

**\* Explanations on “The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (Draft)” and Its Related Documents**

(Addressing the Third Session of the Seventh National People’s Congress on March 28, 1990)

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Fellow Deputies,

Through four years and eight months of effort, the Drafting Committee for The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China has completed the work of drafting the Basic Law. The Standing Committee of the National People’s Congress has submitted to the current session of the National People’s Congress for examination “The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (Draft)” and three annexes; the draft designs of the regional flag and regional emblem for the Hong Kong Special Administrative Region: “The Decision of the National People’s Congress of the People’s Republic of China on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region (Draft),” which has been worked out by the Drafting Committee on behalf of the National People’s Congress; and “The Proposal by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region on the Establishment of the Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People’s Congress.” I have been entrusted by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region to make the following explanations concerning this legal document.

In accordance with “The Decision of the Third Session of the

Sixth National People's Congress on the Establishment of the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China," at its 11th session the Standing Committee of the Sixth National People's Congress appointed the members of the Hong Kong Basic Law Drafting Committee. On July 1, 1985, the Drafting Committee was officially established and began its work. After mapping out its work plans and deciding upon the structure of the Basic Law, the Drafting Committee set up five special groups consisting of committee members from both the mainland and Hong Kong. The five groups, namely, the Special Group Concerned with the Relationship between the Central Authorities and the Hong Kong Special Administrative Region; the Special Group Concerned with Fundamental Rights and Duties of Residents; the Special Group Concerned with the Political Structure; the Special Group Concerned with the Economy; and the Special Group Concerned with Education, Science, Technology Culture, Sports and Religion, were responsible for the drafting work. After these special groups worked out their first draft of provisions of the Basic Law, the General Working Group was set up to make overall adjustment and revision of the draft provisions. In April 1988, the seventh plenary session of the Hong Kong Basic Law Drafting Committee issued "The Draft Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China for Solicitation of Opinions." In the next five months, the Committee widely collected opinions from Hong Kong and the provinces, autonomous regions, municipalities directly under the Central Government and relevant departments on the mainland and, based on the collected opinions, the Committee made more than 100 revisions in the draft version. In January 1989, at its eighth plenary session, the Drafting Committee voted by secret ballot on the draft Hong Kong Basic Law and its annexes and related documents to be submitted to the Standing Committee of the National People's Congress, article by article and document by document. Except for Article 19 in the draft Basic Law, all other provisions, annexes and related documents were adopted by a two-thirds majority. At its sixth session held in February 1989, the Standing Committee of the Seventh National People's Congress decided to promulgate the Hong Kong Basic Law (Draft), its annexes and other related documents to widely solicit opinions from Hong Kong; from the provinces, autonomous regions and municipalities directly under the Central Government on the mainland; and from central government

departments, democratic parties, mass organizations and experts as well as from the general departments of the People's Liberation Army. After an eight-month opinion-soliciting period followed by a careful study of the opinions collected from all circles, the special groups jointly put forward 24 amendment bills, including the one regarding Article 19 in the Hong Kong Basic Law (Draft). At the ninth plenary session of the Drafting Committee in February this year, those amendment bills were voted upon by secret ballot one by one and all of them were passed by an over two-thirds majority. Then, all relevant provisions in the original draft were replaced by provisions recommended by the amendment bills. With this, the work of drawing up the Hong Kong Basic Law (Draft), its annexes and other related documents was complete.

The collection and selection of designs for the regional flag and regional emblem of the Hong Kong Special Administrative Region was the responsibility of the Committee for Selecting Designs for the Regional Flag and Regional Emblem of the Hong Kong Special Administrative Region, consisting of five drafters of the Basic Law and six experts from both Hong Kong and the mainland. After the selecting committee conducted the first and second rounds of selection from the 7,147 contributed designs, the Basic Law Drafting Committee examined and appraised the candidates recommended by the selecting committee. Since the Drafting Committee failed to decide upon a single set of designs for the regional flag and regional emblem to be submitted to the National People's Congress for examination, the selecting committee again worked out three sets of candidate designs of the regional flag and regional emblem for the Hong Kong Special Administrative Region through collective modification of certain contributed designs. The draft designs of the regional flag and regional emblem to be submitted to the National People's Congress for examination were finally selected at the ninth plenary session of the Basic Law Drafting Committee through a secret ballot. Also at the session, the second and third paragraphs under Article 10 of the draft Basic Law regarding the regional flag and regional emblem of the Special Administrative Region were passed.

Over this period of more than four years, the Drafting Committee has held nine plenary sessions, 25 meetings of the Chairman and Vice-Chairmen and two enlarged meetings of the Chairman and Vice-

Chairmen; the General Working Group held three meetings; the Special Groups met 73 times; and even the Committee for Selecting Designs for the Regional Flag and Regional Emblem of the Hong Kong Special Administrative Region held five meetings.

In reviewing the work done over this period of more than four years, we must say that drafting of this legal document was conducted in a very democratic and open manner. During the process of drafting the Basic Law, members of the Drafting Committee worked together with one heart and pooled their wisdom and efforts; and each and every article of the document was worked out after investigation, study and full discussion in which views of the majority were followed and those of the minority respected. After every meeting, reporters covering the event were briefed and the Consultative Committee for the Basic Law of the Hong Kong Special Administrative Region was immediately informed of its proceedings. The work of drafting the Basic Law was completed with the close attention and broad participation of the entire nation, especially the compatriots and people from all circles in Hong Kong. What is especially noteworthy here is that the Hong Kong Basic Law Consultative Committee, formed by people from all walks of life in Hong Kong, collected a great amount of opinions and suggestions in Hong Kong on the Basic Law and promptly referred them to the Drafting Committee and has rendered active and effective assistance to the work of drafting the Basic Law from the very beginning. The work of the Consultative Committee has been praised by the drafters.

Fellow Deputies,

The draft Basic Law that has been submitted to the current session of the National People's Congress for examination includes a Preamble and 160 articles in nine chapters. The nine chapters are: Chapter I, General Principles; Chapter II, Relationship Between the Central Authorities and the Hong Kong Special Administrative Region; Chapter III, Fundamental Rights and Duties of the Residents; Chapter IV, Political Structure; Chapter V, Economy; Chapter VI, Education, Science, Culture, Sports, Religion, Labour and Social Services; Chapter VII, External Affairs; Chapter VIII, Interpretation and Amendment of the Basic Law; and Chapter IX, Supplementary Provisions. There are also

three annexes, namely, Annex I: Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region; Annex II: Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures; and Annex III: National Laws to be Applied in the Hong Kong Special Administrative Region.

## **I. On the Guiding Principle of Drafting the Hong Kong Basic Law**

“One country, two systems” is the fundamental policy of the Chinese Government for bringing about the country’s reunification. In line with this policy, the Chinese Government has formulated a series of principles and policies regarding Hong Kong. The main point is to establish a special administrative region directly under the Central People’s Government when China resumes its sovereignty over Hong Kong. Except for national defence and foreign affairs, which are to be administered by the Central Government, the Hong Kong Special Administrative Region will exercise a high degree of autonomy; no socialist system or policies will be practiced in the Region, the original capitalist society, economic system and way of life will remain unchanged and the laws previously in force in Hong Kong will remain basically the same; Hong Kong’s status as an international financial centre and free port will be maintained; and the economic interests of Britain and other countries in Hong Kong will be taken into consideration. The Chinese Government has written the above principles and policies into the Sino-British Joint Declaration on the Question of Hong Kong and proclaimed that all the principles and policies regarding Hong Kong will remain unchanged for 50 years, which is to be codified in the Basic Law. The concept of “one country, two system” and all the principles and policies regarding Hong Kong formulated on the basis of this concept provide the fundamental guarantee for the resumption of China’s sovereignty over Hong Kong and the maintenance of Hong Kong’s stability and prosperity; they also conform to the basic interests of the Chinese people, particularly those of the Hong Kong compatriots.

Article 31 of China’s Constitution stipulates that “the state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law

enacted by the National People's Congress in the light of the specific conditions." China is a socialist country and socialism is China's basic system. To realize China's reunification, however, another kind of social system, namely, the capitalist system, may be practiced in individual regions of the country. It is on the basis of China's Constitution and with "one country, two system" as the guiding principle that all the state principles and policies regarding Hong Kong have been established in the draft Hong Kong Basic Law, which has been submitted to the present session of the National People's Congress for examination.

## **II. On the relationship between the Central Authorities and the Hong Kong Special Administrative Region**

The relationship between the Central Authorities and the Hong Kong Special Administrative Region is one of the important issues defined by the Basic Law and is touched upon not only in Chapter II but also in Chapter I, Chapter VII, Chapter VIII and other chapters.

Article 12 of the draft stipulates, "The Hong Kong Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government." This stipulation defines that legal status of the Hong Kong Special Administrative Region and constitutes the basis for specifying the Region's limits of power and its relationship with the Central Authorities. The Hong Kong Special Administrative Region, as an inalienable part of the People's Republic of China, will be a local administrative region directly under the Central People's Government and at the same time, it will be a special administrative region enjoying a high degree of autonomy and practicing a system and executing policies different from those of the mainland. Therefore, the draft Basic Law contains both provisions embodying the unity and sovereignty of the country and provisions empowering the Special Administrative Region with a high degree of autonomy in the light of Hong Kong's special circumstances.

The power to be exercised by, or the affairs which are the responsibility of the Standing Committee of the National People's Congress or the Central People's Government, as prescribed in the draft

law, is indispensable to maintaining the state sovereignty. For example, the Central People's Government will be responsible for the Special Administrative Region's defence and foreign affairs and the Chief Executive and other principal officials of the Special Administrative Region will be appointed by the Central People's Government; a small number of national laws relating to defence and foreign affairs as well as other matters beyond the limits of the autonomy of the Special Administrative Region will be applied locally by way of promulgation or legislation by the Special Administrative Region; and in the event that the National People's Congress Standing Committee decides to declare a state of war or, by reason of turmoil within the Hong Kong Special Administrative Region which endangers national unity or security and is beyond the control of the Special Administrative Region Government, decides that the Region is in a state of emergency, the Central People's Government may issue an order applying the relevant national laws in Hong Kong. The draft law also stipulates that the Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, or subversion against the Central People's Government, or theft of state secret, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies. These stipulations are entirely necessary for maintaining the state sovereignty, unity and territorial integrity as well as for preserving Hong Kong's long-term stability and prosperity.

The high degree of autonomy to be enjoyed by the Special Administrative Region, as stipulated in the draft, embodies executive, legislative and independent judicial power, including that of final adjudication. The Special Administrative Region, authorized by the Central People's Government, also has the power to conduct relevant external affairs on its own. This shows that the Hong Kong Special Administrative Region will enjoy extensive autonomy.

Regarding the executive power, the draft law, while stipulating that the Special Administrative Region shall, on its own, conduct the administrative affairs of Hong Kong in accordance with the Basic Law, specifically defines the Special Administrative Region's autonomy in

areas such as finance, economy, industry commerce, trade, transport and communications, development and management of land and natural resources, education, science and technology, culture, sports, public order and control of entry and exit activities. For instance, the draft law stipulates that the Special Administrative Region shall have independent finances, its revenues shall not be handed over to the Central Government, and the Central Government shall not levy taxes in the Region; and the Special Administrative Region may, on its own, formulate monetary and financial policies, the Hong Kong dollar shall be the legal tender in the Region, and the authority to issue Hong Kong currency shall be vested in the Special Administrative Region Government. Also, the draft stipulates that representatives of the Special Administrative Region Government may act as members of delegations of the Chinese Government to participate in negotiations at the diplomatic level affecting Hong Kong; the Special Administrative Region may on its own, using the name “Hong Kong, China,” maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organizations in economic, trade, financial and monetary, shipping, communications, tourism, cultural, sports and other appropriate fields.

Regarding the legislative power, the draft stipulates that laws enacted by the Hong Kong Special Administrative Region legislature shall take effect upon the signature and promulgation by the Chief Executive. The laws shall be reported to the National People’s Congress Standing Committee for the record, but they will go into force without being affected by this reporting. The draft also stipulates that only when it considers that any law enacted by the Special Administrative Region legislature is not in conformity with the provisions of the Basic Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the Region, shall the National People’s Congress Standing Committee return the law in question; the Standing Committee shall not amend it. Any law returned by the National People’s Congress Standing Committee shall immediately be invalidated. These stipulations not only conform with the “one country, two systems” principle and are in line with provisions of the Constitution, but also take into full consideration the need for Hong Kong to enjoy a high degree of autonomy.



According to the Constitution, interpretation of laws is among the powers and functions of the National People's Congress Standing Committee. To take into account Hong Kong's special circumstances, the draft Basic Law, while stipulating that the power of interpretation of the Basic Law shall be vested in the National People's Congress Standing Committee, provides that the National People's Congress Standing Committee shall authorize the courts of the Hong Kong Special Administrative Region to interpret on their own, in adjudicating cases, the provisions of the Basic Law which are within the limits of the autonomy of the Region. This stipulation will guarantee the power of the National People's Congress Standing Committee and also facilitate the Hong Kong Special Administrative Region in exercising its autonomy. According to the draft, the Hong Kong Special Administrative Region courts may also interpret other provisions of the Basic Law in adjudicating cases. However, if the courts, in adjudicating cases, need to interpret the provisions of the Basic Law concerning affairs which are the responsibility of the Central People's Government, or the relationship between the Central Authorities and the Region, and if such interpretation will affect their final judgements on the cases, the courts shall seek an interpretation of the relevant provisions from the National People's Congress Standing Committee through the Court of Final Appeal of the Region. The courts, in applying those provisions, shall follow the interpretation of the National People's Congress Standing Committee. This stipulation will provide the basis for the Region's courts, in adjudicating cases, to comprehend the provisions of the Basic Law concerning affairs which are the responsibility of the Central Government or the relationship between the Central Authorities and the Hong Kong Special Administrative Region, and prevent the courts from making erroneous judgements due to inaccurate understanding.

The draft vests the courts of the Special Administrative Region with independent judicial power, including that of final adjudication. This is certainly a very special situation wherein courts in a local administrative region enjoy the power of final adjudication. Nevertheless, in view of the fact that Hong Kong will practise social and legal systems different from the mainland's, this provision is necessary. Under the current judicial system and principles, the Hong Kong authorities have never exercised jurisdiction over acts of state such as defence and foreign affairs. While

preserving the above principle, the draft stipulates that the courts of the Hong Kong Special Administrative Region shall obtain a certificate from the Chief Executive on questions of fact concerning acts of state such as defense and foreign wherever such questions arise in the adjudication of cases. This certificate shall be binding on the courts. However, before issuing such a certificate, the Chief Executive shall obtain a certifying document from the Central People's Government. This stipulation not only appropriately solves the question of jurisdiction over acts of state, but also guarantees that the courts of the Region can conduct their functions in a normal way.

In additional, in order to enable the National People's Congress Standing Committee to heed fully the opinions of the people from all walks of life in Hong Kong when it makes decisions on whether a law enacted by the Special Administrative Region legislature conforms to the provisions concerning affairs within the responsibility of the Central Authorities or to the provisions concerning the relationship between the Central Authorities and the Special Administrative Region, decisions on adding to or deleting from the list of national laws which are applicable in the Hong Kong Special Administrative Region in Annex III and decisions on the interpretation of and amendment to the Basic Law, the drafters have recommended that when the Basic Law comes into force, a working committee be set up under the National People's Congress Standing Committee to submit its views regarding the above questions to the National People's Congress Standing Committee. The working committee shall be composed of people from the mainland and Hong Kong. To this end, the Hong Kong Basic Law Drafting Committee has drafted the "Proposal by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region on the Establishment of the Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress."

### **III. On the Fundamental Rights and Duties of Hong Kong Residents**

The extensive rights and freedoms enjoyed by the residents of the Hong Kong Special Administrative Region and other people residing in the Region as prescribed in Chapter III of the draft Basic Law include

political, economic, cultural, social and family rights and freedoms and the freedom of person. The special features in the provisions concerning Hong Kong residents' rights and freedoms in the draft Basic Law boil down to the following two basic points:

(1) The draft provides multi-level protection for Hong Kong residents' rights and freedoms. In accordance with the characteristics of the composition of Hong Kong residents, the draft stipulates not only the general rights and freedoms enjoyed by Hong Kong residents, but also the rights of the permanent residents and Chinese citizens living among them. It also stipulates that people other than Hong Kong residents also enjoy the rights and freedoms of Hong Kong residents in accordance with the law. In addition, while stipulating in explicit terms the fundamental rights and freedoms of Hong Kong residents, the draft also stipulates that Hong Kong residents shall enjoy the other rights and freedoms safeguarded by the laws of the Hong Kong Special Administrative Region. In view of the application in Hong Kong of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions, the draft stipulates that those provisions shall remain in force and be implemented through the laws of the Special Administrative Region. In addition to a chapter specially devoted to Hong Kong residents' rights and freedoms, there are also provisions concerning the issue in other relevant chapters and articles. Thus, extensive, comprehensive and multi-level protection is provided for safeguarding Hong Kong residents' rights and freedoms.

(2) The rights, freedoms and duties of Hong Kong residents are prescribed in the draft in accordance with the principle of "one country, two systems" and in the light of Hong Kong's actual situation. They include such specific provisions as protection of private ownership of property, the freedom of movement and freedom to enter or leave the Region, the right to raise a family freely and protection of private persons' and legal entities' property. The draft also provides that the systems to safeguard the fundamental rights and freedoms of Hong Kong residents shall all be based on the Basic Law.

#### **IV. On the Political Structure**

Chapter IV of the draft Basic Law mainly defines the formation and powers of and inter-relationship among the executive, legislature and judiciary, as well as the qualifications, powers and functions of and relevant policies regarding the Chief Executive, principal officials, members of the executive and legislative councils, judges of the courts at all levels and other members of the judiciary, and public servants of the Hong Kong Special Administrative Region. It also provides that district organizations which are not organs of political power may be established in the Region.

The political structure of the Hong Kong Special Administrative Region should accord with the principle of “one country, two systems” and aim to maintain stability and prosperity in Hong Kong in line with its legal status and actual situation. To this end, consideration must be given to the interests of the different sectors of society and the structure must facilitate the development of the capitalist economy in the Region. While the part of the existing political structure proven to be effective will be maintained, a democratic system that suits Hong Kong’s reality should gradually be introduced. In accordance with this principle, Chapter IV and Annexes I and II of the Basic Law contain the following major provisions concerning the political structure of the Hong Kong Special Administrative Region:

(1) The relationship between the executive authorities and the legislature. The executive authorities and the legislature should regulate each other as well as co-ordinate their activities. To maintain Hong Kong’s stability and administrative efficiency, the Chief Executive must have real power which, at the same time, should be subject to some restrictions. The draft provides for the Chief Executive to be the head of the Hong Kong Special Administrative Region and accountable to the Central People’s Government and the Hong Kong Special Administrative Region. He or she is to lead the government of the Region, sign bills and budgets and promulgate laws. If the Chief Executive considers a bill passed by the Legislative Council to be not compatible with the overall interests of the Region, he or she may return it to the Legislative Council for reconsideration. If the Chief Executive refuses to sign a bill passed

the second time by the Legislative Council, or the Legislative Council refuses to pass a budget or any other important bill introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council. On the other hand, the Basic Law provides that the government of the Region must abide by the law and be accountable to the Legislative Council. It must implement laws passed by the Legislative Council and already in force, present regular policy addresses to the Council, answer questions raised by members of the Council and obtain approval from the Council for taxation and public expenditure. The Chief Executive must consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, enacting subordinate legislation, or dissolving the Legislative Council. The Basic Law also stipulates that if the bill returned by the Chief Executive is passed again by the Legislative Council with at least a two-thirds majority, the Chief Executive must sign and promulgate it within one month, unless he or she dissolves the Legislative Council. If the newly elected Legislative Council, after the old one has been dissolved, again passes by a two-thirds majority the original bill in dispute, or it still refuses to pass the original budget or any other important bill introduced by the government, the Chief Executive must resign. If the Chief Executive is found to have committed a serious breach of law or dereliction of duty and if he or she still refuses to resign, the Legislative Council may pass a motion of impeachment through the specified procedures and refer it to the Central People's Government for decision. The provisions mentioned above embody the relationship of regulation and co-ordination between the executive authorities and the legislature.

(2) The method for the selection of the Chief Executive. The draft stipulates that the Chief Executive shall be selected by election or through consultations and be appointed by the Central People's Government. The method for selecting the Chief Executive shall be worked out in the light of the actual situation in Hong Kong and applied in a gradual and orderly way. The ultimate goal is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures. Based on these provisions, Annex I provides specific rules on selecting the Chief Executive. In the ten years between 1997 and 2007, the Chief

Executive will be elected by a broadly representative election committee. If there is need to amend this method of election after that period, such amendments must be made with the endorsement of a two-thirds majority of all the members of the legislative Council and the consent of the Chief Executive, and they must be submitted to the Standing Committee of the National People's Congress for approval. The method for selecting the Chief Executive is provided in an annex to make it more amenable to revision when necessary.

(3) The method for forming the Legislative Council and its procedures for voting on bills and motions. According to the draft Basic Law, the Legislative Council will be constituted by election. The method for forming the Legislative Council will be worked out in the light of the actual situation in Hong Kong and applied in a gradual and orderly way. The ultimate goal is the election of all the members of the Legislative Council by universal suffrage. In accordance with these provisions, Annex II provides specific rules on formation of the Legislative Council. The first and second Legislative Council will be formed by members elected by functional constituencies, by the Election Committee or by geographical constituencies through direct elections. During the first 10 years after the Special Administrative Region is established, the number of seats in the Legislative Council for members elected by geographical constituencies through direct elections will be increased with each passing council, and the number of seats elected by the Election Committee will be gradually reduced. When the third Legislative Council is formed, members elected by functional constituencies and geographical constituencies through direct elections will each share half the seats of the Legislative Council. These rules accord with the principle of developing the election system in a gradual and orderly way. Annex II also stipulates that different voting procedures shall be adopted by the Legislative Council in handling bills introduced by the government and motions and bills introduced by individual members of the Legislative Council. The passage of bills introduced by the government requires a simple majority vote of the members of the Legislative Council present. The passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council requires at least a simple majority vote by each of the two groups of members present, i.e., members returned by functional constituencies and those returned by geographical constituencies through

direct elections and by the Election Committee. Such provisions take into consideration the interests of all social strata and will prevent endless debates over government bills, thus helping the government work with efficiency. Ten years after the establishment of the Special Administrative Region, if there is a need to improve the method for forming the Legislative Council and its procedures for voting on bills and motions, such improvements shall be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they must be reported to the Standing Committee of the National People's Congress for the record. The method for forming the Legislative Council and the Council's procedures for voting on bills and motions are provided in an annex because it is more amenable to revision when necessary.

(4) Qualifications for the Chief Executive of the Hong Kong Special Administrative Region, members of the Executive Council, the President of the Legislative Council, principal government officials, the chief justice of the Court of Final Appeal and the chief judges of the High Court, as well as Hong Kong members of the Basic Law Committee. Relevant provisions in the draft Basic Law stipulate that these posts must be held by Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country. This helps define state sovereignty and reflects the principle of managing Hong Kong by the Hong Kong people. Only in this way can those maintaining the posts mentioned above hold themselves responsible to the State, the Region and the residents of Hong Kong. Based on the same considerations, relevant articles stipulate that the Region's Legislative Council must be composed of Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country. However, in view of Hong Kong's specific conditions, permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the Legislative Council of the Region, provided that the proportion of such members does not exceed 20 per cent of the total membership of the Council.

(5) The method for the formation of the first Government and the first Legislative Council of the Hong Kong Special Administrative Region. In line with the principles of state sovereignty and for the benefit

of smooth transition, the establishment of the Special Administrative Region will be presided over by a Preparatory Committee set up by the National People's Congress. Since preparations must be made before the establishment of the first Government and the first Legislative Council and since the Basic Law will not go into effect until July 1, 1997, the Drafting Committee has suggested that the National People's Congress make a special decision on the method for the formation of the first Government and Legislative Council and that the decision be made public together with the Basic Law. The Drafting Committee has therefore worked out a draft of the decision on behalf of the National People's Congress. According to this decision, the candidate for the first Chief Executive of the Hong Kong Special Administrative Region will be recommended by a selection committee composed entirely of Hong Kong residents and then referred to the Central People's Government for appointment. If the composition of the last Hong Kong Legislative Council before the establishment of the Special Administrative Region is in conformity with the provisions of the decision made by the National People's Congress on the method for the formation of the first Government and the first Legislative Council, those of its members who uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region and who meet the requirements set forth in the Basic Law may, upon confirmation by the Preparatory Committee, become members of the first Legislative Council of the Region. This arrangement is designed to ensure stability throughout the transition period and make the two governments dovetail without a hitch.

According to the decision, when assuming office, the Chief Executive, principal officials, members of the Executive Council and the Legislative Council, judges of the courts at all levels and other members of the judiciary must swear to uphold the Basic Law and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China.

## **V. On Economy, Education, Science, Culture, Sports, Religion, Labour and Social Services**

Chapter V of the Basic Law contains stipulations on the economic system and policies of the Hong Kong Special Administrative Region,



divided into eight fields of endeavour: public finance, monetary affairs, trade, industry, commerce, land leases, shipping and civil aviation. These stipulations are indispensable to ensuring the normal operation of Hong Kong's capitalist economic mechanism and maintaining its status as an international financial centre and free port. Concerning monetary affairs, for instance, the draft Basic Law stipulates that no foreign exchange control policies shall be applied in the Hong Kong Special Administrative Region and that markets for foreign exchange, gold, securities, futures and the like shall continue. The free flow of capital within, into and out of Region as well as the free operation of financial businesses and financial markets are safeguarded. It also stipulates that the Hong Kong dollar is the legal tender in the Region and shall be freely convertible and that the authority for its issuance shall be vested in the Government of the Hong Kong Special Administrative Region. As for foreign trade, the draft Basic Law stipulates that all investments from outside the Region shall be protected by law, and the free movement of goods, intangible assets and capital shall be safeguarded. Unless otherwise prescribed by law, no tariff shall be imposed. As a separate customs territory, the Region may, using the name "Hong Kong, China," participate in relevant international organizations and trade agreements (including preferential trade arrangements,) such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles. Export quotas, tariff preferences and other similar arrangements obtained or made by the Hong Kong Special Administrative Region shall be enjoyed exclusively by the Region. The draft Basic Law also stipulates that the Hong Kong Special Administrative Region shall strive to achieve a fiscal balance and avoid deficits in drawing up its budget. The Region may also enact laws on its own concerning the taxation system, using the previously pursued low tax policy as reference. The draft Basic Law also carries detailed stipulations concerning the major trades, land leases, shipping, civil aviation and the like.

Chapter VI of the draft Basic Law carries stipulations on the maintenance and development of Hong Kong's current systems and policies concerning education, science, culture, sports, religion, labour and social services. These stipulations involve the interests of Hong Kong residents in many aspects of public life and are important for social stability and development.

There are quite a number of articles concerning policies in Chapter V and VI of the draft Basic Law. The Chinese Government has undertaken, in the Sino-British Joint Declaration, to write its basic principles and policies on Hong Kong and their detailed explanations as given in Annex I of the Joint Declaration into Basic Law, and Hong Kong residents from all walks of life have a strong desire for the Basic Law to reflect and protect their interests. Therefore, it was decided in the end that these articles concerning policies should remain in the draft Basic Law, despite the differing opinions expressed over the brevity of articles during the drafting of the law.

Finally, I should like to explain a few points about the draft designs of the regional flag and regional emblem of the Hong Kong Special Administrative Region. The regional flag carries a design of five bauhinia petals, each with a star in the middle, on a red background. The red flag represents the motherland and the bauhinia represents Hong Kong. The design implies that Hong Kong is an inalienable part of China and prospers in the embrace of the motherland. The five stars on the flower symbolize the fact that all Hong Kong compatriots love their motherland, while the red and white colours embody the principle of “one country, two systems.” The regional emblem is round and bears a design similar to the one on the flag, with five red stars on a white bauhinia against a red background, which also symbolizes the principle of “one country, two systems” by the use of red and white. The outer ring of the emblem carries the words “Hong Kong Special Administrative Region of the People’s Republic of China” in Chinese, and “HONG KONG” in English.

Fellow Deputies,

I hereby present my explanations concerning “The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (Draft),” its annexes and other relevant documents and concerning the draft designs of the regional flag and regional emblem of the Special Administrative Region, to the National People’s Congress for examination.

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Note:

\* This is an English translation of the original instrument in Chinese and is published for information.