delegates are familiar with the situation in the PRC and are an important bridge between the PRC and Hong Kong, they may act as advisors to the Legislative Council.

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

# 第一屆特區政府的產生 專題研究報告

(1987年11月4日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會  
政制專責小組

## I. 導言

經本專責小組討論後，就第一屆特區政府產生的方案已由坊間的三個增至十數個，分別有(1)查濟民方案(4/8/87)、(2)戴耀廷方案(24/8/87)、(3)張炳良方案(18/9/87)、(4)夏文浩方案(28/9/87)、(5)76人方案(1/10/87)、(6)簡福怡方案(5/10/87)、(7)徐是雄方案(7/10/87)、(8)吳夢珍方案(9/10/87)、(9)張振國、程介南方案(10/10/87)、(10)錢世年方案(10/10/87)、(11)杜葉錫恩方案(10/10/87)、(12)林邦莊方案(10/10/87)、(13)何鍾泰、唐一柱、曹宏威方案(25/8/87)及(14)香港民主民生協進會(26/10/87)。

本報告主要分三部份：(1)對「第一屆政府產生」的討論是否需要；(2)各方案之介紹及有關評論；及(3)本專責組對第一屆政府產生有關問題之討論。

## II. 對「第一屆政府產生」的討論是否需要

有認為首屆政府的產生涉及政權的交接，不能單獨由基本法起草委員會決定，應由中英雙方透過外交途徑或由中英聯合聯絡小組解決。而另有意見認為起草委員會是中方的工作機構，而非決策機構，起草委員會可以工作機構的身份討論這問題，得到結論後才交中國當局，再循外交途徑或聯絡小組討論。

有委員認為討論「第一屆政府產生」這題目肯定是需要的，因基本法結構草案有「第一屆政府產生」這一條條文，故不能不討論。

## III. 各方案

### 1. 查濟民方案(4/8/87)

#### (1) 不同情況，不同安排

查草委的方案分別從順利銜接與不順利銜接兩種情況來作構想的。但兩種不同情況的構想卻有其共通點：

- 1) 1990年——在1990年開始第一屆政府產生的籌備工作
- 2) 顧問團的產生——
  - i) 由五十人組成
  - ii) 由香港各界提名
  - iii) 由中央委任(經中英協商委任)
- 3) 第一屆行政長官的產生——由顧問團與中央協商
- 4) 行政會議成員的產生——由行政長官提名，請中央任命
- 5) 主要官員的產生——由行政長官提名，請中央任命

#### (2) 在順利銜接時

- 1) 顧問團工作——
  - i) 1992年參加各政府部門，觀察各部門工作
  - ii) 推選代表列席行政、立法兩局會議
  - iii) 1994年後，與中央協商產生第一屆行政首長

- 2) 行政首長——1995年後，候任行政首長進駐港督府觀察日常工作
  - 3) 立法局——1997年，原有立法局議員繼續工作至任滿時，根據基本法規定重選
- (3) 在不順利銜接時
- 1) 顧問團工作——
    - i) 顧問團成員分集體以民間身份觀察香港政府工作，必要時通過建議，傳媒或諮詢渠道向港府提出意見
    - ii) 1993年後與中央協商產生第一屆行政首長
  - 2) 行政首長——1995年，提名行政會議成員及主要官員名單，報請中央任命
  - 3) 立法局——
    - i) 1997年7月1日行政首長接任後，解散97年6月30日前的立法局
    - ii) 1997年7月1日起至新的立法會議產生前，立法會議的工作可以下列三種辦法處理：
      - a) 暫無立法會議，一切新的法律，特別撥款等暫時凍結，為時不能過久。行政區政府必須於六個月內按基本法產生新的立法會議；
      - b) 由顧問團臨時代替立法會議至依基本法產生新立法會議成立為止，為期不超過一年；
      - c) 由顧問團選舉立法委員若干人組織臨時立法會議，暫代立法會議職能，直至依基本法產生的新立法會議成立為止，一般不超過二年。

(4) 影響

方案建議人認為這種過渡方式能使港人逐步熟悉本港中央層次的運作，以保證未來首屆特別行政區政府順利產生。而顧問團經中央委任是不會成為「影子內閣」或另一個「權力中心」的，因他深信大多數港人都會自律。而目前最熟悉港府各部門工作的是公務員，如果將來顧問團能吸納一部份現時的公務員，包括一些高級公務員加入，這對港府的工作不僅不會造成影響，相反，將來如遇一些涉及內地方面的問題，顧問團成員便更易與中央協商，及得到中央的支持。

但有人質疑：1) 顧問團能否順利產生？2) 會否被視為嚴重干預九七年前原有政府的運作及影響到原有政府的威信及管治實效，而英港政府亦因而拒絕合作？3) 這是否等於中國政府提前接管香港，其主要目的是為培植一群親中的行政領導層人員，以接替現時親英的高官及行政局議員，在其監察及培植過程中，原有政府的各部門官員一方面仍隸屬名義上掌權的英國人，另一方面又要盡力奉承這群「未來主人翁」顧問團，惟恐官位不保，如此便令公務員內部分化，影響效率及士氣。4) 由一個五十人顧問團提名、由中央任命的行政長官及由行政長官提名，由中央任命的主要官員及行政會議成員的合法性及代表性都是不利九七年後特區政府的威信、領導及協調香港社會有秩序的過渡。5) 在出現「不順利銜接」的情形，顧問團也會被英方疏離架空，根本接觸不到政府內部運作的情況，起不了將來有效接管的真正作用。

有委員認為《中英聯合聲明》規定一九九七年之前由英國政府負責香港的行政管理。而此方案認為顧問團經中國中央委任，便不會成為「影子內閣」或另一個「權力中心」，此乃一廂情願的看法。我認為該方案乃違反《中英聯合聲明》內的上述規定。

有委員認為此方案的好處是：1) 及早進行第一屆政府產生之籌備工作(1990)。2) 在順利銜接之情況下，候任行政首長於1995年後進駐港督府觀察日常工作，此建議若可行有助候任行政首長九七年之工作。

可質疑的兩點是：1)以上第2)點是否可行？會否防礙九七年前原有政府的運作？即或可行，於一九九五年實行又似乎過早。2)「顧問團」有否違反聯合聲明之港人治港、高度自治之精神？其於第二屆政府之產生上又扮演甚麼角色？

## 2. 戴耀廷方案 (24/8/87)

### (1) 原則

- 1) 臨時性的，半年至一年，而第一屆政府的結構可與憲法規定的常設政府結構不同，且其他國家經驗多是與權力移交前的政府結構一樣。好處是減少權力過渡時可能出現的混辭，政府仍能照常運作。
- 2) 第一屆政府不可干預權力移交前的原有政府的運作，目的是確保原有政府能夠在權力移交前仍有效地運作，而不會在權力移交前的一般時間，已完全受制於將來的政府，威脅到該地區在權力移交前的穩定。
- 3) 移交的安排必須確保該地區的社會穩定。

### (2) 第一屆政府的產生

- 1) 行政長官——
  - i) 產生：由基本法生效前原任職香港總督出任
  - ii) 任期：六個月，任期屆滿時需辭退職務
  - iii) 職責：
    - a) 維持政府的日常運作
    - b) 執行基本法的規定，任期内產生第二屆行政長官及第二屆立法機關
    - c) 執行措施以確保權力順利移交至第二屆政府
    - d) 行使上述職權不能與基本法抵觸
- 2) 立法機關——
  - i) 產生：由在基本法生效前原任職香港立法局議員出任
  - ii) 任期：六個月
  - iii) 職責：
    - a) 確保政府的日常運作
    - b) 制定選舉法規定以貫徹基本法的規定，在基本法生效後的六個月內產生第二屆行政長官及第二屆立法機關
    - c) 制定法律以助權力順利移交至第二屆政府
    - d) 行使上述職權不得與基本法抵觸
- 3) 主要官員——
  - i) 產生：由基本法生效前原任職香港政府的公務人員出任
  - ii) 任期：由基本法生效後，至第二屆政府的主要官員產生為止
- 4) 行政會議——第一屆政府不設行政會議
- 5) 全國人民代表大會代表——根據基本法的規定在基本法生效後一年內產生

### (3) 生效日期——1997年7月1日

### (4) 權力來源

有認為其建議沿用原來政府充作過渡性看守政府是有困難的，因九七年前的舊政府，權力來源是英國，人事也由英國任命。中國收回香港主權後，香港政府權力來源是中國中央政府，因此其原來權力及委任來自英國的舊政府人事，不宜介入九七年七月一日後的香港政府事務。雖然技術上可以安排中國正式對原有人員作出委任，但由於是近乎「迫於無奈」，似乎有實質地影響中國的主權地位之嫌。

(5) 好處與疑點

有委員認為此方案的好處是沿用原來政府作過渡，不致急變。

但值得懷疑的是：1)方案之安排似乎只把「真正」的第一屆政府之產生拖延了六個月。若其目的乃為使各官員熟習在基本法原則下之政府運作，則隨之而起的問題是：第一屆政府與第二屆政府之關係(如：結構、成員)。2)方案建議行政長官「由基本法生效前原任職港督出任」，若要此建議可行，則需先確保九七年前之港督不是外籍人士，此舉會否涉及對九七年前原有政府之干預？中方又能否確保英政府在此方面之合作？3)方案建議第一屆政府不設行政會議，原因何在？行政會議的角色怎樣？首屆政府是不需要或是不能夠將之設立？

3. 張炳良方案(18/9/87)

(1) 原則：

- 1) 過渡性的、看守性的。
- 2) 主要功能是安排在短期內(半年、一年)按照基本法的規定產生新政府及新的立法機關。在看守期內只負維持政府經常性運作之責，依遁現制，不創新法律或新政策。
- 3) 由於是看守性政府，故可由中央政府自行委任而非經基本法規定之正常產生過程的特別安排。
- 4) 看守性政府並非舊政府的延續，其權力來自中國中央政府。它原則上從舊政府接收所有權力、條約義務、債務及公共財產等。

(2) 行政長官：

九四／九五左右，由英國政府諮詢中國政府，委任一名中、英、港三方都可以接受的港人為副總督，協助總督工作。九七年七月一日特區成立時，中國政府委任該名人士為看守性政府之行政首長，以安排產生新政府。

(3) 司級官員

九七年前舊政府各司級官員可留任，但英政府在七月一日前要確保只委任港人為司級官員，(以符合中央聯合聲明中關於外籍人士不得出任司級官員之規定；)在委任前，英政府宜諮詢中方意見。

(4) 顧問委員會

原行政局原則上解散，但看守政府行政首長可再提請中央委任部份或全部原任行政局成員為一顧問委員會成員，至看守政府任滿為止。

(5) 立法機關

原來的立法局在七月一日成為臨時性機構，只負責監督看守政府之運作，不進行新的立法(緊急事故除外)，而新立法機關產生後可於一段時間內檢討所有在看守期內通過的法律，以確定其應否繼續有效。

(6) 疑點

有委員認為：1)此方案建議第一屆政府是看守性，可由中央政府自行委任，會否違反聯合聲明之民主、自治精神？2)建議首任行政長官由九七年前之副總督擔任，會否防礙九七年前原有政府之運作？英方會否予以合作？

#### 4. 夏文浩方案 (28/9/87)

##### (1) 原則：

- 1) 我建議中英兩國政府以互諒互讓態度，和在公平原則下解決第一屆特區政府產生時所牽涉到的主權問題。
- 2) 移交的安排必須確保香港繁榮安定。
- 3) 新舊政府的人選應有連續性，使新舊政府在政策上有連續性。這項安排符合政制改革，應是循序漸進的原則，並且使新政府人選在九七年之前有管治香港的經驗。

##### (2) 行政長官：

通過中英聯絡小組的安排，中國於九五年在香港根據基本法的規定選出第一屆政府的行政長官；同樣通過中英聯絡小組的安排，由英國委任此人為香港副總督，協助總督工作。在九七年七月一日，由中國正式任命此人為特區行政長官。

##### (3) 主要官員：

上述行政長官在九七年前已有參與管治香港的經驗，故容易了解管治層和各界人士的才能。因此我建議在九七年七月一日，由特區長官提名主要官員，再由中央任命。

##### (4) 立法機關：

九零年，中國人大頒佈基本法。到時香港立法局應朝基本法的規定進一步發展。這發展應在九六年前完成。在九七年不適宜有立法機關選舉。

#### 5. 76人方案 (由梁振英委員提出) (1/10/87)

##### (1) 原則

為了維持市民及投資者對未來的信心，為了盡量維持政治上的穩定，香港應避免在九七年進行任何選舉活動。

##### (2) 立法機關

新立法機關成員的任期將延長至四年，而且互相交錯。假設任期由一九八八年起改為四年，由九二年開始直接選舉部份議席，一九九四年就應該完成所有架構上的改變。第一屆特區政府立法機關成員亦在一九九六年完全產生。九七年中國恢復行使主權時，祇需進行形式上的改變便可。

##### (3) 行政長官

在選舉第一屆行政長官方面，由於該方案建議行政長官由大選舉團選出，故此，第一個選舉行政長官的大選舉團須於一九九七年七月前成立。「大選舉團」的具體組織成份可以由下列兩個方法其中之一決定：

- 1) 由於「大選舉團」的組織及運作細則仍有待「基本法起草委員會」訂定，因此建議在「基本法起草委員會」下成立一個小組，工作期限直至一九九七年，以決定「大選舉團」的具體組織成份。  
或
- 2) 由於聯合聲明指明中英兩個政府確保一九九七年政權的順利交接，「大選舉團」的具體組織成份可由中英聯合聯絡小組負責。

6. 簡福飴方案 (5/10/87)

(1) 不同情況的考慮：

本人認為在考慮第一屆政府的產生這個問題上應該與管治香港權的移交是否會出現銜接問題這一疑問作為一個有關連的問題結合起來考慮。在現階段我們仍未看得清政制銜接是否會出現問題和會出現些什麼問題，因此在考慮特區第一屆政府的產生方案時，我們應考慮到有必要準備不同的方案來應付新舊兩制在銜接方面將產生的不同情況。

從推理的角度來看，在銜接方面新舊兩制可以產生下列的一種情況：1)兩制是可以完全銜接的；2)兩制只可以部份銜接；3)完全不可以銜接。

(2) 完全銜接：

所謂完全銜接就是指新舊兩制的人物除了特區長官的個人身份（九七年前他的身份不可能是“長官”）在新舊兩制轉換之中有稍大變動外，其他人員如主要官員和立法機關的成員都不會有變動。如果能達到這個理想地步的話，第一屆與第二屆政府在結構上基本就是相同的，那麼我們要考慮的也就只會是下列幾個在技術上的因素：1)如何保證九七年從選舉產生的行政長官（如果他不是從協商產生的話）和立法機關的成員在九七年後的合法地位。2)行政長官該在九七年前的那一年當選，當選後他在九七年前該擔任些什麼具體工作才有利於他在九七年後要擔負的工作。3)行政長官能否在九七年前便提名一些主要官員來擔當司級官員？他要提名作為主要官員的人是否只能在九七年後才能上任？

(3) 部份銜接：

至於只有部份政制能銜接的情況，其問題可能會變得非常複雜。部份不銜接的情況可能是以下的一種或多種因素的組合：1)行政長官人選在九七年七月前仍未決定，2)九七年七月前的“司”級官員仍有外籍人士；3)立法局仍有部份委任議員；4)產生立法局議員的功能組別或選舉團或直選的地域劃分、不同組別和選舉團的議席劃分、不同直選地域的議席的劃分，這些在九七年的前和後出現了差別。

由於有以上諸多個可變動的因素，因此我們很難設計出一個可以應付得了只有部份銜接等不同情況的方案。最後定案只能決定於中英兩國在銜接方面所能取得的成果了。

(4) 完全不銜接：

至於如果最壞即完全不能銜接的情況出現的話，我們第一屆政府的產生可能有如下的選擇：1)由中央政府通過與港人協商組成的臨時政府來負起第一屆政府的任務和按照基本法的規定來籌組第二屆政府。第一屆政府雖然是臨時的，但任期卻與第二屆政府相等。2)由中央政府與港人協商產生第一屆的行政長官，然後由他來組織一個臨時政府以便在短暫的期間內（即六個月或一年）按照基本法的規定產生第一屆政府之除行政長官以外的其他主要官員及立法機關成員。在上述方案中中央與香港的協商對象，本人建議應為我們將要討論它的產生和職能的香港特別行政區基本法委員會。

(5) 最妥善的方法：

最妥善的方法應是：由中央與香港特別行政區基本法委員會協商產生第一屆政府的行政長官，然後由他來按照基本法規定組織第一屆政府。但不排除在協商的同時也有選舉，即候選人名單可由協商產生，但誰最後當選則要通過委員會成員的選舉來決定。並贊成如李後和魯平兩位先

生所提議的有“一個人數很少的、由中央派人來主持並有港人加入的香港特別行政區籌備委員會”和由它來主持籌備特區成立的工作來體驗主權的轉移；但行政長官的產生卻不是由它的成員選舉出來的。

(6) 影響：

能應付任何不同的銜接情況。銜接情況的好與壞只影響第一屆的行政長官在籌組第一屆政府的工作量而絕不會影響到第一屆政府能否按條文而產生出來。第一屆的特區行政長官在把舊的政制改變成為新的政制就等如是個裁縫師傅要把一套舊的衣服改成為一套疑衣一樣。這兩者愈接近，修改款式的工作量則愈少，反之則愈多。

7. 徐是雄方案(根據1986年1月19日提出的方案進一步具體化)(7/10/87)

一九九七年之前二年，由人大常委會成立一個由中、港知名人士組成的籌備委員會(類似目前的草委)，由此籌備委員會的香港委員在香港組織一個由各界港人組成的協商團或選舉團(類似現今的諮委)，選舉或協商出第一屆政府行政長官，報請中央任命。協商團和選舉團除有其他職責或任務，不然在產生行政長官後便解散。行政長官(在九七前只能叫候任行政長官)根據基本法的規定組成行政會議。行政會議的成員(九七前為候任議員)由行政長官從主要官員、立法機關成員和社會人士中提名，報請中央人民政府任命(第二屆開始就無需報請中央任命)。第一屆政府在九七年之後二年解散，然後根據基本法的規定產生第二屆政府。第一屆行政長官和行政會議的任期為四年(如果從九七年開始算起只有二年)。第一屆行政會議的成員(候任)與中英聯合聯絡小組的主要成員和香港政府的主要官員(九七後改為顧問身份)組成一個工作小組，負責解決一切交接事宜。至於立法機關則應在97年前由直選、大選團、功能團體選舉產生，再由這些候任成員選出主要官員及在其中選出部份司級官員出任立法機關部份議席。

8. 吳夢珍方案(9/10/87)

(1) 原則：1)平穩過渡；2)體現中國；3)為港人接受並易於與基本法銜接。

(2) 時間及形式

在第一原則下，政府架構以最少變動為最好，但要體現中國的主權，則不能於九七年前便選定第一屆立法議局、行政議局以及行政長官及主要官員。九七年前的政府並沒有責任去執行基本法，而中國亦未必願意讓現在的政府去替她處理香港在九七年後的事。但是要港人安心，中國亦不宜在九七年前去干預香港的政府架構，如先委任副港督之類。因此第一屆政府最好還是以臨時政府的形式出現，到第二屆政府才根據基本法的規定產生。所以第一屆政府只負責維持香港九七年後一個短時期的日常政府運作，並且籌備組成第二屆政府的工作，時間最多不可以超過二年。

(3) 組成

第一屆政府的組成部份包括立法議局、行政議局、行政首長及幾個主要的行政長官、及政府的各級職員。由於中英聯合聲明已列明現有香港公務員留任，所以這部份不同討論。在以最少變動為原則下，立法議局可以暫時不變，但行政首長一定要是立法議局的主席(這與以下體現中國主權有關)，而行政議局的成員可由行政首長委任。

(4) 產生方法

行政首長及幾個主要官員的產生方法則以體現中國主權為原則，在九五或九六年間，由中國以組織草委及基本法諮詢委員會的形式，委出有各界代表的人推薦行政首長及主要行政長官，成為候任行政首長及行政長官，到九七年七月一日再由中國正式委任為行政首長及行政長官。這個方法既體現了中國的主權，亦符合港人治港的原則。至於候任行政首長及行政長官如何熟習九七年前的政府運作，則可以由中英雙方以非原則性的友誼合作的方式讓候任人選熟習政府的運作。不過如第一屆政府的主要任務是產生第二屆政府的話，一般政府運作應不會有大變動，這又可以保證了平穩過渡。至於立法機關則由九七年原任之立法機關成員出任。

9. 張振國、程介南、梁兆棠方案(根據38人方案進一步具體化)(10/10/87)

(1) 行政長官

第一任行政長官提名團▲須於一九九六年上半年內產生，並於一九九七年上半年由提名團推舉三人為行政長官候選人，交由中央政府在三人中選定委任，任期四年，如中央政府否決全部候選人，得交由提名團重新推舉。

(2) 立法機關

第一屆立法機關之中的三分之二成員根據職業分組▲辦法於一九九六年上半年與提名團同時選出，任期二年，另三分之一成員則於九七年上半年由分區直選產生，任期四年。

(3) 司級官員

第一屆政府各部門司級官員，須由候任行政長官於一九九七年七月一日前提名，交由中央委任。

(4) 選舉

為保證九七年前後的順利過渡以及上述辦法得以實現，現行香港政制須於九一年起逐步改變，即九一年、九四年將先後有兩次立法機關選舉，該兩次選舉須逐步減少委任成員，引入分區直選，取消選舉團，並將功能組別選舉改為職業分組選舉。

(5) 不銜接情況

若一旦九七年前後出現不能銜接情況，則由中央政府組織香港各界籌委會推舉第一屆行政長官及立法機關，任期二年，然後於九九年按基本法產生第二屆政府。

(6) 考慮點

根據本建議以及參照其他建議，第一屆政府產生辦法，應考慮讓全民有參與的機會。目前功能組別的選舉辦法未能包容所有各個階層，而且不斷有新的界別產生，大選舉團的辦法則未能符合全民參與的原則，而一人一票普選辦法則未能確保產生的成員有合理的階層及界別比例。

▲附錄：由職業分組選舉的行政長官候選人提名團及立法機關議席分配辦法。

	立法機關議席數目
第一大類職業組別共佔	16
其中 商界(1)	6
工業界(2)	4

銀行界(3)		2
其他僱主		4
第二大類職業組別共佔	16	
其中 醫學界(註冊醫生)		1
其他護理人員		1
教學界		2
法律界		1
社會服務界		2
工程、建築、測量及城市設計師		1
會計、核數師		1
資訊、傳媒專業人士		1
文化、藝術界		1
行政人員		2
其他專業人士		3
第三大類職業組別共佔	16	
其中 文員		2
銷售人員		2
服務業工作人員		2
農、林、牧、漁人士		2
製造、建築、運輸工作人員		6
學生、退休人士、料理家務者 及其他非從事經濟活動人士		2
總數	48	

10. 錢世年方案(10/10/87)

(1) 設立第一屆特區政府時，需要注意的因素：

- 1) 新舊政權的順利交接；
- 2) 中英聯合聲明和基本法的內容；
- 3) 中英聯合聯絡小組的工作。因此

(2) 籌組第一屆特區政府應由基本法公佈後兩年內開始(即1992年)

(3) 第一屆特區政府產生日期應為1997年7月1日而與英國政府委任的最後一任政府(1995—97年6月30日)作緊密的銜接。而第二屆特區政府的產生應為兩年之後，而且任期方改為四年(1999—2003)。

(4) 第一屆特區政府雖然仍然是一個憲制性的政府但有些方面則毋需完全按照基本法的規定(如任期僅為兩年)第二屆特區政府則可以完全按基本法的程序和規定產生。

- (5) 中國政府於1992年成立第一屆特區政府的顧問委員會與基本法委員會和中英聯合聯絡小組共同籌備第一屆特區政府的籌組工作。
- (6) 第一屆特區政府的結構須等待基本法公佈後方能決定，而第一屆特區政府負責依基本法籌組兩年後(1999)的第二屆特區政府。
- (7) 行政長官—第一屆特區行政長官任期兩年，由1997年7月1日至1999年6月30日由第一屆特區政府籌備委員會(由第一屆特區政府顧問委員會，基本法委員會，中英聯合聯絡小組組成)協商提名，由中央人民政府委任。
- (8) 立法機關—第一屆特區立法機關任期兩年，由1997年10月1日至1999年9月30日，由第一屆特區政府籌備委員會按照基本法規定選舉產生。
- (9) 主要官員—由第一屆行政長官提名，於1997年7月由中央人民政府委任(司級官員)，其餘公務人員由第一屆行政長官根據中英聯合聲明加以委任。

#### 11. 杜葉錫恩方案(10/10/87)

有人提議在九七年之前，即在殖民制度下，選舉行政長官及立法機關(不論是什麼選舉方式)，以便在九七年七月前接收權力。但我認為中國不會同意這做法，所以現在提出另一順利交接的方案：

##### (1) 行政長官

中國任命一個臨時行政長官，自七月一日起作行政長官三個月。這臨時行政長官的人選應熟悉香港的情況，最好是香港人所接受的。這臨時行政長官有可能在三個月後，即九七年十月一日，以基本法所規定的方法成為正式的行政長官。

##### (2) 立法機關

立法機關的新會議年度由每年十月開始，至九七年七月一日，在任立法機關成員的三年任期尚有三個月才告屆滿。如果中國同意，他們可留任至十月，但任期屬臨時性質，這樣便可制衡行政長官的權力。在這三個月內，可根據基本法選舉立法機關，而在此之前，原則上已為選舉作好準備。如果各方面都決意做到順利過渡，在九七年七月一日便不會有即時的改變(行政長官一職除外)，而交接期則維持三個月。許多立法機關成員都很可能會重新獲選，沒有資格再成為立法機關成員的外籍人士則應遠在九七年之前已經辭職了。

根據中英聯合聲明任何沒有資格擔任各部門最高職位的公務員都應在九七年七月一日前辭去職務，因此公務員架構在九七年不會有顯著的變化，令政府各部都能順利過渡。

##### (3) 主要官員

由行政長官提名，中央任命。

#### 12. 林邦莊方案(10/10/87)

##### (1) 1) 需要注意的因素

(a) 「政府」一詞包括以下各項，應考慮每項在主權移交時需作什麼改變：

##### I) 行政長官

- II) 行政會議
- III) 立法機關
- IV) 行政機關
- V) 主要官員
- VI) 各政府部門的正職和副職
- VII) 公務人員 (包括顧問)

- (b) 改變愈少愈好。
  - (c) 各官員的效忠對象及國籍要符合英國和中國的要求。
  - (d) 主權及管治方面一定要有真正的轉變。
  - (e) 政府權力不應出現真空。
- 2) 以先易後難的程序處理各方面：
- (a) 公務人員 (包括顧問)  
只要任命顧問來補充不足，過渡便不會出現問題。
  - (b) 各政府部門的正職和副職  
在執行中英聯合聲明及通過中英聯合聯絡小組解決問題時，英國應確保到一九九七年中，再沒有英籍或其他外籍人士擔任中英聯合聲明所述的主要政府部門正職和某些主要政府部門副職；及如有需要，所有適當的顧問職位都有人擔任。在主權移交時，這些正職和副職需由中央人民政府重新任命。
  - (c) 立法機關  
立法機關應在一九九七年六月底休會，以便在主權移交後舉行選舉。這樣，立法機關便能在九／十月開第一次會議。
  - (d) 行政會議  
如果行政會議是由行政長官成立的，則要待主權移交後才由行政長官任命。
  - (e) 主要官員  
主要官員須由行政長官提名，所以要待行政長官選出後才可提名主要官員。
  - (f) 行政機關  
由於「行政機關」一詞未有界定，現假定行政機關包括行政長官、主要官員、各政府部門的正職和副職。這些職位人選在提名和選出後，都要經中央人民政府任命。但任命要待主權移交時或之後才告生效。任命應在主權移交後盡快生效。
  - (g) 行政長官  
根據中英聯合聲明，行政長官是在當地通過選舉或協商產生。這顯示他會由香港選出來的香港永久性居民可由選舉產生的規定表示這產生過程是有意達到民主的目的。因此我希望符合基本法的第一屆行政長官選舉能在一九九七年中之前在中央人民政府的權力及英國政府的允許下在香港舉行，由香港政府提供實際援助，即提供投票站工作人員及警務人員、准許候選人進行競選活動。候選人的提名應是公開的，並符合基本法規定的資格。獲選的候選人應在主權移交前由中央人民政府任命，但這任命在主權移交時才生效。將來的行政長官可以其候任行政長官的身份，提名未來的主要官員，以便在主權移交時立即委任他們。在主權移交後，行政長官及其行政機關隨即籌備立法機關的選舉。

這方案能確保：

- i) 在主權移交時變動減至最少。
- ii) 香港政府在主權移交前後的效忠對象及國籍，符合英國和中國的要求。
- iii) 真正移交主權與治權。
- iv) 政府權力不會出現真空。
- v) 符合中英聯合聲明，並保證能民主產生第一屆特區政府。

13. 何鍾泰、唐一柱、曹宏威方案 (25/8/86)

過渡期內的安排

- (1) 為了政制的連貫性，政制應在過渡時期內開始逐步進步。
- (2) 在八八及九一年立法局選舉時，可以逐步使立法局的組合趨向未來的香港政制。
- (3) 過渡政府應在九四年設立，政制一如未來香港特別行政區的政制，首屆行政長官也適宜於九四年產生，任期橫跨九七，直至二零零零年。
- (4) 負責推選首屆「行政長官候選人」的「遴選委員會」，其「界定團體」的名單及分配比例，可以透過「中英聯合聯絡小組」商議後產生。
- (5) 「遴選委員會」推選出首屆「行政長官候選人」，先經由「中英聯合聯絡小組」審批，再交由香港市民普選（過程可參照本方案的行政長官產生方法）
- (6) 九四年產生的「遴選委員會」的其他任務，可參照本方案「遴選委員會」之四點主要任務。
- (7) 此方案是立腳於兩地政府在過渡計劃上，全無芥蒂地進行配合的交接程序，但這方案在客觀上，應有一定技術上和原則上的困難。
- (8) 曹宏威委員認為：無論如何，過渡是事實存在的，是否要設立一個臨時政府總理其事也需要積極地考慮，這個臨時政府，任期宜短，但又不應有其急切的時限。它一定要把兩件事辦理好。其一是：處理主權回歸的一切事務，其二是：創造足夠條件，使特區第一屆政府可依基本法順利產生這兩件事辦好，臨時政府的工作便結束。

14. 香港民主民生協進會

- (1) 行政長官—96年底，由立法機關提名，全港一人一票選出候任行政長官。  
97年1月至6月期間，應在港督的協助下，熟習各項施政的安排，至97年7月1日由中央正式任命。
- (2) 主要官員—由行政長官提名，97年7月1日由中央任命。
- (3) 立法機關—97年立法機關的議席應為80席，50%直選產生，25%由選舉團選舉產生，25%由功能團體選舉產生。88年開始，立法局應引入直選，並變動其他議席的數目，以達至97年前全部由選舉產生。

### III. 主要問題

#### 1. 討論問題

- (1) 考慮設立第一屆政府時，需要注意的因素。
- (2) 籌組第一屆政府的工作應由何時開始？
- (3) 第一屆政府與第二屆政府產生的日期？
- (4) 第一屆政府構想的性質應屬臨時性的，還是憲制性的（照基本法內的一般規定）？
- (5) 若有「順利銜接」與「不順利銜接」之不同處理，應何時決定採取哪一種措施？
- (6) 第一屆政府的結構、功能及產生方法及其與第二屆政府的關係？

#### 2. 本組討論

##### (1) 「政府」的定義

有委員提出，在討論第一屆特區政府產生前，應先討論什麼是「政府」。有委員回應，「政府」應包括行政長官、主要官員及立法機關。亦有認為行政會議亦應包括在內。另外，有委員指出一般人都有一假設，就是以為司級官員的轉變沒大重要，而事實上其轉變的影響性是很重大的。另外，有委員指出一般市民擔心的是九七年政權轉移當日及第二屆政府產生時會發生什麼事，政府內部是否會有「大換班」的情況出現。但有委員回應，認為司法機關並非選舉產生故無需改變，至於司級以下之公務員亦是無需改變，故司法機關及司級以下之公務員是不在憂慮之列。

##### (2) 討論這問題的需要

有不少委員認為中英聯合聯絡小組可在銜接問題上作出安排，更有認為現時聯絡小組已是為銜接事宜工作，根本無需再另談安排。亦有認為銜接的特別安排是可透過類似中英聯合聯絡小組協助過渡的。另有委員認為除此以外，第一屆政府的產生方法應與第二屆或以後的政府產生方法一樣，故根本無需特別討論第一屆政府的產生。

##### (3) 考慮因素

有委員質疑當香港仍在英國的政權下，及基本法尚未開始運作（即九七年前）便根據基本法的規定預先選舉第一屆特別行政區立法機關，是否合乎法理呢？

有委員回應認為這是合法理的，如英國的看守性政府是可在上任首相（政府）任期未屆滿前選出的，而議會則在看守性政府選出時解散重選。而美國的新一屆政府亦是在舊政府屆滿前兩個月開始選出，到屆滿期新政府便正式就任，因此在英政府下產生未來特區政府亦是合法理的。但有委員卻認為香港的情況是特別的，因這牽涉到主權的轉移問題。

有委員提到如何可體現中國主權是很重要的。由於是主權轉移，應另有一新的主權，故行政長官及主要官員都應在97年7月1日由中央委任。

但另一方面，有委員指出法理與主權的因素固然重要，但97年前之香港政府的運作亦需考慮。如在97年前提早產生臨時性政府，可能會對現時的港府做成困難。再者，我們都應有一個信念，就是無論97前或後的政府都是為香港人謀福利的，故兩者都應受到考慮及重視。

#### (4) 第一屆政府的性質

本組對第一屆政府產生的意見主要為：

- 1) 第一屆政府在九七年前已產生並運作，跨越九七年七月一日，到時由中央再任命。
- 2) 產生候任行政長官，在97年7月1日才由中央正式委任
- 3) 97年7月1日才設臨時性或第一屆政府，與中英聯合聲明及基本法規定一致的。

有委員認為考慮這問題要視乎97年前後香港的實際情況，委員認為愈早開始籌組愈能令香港人消除疑慮及有信心，並建議97前後兩年什麼都不搞，而用「直通車」的設想，通過中英聯合聯絡小組，就是在中英兩國同意下產生臨時政府，在97年7月1日中央正式任命，在99年才舉行第一屆的選舉，這樣便可減少問題亦能避免動盪。這個構想有兩個假設：1) 互讓互諒，但該委員認為若中英兩國不是互讓互諒的話，香港便沒有前途了；2) 中國可接受這班人（臨時政府的成員），但該委員認為中國是沒有理由不接受這批政府成員的。

有委員認為第一屆政府應與第二屆政府盡量相同。有委員認為只要香港人有這樣的共識及英國政府合作則不難達至這目標。亦有認為既然九零年基本法初稿已定，第一屆政府就應按基本法規定的模式來產生。更有認為其中需要轉變的，如立法機關成員的效忠等問題，則由中英聯合聯絡小組負責處理。亦有建議立法機關可以程序上的轉變將舊制下的立法機關變為特區立法機關，同樣地行政長官亦可通過類似的程序安排產生。因此第一屆政府應屬憲制性的（照基本法內的一般規定）。

亦有委員認為在九七前產生特區臨時政府，行政長官在九七前是候任的，主要官員則由行政長官提名，在九七年由中央正式任命，至於立法機關則難在九七前產生，故建議在九七年七月一日後三個月內產生立法機關，這種方法可避免了「直通車」式產生方法的法理問題。有委員建議在九七年前協商產生候任行政長官，因在九七前用選舉產生行政長官有很多困難。而立法機關在九七年後才由選舉產生，這會引出一個問題，就是在這段時間法律如何得以通過。

另一方面，有委員認為「銜接」問題是非常重要的、銜接程序有三大可能性，一是完全銜接，一是部份銜接，一是完全不銜接。而第一屆與第二屆政府的分別又按銜接的程序不同在產生程序和結構上又有分別。（各考慮問題見簡福飴方案）但委員指出最理想的當然是完全銜接及第一屆政府在結構上與第二屆的一樣；但若要做這部份，是有賴香港政府在中英聯絡小組的指示下在一定時間內按步就班地組成政府。而這是行不通的，因：1) 基本法只可規定香港特區九七年後的運作而不能有任何條文指令九七年前的港英政府遵守和執行；2) 中英聯合聲明規定中國在97年後在香港行使主權，因此在97年前要求選出第一屆政府便有提前行使主權之嫌。另一建議是過渡期最末一屆港英政府與第一屆政府結構一樣，該委員卻認為此方案不行，因：1) 這等如令中國放棄組織第一屆政府的權利；2) 由於過渡期的最後一屆港英政府是全由港英政府決定的，中國沒有指示性可言，這會迫使中國全部承擔第一屆政府的後遺症的，因所有改變都要待第二屆政府產生才可進行。第一屆政府與過渡期最末一屆政府結構一樣本是最理想的，但任何方案，如在實施上要牽涉到九七年前的香港政府及其合作，那麼中國便變得被動，且基本法只能規範特區政府在九七後的運作而不能有任何條文指令九七年前的港英政府來遵守和執行。至於港英政府的合作熱忱亦沒有人能保證。

再者基本法的擬定也不能基於一個或然因素的出現來擬定的。因此應假設在銜接方面出現最壞的情況下來擬定第一屆政府產生的方案，因在最壞的假設下擬定的方案是最能應付到各種可能性的。而最佳的方法就是設立臨時性的第一屆政府，其結構以至產生方式都可與第二屆的不同，而作用就是交棒。亦有委員認為這種方式在國際上亦有先例可援。另外有委員認為臨時性的政府可處理如功能團體的劃分問題，因九七年前後的劃分法及結構很可能是不同的。

(5) 時間

贊成第一屆政府為臨時性政府的委員，贊同在九七年前開始籌備工作，而這臨時性政府的目的乃為在九七年七月一日後短期內產生第二屆，就是按基本法產生的政府。

至於贊成第一屆政府的產生與第二屆相同的委員，其中有贊成九七年前開始籌備工作（包括選舉及協商）。其中不少贊成一九九七這年不宜有選舉活動，因這不利平穩過渡。技術上的安排就有委員建議九七前按基本法產生政府，而該政府只是候任政府，至九七年七月一日才正式上任，因而亦免了銜接問題。更有認為九七年前進行選舉及／或協商是讓世界各地對香港的穩定性有信心。

另外，贊成第一屆政府按基本法產生的委員，亦有認為應在九七後才產生第一屆政府。之前的銜接問題則待中英聯合聯絡小組或通過港英政府的合作將之解決，到九七年才正式產生第一屆政府。

亦有委員認為政府產生的時間很重要，故建議行政長官在九七年前兩年產生，在九七後再運作多兩年，因此建議行政長官的任期為四年。

REPORT ON THE SUMMARY OF THE PROPOSALS REGARDING  
THE SELECTION OF THE CHIEF EXECUTIVE

(passed by the Executive Committee on 4 November 1987)

Special Group on  
The Political Structure of the SAR

I To be selected by the legislature

1. Albert Chen's proposal

The Chief Executive, who is concurrently the president of the Executive Council, is to be elected from among members of the Executive Council through consultations. Members of the Executive Council are to be elected from among members of the legislature.

2. Joseph Y.S. Cheng's proposal

The Chief Executive is to be elected from among members of the legislature. Any qualified elector may become a candidate for the Chief Executive. However, he must be nominated by 10 legislators in order to stand for election.

3. Mao Chi Wang's proposal

The Chief Executive is to be elected by the Legislative Assembly (the legislature). Any candidate must be nominated by 10 members of the Legislative Assembly (the legislature) in order to stand for election.

4. Proposal of the Hong Kong Affairs Society

The Chief Executive is to be selected by the Executive Committee. Apart from heading the departments within his jurisdiction, the Chief Executive is to preside at meetings of the Executive Committee. Members of the Executive Committee are to be elected by members of the legislature. Only current members of the legislature or Executive Committee members who run for re-election may become the candidates for Executive Committee members.

5. Lee Wah Ming's proposal

The Chief Executive is to be selected by the legislature election.\*

6. Meeting Point

The Chief Executive is to be selected by the legislature. Any Chinese nationals who have resided in Hong Kong for at least 10 years and registered as electors are qualified to be candidates. Any candidate must be nominated by 10 legislators in order to stand for election.

\* The meaning of the Chinese original is obscure.

7. Fung Wai Kwong's proposal

The Chief Executive is to be elected from among members of the legislature which is formed by both direct and indirect elections.

8. Proposal of the Hong Kong Institute of Planners

The Chief Executive is to be selected from among members of the legislature. Any candidate for the Chief Executive must be supported by at least one-fourth of members of the legislature. Should there be more than one candidates for this office, the Chief Executive is to be elected by members of the legislature.

II To be selected by other means

A Direct election without restriction on nomination

9. Student Union of the Hong Kong University

The Chief Executive should ultimately be elected in a general election.

B Direct election with restriction on nomination

10. Hok Yau Club

A selection committee comprising 150 to 200 members who are representatives of various functional constituencies is to be formed. The committee will be responsible for selecting 5 "official candidates" through consultations or by elections. The Chief Executive is to be selected by direct election in the form of "referendum".

11. Commission on Public Policy of Hong Kong Christian Council

Any candidate for the Chief Executive must be nominated by 5 members of the legislature. The Chief Executive will be elected by all electors in Hong Kong on a one-man-one-vote basis.

12. University Graduates' Association of Hong Kong Limited

A nomination college is to be formed by all members of the legislature and the same number of local people appointed by the Central Government. Any candidate for the Chief Executive must be supported by 1/8 of the members of each of the two parties.

13. 190 proposal

Any candidate for the Chief Executive should be nominated by members of the legislature and stand for direct election on a one-man-one-vote basis.

14. Ng Hong Mun's proposal

A 37-member nomination committee for the Chief Executive (including Hong Kong delegates to the NPC, members of the Political Consultative Conference, representatives of the legislature, Secretary-level officials, representatives of the Urban Council and the Regional Council, and representatives of the District Boards and community organisations) will be responsible for choosing 3 to 5 candidates who will then stand for direct election with universal franchise.

15. 38-member proposal

The Chief Executive is to be nominated by a nomination committee for the Chief Executive and then selected by referendum. The nomination committee will be composed of 128 members among whom 96 will be elected by the professional divisions, 16 will be elected from among the Hong Kong delegates to the NPC and members of the Political Consultative Conference, and 16 will be elected from among members of the legislature.

16. Ai Fan's proposal

The Chief Executive will be nominated by 10 (or 20) bodies (the membership of each being at least 500) and elected on a one-man-one-vote basis.

C Grand Electoral College

17. Tritolaire Academy

The Chief Executive is to be elected by an electoral college which is formed by members of the legislature and district authorities.

18. Albert Cheung's proposal

The Chief Executive is to be nominated by Legislative Councillors and then indirectly elected by members of the councils at various levels.

19. Proposal of the Business and Professional (76-member) Group of the CCBL

The Chief Executive is to be elected by an electoral college comprising 600 members. The electoral college will consist of members of the legislature, representatives of the Urban Council, Regional Council and District Boards, and representatives of various classes and sectors. Members of the electoral college will elect from among themselves 20 persons to form a "nomination committee". The "nomination committee" will select three candidates who are qualified in all respects to be the Chief Executive. Then the Chief Executive will be elected by a vote of the full electoral college. Members of the "nomination committee" will not be eligible to be candidates themselves, nor to vote when the selected candidates are voted upon by the electoral college.

20. Political Structure Group of the Christian Concern Committee for the Basic Law

The Chief Executive may be elected by an electoral college (comprising Legislative Councillors, Urban Councillors, Regional Councillors, and members of District Boards). It is hoped that this arrangement will develop towards the goal of "the Chief Executive being elected on a one-man-one-vote basis" after the establishment of the SAR.

21. Hong Kong People's Association

The Chief Executive is to be elected by an electoral college (comprising 420-560 members) formed by functional constituencies and district authorities.

22. Hong Kong Chinese Civil Servants' Association

An electoral college of 500-600 members will elect a 5-member nomination committee which will be responsible for nominating a certain number of candidates for the Chief Executive. The electoral college will then elect the Chief Executive from these candidates.

The electoral college will comprise representatives of functional constituencies Chairmen of District Boards, and representatives of the Urban Council and the Regional Council.

23. Joint Conference of Health Care Professional Organisations on the Basic Law

An electoral college (of 500-600 members) comprising people from various sectors (functional constituencies, representatives of the Urban Council and district authorities) is to elect a nomination committee which will be responsible for nominating a certain number of candidates for the Chief Executive. The Chief Executive will then be elected by the electoral college.

D Consultations held locally

24. Victor Sit's proposal

The Chief Executive is to be selected through consultations by a consultative college. The consultative college will comprise all unofficial members of the Executive Council, all Legislative Councillors, functional constituencies and community organisations. On the basis of consultation, the members are to discuss the suitable choice of person for the post of Chief Executive. If necessary, the Chief Executive may be elected on a one-man-(or unit)-one-vote basis.

25. Ku Sing Fai's proposal

The Hong Kong members of the Drafting Committee for the Basic Law will look for suitable persons to form an "administrative advisory council" which may nominate candidates for the Chief Executive. The "administrative advisory council" will then collect views from the public within a six-month consultation period, after which the Chief Executive will be selected either through democratic consultations or by election.

E Consultations held by the Central Government

26. Sin Ming Lun's proposal

The candidates are to be selected from people of various sectors in Hong Kong through consultations with the Central Government. A candidate who is decided on by the Central Government should obtain the approval of an elected legislature.

27. Sun Wai See's proposal

Consultations will be held by the Central Government i.e. the Central Government will set up a selection committee of Hong Kong people for consulting the Legislative Councillors and people of the various community bodies. A list of not more than 3 candidates will be drawn up and given to the people of Hong Kong for election.

F Hong Kong will be responsible for nominating a certain number of candidates from whom the Central Government will select a few, and then Hong Kong will make the final decision.

28. Chung Keng

The legislature is to nominate several candidates (who may be people from various strata of society or members of the legislature). The list of candidates is to be reported to the Central Government and then direct election will be held.

29. Raymond Ho, Tong Yat Chu, and Tso Wung Wai

A selection committee will be established. It will comprise about 60-80 members who are selected by various "designated organisations" and appointed by the NPC. (The list of "designated organisations" and the number of members selected by each designated organisation should be more or less the same as those in the formation of the Consultative Committee for the Basic Law.) The selection committee is to select 3 to 5 candidates who with the approval of the Central Government will stand for direct election with universal franchise.

30. Zee Sze-yong's proposal

Regarding the first SAR Government, 2 to 3 candidates for the Chief Executive will be nominated by a grand electoral college. After the nominations are approved by the Central Government, the Chief Executive will be elected by the grand electoral college.

Regarding the second SAR Government, the grand electoral college will nominate 2 to 3 candidates for the Chief Executive. After the nominations are approved by the Central Government, a general election will be held.

Should the grand electoral college be abolished in the future, the candidates for the Chief Executive will be nominated by the legislature and will stand for general election with the approval of the Central Government.

31. K.S. Lo's proposal

With 5 members selected from among the Legislative Councillors and another 5 members selected from among the Hong Kong delegates to the NPC, an impartial and balanced "ten-member nomination group" will be formed. The group will through consultations recommend a candidate from each of the following: (1) the Legislative Council, (2) the civil service, and (3) the various sectors of society. Then the Central Government will appoint one of the three candidates as Chief Executive of the HKSAR.

III Other proposals

32. Hong Kong Federation of Students

The Federation commented on "a proposal for the future structure of the HKSAR Government" presented by the Business and Professional Group. They held that the selection of the Chief Executive "must ensure institutionally the participation of the people at large in the process of selecting the appropriate candidate". Besides, they strongly opposed to the election of the Chief Executive by an electoral college which strictly speaking was not an elected body.

33. Vincent Ko's proposal

It was pointed out that the Chief Executive should not be elected by the legislature, nor should he be directly elected. Indirect elections or consultations would be more appropriate.

34. Agnes Ng's proposal

- 1) The first Chief Executive: A certain number of candidates for the Chief Executive are to be nominated by the Sino-British Joint Liaison Group jointly with the Executive Council, the Legislative Council, and the incumbent Governor. The Central People's Government will then make the final decision and appoint the Chief Executive.
- ii) The second and the subsequent Chief Executives: The above-mentioned method can be adopted except that the Sino-British Joint Liaison Group will no longer be involved in the nomination of candidates.

35. Cha Chi-man's proposal

- 1) The second and third Chief Executive after 1997  
The advisory council (which will be formed before 1997, with members nominated by the Hong Kong Governor, and approved and appointed for a lifelong term of office by the Central Government) should through consultations nominate a Hong Kong person who is not a member of the advisory council. The candidate will be appointed by the Central Government upon approval.
- ii) The Chief Executive around 2010  
After carrying out consultations, the advisory council will nominate 2-3 Hong Kong persons. After the nomination is approved by the Central Government, a general election will be held in Hong Kong. The candidate who gains the largest number of votes will be appointed by the Central Government as Chief Executive.

36. Association for Democracy of Hong Kong

The Chief Executive is to be nominated by a relatively detached political and economic advisory committee. The nomination should be passed by 2/3 of the legislature members and then forwarded to the Central Government for appointment. Members of the advisory committee should be people with a long history in Hong Kong and of substantial experience in legislation, administration, judicial affairs, industry, commerce, finance, or investment.

37. Fraternity for the Sharing of the Christian Way

The Chief Executive should be elected from the "candidates pool". The candidates will be nominated by registered electors in Hong Kong. A one-man-one-vote general election will then be held in Hong Kong.

Members of the candidates pool include all elected former and serving members of the legislature, the Urban Council, the Regional Council, and the District Boards, the incumbent Chief Executive and a certain number of representatives of the functional constituencies.

38. Chan Hip Ping's proposal

Under the authorisation of the State, a nomination committee for the Chief Executive comprising Hong Kong people from various sectors is to be formed. It will be responsible for nominating a certain number of candidates and reporting the nominations to the State which will appoint the Chief Executive, the Chief Secretary, the Financial Secretary, the Attorney General and the Chief Justice.

39. Cheung Sai Lam's proposal

The first Chief Executive is to be selected through consultations.

The second Chief Executive is to be nominated by a nomination committee and selected by an electoral college in an election with more than one candidates.

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

# 行政長官的產生方法 方案歸納報告

(1987年11月4日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會  
政制專責小組

(一) 由立法機關產生

1. 陳弘毅方案

行政長官由行政局成員協商、互選產生，他兼行政局主席，而行政局成員則由立法機關互選產生。

2. 鄭宇碩方案

行政長官由立法機關成員選舉出來。任何合資格選民都可或為行政長官候選人，但他需得到十位立法機關成員的支持，才能取得正式的提名資格，方可參選。

3. 譚熾宏方案

行政長官由立法議會(立法機關)選舉產生，候選人必須得到十位立法議會(立法機關)議員提名，方可參選。

4. 太平山學會方案

行政長官由行政委員會選出，除主理所管轄部門外，他兼任行政委員會主席。行政委員會成員由立法機關成員選舉產生，只有現任的立法機關成員或競選連任的行政委員，方可成為行政委員會候選人。

5. 李華明方案

行政長官由立法機關選舉產生。

6. 匯點

行政長官由立法機關選出。凡居港滿十年，並已登記為選民的中國公民均可成為候選人，每位候選人需得到十位立法機關議員提名支持，方可參選。

7. 馮煒光方案

行政長官由直選選舉和間接選舉混合產生的立法機關中互選產生。

8. 香港都市規劃師學會

行政長官從立法機構議員中選出，競選行政長官一職者，須獲最少1/4立法機構議員支持，若多於一人角逐此職，則由立法機構選舉產生。

- (二) 非由立法機關產生
- A 無提名限制之直選
9. 香港大學學生會  
行政長官最終應由全體市民普選產生。
- B 有提名限制之直選
10. 學友社  
由各界功能團體代表組織成一個「遴選委員會」(成員約150—200人)，遴選委員會經協商或選舉產生「正式候選人」五名，行政長官以「全民投票」方式，直接選舉產生。
11. 基督教協進會公共政策委員會  
行政長官候選人必須得五名立法局議員提名，由全港選民以「一人一票」方式選出。
12. 大學畢業同學會  
由本港立法機關全體成員和同等數目之中央委任之當地人士組成「提名團」，行政長官候選人須得到這兩類提名成員各1/8支持，然後經全民選舉產生。
13. 190方案  
行政長官候選人須由立法機關成員提名，全港一人一票直接選舉產生。
14. 吳康民方案  
「行政長官候選人提名委員會」由37人組成，包括香港人大代表、政協委員、立法機關代表、司級官員、市政局及區域市政局代表、區議會代表和社會團體代表，負責推出候選人3—5名，由全港市民直接選舉行政長官。
15. 38位文教界諮委及團體負責人方案  
行政長官由「行政長官候選人提名團」提名，經全民投票產生。  
提名團由128人組成，其中96席由職業分組選舉產生，香港人大代表和政協委員互選佔16席，立法機關互選佔16席。
16. 艾凡方案  
特別行政區首長由十個(或二十個)五百人以上團體提名，一人一票選舉。
- C 大選舉團
17. 三方學會  
行政長官由選舉團選舉產生，而選舉團由立法機關及地區議會成員組成。

18. 張熾標方案  
行政長官由立法局議員提名，然後由各級議會的議員投票決定，以間接選舉形式選出。
19. 工商界諮委 (76人方案)  
行政長官由一個以600人組成的「選舉團」選出來。「選舉團」包括立法機關成員、市政局、區域市政局及區議會代表，以及香港各階層界別市民代表。「選舉團」成員互相推選20人，組成「提名委員會」，「提名委員會」遴選三名在各方面條件都合適的行政長官候選人，然後經由「選舉團」全體成員選舉產生。（「提名委員會」成員不得競選行政長官，亦不可再在「選舉團」選舉行政長官時投票。）
20. 香港基督教關注基本法委員會政制小組  
行政長官可由選舉團（由立法局議員、市政局及區域議局議員、區議員組成）選出。望在特區成立後，邁向「行政首長應由一人一票選出」，這個目標。
21. 港人協會  
由功能團體和地區議會產生一個（420—560人）選舉團，再由這個選舉團產生行政長官。
22. 華員會  
建議先由一個500—600人的選舉團選出一個五人提名團，提名團提名候選人若干名，交由選舉團選舉。  
選舉團包括功能團體代表，區議會主席、市政局及區域市政局代表。
23. 醫務界專業團體基本法聯席會議  
先由各界人士（包括各功能團體、市政局地方區議會代表）共同組成500—600人之選舉團，選舉團選出一個提名團，提名團提名若干行政長官候選人，交由選舉團選出。
- D 地方協商
24. 蔣鳳旋方案  
行政長官由協商團協商產生。協商團由行政局全體非官守議員、立法局全體議員、功能團體、社會團體組成，以協商為基礎，商討合適的人選，必要時以一人（或單位）一票的方式選出。
25. 古星輝方案  
先由起草委員會在香港的委員安排物色人選組成「行政顧問院」，「行政顧問院」可提名行政長官候選人，再由「行政顧問院」以六個月的諮詢期收集各階層人士的意見，再以民主協商或投票選出。

- E 中央協商
26. 冼銘倫方案  
由香港各界人士以中央協商方式產生人選，經中央決定後，要獲得民選的立法機關同意。
27. 辛維思方案  
由中央主持協商，即由中央組成一個包括港人在內的「遴選委員會」，諮詢立法局議員和各界社團的意見，產生一個不超過三個人的最後候選人名單，交全港市民選舉。
- F 由香港提名數人，由中央選出幾個人，再由香港決定
28. 中根  
由立法機關提名數人成為候選人(可來自各階層或立法機關議員)，然後報請中央，並進行全民直選。
29. 何鍾泰、唐一柱、曹宏威  
建議設立一個「遴選委員會」，成員約60—80人，人選分別由「界定團體」推選出來，再經「人大」委任。（「界定團體」的名單和每個團體所推選的委員數目，大致上應與現有的「基本法諮詢委員會」組織時所列舉的「界定團體」相同。）「遴選委員會」推選出3—5位「行政長官候選人」，經中央批准後，交由全港市民普選。
30. 徐是雄方案  
第一屆由「大選舉團」提名2—3位行政長官候選人，報請中央同意，然後由「大選舉團」選出。第二屆由「大選舉團」提名2—3位行政長官候選人，報請中央同意，然後作普選。假如以後「大選舉團」被取消，各屆行政長官候選人改由立法局提名，報請中央同意然後作普選。
31. 羅桂祥方案  
由立法局成員中互選五人，加上中國香港人大代表互選五人，組成一公平而均衡的「十人提名小組」，然後提名小組以(一)立法局(二)公務人員(三)其他各界人士，各推薦一名賢達，通過協商取得一致通過，然後由北京中央政府以三人中選出一位，作為香港特別行政區的長官。
- (三) 其他方案
32. 學聯  
該團體就商界及專業人士提出的「未來香港特別行政區政府架構」作出批評，認為行政長官的產生「必須在制度上保障廣大市民能參與選擇適當人選過程」，並強烈反對由一個以非民選成份為主的選舉團投票產生行政長官。

33. 高漢釗方案  
該文指出，行政長官不應由立法機關選出來，更不可能由直接選舉產生。間接選舉或協商方式則似較適合。
34. 吳夢珍方案
- i) 首屆行政首長：由中英聯絡小組會同行政、立法兩局以及當時的行政首長提名若干候選人，由中央人民政府作最後決定委任。
  - ii) 第二屆和以後各屆行政首長的產生：除了中英聯絡小組不再參與提名人選外，仍可用上述所提方式。
35. 查濟民方案
- i) 1997年後初期的二、三任行政長官  
經顧問局(港督提名，中央批准後任命，終身制，97年前成立)協商後提名一位顧問局以外的香港人，由中央政府同意後任命。
  - ii) 2010年前後的行政長官  
經顧問局協商後提名二至三名香港人，由北京同意後交由香港全體選民普選，得票多數者由中央任命。
36. 香港民主協會  
由一個比較超然的「政治經濟顧問委員會」提名，經立法機關2/3同意，然後由中央任命。  
「政治經濟顧問委員會」由一些在本港有深長歷史的立法、行政、司法、工商、金融、投資方面有豐富經濟的人士來擔任。
37. 基督教弘道社  
行政長官必須從一個「候選人團體」(candidates pool)中選出，由已登記為選民的港人提名，全港選民一人一票選出。  
候選人團體成員包括所有曾任或現任立法機關、市政局、區域市政局、區議會之民選成員，現任行政長官，以及指定數目由功能組別選舉之代表。
38. 陳協平方案  
經國家委托組成香港各界提名行政長官委員會，負責提出若干人選報請國家任命，擔任行政長官，輔政司、財政司、律政司和司法長。
39. 張世林方案  
第一任行政長官以協商辦法產生。  
第二任行政長官由提名團提名，以差額選舉方法由選舉團產生。

REPORT ON THE STUDY OF THE  
"FORMATION OF THE FIRST GOVERNMENT OF THE SAR"

(passed by the Executive Committee on 4 November 1987)

Special Group on  
The Political Structure of the SAR

## I. Introduction

After the Special Group's discussion, the number of proposals regarding the formation of the first government of the SAR has amounted to more than ten, namely, (1) Cha Chi Man's proposal (4/8/87), (2) Tai Yiu Ting's proposal (24/8/87), (3) Cheung Ping Leung's proposal (18/9/87), (4) Ha Man Ho's proposal (28/9/87), (5) 76-member proposal (1/10/87), (6) Kan Fook Yee's proposal (5/10/87), (7) Zee Sze Yong's proposal (7/10/87), (8) Agnes Ng's proposal (9/10/87), (9) proposal of Cheung Chun Kwok and Cheng Kai Nam (10/10/87), (10) Tsin Sai Nin's proposal (10/10/87), (11) Elsie Tu's proposal (10/10/87), (12) J.S. Lambourn's proposal (10/10/87), (13) proposal of Raymond Ho, Tong Yat Chu, and Tso Wung Wai (25/10/87), and (14) Association for Democracy and People's Livelihood (26/10/87).

This report is mainly divided into 3 parts:

1) any need for discussion on the formation of the first government; 2) introduction to and relevant comments on the various proposals; and 3) the Special Group's discussion on questions concerning the formation of the first government.

## II. Any need for discussion on the "formation of the first government"?

1. A view has been expressed that as the issue on the formation of the first SAR's government involves the handing over of sovereignty, it cannot be decided solely by the drafters of the Basic Law, and should be resolved through diplomatic channels or by the Joint Liaison Group. Another view is that since the Drafting Committee for the Basic Law is a working body rather than a decision-making body of China, it may in the capacity of a working body hold discussions on this issue. After the conclusion of the discussions is submitted to the Chinese authorities, the issue will be dealt with through diplomatic channels or by the Joint Liaison Group.

A member held that it was definitely necessary to discuss the "formation of the first government of the SAR" because the Structure of the Basic Law (Draft) contained an item on the formation of the first government.

## III. Proposals

### 1 Cha Chi Man's Proposal (4/8/87)

#### (1) Different arrangements for different conditions

Mr Cha's proposal is formulated to meet the needs of two different conditions -- smooth convergence and otherwise. The points which apply to both conditions are as follows:

- 1) 1990 -- to start preparing for the formation of the first government of the SAR.
- 2) Formation of the advisory body --
  - 1) comprising 50 members
  - ii) nominated by the various sectors in Hong Kong
  - iii) appointed by the Central People's Government (CPG) (after consultations with Britain)
- 3) Selection of the first Chief Executive -- through consultations between the advisory body and the CPG.
- 4) Selection of members of the Executive Assembly -- nominated by the Chief Executive and appointed by the CPG.
- 5) Selection of principal officials -- nominated by the Chief Executive and appointed by the CPG.

#### (2) In case of smooth convergence

- 1) Work of the advisory body --
  - 1) to participate in the various government departments in 1992 and to observe their work.
  - ii) to select representatives to be in attendance at meetings of the LegCo and ExCo.
  - iii) to select the first Chief Executive in consultation with the CPG after 1994.
- 2) The Chief Executive --

The Chief Executive designate will stay at the Governor's House after 1994 to observe the routine work of the Governor.
- 3) The Legislative Council --

In 1997, all the previous Legislative Councillors will remain in office until their terms expire, and be allowed to stand for re-election according to the Basic Law.

(3) In case of rough convergence

1) Work of the advisory body --

1) Members of the advisory body will as a group observe the work of the Hong Kong Government as citizens of Hong Kong. If necessary, they will give their opinions to the government by submission of proposal, or through the mass media or consultative channels.

ii) To select the first Chief Executive in consultation with the CPG.

2) The Chief Executive --

To nominate members of the Executive Assembly and principal officials in 1995, and report the nominations to the CPG for appointment.

3) The Legislative Council --

1) When the Chief Executive assumes office on 1 July, 1997, the Legislative Council existing before 30 June 1997 will be dissolved.

ii) During the period between 1 July 1997 and the date when the new Legislative Assembly is set up, the work of the Legislative Assembly can be carried out in the following three ways:

a) There will not be any Legislative Assembly for the time being. All new laws and special appropriations will be suspended for a period which should be long. The SAR Government will have to set up a new Legislative Assembly in accordance with the Basic Law within six months.

b) The advisory body will function as the Legislative Assembly for a period not exceeding one year, until a new Legislative Assembly is set up in accordance with the Basic Law.

c) The advisory body will elect a number of legislative members to form a provisional Legislative Assembly in order to carry out the functions of the Legislative Assembly for a period generally not exceeding two years, until the new Legislative Assembly is set up in accordance with the Basic Law.

(4) Implications

According to Cha Chi Man, this method of transition will familiarise Hong Kong people with the operation of central organs to ensure that the first government can be formed smoothly. The advisory body appointed by the CPG will not become a "shadow cabinet" or another "power centre" as he

believes that the majority of Hong Kong people have self-discipline. At present, those who are most familiar with the work of the various government departments are the public servants. If the future advisory body can absorb some of the present public servants, including certain senior public servants, no harm will be done to the work of the Hong Kong government. On the contrary, regarding any issue which involves the mainland, members of the advisory body will be in a better position to carry out consultations with the CPG and gain its support.

The following queries have been raised: 1) Will the advisory body be formed smoothly? 2) Will the British Hong Kong Government refuse to co-operate with the advisory body because the latter may seriously interfere with the operation of the pre-1997 government and undermine the prestige and the results of administration of the pre-1997 government? 3) Does it imply that the Chinese Government will take over at an earlier date mainly for the purpose of training a group of pro-China executive leaders to replace the existing pro-Britain senior officials and Executive Councillors. In the course of supervision and training, though officials of the pre-1997 government will still nominally be subordinates of the British who are in power; they will have to please the advisory body -- a group of "future masters", lest they should lose their jobs in the future. Consequently, the public service will be so divided that its efficiency and morale will be adversely affected. (4) In terms of legitimacy and representativeness, the Chief Executive nominated by the 50-member advisory body and appointed by the CPG as well as the principal officials and members of the Executive Assembly nominated by the Chief Executive and appointed by the CPG will not be favourable to the prestige and leadership of the post-1997 government, and its co-ordination for an orderly social transition. (5) In case of "rough convergence", the advisory body will be alienated and put out of place by the British Government. It will not be able to get in touch with the internal operation of the government at all and will by no means facilitate the future take-over.

A member noted that the Joint Declaration provided that the British Government would be responsible for the administration of Hong Kong before 1997. The argument in Cha's proposal that an advisory body appointed by the CPG of China would not be a "shadow cabinet" or another "power centre" was only his own wishful thinking. The member thought that Cha's proposal contravened the above-mentioned provision under the Joint Declaration.

A member held that the merits of Cha's proposal were as follows: (1) the preparation for the formation of the first government would start early (1990). (2) Under the condition of smooth convergence, the Chief Executive designate would stay at the Governor's House in 1995 to observe the routine work of the Governor. This proposal, if viable, would be helpful to the work of the Chief Executive designate after 1997.

The member was dubious about the following points: (1) Whether point (2) mentioned above was viable? Would it hamper the operation of the pre-1997 government? Even if it was viable, would it be too early to apply this arrangement in 1995? (2) Was the "advisory body" against the spirit of "Hong Kong people governing Hong Kong" and "a high degree of autonomy" under the Joint Declaration? What would be the role of the "advisory body" in the formation of the second government?

## 2 Tai Yiu Ting's Proposal (24/8/87)

### (1) Principles

- 1) Of a provisional nature -- 6 months to one year. The structure of the first government may be different from the permanent structure prescribed by the Constitution. According to the experience of other countries, the structure of the first government is usually identical to that of the government before the take-over. This arrangement has the merit of minimising the possible confusion which might arise in the transition so that the government can function normally.
- 2) The first government may not interfere with the operation of the pre-1997 government so as to ensure that the pre-1997 government may still operate effectively before the take-over. If the pre-1997 government is subjected to the control of the future government even before 1997, stability of the place will be threatened.
- 3) The arrangement for the take-over should ensure social stability.

### (2) Formation of the first government

#### 1) The Chief Executive --

- 1) Selection method: The governor in office before the Basic Law takes effect will be the first Chief Executive of the SAR.

ii) Term of office: Six months. The Chief Executive is required to resign his post when this term expires.

#### iii) Functions:

- a) To maintain the routine operation of the government.
- b) To implement the provisions under the Basic Law. The succeeding Chief Executive should be selected and the succeeding legislature formed during his term of office.
- c) To take measures to ensure a smooth take-over by the succeeding government.
- d) The exercise of the foregoing powers and functions should not contravene the Basic Law.

#### 2) The legislature --

i) Formation method: The Legislative Councillors in office before the Basic Law takes effect will be members of the legislature.

ii) Term of office: 6 months

#### iii) Functions:

- a) To ensure the routine operation of the government.
- b) To formulate electoral provisions in order to implement the provisions under the Basic Law. The succeeding Chief Executive should be selected and the succeeding legislature formed within six months after the Basic Law takes effect.
- c) To enact laws which will facilitate a smooth take-over by the succeeding government.
- d) The exercise of the foregoing powers and functions should not contravene the Basic Law.

#### 3) Principal officials --

i) Selection method: Principal officials will be public servants in office before the Basic Law takes effect.

ii) Term of office: From the date when the Basic Law takes effect to the date when the principal officials of the succeeding government are selected.

4) Executive Assembly -- No Executive Assembly will be formed in the first government.

5) Delegates to the NPC -- to be selected within one year after the Basic Law takes effect.

(3) The arrangement will take effect from 1 July 1997.

(4) Source of power

It was pointed out that it would be difficult for the pre-1997 government to become a caretaker government of a transitional nature because the source of power of the previous government was Britain and the officeholders in the government were also appointed by Britain. After Hong Kong's sovereignty is reverted to China, the source of power of the Hong Kong Government will be the CPG of China. Hence, the officeholders in the previous government appointed by Britain and whose source of power was Britain should not participate in the Hong Kong Government after 1 July 1997. Though, technically speaking, arrangements could be made so that China could formally appoint the previously officeholders, it should be the last resort which might be suspected of undermining the status of China as a sovereign state.

(5) Merit and questionable points

A member held that the merit of this proposal was as follows: The previous government could remain in operation during the period of transition to avoid abrupt changes. But the member expressed reservations about the following points: (1) According to the arrangement of this proposal, the formation of the first government would be delayed for six months. If the purpose of such delay was to familiarise officials with the operation of the government under the principles of the Basic Law, the relationship between the first and second governments would be a problem (e.g. the structure and members). (2) According to the proposal, the governor in office before the Basic Law took effect would be the first Chief Executive. If this proposal was viable, we should first guarantee that the pre-1997 governor would not be of foreign nationality. Would this interfere with the pre-1997 government? How could China ensure that the British government would co-operate in this respect? (3) According to the proposal, the first government would not have an Executive Assembly. What was the reason? What was the role of the Executive Assembly? Was it that the first government would not need an Executive Assembly or it would be unable to set up one?

3 Cheung Ping Leung's Proposal (18/9/87)

(1) Principles

- 1) Of a transitional nature and of a caretaker nature.
- 2) It mainly makes arrangements for the formation of the new government and the new legislature in accordance with the Basic Law within a short period (six months/one year).

During the caretaker period, it will solely be responsible for maintaining the routine operation of the government, abiding by the established system without formulating any new laws or new policies.

- 3) Since it will be a caretaker government, it may be appointed by the Central Government on its own, without going through the normal formation process prescribed by the Basic Law.
- 4) The caretaker government will not be a continuation of the previous government because its power will come from the Central Government of the PRC. In principle, it will take over the powers, treaty obligations, debts, public property, etc. from the previous government.

(2) The Chief Executive

Around 1994/95, the British Government will, in consultation with the Chinese Government, appoint a person acceptable to China, Britain and Hong Kong as deputy governor to assist the governor. With the establishment of the SAR on 1 July 1997, the Chinese Government will appoint that person as the Chief Executive of the caretaker government to arrange for the formation of the new government.

(3) Officials at Secretary level

Secretaries of the pre-1997 government may remain in office. But the British Government should ensure that the Secretaries appointed before 1 July are all Hong Kong people (to be in accordance with the provisions under the Joint Declaration that British and other foreign nationals should not serve as Secretaries.) The British Government will be advised to consult the Chinese Government before making the appointment.

(4) Advisory Committee

In principle, the previous Executive Council will be dissolved. But the caretaker government may request the CPG to appoint some or all of the previous Executive Councillors to be members of an advisory committee until the term of the caretaker government expires.

(5) The Legislature

The Legislative Council will become a provisional body from 1 July, responsible only for monitoring the operation of the caretaker government. It will not enact any new legislation (except for emergencies). The new legislature, upon its formation, may review within a certain period all laws which

have been passed during the term of the caretaker government, and determine whether such laws will remain valid.

(6) Questionable points

A member made the following points: (1) According to the proposal, the first government would be of a caretaker nature and could be appointed by the Central Government on its own. Would this be against the spirit of democracy and autonomy in the Joint Declaration? (2) It was proposed that the post of the Chief Executive be filled by the pre-1997 deputy governor. Would this hamper the operation of the pre-1997 government? Would Britain co-operate in this respect.

4 Ha Man Ho's Proposal (28/9/87)

(1) Principles

- 1) I propose that the Chinese Government and the British Government adopt the attitude of mutual understanding and accommodation, and resolve any problem relating to sovereignty in the formation of the first government of the SAR under the principle of equality.
- 2) Arrangements for the take-over should ensure the prosperity and stability of Hong Kong
- 3) There should be continuity regarding the officeholders in the previous and new governments in order to ensure continuity in the policies of the two governments. This arrangement will be in line with the principle that political reforms should be carried out step by step. It will also enable the officeholders of the new government to acquire experience in administering Hong Kong before 1997.

(2) The Chief Executive

Through the arrangements of the Sino-British Joint Liaison Group, China will select the Chief Executive of the first government in accordance with the Basic Law in 1995. Also through the arrangements of the Sino-British Joint Liaison Group, Britain will appoint this person as deputy governor of Hong Kong to assist the governor. On 1 July 1997, China will officially appoint this person as Chief Executive of the SAR.

(3) Principal officials

As the above-mentioned Chief Executive will have experience in participating in the administration of Hong Kong before 1997, he will be aware of the talent at the administrative level and from various sectors of society. I therefore propose that principal officials be nominated by the Chief Executive and appointed by the Central Government on 1 July 1997.

(4) The Legislature

The Basic Law will be promulgated by the NPC in 1990. By that time, the Legislative Council in Hong Kong will have had further development in the direction of the provisions under the Basic Law. This development should be completed by 1996. There should not be any elections to the legislature in 1997.

5 76-member Proposal (raised by Mr Leung Chun Ying) (1/10/87)

(1) Principle

To maintain the confidence of the public and of the investors in Hong Kong's future and to ensure political stability, Hong Kong should avoid any election activities in 1997.

(2) The Legislature

The new legislature's terms of office will be extended to four years according to a staggered system. Assuming the 4-year term starts in 1988, and that a directly elected element introduced to the legislature in 1992, 1994 is the appropriate year to have all the necessary changes implemented. The selection of the legislators of the first SAR government will be completed in 1996. When China resumes the exercise of sovereignty in 1997, only ceremonial changes will be required.

(3) The Chief Executive

According to the proposal, the Chief Executive will be selected by the grand electoral college. Hence, the first grand electoral college for the selection of the chief executive should be formed before July 1997. The composition of a "grand electoral college" can be determined by either of the following methods:

1) As the details of formation and operation of the grand electoral college have yet to be laid down by the Drafting Committee, it is therefore proposed that a group be set up under the Drafting Committee. The group will work till 1997 to determine the composition of the grand electoral college.

11) As the Joint Declaration expressly provides that the U.K. Government and the PRC Government will ensure a smooth transfer of government in 1997, the composition of the grand electoral college may be determined by the Joint Liaison Group.

6 Kan Fok Yee's Proposal (5/10/87)

(1) To prepare for different situations

I think in discussing the formation of the first government, we should take into consideration the question as to whether there would be any convergence problem in the hand-over of administrative power in Hong Kong. At present, we are still not sure if there would be any convergence problem or what exactly the problem would be. Hence, when we design a proposal regarding the formation of the first government, we should prepare some options to deal with the different conditions of convergence.

By my reckoning one of the following situations may arise in respect of convergence: 1) The two systems converge completely; 2) The two systems converge partially; and 3) The two systems do not converge at all.

(2) Complete convergence

Complete convergence means that except for the status of the Chief Executive of the SAR (whose pre-1997 status cannot be a "chief executive") which will be subject to a major change in the new system, other officeholders such as the principal officials and members of the legislature will remain unchanged. Should this ideal be achieved, the first and the second governments will basically be the same in structure, and we only need to consider the following technical factors: 1) The way to ensure the post-1997 legitimate status of the Chief Executive who was selected by election (if not through consultations) before 1997 and of the legislative members who were selected by election before 1997. 2) In what year should the Chief Executive be elected? And after he has been elected, what are the specific tasks that he should take up before 1997 in order to prepare himself for his future tasks after 1997?

3) Can the Chief Executive nominate some principal officials as Secretaries before 1997? Will these nominees assume office only after 1997?

(3) Partial convergence

Partial convergence involves more complicated problems. Partial convergence is possibly the result of one or more of the following elements: 1) It is still not decided by July 1997 who the Chief Executive will be; 2) There are still some Secretaries who are of foreign nationalities by July 1997; 3) There are still some appointed members in the Legislative Council; and 4) Regarding the pre-1997 and post-1997 selection of legislators there are differences in the division of functional constituencies or electoral colleges or geographical constituencies for direct election in the allocation of seats to the various constituencies and electoral colleges, and in the allocation of seats to the various geographical constituencies for conducting direct election.

Due to the foregoing variables, it is difficult for us to design a proposal which can deal with the various situations that may arise in partial convergence. The final decision relies on the achievements that the Chinese and British Governments can make regarding convergence.

(4) No convergence at all

Under the worst situation where there is no convergence at all, our first government may have the following choices: 1) The duties of the first government be taken up by a provisional government which is set up by the Central Government in consultation with Hong Kong people; and the second government be formed according to the provisions of the Basic Law. Despite its provisional nature, the term of office of the first government should be the same as that of the succeeding government. 2) The first Chief Executive be selected by the Central Government in consultation with Hong Kong people. Then this Chief Executive is to organise a provisional government which is responsible for selecting the principal officials (except the Chief Executive) and legislative members of the first government according to the Basic Law in a short period of time (i.e. six months or a year). I think that in the above proposal, what the Central Government and Hong Kong should consult is the HKSAR Basic Law Committee of which the formation and terms of reference we are going to discuss.

(5) The best arrangement

The best arrangement will be as follows: The Central Government in consultation with the HKSAR Basic Law Committee will select the first Chief Executive who will be responsible for organising the first government according to the Basic Law. However, election and consultation may both be held, i.e. the list of the candidates can be drawn up through consultations, but the Chief Executive can be elected from among the candidates by members of the Basic Law Committee. Furthermore, I support the proposal of Mr Li Hou and Mr Lu Ping that, in order to give expression to the reversion of sovereignty, a HKSAR preparatory committee of a very small membership including Hong Kong people and headed by a delegate of the PRC should be set up. This committee will prepare for the formation of the SAR but the Chief Executive will not be elected by its members.

(6) Implications

This arrangement can deal with different conditions of convergence. The conditions of convergence will only affect the workload of the first Chief Executive in organising the first government but not whether the first government will be formed in accordance with the Basic Law. In converting an old political system into a new one, the first Chief Executive is like a tailor modifying an old suit into a new one. The closer the two patterns are, the less work will be involved.

7 Zee Sze Yong's Proposal (based on Zee's proposal published on 19 January 1986) (7/10/87)

Two years before 1997, the NPC Standing Committee will set up a preparation committee composed of eminent persons from mainland and Hong Kong (similar to the present Drafting Committee for the Basic Law). The Hong Kong members of this preparation committee will form a consultative college or an electoral college in Hong Kong, comprising people from various sectors in Hong Kong (similar to the present Consultative Committee for the Basic Law.) Such college will be responsible for selecting the first Chief Executive by election or through consultations, and reporting the selection to the Central Government for appointment. The consultative college and electoral college will be dissolved after the selection of the chief executive unless it will also have other duties. The Chief Executive (who can only be referred to as the Chief Executive designate before 1997) will form an Executive Assembly according to the provisions under the Basic Law. Members of the Executive Assembly will be nominated by the Chief Executive from among principal officials, members of the legislature and members of the

public and reported to the Central People's Government for appointment. (The report to the CPG for appointment will no longer be necessary for the succeeding Executive Assembly.) The first government will be dissolved two years after 1997 and the second government will be formed according to the provisions under the Basic Law. The terms of office of the first Chief Executive and the first Executive Assembly will be four years (or two years if starting from 1997). Members (designate) of first Executive Assembly, major members of the Joint Liaison Group and principal officials of Hong Kong Government (who will change their status to advisors) will form a working group which will be responsible for resolving all matters concerning the transition. The legislature should be elected by direct elections, a grand electoral college and functional constituencies before 1997. Then these legislators designate will select principal officials and choose some of them to be legislators.

8 Agnes Ng's Proposal (9/10/87)

(1) Principles

(i) stable transition; (ii) to give expression to the sovereignty of China; and (iii) to be acceptable to Hong Kong people and to converge on the Basic Law.

(2) Timing and nature

Under the first principle, changes in the government structure should be kept to the minimum. But in order to give expression to the sovereignty of China, it would not be possible to select members of the legislative council and the executive council, the chief executive and principal officials before 1997. The pre-1997 government does not have the obligation to implement the Basic Law and China may not be willing to let the present government deal with post-1997 affairs of Hong Kong on its behalf. To reassure Hong Kong people, China should not interfere with the government structure of Hong Kong before 1997 (e.g. appointing a deputy governor in advance). Hence, the first government should be of a provisional nature but the second government will be formed according to the provisions under the Basic Law. The first government will only be responsible for maintaining the routine operation of the government temporarily and for preparing for the formation of the second government. The provisional government should not last for more than two years.

(3) Composition

The first government is composed of a legislature council, an executive council, the chief executive and several principal officials and government personnel of different grades in the government. As the Joint Declaration already states that the present civil servants may remain in employment, it is not necessary to discuss this part of the government. Under the principle of minimum change, the legislative council may remain unchanged temporarily but the chief executive must be the president of the legislative council (this concerns the expression of the sovereignty of China). Members of the executive council may be appointed by the chief executive.

(4) Method of selection

The selection of the chief executive and several principal officials should give expression to the sovereignty of China. During 1995 or 1996, similar to the formation of the Drafting Committee and the Consultative Committee for the Basic Law, China will appoint representatives of various sectors who will recommend the chief executive and principal officials who will become the chief executive designate and the principal officials designate. On 1 July 1997, China will appoint them to be the chief executive and the principal officials. This method will give expression to China's sovereignty on one hand and satisfy the principle of "Hong Kong people governing Hong Kong" on the other. As to how the future government officeholders designate can familiarise themselves with the operation of the pre-1997 government, the Chinese and the British governments may on the basis of friendly co-operation allow them to learn more of the operation of the government. In fact, if the main duty of the first government is to form the second government, there should not be any major changes in the general operation of the government. This in turn will ensure a smooth and stable transition. The Legislative Councillors in office before 1997 will be members of the legislature.

9 Proposal of Cheung Chun Kwok, Cheng Kai Nam and Leung Siu Tong [based on the 38-member proposal] (10/10/87)

(1) The Chief Executive

The nomination committee\* for the first chief executive should be formed in the first six months of 1996. The committee should recommend 3 persons as candidates for the chief executive. The Central Government will select the chief executive from among these candidates and make appointment. The term of office should be four years.

In case the Central government rejects all of the candidates, the nomination committee will make fresh recommendations.

(2) The Legislature

Two-thirds of the members of the first legislature should be elected through professional divisions\* and in the first six months of 1996 concurrently with the election of the nomination committee members. The term of office will be two years. The other one-third of the legislators should be directly elected through geographical constituencies in the first six months of 1997. The term of office will be four years.

(3) Officials at Secretary Level

The officials at Secretary level of the various departments of the first government should be nominated by the Chief Executive designate before 1 July 1997, and submitted to the Central Government for appointment.

(4) Election

In order to have a smooth transition around 1997 and for the above proposal to materialise, the present political structure must undergo gradual change beginning from 1991. That is to say, there will be elections to the legislature in 1991 and 1994. These two elections should gradually phase out appointed members, introduce direct election through geographical constituencies, eliminate electoral colleges, and transform functional constituencies into professional divisions.

(5) In case of non-convergence

If the pre-1997 system and the post-1997 system do not converge, the Central Government will organise a preparatory committee representing the various sectors in Hong Kong to select the Chief Executive and the legislators of the first government. The term of office should be two years. In 1999, the second government will be formed in accordance with the Basic Law.

(6) Points for consideration

According to this proposal and with reference to other proposals, it should be considered to allow all Hong Kong people to participate in the formation of the first government. At present, the functional constituencies

elections do not include all the classes in society. Besides, new sectors are constantly being formed. Neither does the grand electoral college method allow for participation of all Hong Kong people. Universal suffrage, on the other hand, cannot guarantee a reasonable representation of the various classes and sectors in the legislature.

\* Appendix: The allocation of seats to professional divisions in the nomination committee for the Chief Executive and in the legislature.

	Number of seats in the Legislature
The first category of professional divisions should have a total number of	16 seats
including:	
Commercial sector (1)	6
Industrial sector (2)	4
Banking sector (3)	2
Other employers	4
The second category of professional divisions should have a total number of	16 seats
including:	
Medical sector (registered medical doctors)	1
Other nursing personnel	1
Education sector	2
Legal sector	1
Social service sector	2
Engineers, architects, surveyors, and town planners	1
Accountants and auditors	1
Information and mass media professionals	1
Cultural and arts sector	1
Administrators	2
Other professionals	3

The third category of professional divisions should have a total number of	16 seats
including:	
Clerical personnel	2
Sales personnel	2
Service industry personnel	2
People engaged in agriculture, forestry, animal husbandry, and fishery	2
Personnel from manufacture, building, and transport	6
Students, retired persons, home-makers, and other persons not engaged in economic activities	2
Total	<u>48</u>

10 Tsing Sai Nin's Proposal (10/10/87)

(1) Factors to be considered regarding the formation of the first SAR Government:

1) A smooth changeover of the government

ii) The contents of the Joint Declaration and the Basic Law

iii) The work of the Joint Liaison Group

Therefore:

(2) The preparation for the first SAR Government should begin within two years after the promulgation of the Basic Law (i.e. 1992).

(3) The first government of the SAR should be formed on 1 July 1997 and converge closely on the last government appointed by the British Government (1995 -- 30/6/97). The second government should be formed two years later and its term should be extended to 4 years (1999 -- 2003).

(4) Though the first government of the SAR should still be of a constitutional nature, some aspects need not be totally in line with the provisions under the Basic Law (e.g. the term will only last for 2 years). The second government may be formed in accordance with the procedure and provisions under the Basic Law.

- (5) The Chinese Government will set up in 1992 an advisory committee for the first SAR Government. The advisory committee will prepare for the formation of the first SAR Government jointly with the Basic Law Committee and the Joint Liaison Group.
- (6) The structure of the first SAR Government can be determined only after the promulgation of the Basic Law. The first government will be responsible for preparing for the formation of the second government two years later (1999).
- (7) The Chief Executive -- The first Chief Executive of the SAR will serve a two-year term from 1 July 1997 to 30 June 1999. He will be nominated through consultations by the preparatory committee for the first SAR Government (formed by the advisory committee for the first SAR Government, the Basic Law Committee and the Joint Liaison Group) and appointed by the CPG.
- (8) The legislature -- The term of office of the first SAR legislature will be two years from 1 October 1997 to 30 September 1999. It will be elected by the preparatory committee for the first SAR Government in accordance with the provisions under the Basic Law.
- (9) Principal officials -- Nominated by the first Chief Executive of the SAR and appointed by the CPG (as Secretaries) in July 1997. Other public servants will be appointed by the first Chief Executive in accordance with the Joint Declaration.
- 11 Elsie Tu's Proposal (10/10/87)
- As I think it would be unacceptable, as some have suggested, for China to agree to the election by whatever means of the Chief Executive and the Legislature before 1997 and under the colonial system, to take over power before July 1997, I would like to make another proposal for a smooth changeover:
- (1) The Chief Executive -- China to appoint a temporary Chief Executive familiar with the Hong Kong scene and preferably acceptable to the Hong Kong people, to act as Chief Executive for a period of three months from 1 July, with the possibility of the same person being confirmed in his position from 1 October 1997, by whatever method is spelt out in the Basic Law.

- (2) The Legislature -- The new session of the Legislature begins in October each year, and the members will still have three months left of their 3-year term on 1 July 1997. If China agrees, they could be allowed to continue to October, on a temporary basis, thus balancing the power of the Chief Executive. During those three months, elections under the Basic Law could be held, having been prepared in principle earlier. It would appear that if all parties are determined to make the transition smooth, there would be no immediate change on 1 July except the the seat of Chief Executive, and the changeover would take three months. The likelihood is that many members of the Legislature would be re-elected to office, while those expatriates not eligible should have resigned well before this time.

Any civil servants not eligible for the highest posts should have resigned prior to this time and there should be no noticeable change in the civil service, thus enabling a smooth transition departmentally.

- (3) Principal officials -- They are to be nominated by the Chief Executive and appointed by the Central Government.

12 J.S. Lambourn's Proposal (10/10/87)

- (1)
- 1) The factors to be considered
- a) Taking the word "Government" to include the following, each should be examined to see what changes might be necessary at the change of sovereignty.
- i) The Chief Executive
- ii) Executive Assembly
- iii) The legislature
- iv) Executive Authorities
- v) Principal Officials
- vi) Heads and deputy heads of government departments
- vii) Public servants (including advisors).
- b) Changes should be kept to a minimum.
- c) The office holders allegiance and nationality will have to meet the requirements of Britain and China.

d) The change of sovereignty and administration must be a real change.

e) No vacuum of government authority should occur.

2) Dealing with the aspects, easiest first:-

a) Public Servants (including advisors)

No problems during the transition as long as deficiencies are made up by the appointment of advisors.

b) Heads and deputy heads of government departments

In the process of implementing the Joint Declaration and resolving problems through the Joint Liaison Group, Britain should have ensured by mid 1997 that no British or other foreign nationals are holding the excepted Public Service posts and all the appropriate advisor posts are filled where necessary. These heads and deputy heads would have to be reappointed by the Central People's Government on change of sovereignty.

c) The Legislature

The Legislature should recess at the end of June 1997 for elections to follow after the change of sovereignty. This could be completed in time for the first sitting in September/October.

d) Executive Assembly

Assuming this to be formed by the Chief Executive it will have to be appointed by the Chief Executive after the change of sovereignty.

e) Principal Officials

As these are to be nominated by the Chief Executive this cannot be achieved until a new Chief Executive has been chosen for appointment.

f) Executive Authorities

As the term "Executive Authorities" has not been defined it is assumed that this will include the Chief Executive, the principal officials and heads and deputy heads of government departments, all requiring appointment by the Central People's Government following selection and nomination. This appointment can only become effective at or after the change of sovereignty. Appointment should become effective as soon as possible after the change.

g) The Chief Executive

According to the Joint Declaration the Chief Executive shall be selected by election or through consultations held locally. This indicates that it will be Hong Kong's selection of a permanent inhabitant from Hong Kong. The possibility of selection by election indicates an intention for the selection process to be democratic. I would therefore like to see an election for the first Chief Executive under the Basic Law take place in Hong Kong before mid 1997 under the authority of the Central People's Government with the blessing of the British Government, the Hong Kong Government providing practical assistance in holding the elections i.e. providing polling staff, police assistance, allowing candidates to campaign. Nomination of candidates to stand for election should be open and in accordance with the qualifications laid down in the Basic Law. The successful candidate should be appointed by the Central People's Government before the change of sovereignty but effective only at the change of sovereignty. In his designate capacity this would allow the future Chief Executive to nominate potential Principal Officials in time for appointment at the change of sovereignty.

Following change of sovereignty the Chief Executive and his executive authorities will then make preparation for election of the legislature.

This method will:-

i) keep changes to a minimum at change of sovereignty,

ii) meet the allegiance and nationality requirements of China and Britain in the governments in Hong Kong up to and following change of sovereignty,

iii) be a real change of sovereignty and administration,

iv) not create a vacuum of government authority,

v) be in accordance with the Joint Declaration and ensure the first government of the HKSAR has been democratically created.

13 Proposal of Raymond Ho, Tong Yat Chu, and Tso Wung Wai (25/8/86) -- extract

(1) To ensure continuity in the political structure, the political structure should start progressing step by step in the transitional period.

- (2) In the Legislative Council elections in 1988 and 1991, arrangements should be made so that the composition of the Legislative Council will gradually develop towards the future political structure of Hong Kong.
- (3) The interim government should be set up in 1994 with the same structure as the political structure of the future HKSAR. The first Chief Executive should also be selected in 1994 with his term of office extending through 1997 and ending in 2000.
- (4) Regarding the selection committee responsible for choosing the candidates for the first Chief Executive, the name list and ratio of representation of the "designated organisations" may be determined after discussion by the Joint Liaison Group.
- (5) The selection committee will choose the candidates for the first Chief Executive to be examined and approved by the Joint Liaison Group before a general election for the chief executive will be held in Hong Kong. (For the process, please refer to the section on the selection of the chief executive in this proposal.)
- (6) For other duties of the selection committee which will be formed in 1994, please refer to the 4 major duties of the selection committee mentioned in this proposal.
- (7) This proposal is based on the assumption that both governments will, regarding the plan of transition, cooperate without grudge in the changeover procedure. However, there are objectively certain difficulties in technicality and principle.
- (8) Tso Wung Wai believed that in any case the transition would be a fact and whether an interim government should be set up for coordination required active consideration. The term of office of the interim government should be short but not necessarily be fixed. Two tasks should be completed by the interim government: (1) to handle all matters concerning the reversion of sovereignty; (2) to create sufficient conditions for the smooth formation of the first SAR Government in accordance with the Basic Law. When these two tasks were completed, the work of the interim government would be over.

14 Proposal of the Association for Democracy and People's Livelihood (26/10/87)

- (1) The Chief Executive -- In late 1996, the Chief Executive designate will be nominated by the legislature and elected by Hong Kong people on a one-man-one-vote basis.

During the period from January to June 1997, the Chief Executive designate should, with the help of the governor, familiarise himself with all administrative arrangements. He will be appointed by the Central Government on 1 July 1997.

- (2) Principal Officials -- Principal officials will be nominated by the Chief Executive and appointed by the Central Government on 1 July 1997.

- (3) The Legislature -- These should be 80 seats in the legislature in 1997, of which 50% will be filled by direct elections, 25% by election by an electoral college, and 25% by functional constituencies elections. Direct elections should be introduced to the legislature from 1988 onward. And there should be changes in the number of seats allotted to the members selected by different means so that there will be an elected legislature before 1997.

IV.\* Major Questions

1. Questions for discussion

- (1) The factors to be considered regarding the establishment of the first government.
- (2) When should the preparation for the formation of the first government start?
- (3) When will the first and second governments be formed?
- (4) Should the structure of the first government be provisional or constitutional (in accordance with the provisions under the Basic Law)?

\* A mistake in the numbering of the Chinese version: it reads III in Chinese.

(5) If "smooth convergence" and "rough convergence" will entail different arrangements, when should the decision be made regarding which arrangement will apply?

(6) The structure, function and formation method of the first government and its relation with the succeeding government.

2. Discussion of this Special Group:

(1) Definition of "Government"

A member pointed out that we should define what was meant by "government" prior to the discussion on the formation of the first government of the SAR. A member responded that "government" included the Chief Executive, Principal Officials and the Legislature. Another member held that the Executive Assembly should also be included. In addition, a member pointed out that it was generally assumed that the change of the officials at the secretarial level was not important but in fact the effect of the change was enormous.

A member pointed out that the general public were concerned about what would happen at the change of sovereignty in 1997 and at the time when the second government would be formed and whether there would be a "great turnover" within the government. But a member maintained that since the judicial organs would not be constituted by elections, no changes would be required. Neither would there be any change in the public service below the Secretary level. Hence, members of the judicial organs and the public service below the Secretary level could be free from such anxiety.

(2) The need to discuss this question

Some members held that the Joint Liaison Group (JLG) could work on the arrangements for convergence. They held that since the JLG was now deliberating on matters concerning the convergence, it was not necessary to discuss these matters here. Another member held that special arrangements for convergence could be made with the assistance of organisations similar to the JLG. Another member held that an alternative arrangement was that the method of formation of the first government would be the same as that of the second government or the subsequent ones, which would mean that there was no need to discuss the formation of the first government of the SAR.

(3) Factors to be considered

A member queried whether the election and/or consultations involved would be in accordance with the legal principle if the first HKSAR legislature was elected according to the Basic Law under the British rule and before the Basic Law takes effect (i.e. before 1997). A member responded that the answer was positive and cited the following example: A caretaker government could be elected before the end of the term of office of the last Prime Minister (government) whereas the Parliament would be dissolved and re-elected when the caretaker government was elected. In the case of the United State, the election to the new government started two months before the term of the last government expired and the new government would officially assume office as soon as the term of the old government expired. In the light of these examples, to form the future SAR Government should also be in accordance with the legal principle. But a member held that the conditions in Hong Kong were special as it involved the transfer of sovereignty.

A member noted that the expression of sovereignty was highly important. With the transfer of sovereignty, there should be a new sovereign state. Consequently, the Chief Executive and principal officials should be appointed by the Central Government on 1 July 1997.

On the other hand, a member pointed out that legal principle and sovereignty were of course important factors but the operation of Hong Kong government before 1997 should also be considered. The formation of a provisional government before 1997 might pose difficulty to the present Hong Kong Government. In addition, we should believe that any government, be it pre-1997 or post-1997, would work for the interests of Hong Kong people. Hence, both governments should deserve our consideration and attention.

(4) Nature of the first government

The main views on the formation of the first SAR Government expressed by members of this Special Group are as follows:

- 1) The first government will be formed and start functioning before 1997, with its term extending through 1 July 1997 and to be appointed again by the Central Government then.
- 2) To select the Chief Executive designate who will be appointed to be Chief Executive by the Central Government on 1 July 1997.
- 3) To set up a provisional government or the first government on 1 July 1997. The government will be formed in accordance with the Joint Declaration and the Basic Law.

A member held that this question should be considered in the light of the actual conditions in Hong Kong around 1997. The member considered that the earlier preparation started, the more reassured and confident Hong Kong people would be. It was also proposed that no changes be introduced the year before and the year after 1997, and that the "through train" arrangement be adopted so that a provisional government would be set up through the Joint Liaison Group (i.e. with the approval of both the Chinese Government and the British Government), to be officially appointed by the Central Government on 1 July 1997 whereas the first election would not be held until 1999. In this way, problems could be minimised and unrest avoided. This arrangement was based on two assumptions: 1) Mutual understanding and accommodation: the member noted that if the Chinese Government and British Government refused to observe this principle, Hong Kong would have no future. 2) China could accept these people (member of the provisional government): the member could not see why China would refuse to accept these office-holders.

A member held that the first government should be as similar to the second government as possible. A member was of the view that it was not difficult to achieve this aim if Hong Kong people had such a consensus and the British Government was co-operative. Another member held that since the first draft of the Basic Law would be completed in 1990, the first government should be formed according to the structure prescribed by the Basic Law. Some members were of the view that any necessary changes, such as the allegiance of the legislators, could be dealt with by the Joint Liaison Group. It was also proposed that since the Legislative Council under the previous system could be converted into the legislature of the SAR by procedural changes, the chief executive could also be selected through similar procedural arrangements. Hence, the first government should be of a constitutional nature (in accordance with the general provisions under the Basic Law).

Another member held that if a provisional government was formed before 1997, the Chief Executive designate selected before 1997 and the principal officials nominated by the Chief Executive designate before 1997 would be officially appointed by the Central Government in 1997. However, as it would be difficult to form the legislature before 1997, it was proposed that the legislature be formed within three months from 1 July 1997. This arrangement could avoid the problem of the "through train" arrangement in terms of legal principles. A member suggested that the Chief Executive designate be selected through consultations before 1997 because it would be very difficult to select the Chief Executive by election before 1997. If the legislature was formed by election after 1997, the question as to how the laws within this period could be passed would arise.

On the other hand, a member held that the question of "convergence" was highly important and there were three possibilities regarding this question: total convergence, partial convergence, and no convergence at all. These possibilities would result in the difference in selection method and structure between the first and second governments. (For issues too to be considered, see Kan Fook Yee's proposal.)

But a member pointed out that the most ideal was of course total convergence and the first government being identical to the second government in structure. But to achieve this aim, Hong Kong government would have to complete the formation of the future government step by step within a certain period under the guidance of the Joint Liaison Group. But this would not be viable for the following reasons: 1) The Basic Law which only provided for the administration of the post-1997 HKSAR could not contain any provision which was binding on the pre-1997 British Hong Kong Government. 2) The Joint Declaration provided that China would resume the exercise of sovereignty in Hong Kong after 1997. If the first government was to be formed before 1997, the Chinese government would be suspected of exercising its sovereignty in Hong Kong in advance. Another proposal was that the last British Hong Kong Government in the transitional period should be the same as the first SAR Government in structure. The member considered that it was not feasible for the following reasons: 1) This would mean China's waiving its right to form the first government. 2) As the formation of the last British Hong Kong Government in the transitional period would be totally decided by the British Hong Kong Government (in which China would not have any say), China would have to bear the sequelae of the first SAR Government as no changes could be introduced until the formation of the second government. The first SAR Government being structurally identical to the last government in the transitional period should be an ideal proposal. But as long as the implementation of the proposal would involve the pre-1997 Hong Kong Government or require its co-operation, China would be reduced to a passive role. Moreover, the Basic Law which only provided for the administration of the post-1997 SAR Government could not contain any provision which was binding on the pre-1997 British Hong Kong Government. No one could guarantee that the British Hong Kong Government would offer co-operation readily.

The drafting of the Basic Law should not base on any uncertain factor. Hence, the proposal for the formation of the first government should be designed on the assumption that the convergence might turn out to be most unsatisfactory because a proposal which had prepared for the worst could meet all kinds of possibilities. The best solution was to set up a first government which was of a provisional nature: it would be different from the second

government in structure and even in the method of formation; it would serve the purpose of handing over to the next government. A member pointed out that internationally, such arrangement had precedents to go by. In addition, a member held that the provisional government could deal with such issues as the division of functional constituencies because the pre-1997 division and structure may be different from the post-1997 arrangement.

(5) Timing

Members who were in favour of having a provisional government as the first government held that preparation should start before 1997. The provisional government would serve the purpose of forming the second government within a short period after 1 July 1997.

Among members who were in favour of a first government identical to the second government in structure, some held that preparation (including election and consultations) should start before 1997. But some maintained that election activities should be avoided in 1997 in order to have a smooth transition. Regarding the technical arrangements, a member proposed that a government be formed according to the Basic Law before 1997. But such government would only be of a designate nature and would not assume office until 1 July 1997. This arrangement could avoid the problem of convergence. A view was also expressed that holding elections and/or consultations would reassure other countries about the stability of Hong Kong.

In addition, some of those who were in favour of a first government formed in accordance with the Basic Law held that the first government should be formed after 1997. The convergence problem should be resolved by the Joint Liaison Group or through co-operation of the British Hong Kong Government so that first government would be formed in 1997.

A member noted that the timing of the formation of the government was very important, and proposed the Chief Executive be selected two years before 1997 and be in office for two more years after 1997. It was therefore suggested that the term of office of the Chief Executive be four years.

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

# 政黨問題 專題研究報告

(1987年11月4日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會  
政制專責小組

## 1. 前言

政制專責小組曾在立法機關工作組之最後報告中初步探討過「政黨政治」的定義、其對社會之影響及各人贊成或反對有「政黨政治」的理由(見附件一)。本文將繼續深入討論基本法中對政黨的規定問題。

## II. 基本法處理政黨問題的三個方案

曾有草委對政黨問題提出三個具體方案：

1. 在基本法中規定未來特區不可以有政黨。
2. 在基本法中規定，未來特區可以有政黨，然後再考慮是否加上一些附帶的條件，例如不得與特區外的地方的政黨有任何正式或非正式的聯繫，政黨的一切政綱和活動應以不抵觸基本法為原則，而政黨的活動是否抵觸基本法，將由香港特別行政區的法庭來審定等。
3. 在基本法中不作規定。

## III. 本組討論

### 1. 政黨定義

有委員認為各地對政黨的定義都不同。亦有委員認為政黨的定義很模糊，政黨相對秘密組織而言是一開放、受認許、有地位的組織。也有委員認為政黨是參與政府事務及政府組織的工作的，不論其組織如何都可算是政黨。另有委員認為政黨是有參政目標的，有組織、有政綱、有紀律、有政治目標的。亦有認為一群人組織起來，有其清晰的目標的，如匯點，也算政黨。

### 2. 政黨與政黨政治不同

有委員指出政黨與政治團體不同，他們是不同階段的產物，目前的政見團體有政黨的雛形，但現時卻沒有政黨，也沒有政黨政治。政黨與政黨政治不同，政黨政治並非是主觀意願，它需要特定的規定途徑、政治架構及社會條件等配合才能發展、產生的，而不能規定有或無政黨政治。而本組有委員贊成讓政黨存在，但却不贊同有政黨政治，因反對黨會攻擊執政黨，這對香港是不利的。

### 3. 應否容許政黨存在

大部份與會委員都贊成容許政黨存在，因為既然現時香港的習慣是根據英國的做法的就是沒有法律禁止的均屬合法，而九七年後又是保持現狀(現有的法律繼續有效)，那麼基本法內不對政黨作出規定，就等如容許政黨存在。有委員指出他贊同容讓政黨存在是沒有價值判斷的，意即他不認為有政黨好或無政黨好但要求的是無論政黨存在的形式如何，也不應對之加以限制。

但另有委員指出目前的社團條例第六條第二段有拒絕某些組織登記的權(假如團體在學校內搞有政治意識的活動等)。亦有委員認為香港目前的法律基本上可說是禁止政黨存在的，但《中英聯合聲明》却有「結社自由」的規定，故建議將來基本法不寫「政黨」的條文，但將現有防礙「結社自由」的法律條例修改或取消。

另有委員認為目前在中國很難把政府和黨分別開來，因此很難想像將來除中國共產黨外，香港還容許其他強大的政黨存在。要發展民主，則必須容許有真正的選擇機會，這真正的選擇機會則靠組織不同政黨來體現。如果民主可能受到妨礙，則令人擔心香港在九七年後的前途，屆時英國的民主蔭庇將會消失。專責小組的大部分委員已同意香港應容許政黨存在。根據中英聯合聲明「行政機關向立法機關負責」的規定，確有一線希望。但除非立法機關的大多數成員能作出團結協調的回應，否則這規定不會是個非常有效的保證。如果立法機關沒有政黨，則不能發揮集體協調的作用。要立法機關有政黨，政黨則要在立法機關外存在，並有長遠目標，其存在年期跨越立法機關的任期。

但有委員認為政黨的存在是不利香港特區的安定與繁榮的。

#### 4. 基本法是否需要「政黨」條文

有認為基本法不應有政黨的條文規定，因為《中英聯合聲明》有「言論、出版、集會、結社自由」之規定，而這些又是「依法」執行的，而香港目前亦有這權的，故將來亦應如現在保障這些自由。亦有委員指出除了不在基本法內對政黨作出規定外，更要將香港現有礙「結社自由」的條例刪除，因為《中英聯合聲明》內有「結社自由」的規定，而「結社自由」是包括「組織政黨自由」，但這個解釋未必為草委接受。另一意見則認為基本法不應有有關政黨的條文，因為大部份有政黨的西方國家，都沒有將政黨架構的問題寫入憲法內，而大多數社會主義國家的憲法則會將政黨問題寫入憲法內。

另一方面有委員認為應在基本法內規定可有政黨存在，因為不知將來「結社自由」解釋的寬度如何，故應有條文列明。另外，政黨的存在應有一定條件的限制，如(1)定必要通過註冊；(2)註冊官可審核該黨是否有與香港以外地區的政黨有關係，這樣便可減除中國共產黨甚至蘇聯共產黨介入香港的恐懼；(3)在一國兩制，五十年不變的原則下，政黨之政綱不能與基本法及《中英聯合聲明》相抵觸。

亦有委員認為由於中國基本上是個一黨國家，故基本法應寫明多黨在香港特別行政區存在，是受到法律認可的。部分草委認為基本法第三章第三條所規定的「結社自由」並不包括組織政黨的自由。如果這意見成立的話，第四章則需要有一條文寫明組織政黨的自由。這做法尤其重要，因為人大(以共產黨為其政治推動力量)是負責基本法的權力機關，也是解釋基本法的權力機關(這點還有商榷餘地)。此委員希望基本法明確規定香港特別行政區容許不同政黨存在。

#### 5. 會上委員曾提出之問題

- (1) 政黨與外地的聯系
- (2) 中國共產黨在香港的角色
- (3) 中國共產黨與本地的關係
- (4) 中國共產黨在港存在的問題

REPORT ON THE STUDY OF  
"POLITICAL PARTY"

(passed by the Executive Committee on 4 November 1987)

Special Group on  
The Political Structure of the SAR

## I Introduction

The Special Group on Political Structure has preliminarily studied the definition of "party politics", its influence on society and the various arguments for and against "party politics" in the final report prepared by the Subgroup on the Legislature (see appendix 1). This paper goes on discussing the provisions regarding political parties under the Basic Law.

## II Three proposals regarding how the issue on political parties should be dealt with in the Basic Law

A member of the Drafting Committee has put forward three concrete proposals regarding the issue on political parties:

1. To provide in the Basic Law that there should not be any political parties in the future SAR.
2. To provide in the Basic Law that political parties may exist in the future SAR, and then to consider whether their existence should be conditional. For instance, any formal or informal relationship with political parties outside the SAR shall not be allowed; the platforms and activities of political parties should not contravene the Basic Law, and the courts of the HKSAR will be responsible for adjudicating whether an activity of a political party contravenes the Basic Law.
3. The Basic Law will not contain any provisions on this issue.

## III The discussion of our Special Group

### 1. Definition of "political party"

A member noted that the definition of "political party" varied from place to place. A member also held that the definition of "political party" was very vague, and that in comparison with a secret society, a political party was an open and recognised organisation which enjoyed certain status. A member pointed out that any party which

participated in government affairs and the work of government organisations, regardless of its platform, could be regarded as a political party. Another member held that political party was an organised and disciplined body with a platform and a political objective, which aimed at participating in government and political affairs. Another member thought that any organised group of people with a clear goal, e.g. the Meeting Point, could be called a political party.

### 2. Difference between "political party" and "party politics"

A member pointed out that "political party" was different from "political society": they were products of different stages. The present, political societies were political parties in an embryonic form but there was neither political party nor party politics at present. "Political party" is different from "party politics". Party politics was not something which could be worked on; without certain set channels, political structure and social conditions, party politics would not develop or emerge. It was therefore pointless to provide for or against party politics. A view was expressed in our Group that political parties should be allowed, but party politics should be forbidden in Hong Kong because any strife between the opposition party and the ruling party would be unfavourable to Hong Kong.

### 3. Should political parties be allowed in Hong Kong?

Most of the members present agreed that political parties should be allowed in Hong Kong. At present, Hong Kong adopted the British practice that whatever not forbidden by law was considered lawful. Provided that the present practice would remain unchanged after 1997 (the existing laws should remain in force), no particular mention of political parties in the Basic Law would mean that political parties would be allowed. A member clarified that his support for allowing political parties in Hong Kong did not imply any value judgement. In other words, he did not say whether it was good or not to have political parties; he only thought that no matter what form they would be in, political parties should not be subject to restrictions. Another member pointed out that according to the second paragraph of Article 6 in the Society Ordinance, the Registrar could refuse to register certain societies (such as a society which held activities of a political nature in schools). A view was expressed that the existing laws of Hong Kong basically forbade political parties, but the Sino-British Joint Declaration provided for the "freedom of association". It was therefore suggested that the Basic Law should not contain any provisions on "political parties", but any laws which impeded the "freedom of association" should be amended or repealed.

A member noted that it was difficult at present to differentiate between government, political or political party policies/authority in China. For this reason it was difficult to visualise how a vigorous political party other than the Chinese Communist Party would be tolerated in Hong Kong. Democracy could only flourish where genuine choice was allowed to exist and was invariably given substance by the formation of political parties, the potential obstruction to democracy was very worrying for the future of Hong Kong after 1997 when the British democratic umbrella was removed. Most of the members of the special group already agreed that political parties should be allowed in Hong Kong. There was a seed of hope in the Joint Declaration which stated that the executive authorities should be accountable to the legislature. However this would not be a very effective safeguard unless a majority of the legislature could respond with a united cohesive voice. Without political parties in the legislature this cohesion would be absent. For political parties to exist within the legislature they would also have to exist outside and have an identity which was long term in objective and spanned the terms of office of the legislature.

A member, however, maintained that the existence of political parties would be unfavourable to the stability and prosperity of the HKSAR.

- A. Should the Basic Law contain any provision regarding "political parties"?

A view was expressed that there should not be any provisions on political parties because the Sino-British Joint Declaration provided for the "freedoms of speech, of the press, of assembly, and of association" which would be implemented "in accordance with law", and such rights were also provided for in Hong Kong at present. Hence, they should be protected in the future as they were now. Another member pointed out that apart from not laying down any provisions regarding political parties in the Basic Law, any existing ordinance impeding the "freedom of association" should be repealed because the Joint Declaration provided for the freedom of association which should include the freedom to form political parties. But this interpretation was not accepted by the drafters. Another view held that the Basic Law should not contain any provisions on political parties since most of the western countries with political parties did not provide for the structure of political parties in their constitutions, whereas the constitutions of most socialist countries contained provisions on the question of political party.

On the other hand, a member thought that the Basic Law should expressly provide for political parties because how the "freedom of association" would be interpreted was not known. Furthermore, political parties should be subject to certain restrictions, such as (1) registration would be required; (2) the Registrar could examine whether the political party in question had any relation with the political parties overseas so as to safeguard against the intrusion of the Chinese Communist Party or the USSR Communist Party into Hong Kong; and (3) under the principles of "one country, two systems, and no change for 50 years", the platform of any political party should not contravene the Basic Law and the Sino-British Joint Declaration.

Another member noted that because China was basically a one-party state, some sort of legal recognition was necessary in the Basic Law for the existence of more than one political party in HKSAR. The provision of "the freedom of association" in Article 3 of Chapter 3 of the Basic Law did not in some of the drafters' opinions, cover the formation of political parties, if this was the case then an article was needed in Chapter 4 to cover this point. This was especially important because the NPC (the driving political force of which is the Communist Party) would be the authority for the Basic Law and its ultimate interpretation, although there was some reservation on the latter point. Therefore this member would like to see the Basic Law written quite categorically to allow political parties in the HKSAR.

Issues raised by members at the meeting:

- (1) Overseas relationship of political parties;
- (2) The role of the Chinese Communist Party in Hong Kong;
- (3) Relationship between the Chinese Communist Party and Hong Kong; and
- (4) The problems concerning the presence of the Chinese Communist Party in Hong Kong.

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

對基本法第四章條文草稿  
(一九八七年十一月)的意見(一)

(1987年11月23日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會  
政制專責小組

## I. 對條文之意見

### (1) 第一節 行政長官

#### ① 第二條

有委員認為年「滿」這詞很含糊，是否可依照居民組的修改，改為若干年「以上」。

#### ② 第十五條

有委員認為這條顯示審計署是獨立向行政長官負責的，但行政長官作為行政機關的一份子，是需向立法機關負責的，那麼審計署、行政長官與立法機關間的負責關係應是怎樣的呢？

### (2) 第二節 行政機關

#### ① 第三條

有委員認為「廳」、「廳長」等字眼太近似國內用語，恐怕會引起港人擔憂是一種與國內掛勾的現象，甚至會變成一國一制。

### (3) 第三節 立法機關

#### ① 第九條

有委員認為此條文使立法機關的提案權比現時的還少，因為現時的會議常規只限制個別委員(非官守議員)提出涉及稅項及政府開支的法案，而第九條却加了兩項新限制，就是涉及政府政策者及涉及行政機關之結構及管理運作者。然而草委們曾提出將來立法機關的權力應相對現時立法局的權力增加，但現時却又背道而馳。

② 有委員建議基本法應列明未來立法機關繼續擁有目前權力及特權法案所規定的調查權。

## II. 其他

- (1) 有委員質疑到諮委的功能，因諮委很多主要意見都沒有在草委的工作報告中提出，如提名團/提名委員會等的意見都沒有被納入報告中。現有兩個問題：i) 工作報告是否代表草委的意見或已經對諮委的意見做了選擇後的報告？ ii) 諮委的意見需通過何種形式才可令草委看到？此委員又認為草委工作繁多，但亦希望草委考慮到諮委的意見。
- (2) 有委員擔心若草委只將草委接受的意見提出，而對不被草委接受之意見則不討論，這樣易做成與某草委熟悉之人仕的意見才獲表達。但此委員建議草委應將諮委的意見列出或/和討論，對不被接納的意見加以解釋，好使提議人接受其決定。
- (3) 有委員認為現時太多方案並列，草委應盡快找出主流意見，對較少人接受的意見則用「少數人的報告」(minority report) 去處理，這樣做可避免方案建議人至今仍埋首於自己認為是最理想的方案中，但這樣做的效益却很低。

- (4) 有委員問及何時可收到最新的條文(十一月二日廣州會議後已修改的條文)。亦有委員建議草委盡早在諮委與草委交流會前先給諮委最新的條文，好讓諮委不用在已修改的條文上爭論。另外，諮委亦希望盡早知道草委政制組何時再召開會議。
- (5) 有委員認為在現階段仍屬過早做出妥協，現應盡量表達自己認為是最好的意見，至最後階段才做妥協。

OPINIONS ON CHAPTER 4 OF  
THE DRAFT (NOVEMBER 1987) OF THE BASIC LAW (I)

(passed by the Executive Committee on 23 November 1987)

Special Group on  
The Political Structure of the SAR

I Opinions on the articles

(1) Section 1 -- the Chief Executive

1) Article 2

Regarding the term "or more", a member noted that when it appeared in Chapter 3 the Special Group on Inhabitants amended the Chinese wording to make it more precise. The member proposed that the Chinese wording here be amended accordingly.

2) Article 15

A member held that though this article indicated that the Audit Department should be accountable independently to the Chief Executive, the Chief Executive as a member of the executive authorities was supposed to be accountable to the legislature. Then what should be the accountability relationship among the Audit Department, the Chief Executive and the legislature?

(2) Section 2 -- The Executive Authorities

1) Article 3

A member noted that as the Chinese terms for "Offices" and "Directors" resembled those used in Mainland China, Hong Kong people might worry that they would suggest certain linkage with the mainland system or even "one country, one system".

(3) Section 3 -- The Legislature

1) Article 9

A member held that according to this article, the future legislature enjoyed even less power of presentation of bills because the existing standing orders only imposed restriction on the presentation of bills by individual members (unofficial members) regarding taxation and government expenditure whereas this article imposed restriction on two more areas i.e. relating to government policies and relating to the structure and operation of the executive authorities. The drafters had mentioned that the powers of the future legislature should be greater than that of the existing legislature but the

2) A member proposed that the Basic Law should state that the future legislature would continue to enjoy the power of investigation provided by the existing "Legislative Council (Powers and Privileges) Ordinance".

II Others

(1) A member was dubious about the function of CCBL members as many of their major views were not included in the Working Paper of the Drafting Committee e.g. the proposals regarding the nomination committee. Two questions were therefore raised: i) Did the Working Paper present only the views of the Drafting Committee or did it reflect the views of the CCBL members selectively? ii) Through what means would the views of CCBL members be accessible to the drafters? The member hoped that despite their heavy workload, the drafters would consider the views of CCBL members.

(2) A member was concerned that if only the views acceptable to the drafters would be mentioned while those not accepted by the drafters would not be discussed at all, then it would easily lead to a situation where only those who knew the drafters personally could get their points across. The member proposed that the drafters list out and/or discuss the views of CCBL members, and give reasons for rejecting any of them so that the CCBL members who put forward the views could accept the decisions of the drafters.

(3) A member held that as there were too many proposals at present, the drafters should identify the main stream as early as possible. And those views which were acceptable to relatively few people should be dealt with in a "minority report". This would avoid the situation where the proposers still entertained the belief that their own proposals were the best as such attitude would not do any good.

(4) A member asked when the CCBL could receive the latest articles (the articles which had been revised after the Guangzhou meeting on 2 November). Another member proposed that the drafters give the latest articles to CCBL members as early as possible before an exchange session with the drafters so that CCBL members would no longer dwell on the articles which had actually been revised. In addition, CCBL members hoped that they could also know as early as possible when the Subgroup on Political Structure of the Drafting Committee would hold the next meeting.

(5) A member held that at this stage it was still too early to make compromise and members should express the best points in their view. Compromise should not be made until the very last stage.

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

# 功能組別選舉方法方案歸納報告

(1987年11月23日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會  
政制專責小組

歸納各方案所提功能組別選舉部份，各方案基本上贊成有功能組別選舉(註一)，祇是內部選舉方式，組別成分，組別側重點和選舉目的不同。

歸納方法如下：

I. 功能組別內部選舉方式

(一) 沿用現時舊制

(二) 一人一票

II. 功能組別成份

(一) 沿用舊制但增加組別，增加席位

(二) 參考基本法諮詢委員會界別法

(三) 功能組別的組別及席位分配建議

A. 側重工商金融界

B. 其他

(四) 團體或行業要求被列為新功能組別或被納入現有組別內

A. 現時立法局功能組別所佔席位

B. 要求現時被列為新功能組別或被納入現有組別內

1. 專業團體或機構

2. 行業或界別

C. 要求97年後被列為新功能組別

III. 功能組別選舉目的

(一) 產生立法機關成員

(二) 產生選舉行政長官的組織

I. 功能組別內部選舉方式

(一) 沿用現時舊制

現時立法局功能組別選舉的特點：

① 直選形式 — 部份功能組別代表，是用一人一票的直接選舉方法選出的。

— 功能組別中的教學界，法律界，醫學界，及工程建築、測量及都市規劃界，都是在界內的候選人中，以一人一票的直接方式，選出代表進入立法局的。

(註一) 香港專上學生聯會與香港大學學生會均反對功能組別選舉。

②以機構單位作為選民 — 功能組別的選民，除了以上四個界別以個人為單位外，其他的五個界別，是以組織的成員為單位的。而這些機構組織的成員，包括了商業機構、社團和個人，參差不齊。這些界別的選舉方法，也是用一單位一票，選出其代表進入立法局的。有個別單位在投票前，由單位內的成員以投票方法，決定自己的單位的一票，應投給那一位候選人。亦有些單位，是由決策機關決定的，方法不一。

贊成沿用現時舊制者基於政制改革應參考現存優良制度，立法局現時功能組別選舉經驗，港人已普遍接受，所以應予保留。

1. 太平山學會

2. 吳夢珍

3. 學友社

(二) 一人一票

1. 查良鏞

功能組別內部產生是採用直接選舉。

2. 中根

功能組別內部選舉盡量一人一票，避免一會一票，如社工界不應一會一票。

3. 38位文教界諮委及團體負責人

II. 功能組別成份

各方案中提及功能組別成分時，大都主張增加組別。方案認為增加功能組別能兼容廣泛，增強代表性。

(一) 沿用舊制但增加組別、增加席位

1. 太平山學會

基本上沿用現行功能組別選舉模式，但需要把其範圍擴充：一方面增設新的功能組別作為選舉團，另一方面增加現有指定功能組別所產生席位。

2. 李華明

增加席位加強功能組別的代表層面，以保障社會上不同利益的意見得到充份代表。

3. 吳夢珍

功能組別選舉基本上可沿用現在的選舉方法，但可考慮擴大功能組別的範圍，以及增加個別組別的議席。

4. 匯點

按現時及新增設的立法局功能組別選舉劃分的功能組別，產生總數接近但不多於直選議員半數的議員。按就業人數、經濟活動的重要性等標準增設更多不同功能組別（如會計界、護理界及航運界等）而個別現存的功能組別（如勞工界）亦應獲增分配議席數目。

5. 中根

立法機關一半議席按功能組別經選舉產生，並考慮將現時組別擴大，盡量兼容各組別。

6. 學友社

功能組別除現行界別外，須增加文化界、文藝界、航運界等。

7. 有人提議增設一個組別，以包括那些不屬於現有功能組別的專業團體。

(二) 參考基本法諮詢委員會界別法(附表一)

1. 薛鳳旋

功能組別可按基本法諮詢委員會劃分。

2. 查良鏞

功能組別界別大致上和現在基本法諮詢委員會的成份相似。

(三) 功能組別席位分配的建議

A. 側重工商金融界

有方案認為應側重工商、金融界功能組別席位。原因是①其他選舉方式如直選等，代表中、下階層，並不能代表該界利益；②工商界及專業人士對香港經濟繁榮有貢獻。側重工商、金融界保證可維持香港經濟繁榮。

1. 冼銘倫

組別應偏重工商金融界代表。

2. 香港民主協會

功能組別代表應以工商和金融界為主，在立法局代表人數24人，來自最有影響和對社會最有貢獻12種不同行業。

3. 港人協會

功能組別代表基本上代表了工商、金融、基層和專業人士三種不同力量。日後工商金融業在功能組別選舉中應佔一半或接近一半的議席，因為其他方式的選舉，並不直接代表該界別的利益。

4. 基督徒弘道社  
立法機關百分之二十五由功能組別選舉，可有較大金融商界代表。

B. 其他

1. 鄭宇碩

立法機關內由功能組別選出的席位分為親中組織、工商界及專業團體。

2. 何鍾泰、唐一柱、曹宏威

功能組別名單及席位分配由「由界定團體」組成的「遴選委員會」製訂。「界定團體」的名單及每個團體所推選的委員數目，大致上與現有「基本法諮詢委員會」組織時所列舉的「界定團體」相同。

3. 徐是雄

功能組別的席位，由12席增至22席，具體的議席分佈：

組成	代表	議席數目
(一) 商界	香港總商會	
	香港中華總商會	2
(二) 工業界	香港工業總會	
	香港中華廠商聯合會	2
(三) 金融界	香港銀行公會	2
(四) 勞工界	所有註冊職工會	3
(五) 社會服務界	香港社會服務聯會	
	香港社會工作人員協會	2
(六) 醫學界	香港醫學會	
	香港牙醫學會	2
(七) 教學界	選民名冊按以下名單編	3
(八) 法律界	訂：法定名單以及各機	3
(九) 工程師	構和有關專業團體的成	1
(十) 建築師	員名單／職員名單	1
(十一) 會計師		1

4. 38位文教界諮委及團體負責人(註二)

分三大類職業組別①商界、工業界、銀行界及其他僱主；②專業人士及行政管理人員；③各行業勞工界及非從事經濟活動人士。

(註二)方案提出者認為此方案不屬功能組別選舉。但由於每大類職業人數不相等，選出各組別代表時，各選民的票值不相等，與現時功能組別內部選舉相似，故仍把這方案撥入此份文件討論。

	提名團議席數目	立法機關議席數目
第一大類職業組別共佔	32	16
其中 商界(1)	12	6
工業界(2)	8	4
銀行界(3)	4	2
其他僱主	8	4
第二大類職業組別共佔	32	16
其中 醫學界(註冊醫生)	2	1
其他護理人員	2	1
教學界	4	2
法律界	2	1
社會服務界	4	2
工程、建築、測量及城市設計師	2	1
會計、核數師	2	1
資訊、傳媒專業人士	2	1
行政人員	4	2
文化藝術界	2	1
其他專業人士	6	3
第三大類職業組別共佔	32	16
其中 文員	4	
銷售人員	4	2
服務業工作人員	4	2
農、林、牧、漁人士	4	2
製造、建築、運輸工作中員	12	2
學生、退休人士、料理家務者	4	6
及其他非從事經濟活動人士		2
立法機關成員	16	--
人大代表、政協委員	16	--
地區選舉	--	24
總數	128	72

註(1)商界可界定為香港總商會及香港中華總商會成員商號的董事。

(2)工業界可界定為香港工業總會及香港中華廠商聯合會成員廠號的董事。

(3)銀行界可界定為香港銀行公會成員銀行的董事。

5. 港人協會

建議功能組別的席位由12席擴至30席，但沒進一步具體建議。

(四) 團體或行業要求被列為新功能組別或被納入現有組別內

A. 現時立法局功能組別所佔席位

這些界別及所佔席及指定選舉人為：

界別	席位	選舉人
(1) 商界 (1)	1	香港總商會會員
(2)	1	中華總商會會員
(2) 工業界 (1)	1	工業總會會員
(2)	1	中華廠商會會員
(3) 金融界	1	銀行公會會員
(4) 勞工界	2	註冊工會
(5) 社會服務界	1	香港社會服務聯會會員
(6) 醫學界	1	醫學會會員及其他註冊醫生
(7) 教學界	1	全職教師
(8) 法律界	1	律師會、大律師公會會員及 政府律政人員
(9) 工程、建築、測量 及都市規劃界	1	工程師學會、建築師學會、 測量師學會及都市規劃師學會會員

共十二席

B. 要求現時被列為新功能組別或被納入現有組別內

1. 專業團體或機構

社團診所醫生協會有限公司 (希望被納入醫學界組別內)

香港建造商會

港九各區街坊會協進會有限公司

英國建築師與測量師學會 (香港分會)

鄉議局

香港電腦學會

香港接受存款公司公會 (希望被納入金融界組別內)

香港機電工程承建商協會

香港期貨交易所 (希望被納入金融界組別內)

香港建築師學會

香港土地測量師學會 (希望被納入工程師及有關專業組別內)

香港圖書館協會

香港獸醫公會 (希望被納入醫學界組別內)

香港電機及電子立案工程師學會

英國屋宇經理學會香港分會

香港保險總會 (希望被納入金融界組別內)

香港漁民團體聯席會議

香港旅遊業聯會

九龍總商會

新界總商會 (希望被納入商界組別內)

香港地產建設商會

政府護理員協會

英國特許秘書及行政人員公會香港分會

英國公認會計師公會

英國特許屋宇設備工程師學會

金銀業貿易場

港九各區街坊會協進會有限公司

香港牙醫學會

香港接受存款公司公會

香港機電工程承建商協會

香港期貨交易所

香港工程師學會

香港測量師學會

皇家造船工程師學會及船舶工程師學會香港聯合分會

香港管理專業協會

香港護士會

香港會計師公會

香港聯合交易所

香港教師會

香港旅遊協會

印度商會

港九新界農牧業團體聯席會議

工程、建築及土地發展專業聯合議會

香港建築業協會

英國染色學會

在上述團體中，最多人贊成將其列為新功能組別的有鄉議局、香港會計師公會及九龍總商會。

2. 行業或界別

會計行業	行政人員
廣告業	農業
校友會	畜牧業
建築業	核數行業
民航業	廣播業
建造業	飲食業
特許秘書	中醫
公務員	宗親會
文藝界	牙醫
教育行政	電腦資料處理
金融服務業	漁民聯會
金銀證券期貨交易從業員	「草根」階層
小販聯會	酒店業
印度籍居民	新界原居民
街坊會	土地測量業
圖書館從業員	海運業
護理行業	藥劑師、物理治療師及醫療輔助人員
警務人員	出版業
地產業	宗教團體
退休人士	社會工作人員
股票經紀	大專教育界
紡織及製衣業	旅遊業
運輸服務業	紡織印染業
婦女聯會	

C. 要求97年後被列為新功能組別

會計界	文化界
護理界	文藝界
航運界	港九各區街坊會協進會有限公司

III. 功能組別選舉的目的

(一) 產生立法機關成員

各方案中功能組別選舉目的都在於產生立法機關成員，祇是所佔比例不同。

以下是各方案對功能組別選舉產生立法機關成員比例歸納：

1. 功能組別選舉約佔立法機關成員70%

1.1 香港政府華員會

1.2 38位文教界諮委及團體負責人 (2/3)

2. 功能組別選舉佔立法機關成員60%

2.1 冼銘倫

2.2 香港民主協會

3. 功能組別選舉佔立法機關成員50%

3.1 薛鳳旋

3.2 中根

3.3 香港都市規劃師學會

3.4 查良鏞

3.5 何鍾泰、唐一柱、曹宏威

3.6 港人協會

3.7 學友社

3.8 吳夢珍

3.9 76人方案

4. 功能組別選舉佔立法機關成員40%

4.1 太平山學會

4.2 香港大學畢業同學會政制組

4.3 港九各區街坊會協進會

5. 功能組別選舉佔立法機關成員33.3%

5.1 張熾標

5.2 匯點

5.3 查濟民

5.4 陳弘毅

5.5 徐是雄 (8/11/86)

5.6 鄭宇碩

5.7 李華明

6. 功能組別選舉佔立法機關成員25%
- 6.1 民主公義協會
- 6.2 香港基督教協進會公共政策委員會
- 6.3 190人方案
- 6.4 基督徒弘道社
- 6.5 徐是雄 (9/1/86)

(二) 產生選舉行政長官的組織

1. 蔣鳳旋

行政長官由協商團產生。協商團由行政局全體非官守議員、立法局全體議員、功能團體、社會團體組成。

2. 76人方案

行政長官由「選舉團」選出。「選舉團」由各功能組別代表組成。

3. 徐是雄

行政長官經由大選舉團產生。大選舉團包括功能組別選舉產生的立法機關代表。

4. 學友社

各界功能組別代表組成「遴選委員會」負責遴選行政長官候選人的工作。成員人數約150至200人。

5. 港人協會

由功能組別和地區議會組成420至560人的選舉團。選舉團負提名權及選舉權。代表不能選現任立法機構成員。功能組別成員有資格被提名選舉行政首長。

6. 香港政府華員會

功能組別代表與區議會主席和市政局及區域市政局代表組成500至600人的選舉團，選舉團產生五人提名團，提名若干名候選人，交由選舉團選出行政長官。

7. 醫務界專業團體基本法聯席會議

功能組別與市局及地區議會代表，共同組成500至600人選舉團，由選舉團選出一個提名團。提名若干行政長官候選人後交選舉團選出。

8. 38位文教界諮委及團體負責人

「行政長官候選人提名團」由128人組成，96席由職業分組選舉產生。行政長官由“提名團”提名，全民投票產生。

# 諮詢委員會成員產生辦法附表

成員界別劃分及名額分配(總人數暫定150人)

九月二十八日諮詢委員會發起人第四次會議討論通過

界別	推薦邀請人數				簡定邀請人數	小合計	備註
	界定團體推薦人數		非界定註冊團體推薦人數				
	界定團體名稱	人數	團體名稱	人數			
工商業 21.3% 32人	工業	香港中華廠商聯合會	1	6	5	15	
		香港工業總會	1				
		香港生產力促進局	1				
		香港貿易發展局	1				
	商業	香港中華總商會	1	5	3	10	
		香港總商會	1				
	旅遊	香港旅遊協會	1	1		2	
	海運	香港船東協會	1		1	2	
	陸運				1	1	
	航空				1	2	
小合計		8	14	10	32		
			22				
金融地產 12% 18人	銀行	香港銀行公會	2		2	6	
		香港華商銀行業同業公會	2				
	證券	香港聯合交易所	1	1		2	
	地產	香港地產建設商會	3		2	5	
	建造	香港建造商會	1	1		2	
	保險			2	1	3	
小合計		9	4	5	18		
			13				
法律 6.7% 10人	大律師	香港律師會	3		2	8	院及高等法院。 司法包括：地方 司法
		香港大律師公會	3				
	司法				2	2	
	小合計		6		4	10	
			6				
專業人士 20.7% 31人	工程師	香港工程師學會	1	1	1	3	作者。 學者包括專上學院的教師。 教育包括：教育學院及中小學、幼稚園及職業訓練教育工 文藝包括音樂、舞蹈、美術、電影、戲劇。 醫務人員包括中、西、牙醫藥劑師、護士。
	建築師	香港建築師學會	1				
	測量師	香港測量師學會	1		1	4	
	都市規劃師	香港都市規劃師學會	1				
	會計師	香港會計師學會	1		1	2	
	工商管理	香港管理專業協會	1			1	
	醫務人員	香港醫學會	1	2	1	4	
	學者			3		3	
	科技	香港科技協進會	1			1	
	文藝			2	1	3	
	教育	教育團體關注基本法聯席會議	3	1	2	6	
體育			1	1	2		
城市管理					2	2	
小合計		11	10	10	31		
			21				
傳媒 7.3% 11人	電視	香港無線電視台	1			1	
		香港亞洲電視台	1			1	
	電台	香港電台	1			1	
		香港商業電台	1			1	
	新聞				4		
	雜誌、出版			2	1	7	
小合計		4	2	5	11		
			6				
勞工及基層團體 24.7% 37人	勞工	勞工界基本法聯席會議	7		2	9	社會服務包括慈善、福利團體。 社區包括鄉事、街坊組織。
	公務員			5	1	6	
	政見	香港政見團體基本法聯席會議	4		2	6	
	學生	香港專上學生聯會	2		1	3	
	社區			2	1	3	
	社會服務	社會工作者總工會	1				
		社會服務聯會	1			3	
		社會工作人員協會	1				
				2	2	4	
	漁農			1	1	2	
小販			1		1		
小合計		16	11	10	37		
			27				
宗教 4% 6人		六大宗教領袖聯席會議	6			6	
外籍人士團體 3.3% 5人					5	5	
總計			60	41	49	150	
			101				
			佔67.3%	佔32.7%			

註：1. 人大代表、政協委員，行政局、立法局、市政局、區域議局、區議會、鄉議局議員和婦女等代表性人物分別在上述界別推薦、邀請時加以考慮。

2. 推薦邀請及簡定邀請之各界人士可包括外籍人士。

REPORT ON THE SUMMARY OF PROPOSALS  
REGARDING FUNCTIONAL CONSTITUENCIES ELECTIONS

(passed by the Executive Committee on 23 November 1987)

Special Group on  
The Political Structure of the SAR

The various proposals are basically in favour of functional constituencies elections [Note 1]. They only differ in the method of internal election, composition of constituencies, the weight of various constituencies and the purpose of the elections.

The proposals are summarised in the following way:

I. Method of election within the functional constituencies

- (1) The existing system will still apply
- (2) One-man-one-vote

II. Composition of the functional constituencies

- (1) The existing system will still apply but with more constituencies and more seats
- (2) Taking the composition of the CCBL as reference
- (3) Proposals regarding the allocation of seats to functional constituencies
  - A. With emphasis on the industrial, commercial and financial sectors
  - B. Others
- (4) The organisations or sectors requesting recognition as new functional constituencies or inclusion within existing constituencies
  - A. The present allocation of seats to functional constituencies in the Legislative Council
  - B. Requests for recognition as new functional constituencies or inclusion within existing constituencies at present
  - C. Requests for recognition as new functional constituencies after 1997

III Purpose of functional constituencies elections

- (1) To select members of the legislature
- (2) To select the body for electing the Chief Executive

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[Note 1] The Federation of Student and the Student Union of the Hong Kong University are against functional constituencies elections.

I. Method of election within the functional constituencies

- (1) The existing system will still apply

Characteristics of the present functional constituencies elections to the Legislature Council:

- 1) In the form of direct elections -- Some of the representatives of functional constituencies are selected by direct elections on a one-man-one-vote basis.

-- Electors of the teaching functional constituency, the legal functional constituency, the medical functional constituency, the engineering, architectural, surveying and planning functional constituency directly elect representatives to the Legislative Council from candidates of their respective constituencies on a one-man-one-vote basis.

- 2) Organisations as electors

-- Apart from the above-mentioned constituencies whose electors are individuals, electors of the other five constituencies are members of designated organisations which include commercial organisations, community bodies and individuals. These constituencies also elect their representatives to the legislature on a one-unit-one-vote basis. Some units first determine which candidates they will elect by putting it to a vote within the units. But for some units, it will be decided by their respective policy-making bodies.

The argument for maintaining the existing system is that political reforms should take the existing good system as reference. As the functional constituencies elections to the Legislative Council at present are widely accepted by Hong Kong people, they should be retained.

1. Hong Kong Affairs Society
2. Agnes Ng
3. Hok Yau Club

- (2) One-man-one-vote

1. Louis Cha

Direct elections should be adopted for selection within the functional constituencies.

## 2. Chung Keng

Elections within the functional constituencies should as far as possible be on a one-man-one-vote basis. One-unit-one-vote election should be avoided e.g. the social services functional constituency should not adopt the one-unit-one-vote method.

## 3. 38-member proposal

# II. Composition of the functional constituencies

When mentioning the composition of functional constituencies, most of the proposals advocate that the number of functional constituencies be increased so that they will be more widely representative.

## (1) The existing system will still apply but with more constituencies and more seats

### 1. Hong Kong Affairs Society

The existing mode of functional constituencies election will basically be adopted but the scope should be enlarged: new functional constituencies should be added as electoral colleges on one hand and more seats should be allocated to functional constituencies on the other.

### 2. Lee Wah Ming

More seats should be allocated to functional constituencies to ensure that the various interests in society may be fully represented.

### 3. Agnes Ng

The present election method for functional constituencies may generally be adopted. But we may consider enlarging the scope of functional constituencies and increasing the number of seats for individual constituencies.

### 4. Meeting Point

The existing and additional functional constituencies in Legislative Council elections will select a certain number of councillors. The number should be close to but not more than half of the number of directly elected councillors. More functional constituencies (e.g. accounting, nursing, shipping, etc.) should be created in the light of the number of persons employed and the importance of such economic activities. The number of seats allocated to the existing functional constituencies (e.g. labour) should also be increased.

## 5. Chung Keng

Half of the legislature should be constituted by functional constituencies elections. We may consider enlarging the scope of the existing functional constituencies to accommodate different groups.

## 6. Hok Yau Club

Apart from the existing functional constituencies, the cultural constituency, literature and arts constituency and shipping constituency should be added.

## 7. It has been suggested that a new constituency be created to include those professional organisations which do not belong to any of the existing functional constituencies.

## (2) Taking the composition of the CCBL as reference (see the attached table)

### 1. Victor Sit

The composition of functional constituencies may be in accordance with that of the CCBL.

### 2. Louis Cha

The composition of functional constituencies will generally be similar to that of the present CCBL.

## (3) Proposals regarding the allocation of seats to functional constituencies

### A. With emphasis on the industrial, commercial and financial sectors

Some proposals are of the view that emphasis should be laid on the commercial, industrial and financial functional constituencies for the following reasons: 1) Other modes of election such as direct election will give representation to the middle and lower classes in society and may not represent the interests of the above-mentioned sectors; 2) As the industrial and commercial sectors as well as the professionals contribute to the economic prosperity of Hong Kong, giving them due emphasis will ensure that the economic prosperity of Hong Kong may be maintained.

1. Sin Ming Lun

Emphasis should be laid on the representation of industrial, commercial and financial functional constituencies.

2. Association for Democracy of Hong Kong

Representatives of functional constituencies should mainly be from the industrial, commercial and financial sectors. Twenty-four members of the Legislative Council should be elected from the twelve sectors which are most influential and make the most contribution to society in Hong Kong.

3. Hong Kong People's Association

The functional constituencies basically represent 3 different forces in society, namely the industrial, commercial and financial sectors, the grassroot level and the professionals. In the future functional constituencies elections, the industrial, commercial and financial sectors should be entitled to half or nearly half of the seats because other modes of election do not directly give representation to the interests of those sectors.

4. Fraternity for the Sharing of the Christian Way

Twenty-five percent of the legislature should be constituted by functional constituencies elections. The financial and commercial sectors may be given greater representation.

B. Others

1. Joseph Y.S. Cheng

Members of the legislature elected by functional constituencies are representatives of pro-China organisations, industry and commerce, and professional organisations.

2. Raymond Ho, Tong Yat Chu and Tso Wung Wai

The list of functional constituencies and the allocation of seats will be decided by a "selection committee" comprising "designated organisations". The list of "designated organisations" and the number of members recommended by each organisation will be more or less the same as those in the formation of the CCBL.

3. Zee Sze Yong

The number of seats for functional constituencies should increase from 12 to 22, the proposed distribution of seats is as follows:

Constituencies	Representatives	No. of seat
1. Commercial functional constituency	The HK General Chamber of Commerce The Chinese General Chamber of Commerce	2
2. Industrial functional constituency	The Federation of HK Industries The Chinese Manufacturers Association of HK	2
3. Financial functional constituency	The HK Association of Banks	2
4. Labour functional constituency	Registered trade unions	3
5. Social services functional constituency	The HK Council of Social Service	2
6. Medical functional constituency	The HK Medical Association Dental Association	2
7. Teaching functional constituency	The electors' register will be in accordance with the following lists: Statutory lists and the membership/staff lists of the various organisations and relevant professional bodies	3
8. Legal functional constituency		3
9. Engineering functional constituency		1
10. Architectural functional constituency		1
11. Accounting functional constituency		1

4. 38-member proposal [Note 2]

There are three main professional divisions: 1) the commercial sector, the industrial sector, the financial sector, and other employers; 2) professionals and administrators; 3) other trades, the labour sector and those who are involved in non-economic activities.

	number of seats in the legislature
The first category of professional divisions should have a total number of	16 seats
including: commercial sector [1]	6
industrial sector [2]	4
financial sector [3]	2
other employers	4
The second category of professional divisions should have a total number of	16 seats
including: medical sector	
(registered practitioners)	1
other medical staff	1
educational sector	2
legal sector	1
social workers	2
engineers, architects, surveyors, and town-planners	1
accountants and auditors	1
information and mass media	1
art and cultural sector	1
administrators	2
other professionals	3

[Note 2] The 38 members consider that this proposal is not for functional constituencies elections. As the various professional divisions do not have equal membership and the value of a vote differs from sector to sector, which is similar to the case of elections within the present functional constituencies, this proposal is included in this paper.

The third category of professional divisions should have a total number of	16 seats
including: clerical staff	2
sales personnel	2
service personnel	2
Those engaged in agriculture, forestry, livestock husbandry, and fishing	2
manufacturing, construction, and transportation personnel	6
students, retired persons, house-keepers, and others who are involved in non-economic activities	2
TOTAL	48 seats

Footnotes:

[1] Commercial sector refers to directors of the member-corporations of the Hong Kong General Chamber of Commerce and the Chinese Chamber of Commerce.

[2] Industrial sector refers to directors of the member-corporations of the Federation of Hong Kong Industries and the Chinese Manufacturers Association of Hong Kong.

[3] Financial sector refers to directors of the member-banks of the Hong Kong Association of Banks.

5. Hong Kong People's Association:

The number of seats for functional constituencies should increase from 12 to 30, but there is no further substantial proposal.

(4) Organisations or sectors requesting recognition as new functional constituencies or inclusion within existing constituencies

A. The present allocation of seats to functional constituencies in the Legislative Council:

The functional constituencies, the number of seats allocated to them, and their electors are as follows:

Constituencies	No. of seats	Electors
1) Commercial functional constituency	1.	Members of the Hong Kong General Chamber of Commerce
	2.	Members of the Chinese General Chamber of Commerce
2) Industrial functional constituency	1.	Members of the Federation of Hong Kong Industries
	2.	Members of the Chinese Manufacturers Association of Hong Kong
3) Financial functional constituency	1	Members of the Hong Kong Association of Banks
4) Labour functional constituency	2	Registered trade unions
5) Social Services functional constituency	1	Members of the Hong Kong Council of Social Service
6) Medical functional constituency	1	Members of the Hong Kong Medical Association & other registered medical practitioners
7) Teaching functional constituency	1	Full-time teachers
8) Legal functional constituency	1	Members of the Law Society of Hong Kong, members of the Hong Kong Bar Association, & legal officers in the Legal Department
9) Engineering, Architectural, Surveying, and Planning functional constituency	1	Members of the Hong Kong Institution of Engineers, and members of the Hong Kong Institute of Architects, members of the Hong Kong Institute of Surveyors, and members of the Hong Kong Institute of Planners

Total: 12

B. Requests for recognition as new functional constituencies or inclusion within existing constituencies at present

1. Professional bodies or organisations

- Association of Government Nursing Staff
- Association of Medical Practitioners of Societies' Clinics Ltd (wish for inclusion in the Medical constituency)
- Association of the Institute of Chartered Secretaries and Administrators in Hong Kong
- Building Contractors' Association Ltd
- Chartered Association of Certified Accountants
- Chartered Institution of Building Services Engineers
- Chinese Gold and Silver Exchange
- Council of Hong Kong and Kowloon Kaifong Association Ltd
- Faculty of Architects and Surveyors, Hong Kong Branch
- Heung Yee Kuk
- Hong Kong Computer Society
- Hong Kong Dental Association
- Hong Kong Deposit-Taking Companies Association (wish for inclusion in the Financial constituency)
- Hong Kong Electrical and Mechanical Contractors Association Ltd
- Hong Kong Futures Exchange Ltd (wish for inclusion in the Financial constituency)
- Hong Kong Futures Exchange Ltd
- Hong Kong Institute of Architects
- Hong Kong Institute of Engineers
- Hong Kong Institute of Land Surveyors (wish for inclusion in the Engineers and associated professions constituency)
- Hong Kong Institute of Surveyors
- Hong Kong Joint Branch of the Royal Institution of Naval Architects and the Institute of Marine Engineers
- Hong Kong Library Association
- Hong Kong Management Association
- Hong Kong Nurses Association
- Hong Kong Society of Accountants
- Hong Kong Stock Exchange
- Hong Kong Teachers Association
- Hong Kong Tourist Association
- Hong Kong Veterinary Association (wish for inclusion in the Medical constituency)
- Indian Chamber of Commerce
- Institute of Electrical and Electronics Incorporated Engineers
- Insurance Council of Hong Kong (wish for inclusion in the Financial constituency)
- Joint Committee of Fishermen's Organisations, Hong Kong
- Joint Conference of the Hong Kong, Kowloon, and New Territories Agricultural Organisations
- Joint Council of Engineering, Building, and Land Development
- Joint Council of the Travel Industry of Hong Kong
- Kowloon Chamber of Commerce

New Territories General Chamber of Commerce (wish for inclusion in the Commercial constituency)  
 Real Estate Developers Association of Hong Kong  
 Society of Builders, Hong Kong  
 Society of Dyers and Colourists

Of the above, the bodies which received the largest response in support of their recognition as new functional constituencies were the Heung Yee Kuk, the Hong Kong Society of Accountants and the Kowloon Chamber of Commerce.

2. Occupational or other sectors

accountancy	administration
advertising	agriculture
alumni associations	animal husbandry
architecture	auditing
aviation	broadcasting
building	catering
chartered secretaries	Chinese herbal medicine
civil service	clansmen's associations
culture and the arts	dentistry
educational administration	electronic data processing
financial services	fishermen's associations
futures trading in gold, silver, and securities	grassroots
hawker associations	hotel
Indian community	indigenous NT inhabitants
Kaifong associations	land surveying
library	marine
nursing and health care	pharmacy, physiotherapy, and paramedical
police	publishing
real estate	religious bodies
retired persons	social work
stock broking	tertiary education
textile and garment manu- facturing	tourism and travel
transport services	weaving, spinning and dyeing
women's associations	

Requests for recognition as new functional constituencies after 1997

accountancy	culture
nursing and health care	culture and the arts
shipping	Council of HK and Kowloon Kaifong Associations Ltd

III Purpose of functional constituencies elections

(1) To select members of the legislature

Functional constituencies elections as mentioned in the various proposals all serve the purpose of selecting members of the legislature. But the percentage of legislators to be selected by functional constituencies varies.

According to the percentage of legislators to be selected by functional constituencies elections, the proposals can be grouped as follows:

1. About 70% of the legislators to be selected by functional constituencies elections
  - 1.1 Hong Kong Chinese Civil Servants' Association
  - 1.2 38-member proposal (2/3)
2. 60% of the legislators to be selected by functional constituencies elections
  - 2.1 Sin Ming Lun
  - 2.2 Association for Democracy of Hong Kong
3. 50% of the legislators to be selected by functional constituencies elections
  - 3.1 Victor Sit
  - 3.2 Chung Keng
  - 3.3 Hong Kong Institute of Planners
  - 3.4 Louis Cha
  - 3.5 Raymond Ho, Tong Yat Chu, and Tso Wung Wai
  - 3.6 Hong Kong People's Association
  - 3.7 Hok Yau Club
  - 3.8 Agnes Ng
  - 3.9 76-member proposal
4. 40% of the legislators to be selected by functional constituencies elections
  - 4.1 Hong Kong Affairs Society
  - 4.2 Political Structure Group of the University Graduates Association of Hong Kong Ltd
  - 4.3 Council of Hong Kong and Kowloon Kaifong Associations Ltd
5. 33.3% of the legislators to be selected by functional constituencies elections
  - 5.1 Albert Cheung
  - 5.2 Meeting Point

- 5.3 Cha Chi-man
- 5.4 Albert Chen
- 5.5 Zee Sze-yong (8/11/86)
- 5.6 Joseph Y.S. Cheng
- 5.7 Lee Wah Ming

6. 25% of the legislators to be selected by functional constituencies elections

- 6.1 Association for Democracy of Hong Kong
- 6.2 Commission on Public Policy of Hong Kong Christian Council
- 6.3 190-member proposal
- 6.4 Fraternity for the Sharing of the Christian Way
- 6.5 Zee Sze-yong (9/1/86)

(2) To select the body for electing the Chief Executive

- 1. Victor Sit

The Chief Executive will be selected by a consultative college which is composed of all unofficial members of the Executive Council, all Legislative Councillors, functional constituencies, and community organisations.

- 2. 76-member proposal

The Chief Executive will be selected by an "electoral college" which is composed of representatives of functional constituencies.

- 3. Zee Sze-yong

The Chief Executive will be selected through a grand electoral college which includes representatives of the legislature who are selected by functional constituencies elections.

- 4. Hok Yau Club

Representatives of the functional constituencies will form a "selection committee" responsible for selecting the candidates for the Chief Executive. The membership of the committee will range from 150 to 200.

- 5. Hong Kong People's Association

The functional constituencies and district authorities will form an electoral college of 420-560 members responsible for nomination and election. Current members of the legislature will not be eligible to be members of the legislature. Members of the functional constituencies will be qualified to be nominated as candidates for the Chief Executive.

- 6. Hong Kong Chinese Civil Servants' Association

Representatives of the functional constituencies, Chairmen of District Boards and representatives of the Urban Council and the Regional Council will form an electoral college of 500-600 members. The electoral college will select a 5-member nomination committee which will be responsible for nominating a certain number of candidates. The electoral college will then elect the Chief Executive from these candidates.

- 7. Joint Conference of Health Care Professional Organisations on the Basic Law

Representatives of the functional constituencies and district authorities will form an electoral college of 500-600 members. The electoral college will select a nomination committee which will nominate a number of candidates from whom the electoral college will elect the Chief Executive.

- 8. 38-member proposal

The committee for nominating the candidates for the Chief Executive will be composed of 12 members, among whom 96 will be selected by professional divisions. The Chief Executive will be nominated by the nomination committee and selected by referendum.

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

**Table on the Selection of CCBL Members**  
**Division of Sectors and Allocation of Seats**  
(Tentative Total: 150)  
Discussed and Passed by the Promoters of the CCBL at  
their Fourth Meeting held on 28 September 1985

SECTORS		NUMBER OF SEATS FOR RECOMMENDED INVITATION			NO. OF SEATS FOR INVITATION BY CONSULTATION	SUB-TOTAL	REMARKS
		No. of seats for recommendation by designated organisations		No. of seats for recommendation by non-designated registered organisations			
		Name of designated organisations	No.				
Industry and Commerce 21.3% 32 persons	Industry	The Chinese Manufacturers' Association	1	6	5	15	
		The Federation of HK Industries	1				
		The HK Productivity Council	1				
		The Trade Development Council	1				
	Commerce	The HK Chinese General Chamber of Commerce	1	5	3	10	
		The HK General Chamber of Commerce	1				
	Tourism	The HK Tourist Association	1	1	1	2	
Shipping	The HK Shipowners' Association	1	1	1	2		
Transport			1		1		
Aviation			1	1	2		
Sub-total			8	14	10	32	
			22				
Finance and Real Estate 12% 18 persons	Banking	The HK Association of Banks	2		2	6	
		The Chinese Banks' Association	2				
	Securities	The Stock Exchange of HK	1	1		2	
	Real Estate	The Real Estate Developers' Association	3		2	5	
		The Building Contractors' Association	1	1		2	
	Insurance			2	1	3	
Sub-total			9	4	5	18	
			13				
Law 6.7% 10 persons	Barristers	The Bar Association	3		2	8	
	Lawyers	The Law Society	3				
	Judiciary				2	2	
	Sub-total			6		4	10
			6				
Professionals 20.7% 31 persons	Engineers	The Institute of Engineers	1	1	1	3	
	Architects	The Institute of Architects	1				
	Surveyors	The Institute of Surveyors	1		1	4	
	City Planners	The Institute of Planners	1				
	Accountants	The Society of Accountants	1		1	2	
	Business Management	HK Management Association	1			1	
	Medical Professionals	The HK Medical Association	1	2	1	4	
	Academics			3		3	
	Science & Technology	The Association for the Advancement of Science and Technology	1			1	
	Literature & Arts			2	1	3	
	Education	The Joint Conference of Education Groups for the Concern of Basic Law	3	1	2	6	
	Sports			1	1	2	
	City Management				2	2	
	Sub-total			11	10	10	31
			21				
Media 7.3% 11 persons	Television	TVB	1			1	
		ATV	1			1	
	Radio	RTHK	1			1	
		Commercial Radio	1			1	
	Magazines & Publications			2	4	7	
Sub-total			4	2	5	11	
			6				
Labour and Grassroot 24.7% 37 persons	Labour	The Joint Conference of Labour Groups on Basic Law	7		2	9	
	Civil Service			5	1	6	
		Political Opinion	The Joint Conference of the Political Opinion Groups on Basic Law	4		2	6
	Students	HK Federation of Students	2		1	3	
	Communities			2	1	3	
	Social Service	The Social Workers' General Union	1				
		The HK Council of Social Service	1			3	
		The HK Social Workers' Association	1				
	Agriculture & Fishery			2	2	4	
Hawkers			1	1	2		
Sub-total			16	11	10	37	
			27				
Religion 4% 6 persons		The Joint Conference of Leaders from Six Religions	6			6	
Organisations of Non-Chinese 3.3% 5 persons					5	5	
<b>TOTAL</b>			60	41	49	150	
			101 (67.3%)		(32.7%)		

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**Remarks:**

- (1) The judiciary includes district courts and the high court.
- (2) Medical professionals includes practitioners of Chinese medicine, practitioners of Western medicine, dentists, pharmacists, and nurses.  
  
Literature and arts include music, dance, fine arts, film, and drama.  
  
Education includes teachers of institutes of education, secondary and primary schools, kindergartens, and vocational training schools.
- (3) Communities include rural and kaifong associations.  
  
Social service includes charity and welfare organisations.

**Notes:**

1. Representative figures such as delegates to the National People's Congress, members of the Political Consultative Conference, Executive Councillors, Legislative Councillors, Urban Councillors, Regional Councillors, members of District Boards, Heung Yee Kuk and women representatives will be considered when making recommended invitations.
2. Members who are invited by recommendation or by consultation may include expatriates.

# 直接選舉方法方案歸納報告

(1987年11月23日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會  
政制專責小組

## 前言

本文所列舉的直接選舉方法方案，就是以普及和平等的原則，用一人一票方式，由選民直接地選出行政長官以及立法機關議席的方案。

基本上，各方案有下述特徵：

- ①普及和平等——大致上每位選民有相同的投票權利，而每張選票的價值亦平等；
- ②直選——選民直接地決定誰人當選行政長官以及立法機關成員；
- ③開放性——選民的資格無特別限制，投票過程公開。

而下文則分兩部份來介紹：一

### (I) 行政長官產生方法

雖然所有這類方案都同意全民直接選出行政長官，而很多方案贊成應對行政長官施加提名限制，但對如何限制問題，則有如下的不同意見：

- ①全由立法機關成員提名行政長官候選人；
- ②部份地由立法機關成員提名行政長官候選人；
- ③全由立法機關以外人士提名行政長官候選人。

負責提名行政長官候選人的組織，對行政長官的產生有着間接而又實質的影響，故此，怎樣設立這個組織是一個重要的問題。

### (II) 立法機關議席產生方法

大部份方案都同意部份立法機關議席由直接選舉產生，不同的方案建議不同的比例。

關於選舉單位方面，大部份方案同意用分區性直接選舉方式，但對於如何劃分選區的問題，則存着分歧。

另外，沒有方案提出須對立法機關議席候選人施加提名限制。

## 分類項目

### I. 行政長官的產生方式

- A. 無提名限制的直接選舉
- B. 有提名限制的直接選舉

### II. 立法機關議席的產生方式

- A. 分區式直接選舉
- B. 比例代表制直接選舉
- C. 其他

- I. 行政長官的產生方式
- A. 無提名限制的直接選舉
1. 香港大學學生會  
行政長官最終應由全體市民普選產生。
- B. 有提名限制的直接選舉
1. 學友社  
由各界功能團體代表組成一個「遴選委員會」，「遴選委員會」經協商或選舉產生「正式候選人」5名，行政長官以「全民投票」方式，直接選舉產生。
2. 基督教協進會公共政策委員會  
行政長官候選人必須得5名立法局(立法機關)議員提名，由全港選民以「一人一票」方式選出。
3. 大學畢業同學會  
由本港立法機關全體成員和同等數目之中央委任之當地人士組成「提名團」，行政長官候選人須得到這兩類提名成員各1/8支持，然後經全民選舉產生。
4. 190方案  
行政長官候選人須由立法機關成員提名，全港一人一票直接選舉產生。
5. 吳康民方案  
「行政長官候選人提名委員會」由37人組成，包括香港人大代表、政協委員、立法機關、司級官員、市政局及區域市政局代表、區議會代表和社會團體代表，負責推出候選人3—5名，由全港市民直接選舉行政長官。
6. 38位文教界諮委及團體負責人方案  
行政長官由「行政長官候選人提名團」提名，經全民投票產生。提名團由128人組成，其中96席由職業分組選舉產生，香港人大代表和政協委員互選佔16席，立法機關互選佔16席。
- \* 7. 查濟民方案(第二部份)  
2010年前後的行政長官，經顧問局協商後提名2—3名香港人，由北京同意後交由香港全體選民普選，得票多數者由中央任命。

\* 2. 基督教弘道社

行政長官必須從一個「候選人團體」(Candidates Pool)中選出,由已登記為選民的港人提名,全港選民一人一票選出。

候選人團體成員包括所有曾任或現任立法機關、市政局、區域市政局、區議會之民選成員,現任行政長官,以及指定數目由功能組別選舉之代表。

II. 立法機關議席的產生方式

A. 分區性直接選舉

雖然下述方案提出把全港分成若干個選區,然後交由選民在區內直接選出議席,但對於選區的大少問題,則有不同意見。大多數方案提議全港選區數目界乎10—20之間。

1. 陳弘毅方案

三分之一立法機關議席由分區性直接選舉產生。

2. 匯點

直接選舉是產生立法機關議席的主要方法。以五十萬人口為基礎劃分選區,每選區選舉四位議員,選舉制採相對多數選舉制。

3. 學友社

一半立法機關議席由分區直接選舉選出。可將全港劃分成幾個大選舉區,然後以分區直接選舉投票選出。

4. 吳康民方案

由分區直接選舉百分之三十立法機關議席。

5. 38位文教界諮委及團體負責人方案

三分之一立法機關議席(24位)由地區選舉產生,各地區佔2—3席。

6. 三方學會

部份立法機關議席由分區直接選舉產生,選舉用一人一票原則。

7. 工商界諮委(76人方案)

四分之一立法機關議席由地域選區直接選出,把全港劃分成十個選區,每個選區可以一人一票原則進行選舉,得到最多選票的2位候選人可進入立法機關。

8. 港人協會

百分之三十立法機關議席由直接選舉產生,把全港分為18—24區,實行單選區多數當選制。

9. 醫務界專業團體基本法聯席會議  
百分之三十立法機關議席由地區直接選舉產生。
  10. 薛鳳旋方案  
一半立法機關議席由直接選舉產生，而直接選舉則以分區式全民投票選出。
  11. 冼銘倫方案  
百分之四十立法機關議席由分區直接選舉產生。
  12. 中根  
一半立法機關議席由分區直選產生。
  13. 何鐘泰、唐一柱、曹宏威  
立法機關議席共65個，其中20個由區域性直接選舉產生。
  14. 徐是雄方案  
三分之一立法機關議席由直接選舉產生。  
立法機關有66位成員，22人通過分區直接選舉產生；港島區共選6人，分2區選舉，每區選3人；九龍區共選8人，分4區選舉，每區選2人；新界區共選8人，分4區選舉，每區選2人。
  15. 吳夢珍方案  
四分之一立法機關議席由直接選舉產生，可用分區選舉方法直接選舉選出。
  16. 查濟民方案  
三分之一立法機關議席由區議會或各個選區產生。
  17. 香港民主協會  
一半立法機關議席應由分區直接選舉產生。可參考區議會劃分選區方式，每25萬居民為一選區，由居民直接選出一名立法機關成員。
  18. 李華明方案  
大約三分之二立法機關議席由直接選舉產生，每十五萬人便有一席位。
  19. 香港都市規劃師學會  
一半立法機關議席由地方選舉或直接選舉產生。
- B. 比例代表制直接選舉

1. 太平山學會方案

百分之六十立法機關席位按參選名單以比例代表的形式選舉產生。

參選者組成參選團，各參選團的參選者須把名字按先後次序列在一名參選名單之上，然後把整份名單提出參選。選民投票選擇的不是個別候選人，而是個別的參選名單。

選舉的結果是就每份參選名單所得的票數，按比例並根據排名的先後次序分配給各參選名單中之候選人。

選舉可以全港作為一個大選區進行，或把全港劃分為兩至三個選區進行，選民享有一人一票的權利。

C. 其他

1. 鄭宇碩方案

一半立法機關議席由直接選舉產生。

2. 繆熾宏方案

四分之三立法機關議席由直接選舉產生。

3. 馮煒光方案

立法機關議席由直接選舉和間接選舉混合產生。

4. 香港大學學生會

全部立法機關議席最終應由直接選舉產生。

5. 基督教協進會公共政策委員會

百分之六十立法機關議席由直接選舉產生。

6. 大學畢業同學會

長遠而言(廿一世紀)應朝向全部直接選舉立法機關議席。

7. 190方案

一半立法機關議席由直接選舉產生。

8. 張熾標方案

九七年前設立三分之二的直接選舉立法機關議席。

9. 華員會

百分之三十立法機關議席由直接選舉產生。

10. 古星輝方案  
百分之四十立法機關議席由直接選舉產生。
11. 基督徒弘道社  
一半立法機關議席經由直接選舉產生，至於直接選舉的方法，則可再討論，例如：以人口普選，以地區普選。
12. 陳協平方案  
百分之十八立法機關議席由直接選舉產生。
13. 港九各區街坊會協進會有限公司  
百分之十立法機關議席應由合法人數提名之知名人士普選。
14. 小商販社團聯合會  
強調“慎重，讓大家逐步適應才能確定立法局(立法機關)應在何時開始直接選舉。”

REPORT ON THE SUMMARY OF  
PROPOSALS REGARDING DIRECT ELECTIONS

(passed by the Executive Committee on 23 November 1987)

Special Group on  
The Political Structure of the SAR

## Introduction

The proposals on methods of direct elections listed in this paper are the proposals which advocate that the Chief Executive and members of the legislature should be directly elected by electors on a one-man-one-vote basis according to the principles of universality and equality.

The following are the common features of the proposals:

- (1) Universality and equality -- In general, each elector enjoys equal right to vote, and each vote is of equal value;
- (2) Direct election -- Electors may directly decide who are to be the Chief Executive and members of the legislature;
- (3) Openness -- There is no particular restriction on the electors' qualification; and the process of election is open.

The paper is divided into two sections:

## (I) Selection of the Chief Executive

Though these proposals are all in favour of the selection of the Chief Executive by direct election, a number of them maintain that there should be restriction on the nomination of the Chief Executive. The following are different suggestions regarding the restriction on nomination:

- (1) All candidates for the Chief Executive are to be nominated by legislators;
- (2) Some of the candidates for the Chief Executive are to be nominated by legislators;
- (3) All candidates for the Chief Executive are to be nominated by non-legislators.

The body responsible for nominating candidates for the Chief Executive will have indirect but substantial bearing on the selection of the Chief Executive. Hence, how such a body is to be set up is an important issue.

## (II) Formation of the legislature

Most of the proposals hold that some of the legislators are to be selected by direct elections, but the percentage of these legislators may vary from one proposal to another.

As regards constituencies, most of the proposals favour direct election by geographical constituencies, but divergent views are recorded on how the constituencies are to be drawn up.

None of the proposals suggests restriction on the nomination of legislators.

Outline of the paper:

## I. Selection of the Chief Executive

- A. Direct election without restriction on nomination
- B. Direct election with restriction on nomination

## II. Selection of members of the legislature

- A. Direct election by geographical constituencies
- B. Direct election by proportional representation
- C. Others

## I. Selection of the Chief Executive

- A. Direct election without restriction on nomination

## 1. Student Union of the Hong Kong University

The Chief Executive should ultimately be elected in a general election.

- B. Direct election with restriction on nomination

## 1. Hok Yau Club

A selection committee comprising 150 to 200 members who are representatives of various functional constituencies is to be formed. The committee will be responsible for selecting 5 "official candidates" through consultations or by elections. The Chief Executive is to be selected by direct election in the form of "referendum".

## 2. Commission on Public Policy of Hong Kong Christian Council

Any candidate for the Chief Executive must be nominated by 5 members of the legislature. The Chief Executive will be

elected by all electors in Hong Kong on a one-man-one-vote basis.

3. University Graduates' Association of Hong Kong Limited

A nomination college to be formed by all members of the legislature and the same number of local people appointed by the Central Government. Candidates for the Chief Executive must be supported by 1/8 of the members of each of the two parties.

4. 190 proposal

Candidates for the Chief Executive should be nominated by members of the legislature and selected by direct election on a one-man-one-vote basis.

5. Ng Hong Mun's proposal

A nomination committee for the Chief Executive, comprising 37 persons (including Hong Kong delegates to the NPC, members of the Political Consultative Conference, representatives of the legislature, Secretary-level officials, representatives of the Urban Council and the Regional Council, and representatives of the District Boards and community organisations), will be responsible for choosing 3 to 5 candidates who will then stand for direct election with universal franchise.

6. 38-member proposal

The Chief Executive is to be nominated by a nomination committee for the Chief Executive and then selected by referendum. The nomination committee will be composed of 128 persons among whom 96 will be elected by the professional divisions, 16 will be elected from among the Hong Kong delegates to the NPC and members of the Political Consultative Conference, and 16 will be elected from among members of the legislature.

\*7. Cha Chi-man's proposal (The second part)

Arrangement for the selection of the Chief Executive around 2010: After carrying out consultations, the advisory council will nominate 2-3 Hong Kong persons. After the nomination is approved by the Central Government, a general election will be held in Hong Kong. The candidate with the largest number of votes will be appointed by the Central Government as Chief Executive.

\*8. Fraternity for the Sharing of the Christian Way

The Chief Executive should be elected from the "candidates pool". The candidates will be nominated by registered electors in Hong Kong. A one-man-one-vote general election will then be held in Hong Kong.

Members of the candidates pool include all elected former and serving members of the legislature, the Urban Council, the Regional Council, and the District Boards, the incumbent Chief Executive and a certain number of representatives of the functional constituencies.

II. Selection of members of the legislature

A. Direct election by geographical constituencies

1. Albert Chen's proposal

1/3 of the members of the legislature are to be directly elected by geographical constituencies.

2. Meeting Point

Members of the legislature will mainly be selected by direct election. Each constituency, consisting of 500,000 people, will be responsible for electing 4 legislators. Candidates are to be elected by a relative majority.

3. Hok Yau Club

Half of the legislature members are to be directly elected by geographical constituencies. Hong Kong may be divided into several constituencies which will be responsible for returning legislators by direct elections.

4. Ng Hong Mun's proposal

30% of the legislators are to be directly elected by geographical constituencies.

5. 38-member proposal

1/3 of the legislators (i.e. 24 members) are to be elected by the various geographical constituencies. Each constituency will be responsible for returning 2 or 3 legislators.

6. Tritolaire Academy

Some of the legislators are to be directly elected by geographical constituencies. Elections are to be held on a one-man-one-vote basis.

7. Business and Professional Group of the CCBL (76-member proposal)

1/4 of the legislators are to be directly elected by geographical constituencies. Hong Kong will be divided into 10 constituencies in which elections are to be held on a one-man-one-vote basis. The two candidates with the largest number of votes may sit on the legislature.

8. Proposal of the Hong Kong Affairs Society

30% of the legislators are to be directly elected. Hong Kong will be divided into 18 to 24 constituencies. The system of "one seat per constituency and by simple majority" will be adopted.

9. Joint Conference of Health Care Professional Organisations on the Basic Law

30% of the legislators are to be directly elected by geographical constituencies.

10. Victor Sit's proposal

Half of the legislators are to be directly elected. Elections are to be held in the various geographical constituencies in the form of a referendum.

11. Sin Ming Lun's proposal

40% of the legislators are to be directly elected by geographical constituencies.

12. Chung Keng

Half of the legislators are to be directly elected by geographical constituencies.

13. Raymond Ho, Tong Yat Chu and Tso Wung Wai

Of the 65 members in the legislature, 20 are to be directly elected by geographical constituencies.

14. Zee Sze Yong's proposal

1/3 of the legislators are to be directly elected. Of the 66 members of the legislature, 22 will be directly elected by geographical constituencies. The Hong Kong island being divided into 2 constituencies will return 6 members (each constituency will elect 3 members). Kowloon being divided into 4 constituencies will return 8 members (each constituency will elect 2 members). The New Territories being divided into 4 constituencies will return 8 members (each constituency will elect 2 members).

15. Agnes Ng's proposal

1/4 of the legislators will be directly elected. Direct election by geographical constituency may be adopted.

16. Cha Chi Man's proposal

1/3 of the legislators are to be elected by the District Boards or the various geographical constituencies.

17. Association for Democracy of Hong Kong

Half of the legislators are to be directly elected by geographical constituencies. The division of constituencies for District Boards elections may be taken as reference. Each constituency will consist of 250,000 inhabitants who will directly elect a legislator.

18. Lee Ming Wah's proposal

About 2/3 of the legislators will be directly elected. A legislator should be elected by every 150,000 people.

19. The Hong Kong Institute of Planners

Half of the legislators are to be returned by either district election or direct election.

B. Direct election by proportional representation

1. Proposal of the Hong Kong Affairs Society

60% of the seats in the legislature are to be apportioned in proportion to the votes each candidate slate gets.

Candidates should form themselves into a group and present a slate in which their names are listed in the order of priority. The slate will be submitted for election where the electors will vote on individual slates instead of individual candidates.

The results of election are the votes gained by the slates. The seats will be allocated to the slates according to the number of votes they gain; the seats gained by a slate will be given to the candidates according to the order of their names in the slates. Hong Kong as a whole may be treated as a constituency or be divided into 2 or 3 constituencies. Each elector will be entitled to one vote.

C. Others

1. Joseph Y.S. Cheng's proposal  
Half of the legislators are to be selected by direct elections.
2. Mao Chi Wang's proposal  
3/4 of the legislators are to be selected by direct elections.
3. Fung Wai Kwong's proposal  
Legislators are to be returned by a mix of direct and indirect elections.
4. Student Union of the University of Hong Kong  
All legislators will ultimately be selected by direct elections.
5. Commission on Public Policy of Hong Kong Christian Council  
60% of the legislators are to be selected by direct elections.
6. University Graduates' Association of Hong Kong Limited  
In the long run (by the 21st century), all legislators should be selected by direct elections..
7. 190-member proposal  
Half of the legislators are to be selected by direct elections.
8. Albert Cheung's proposal  
2/3 of the legislators are to be selected by direct elections before 1997.
9. Hong Kong Chinese Civil Servants' Association  
30% of the legislators are to be selected by direct elections.
10. Ku Sing Fai's proposal  
40% of the legislators are to be selected by direct elections

11. Fraternity for the Sharing of the Christian Way

Half of the legislators are to be selected by direct elections. Methods of direct election can be further discussed. For instance: general election by geographical constituencies or by constituencies drawn up according to population.

12. Chan Hip Ping's proposal

80% of the legislators are to be selected by direct elections.

13. Council of Hong Kong and Kowloon Kai Fong Associations Limited

10% of the legislators shall be eminent persons nominated by a statutory number of people and elected in a general election.

14. Hong Kong and Kowloon Merchants & Hawkers Association

It should be stressed that "matters should be dealt with prudently to allow the people to gradually adapt to the situation. Only then should we decide when direct election would be introduced to the Legislative Council (legislature)".

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