

# 立法會

## *Legislative Council*

LC Paper No. CB(2)1763/00-01(04)

Ref : CB2/PL/CA

### **Panel on Constitutional Affairs**

### **Background Paper prepared by Legislative Council Secretariat**

### **Mechanism for amending the Basic Law**

#### **Purpose**

This paper summarizes the progress of discussions held by the Panel on the issue of "Mechanism for amending the Basic Law" in the 1998-1999, 1999-2000 and 2000-2001 legislative sessions.

#### **Background**

2. The question of an appropriate mechanism for amending the Basic Law arose consequent upon the giving of notice by Hon LEUNG Yiu-chung to move a motion under Article 159 of the Basic Law (BL 159) at the Council meeting on 2 December 1998.

3. BL 159 stipulates that the power to propose bills for amendment to the Basic Law shall be vested in the Standing Committee of the National People's Congress (NPCSC), the State Council and the Hong Kong Special Administrative Region (HKSAR). Amendment bills from the HKSAR shall be submitted to the NPC by the delegation of the Region to the NPC after obtaining the consent of two-thirds of the deputies of the Region to the NPC, two-thirds of all members of the Legislative Council (LegCo) of the Region, and the Chief Executive of the Region (the three concerned parties).

4. As BL 159 did not provide for the mechanism and procedure for proposing bills for amending the Basic Law, the House Committee discussed and agreed on 20 November 1998 that matters relating to the amendment mechanism be referred to the Panel on Constitutional Affairs for study. Pending discussion by the Panel, Hon LEUNG Yiu-chung subsequently withdrew the notice for moving the motion on 2 December 1998.

## 1998-1999 legislative session

5. The Panel first took up the matter with the Administration on 21 December 1998. The Administration advised that a number of complicated issues had to be fully studied and considered by the parties concerned, before an appropriate mechanism could be worked out to implement BL 159. Taking into account the issues identified by the Administration and after discussion, the Panel agreed that as a first step, the public and other interested parties should be invited to give views on the following issues -

- (a) The parties within the HKSAR who/which may initiate the amendment process;
- (b) The procedure for obtaining consent of the three concerned parties in the HKSAR;
- (c) The form of the amendment proposal;
- (d) The need to consult the public on the amendment proposal;
- (e) The means to ensure that the amendment proposal does not contravene the established basic policies of the People's Republic of China regarding Hong Kong;
- (f) The mechanism for amending an amendment proposal;
- (g) The need and appropriateness to underpin the process by local legislation and to regulate by local legislation the manner in which LegCo Members and local NPC deputies discharge their constitutional duties and responsibilities; and
- (h) The need to consult the people of HKSAR on an amendment to the Basic Law proposed by the NPCSC and the State Council.

6. Two Panel meetings were held in March 1999 to receive views from the legal profession, the academics as well as relevant organizations and individuals. A summary of the views received is in **Appendix I**.

7. The Panel followed up the matter with the Administration at three meetings held in May, June and July 1999 respectively. The Administration advised that a number of new and important issues emerged as a result of the public consultation conducted by the Panel. It was important that all the relevant parties should be fully consulted so that their views would be taken into account in devising the mechanism. The Administration had completed a preliminary analysis of the major issues identified. As some of the issues raised were related to the NPCSC, the State Council, the local NPC deputies and the Basic Law Committee,

discussions with the Central Authorities were required. The preliminary views of the Administration on the major issues are summarized in **Appendix II**.

8. In response to the Panel's repeated requests for a concrete timetable for devising the amendment mechanism, the Administration provided a preliminary rough timetable in June 1999 (**Appendix III**). The Panel noted that the estimated time required for those steps and procedures that were entirely within the ambit of the HKSAR was about 15 to 22 months.

9. In June 1999, the Department of Justice also briefed the Panel on the preliminary findings of a comparative study on the procedures for constitutional amendments in five countries : USA, Australia, Malaysia, South Africa and Switzerland, a summary of which is in **Appendix IV**. The scope of the study covered parties who might initiate an amendment, forms of amendment, sequence and timeframe of deliberation, and special provisions. The next step was to study how these procedures for amending constitutional laws were implemented in these countries.

#### **1999-2000 legislative session**

10. The matter was followed up at two Panel meetings held in January and May 2000 respectively. According to the Administration, the Central Authorities had agreed to study the issues raised, but would need some time in view of the complexity involved. The Administration would keep the Panel informed of new developments.

11. On 19 January 2000, Hon LEUNG Yiu-chung moved a motion to seek the consent of the Council to forward the proposed amendments to Article 74 of and Annex II to the Basic Law to the delegation of the HKSAR to the NPC, for submission to the NPC. During the debate, the Administration reiterated that it had made certain headway in respect of the mechanism for amending the Basic Law and was now at the stage of consultation with the Central Authorities. As the parties concerned had yet to agree on an amendment mechanism, the motion was constitutionally immature, inappropriate and unacceptable to the Administration, and could not be regarded as a proper way to initiate the process of amending the Basic Law. The motion was negated by the Council.

#### **2000-2001 legislative session**

12. At the meeting on 31 October 2000, the Panel was advised that since 1999, the Constitutional Affairs Bureau had held six meetings with the Hong Kong and Macau Affairs Office (HKMAO) to discuss the matter. HKMAO had indicated that it needed more time to discuss the issues identified. In response to members over the progress so far made, the Administration advised that the matter was at step 1

as shown in the tentative timetable for devising the mechanism as provided by the Administration to the Panel in June 1999 (**Appendix III**). Members were disappointed at the static position and requested the Administration to give a report to the Panel after each and every meeting held with the Central Authorities, irrespective of whether any progress had been made at the meetings.

13. The Administration advised in writing on 16 December 2000 that the matter was raised at its meeting with HKMAO in November 2000. The Administration conveyed to HKMAO the concerns expressed by the Panel over the limited progress made so far in devising a mechanism for amending the Basic Law. HKMAO indicated that the matter was complex and required careful consideration. HKMAO also considered it necessary to study the matter in conjunction with the NPC as many issues involved arrangements relating to the NPC.

14. As at to-date, the Administration has made no further report on the matter to the Panel. The Administration has been requested to provide an update to the Panel at the coming meeting on 12 June 2001.

Legislative Council Secretariat  
8 June 2001

**立法會**  
***Legislative Council***

Ref : CB2/PL/CA

**Panel on Constitutional Affairs**  
**Mechanism for amending the Basic Law**

**Purpose**

This paper summarizes the progress of discussions held by the Panel on the issue of "Mechanism for amending the Basic Law" in the 1998-1999 and 1999-2000 legislative sessions.

**Background**

2. The question of an appropriate mechanism for amending the Basic Law arose consequent upon the giving of notice by Hon LEUNG Yiu-chung to move a motion under Article 159 of the Basic Law (BL 159) at the Council meeting on 2 December 1998.

3. BL 159 stipulates that the power to propose bills for amendment to the Basic Law shall be vested in the Standing Committee of the National People's Congress (NPCSC), the State Council and the Hong Kong Special Administrative Region (HKSAR). Amendment bills from the HKSAR shall be submitted to the NPC by the delegation of the Region to the NPC after obtaining the consent of two-thirds of the deputies of the Region to the NPC, two-thirds of all members of the Legislative Council (LegCo) of the Region, and the Chief Executive of the Region (the three concerned parties).

4. As BL 159 did not provide for the mechanism and procedure for proposing bills for amending the Basic Law, the House Committee discussed and agreed on 20 November 1998 that matters relating to the amendment mechanism be referred to the Panel on Constitutional Affairs for study. Pending discussion by the Panel, Hon LEUNG Yiu-chung subsequently withdrew the notice for moving the motion on 2 December 1998.

**Discussions held by the Panel**

1998-1999 legislative session

5. The Panel first took up the matter with the Administration on 21 December

1998. The Administration advised that a number of complicated issues had to be fully studied and considered by the parties concerned, before an appropriate mechanism could be worked out to implement BL 159. Taking into account the issues identified by the Administration and after discussion, the Panel agreed that as a first step, the public and other interested parties should be invited to give views on the following issues -

- (a) The parties within the HKSAR who/which may initiate the amendment process;
- (b) The procedure for obtaining consent of the three concerned parties in the HKSAR;
- (c) The form of the amendment proposal;
- (d) The need to consult the public on the amendment proposal;
- (e) The means to ensure that the amendment proposal does not contravene the established basic policies of the People's Republic of China regarding Hong Kong;
- (f) The mechanism for amending an amendment proposal;
- (g) The need and appropriateness to underpin the process by local legislation and to regulate by local legislation the manner in which LegCo Members and local NPC deputies discharge their constitutional duties and responsibilities; and
- (h) The need to consult the people of HKSAR on an amendment to the Basic Law proposed by the NPCSC and the State Council.

6. Two Panel meetings were held in March 1999 to receive views from the legal profession, the academics as well as relevant organizations and individuals. A summary of the views received is in **Appendix I**.

7. The Panel followed up the matter with the Administration at three meetings held in May, June and July 1999 respectively. The Administration advised that a number of new and important issues emerged as a result of the public consultation conducted by the Panel. It was important that all the relevant parties should be fully consulted so that their views would be taken into account in devising the mechanism. The Administration had completed a preliminary analysis of the major issues identified. As some of the issues raised were related to the NPCSC, the State Council, the local NPC deputies and the Basic Law Committee, discussions with the Central Authorities were required. The preliminary views of the Administration on the major issues are summarized in **Appendix II**.

8. In response to the Panel's repeated requests for a concrete timetable for devising the amendment mechanism, the Administration provided a preliminary rough timetable in June 1999 (**Appendix III**). The Panel noted that the estimated time required for those steps and procedures that were entirely within the ambit of the HKSAR was about 15 to 22 months.

9. In June 1999, the Department of Justice also briefed the Panel on the preliminary findings of a comparative study on the procedures for constitutional amendments in five countries : USA, Australia, Malaysia, South Africa and Switzerland, a summary of which is in **Appendix IV**. The scope of the study covered parties who might initiate an amendment, forms of amendment, sequence and timeframe of deliberation, and special provisions. The next step was to study how these procedures for amending constitutional laws were implemented in these countries.

#### 1999-2000 legislative session

10. The matter was followed up at two Panel meetings held in January and May 2000 respectively. According to the Administration, the Central Authorities had agreed to study the issues raised, but would need some time in view of the complexity involved. The Administration would keep the Panel informed of new developments.

#### **Related development**

11. On 19 January 2000, Hon LEUNG Yiu-chung moved a motion to seek the consent of the Council to forward the proposed amendments to Article 74 of and Annex II to the Basic Law to the delegation of the HKSAR to the NPC, for submission to the NPC. During the debate, the Administration reiterated that it had made certain headway in respect of the mechanism for amending the Basic Law and was now at the stage of consultation with the Central Authorities. As the parties concerned had yet agreed on an amendment mechanism, the motion was constitutionally immature, inappropriate and unacceptable to the Administration, and could not be regarded as a proper way to initiate the process of amending the Basic Law. The motion was negated by the Council.

#### Legislative Council Secretariat

27 October 2000

**Mechanism for amending the Basic Law**

**A summary of views received by the Panel on Constitutional Affairs in March 1999**

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Deputations/ Individuals (LC Paper No. CB(2))	Initiator of amendment proposal	Form of amendment proposal	Public consultation	Referendum	Need for local legislation to underpin the amendment process	Means to ensure conformity of proposal with basic policies	Public consultation on proposal initiated by NPCSC/ State Council	Proposed mechanism/other proposals
Prof Albert H Y CHEN 1475/98-99(02)	CE, LegCo or Deputies  (People of HK do not have right to initiate amendments)	motion  (not subject to Articles 48(10) or 74)	opinion polls, media, hearings, etc.	advisory referendum	To amend RoP to provide for the procedures	-	-	<ul style="list-style-type: none"> <li>• LegCo to consider amending its RoP to include provisions on how amendment proposals from CE, Deputies and LegCo should be handled</li> <li>• Amendment proposals to be gazetted, scrutinised by a LegCo committee to facilitate public discussion, to be debated and voted upon by Members, similar to the existing legislative procedures</li> <li>• Deputies have the implied authority to devise procedural rules on how they should give consent. These rules should be strictly set, similar to the ones made by LegCo. Draft rules may be submitted to the NPCSC for confirmation</li> <li>• LegCo and Deputies to convene informal joint meetings to resolve differences and come up with amendment proposals before the proposals go through the amendment mechanism which are subject to formal rules</li> </ul>



	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Deputations/ Individuals (LC Paper No. CB(2))	Initiator of amendment proposal	Form of amendment proposal	Public consultation	Referendum	Need for local legislation to underpin the amendment process	Means to ensure conformity of proposal with basic policies	Public consultation on proposal initiated by NPCSC/ State Council	Proposed mechanism/other proposals
								<ul style="list-style-type: none"> <li>The three parties have the obligation to respond to the amendment proposal within a reasonable time</li> </ul>
Mr CHANG Hsin	-	-	advertised in media to invite views	not desirable	-	-	-	<ul style="list-style-type: none"> <li>Amendment proposals to be gazetted and advertised for public information</li> <li>To exchange views with Mainland academics to understand the views of Mainland authorities</li> </ul>
Hong Kong Bar Association 1490/98-99(01)	Government or LegCo  (Deputies shall not enjoy the power of initiating or amending an amendment, their power should be confined to approve or reject an amendment proposal)	motion or bill  (not subject to Article 74)	Yes	non-binding referendum before submitting to CE	Yes  (Procedures for Deputies may be a matter outside the jurisdiction of the HKSAR)	-	-	<ul style="list-style-type: none"> <li>Amendment proposals initiated by LegCo Members or the Government should be submitted first to LegCo and then the Deputies. If the requisite support under Article 159 has been obtained, the proposal should be subject to confirmation in a referendum</li> <li>Unless the proposed amendment receives the required support in the referendum, CE shall not give his consent</li> <li>After the CE's consent is obtained, the proposed amendment shall then be forwarded to the Deputies who shall submit the same to the NPC through the delegation of the Region to the NPC</li> </ul>

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Deputations/ Individuals (LC Paper No. CB(2))	Initiator of amendment proposal	Form of amendment proposal	Public consultation	Referendum	Need for local legislation to underpin the amendment process	Means to ensure conformity of proposal with basic policies	Public consultation on proposal initiated by NPCSC/ State Council	Proposed mechanism/other proposals
								<ul style="list-style-type: none"> <li>The three parties have the obligation to respond to the amendment proposal within a reasonable time</li> </ul>
Hong Kong Human Rights Monitor 1483/98-99(01)	CE, LegCo or Deputies  (People of HK do not have the right to initiate amendments)  (To restrict the power of Deputies will contravene Article 159)	bill  (not subject to Article 74)	Yes  (Public hearings should be held by LegCo and the Deputies)	advisory referendum  (after consent given by the three parties and before submission to NPC)	Yes  (a comprehensive legislation governing procedures for both LegCo and the Deputies is possible provided consultation is done with NPC)	<ul style="list-style-type: none"> <li>all parties involved to ensure conformity</li> <li>Committee for BL to advise</li> <li>HKSAR courts may review validity of the proposal</li> </ul>	Yes	<ul style="list-style-type: none"> <li>Amendments proposed by LegCo Members to be debated and voted upon in accordance with RoP. If passed, it should be submitted to the Deputies who will vote on it in accordance with their own procedures. If passed, it would be sent to CE who will consult the Executive Council before deciding on whether or not to give consent</li> <li>The above process could apply to amendments initiated by a Deputy or CE</li> <li>Formal and informal meetings among the three parties to resolve differences</li> <li>A convention to be agreed upon that amendments concerning the autonomy of Hong Kong should be initiated by the HKSAR only</li> </ul>
Dr LIN Feng 1475/98-99(03)	Government or LegCo  (To restrict the power of Deputies to	-	Yes	advisory referendum	Yes	-	<ul style="list-style-type: none"> <li>may be feasible to demand consultation with LegCo</li> <li>Committee for</li> </ul>	-

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Deputations/ Individuals (LC Paper No. CB(2))	Initiator of amendment proposal	Form of amendment proposal	Public consultation	Referendum	Need for local legislation to underpin the amendment process	Means to ensure conformity of proposal with basic policies	Public consultation on proposal initiated by NPCSC/ State Council	Proposed mechanism/other proposals
	initiate amendments)						BL can be consulted, but whether it can represent the people is arguable	
Prof Benjamin C OSTROV 1475/98-99(04)	-	-	-	-	-	-	-	<ul style="list-style-type: none"> <li>The final power of amendment should be vested with HKSAR, not NPC</li> <li>To remove the Deputies from the three parties and replace them with District Boards</li> </ul>
Mr Benny TAI 1475/98-99(05)	CE, LegCo or Deputies  (To restrict the power of Deputies will contravene Article 159)	-	Yes	advisory referendum before the three parties give their consent	Yes  (HKSAR has the power to introduce legislation to govern the procedures for amending BL by the three parties including Deputies)	difficult to monitor	Not provided under BL.  Consultation only possible with the authorisation of the NPCSC or State Council	<ul style="list-style-type: none"> <li>To set up a constitutional convention comprising CE, LegCo Members and Deputies. A judge of the Court of Final Appeal to be the chairman of the convention but has no right to vote. CE or LegCo and Deputies can initiate an amendment if the requisite support (e.g. 1/3 of members) is obtained.</li> <li>Amendments to the amendment proposal may be proposed by any of the three parties. Legislative proceeding will be similar to that of the passage of a bill in LegCo. Voting to be conducted in three groups in order to meet the voting requirements set out in Article 159</li> </ul>
Prof King-kwun	CE, LegCo or	-	-	-	-	-	-	<ul style="list-style-type: none"> <li>Amendments initiated by CE to follow</li> </ul>

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Deputations/ Individuals (LC Paper No. CB(2))	Initiator of amendment proposal	Form of amendment proposal	Public consultation	Referendum	Need for local legislation to underpin the amendment process	Means to ensure conformity of proposal with basic policies	Public consultation on proposal initiated by NPCSC/ State Council	Proposed mechanism/other proposals
TSAO 1490/98-99(02)	Deputies							<p>existing legislative process</p> <ul style="list-style-type: none"> <li>• Amendments may be proposed by LegCo Members from either one or both of the two groups of LegCo Members : Members returned by functional constituencies and those returned by geographical constituencies and the Election Committee</li> <li>• Proposal passed by 2/3 of LegCo Members should be submitted to the Deputies and CE for voting</li> <li>• Procedure for Deputies to initiate amendments and to give consent to a proposal to be worked out by themselves</li> </ul>
Hong Kong & Kowloon Trades Union Council 1533/98-99(01)	LegCo	bill	Yes	-	Yes	<ul style="list-style-type: none"> <li>- Court to interpret</li> <li>- consult the Committee for BL</li> </ul>	<p>Amendments relating to Central Government affairs, foreign affairs and defence should only be initiated by the NPCSC or State Council. Not necessary to consult people of</p>	<ul style="list-style-type: none"> <li>• Amendments to provisions relating to local affairs should be initiated by LegCo on behalf of HKSAR</li> <li>• Amendments passed by 2/3 of LegCo Members should be supported by Deputies and respected by CE</li> <li>• To set up a consultative committee to gather views from the public</li> <li>• In the longer term, voting on proposals</li> </ul>

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Deputations/ Individuals (LC Paper No. CB(2))	Initiator of amendment proposal	Form of amendment proposal	Public consultation	Referendum	Need for local legislation to underpin the amendment process	Means to ensure conformity of proposal with basic policies	Public consultation on proposal initiated by NPCSC/ State Council	Proposed mechanism/other proposals
							Hong Kong	should adopt a simple majority rule
People Constitutionalist Society 1519/98-99(01)	People of HK	-	Yes	Yes	-	-	-	<ul style="list-style-type: none"> <li>To set up a constitutional assembly (CA) to review and amend BL. Amendment proposals which have received the requisite support from the people of Hong Kong will be tabled in CA and voted upon. If the proposal is passed by CA and supported by a referendum, no authorities may raise objection</li> </ul>
The Frontier 1542/98-99(01)	CE, LegCo, or people of HK  (Deputies should not be allowed to initiate amendments)	-	Yes	The three parties to give consent in accordance with the result of referendum	-	-	-	<ul style="list-style-type: none"> <li>Amendments may be initiated by people if they have received at least 1% support from people aged 18 or above. LegCo to introduce the proposal on behalf of the people</li> <li>Government to set up a constitutional consultative convention comprising CE, LegCo Members and the public to discuss the proposal. LegCo and CE may introduce amendments to the amendment proposal. All proposals put to vote in a referendum. A proposal which is passed by a simple majority vote will be submitted by CE to the Deputies who will in turn submit it to NPC for record. The whole process to be completed within a reasonable time</li> <li>Committee for BL, NPC and State</li> </ul>

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Deputations/ Individuals (LC Paper No. CB(2))	Initiator of amendment proposal	Form of amendment proposal	Public consultation	Referendum	Need for local legislation to underpin the amendment process	Means to ensure conformity of proposal with basic policies	Public consultation on proposal initiated by NPCSC/ State Council	Proposed mechanism/other proposals
								Council to respect the result of the referendum
The Neighbourhood and Workers Service Centre 1519/98-99(02)	CE, LegCo, or registered electors  (The power of Deputies to initiate an amendment should be restricted, since they may raise it through the NPCSC)	-	Yes	only when consensus can not be reached by the three parties  (on the assumption that the CE and 60 LegCo Members are directly elected)	-	-	Yes	<ul style="list-style-type: none"> <li>• Amendments may be initiated by registered electors if they have received the requisite support. The Government to introduce the amendments on behalf of the electors. When consent is obtained from LegCo Members, the proposal shall be submitted to CE for consent. The proposal shall then be published in gazette for the Deputies to give consent</li> <li>• Special provisions in RoP should be drawn up for handling amendments initiated by LegCo</li> <li>• Amendments initiated by CE should follow existing procedures for handling bills</li> </ul>
Prof Wilson WONG 1519/98-99(03)	CE, LegCo, or Deputies	Legislation	Yes	advisory referendum	Not necessary for LegCo.  Regulations may be passed by the other parties within HKSAR which would have the effect of regulating the	NPC will reject any proposal which is inconsistent with basic policies	Yes  Consultation through both institutional (e.g. voting in LegCo) and non-institutional means (e.g. public opinion)	<ul style="list-style-type: none"> <li>• Except for CE, the support required for initiating the amendment process should not be above the 2/3 majority required in BL (e.g. 1/4 of LegCo Members)</li> <li>• Procedures to obtain consent of the three parties : CE to give consent in written form; LegCo and the Deputies to take a vote</li> <li>• To revisit the amendment process if</li> </ul>

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Deputations/ Individuals (LC Paper No. CB(2))	Initiator of amendment proposal	Form of amendment proposal	Public consultation	Referendum	Need for local legislation to underpin the amendment process	Means to ensure conformity of proposal with basic policies	Public consultation on proposal initiated by NPCSC/ State Council	Proposed mechanism/other proposals
					Deputies		survey or a referendum)	amendments to the proposal are introduced
願民安 1519/98-99(04)	LegCo	-	Yes	-	-	-	-	<ul style="list-style-type: none"> <li>• Proposal to be drafted by LegCo in consultation with the public. Other procedures to follow existing legislative process</li> <li>• Proposal should be debated in LegCo and passed by 2/3 of its members</li> <li>• All LegCo Members should be returned by direct election</li> </ul>

Abbreviation

BL - Basic Law

CE - Chief Executive

Deputies - deputies of the Region to the NPC

HKSAR - Hong Kong Special Administrative Region

NPCSC - Standing Committee of National People's Congress

RoP - Rules of Procedure

The three parties - CE, LegCo and Deputies

**Mechanism for Amending the Basic Law**

(July 1999)

	<b>Major issues</b>	<b>The Administration's preliminary views</b>
(1)	How will the public be consulted on the amendment proposal? Should there be a referendum? Should the referendum be binding or advisory?	We note that LegCo Members, the legal profession, the academics, the relevant organisations and individuals, etc. place a lot of emphasis on the importance of putting in place a mechanism which would allow the general public to be fully consulted or to participate directly in the process (e.g. by way of a referendum). We have commissioned a comparative study of the experience of other countries on constitutional amendments. (The Administration made a presentation on the preliminary findings at the Panel meeting on 21 June 1999.)
(2)	What should be the form of the amendment proposal?	Our preliminary analysis is that any amendment proposal as agreed to by the three parties (i.e. the LegCo, the local NPC deputies and the Chief Executive of the HKSAR) will become an amendment bill of the HKSAR and be submitted to the NPC by the HKSAR delegation attending the NPC meetings. As such, we need to find out whether an amendment proposal should be in the form of a bill to facilitate submission to the NPC for examination.
(3)	Who will be in a position to initiate the amendment process? Will members of the public be able to initiate the process? Should local NPC deputies voluntarily give up their right to initiate any proposal?	<p>We note that many share the view that any of the three parties concerned referred to in BL 159 should be in a position to initiate a proposal to amend the Basic Law. But there is, at the same time, a view shared by many that the Basic Law, being a constitutional document, should not be amended lightly. We are studying the requirements in other models and will formulate our proposed requirement, taking into account the circumstances in the HKSAR.</p> <p>We note that the Basic Law has not stipulated who can initiate an amendment proposal. We need to consider whether individual members of the public or a specified number of them should be able to initiate an amendment proposal. We also need to consider whether there are already other effective channels available for the public to achieve the same purpose.</p>



<p>(4)</p>	<p>How the local NPC deputies should discharge their duties under BL 159, whether it will be up to the local NPC deputies to decide their own rules of procedures and the contents?</p>	<p>We note that it is stipulated in the "Measures Concerning the Discharge of Duties of the Deputies of the Hong Kong Special Administrative Region to the National People's Congress" promulgated by the General Office of the NPCSC in late 1998 that the local NPC deputies should discharge their duties in accordance with BL 159. We need to consult the relevant Mainland authorities as to whether the General Office of the NPCSC will provide further details on how the local NPC deputies will discharge their duties as laid down in BL 159, or whether the local NPC deputies will formulate their own rules of procedure.</p>
<p>(5)</p>	<p>Should a constitutional conference (involving the three parties and others) be held? What is the nature of such a constitutional conference? What are the rules of procedure? Who should preside?</p>	<p>--</p>
<p>(6)</p>	<p>Should it be stipulated that any amendment proposal must have the support of more than a specified number of LegCo Members/local NPC deputies before it can be put forward?</p>	<p>We need to discuss with the relevant authorities the following issues : whether the relevant rules of procedure should be made by the LegCo on its own according to BL 75 provided that they do not contravene the Basic Law; whether the NPCSC will provide further details on how the local NPC deputies will discharge their duties, or whether the local NPC deputies will formulate their own rules of procedure, etc.</p>
<p>(7)</p>	<p>Should there be a specified sequence for any amendment proposal to be considered by the three parties?</p>	<p>We note that it has been suggested that the Chief Executive should be the last one to give his consent. We will need to consider how this suggestion will work in the case of an amendment proposal initiated by the Administration.</p>

<p>(8)</p>	<p>Should the three parties consider whether or not to set a specified time frame within which an amendment proposal will be considered?</p>	<p>Our preliminary analysis is that any decision on the time frame will be partly related to the question of whether the relevant rules of procedure of the LegCo should be made by the Council on its own provided that they do not contravene the BL 75. We also need to know from the relevant Central Authorities as to whether the General Office of the NPCSC will provide further details on how the local NPC deutes will discharge their duties as laid down in BL 159, or whether the local NPC deputies will formulate their own rules of procedures.</p>
<p>(9)</p>	<p>What is the mechanism for forwarding the amendment proposal agreed by one party to the other parties?</p>	<p>--</p>
<p>(10)</p>	<p>How to deal with amendments to the amendment proposal?</p>	<p>We need to study in the event that an amendment proposal is amended by any of the three parties during the process, whether the amended version should be forwarded to the other two parties afresh for consideration.</p>
<p>(11)</p>	<p>Should the Basic Law Committee consult the HKSAR before giving its view?</p>	<p>We note that the Basic Law Committee is a working committee under the NPCSC and its function is to study questions arising from the implementation of BL 17, 18, 158 and 159 and submit its views thereon to the NPCSC. These Basic Law provisions do not set out whether there should be any requirements for consultations with the HKSAR. We need to understand the views of the relevant Central Authorities.</p>
<p>(12)</p>	<p>Whether a mechanism to ensure that proposed amendments shall not contravene the established basic policies of the PRC regarding Hong Kong</p>	<p>We need to consider whether we should put in place such a mechanism. Some suggest that in considering an amendment proposal, each of the three parties should examine whether the proposal is in compliance with BL 159(4). Before an amendment bill is put on the agenda of the NPC, the Basic Law Committee should, in accordance with the Basic Law, study it and</p>

	<p>under BL 159(4) should be built into the process, and if so, how and at which stage?</p>	<p>submit its views. We believe that the Basic Law Committee and the NPCSC will of course consider whether an amendment bill contravenes the established basic policies of the PRC regarding Hong Kong. We also need to discuss this with the relevant Central Authorities.</p>
(13)	<p>Whether the NPCSC and the State Council should consult the HKSAR on their amendment proposal and if so, how?</p>	<p>We need to discuss this with the Central Authorities.</p>

## Appendix III

### **Mechanism for Amending the Basic Law**

#### **Procedures and timetables for devising the mechanism**

(June 1999)

	Steps and Procedures	Timeframe
(1)	Summarise views expressed and discuss the relevant issues/questions with the CPG/NPCSC; and allow time for the CPG/NPCSC to study the relevant issues/questions, consult the Hong Kong NPC deputies and the Basic Law Committee, etc. and to formulate their views on the relevant issues.	Discussions with the CPG have commenced. The exact timeframe is subject to progress of discussions.
(2)	Meetings with CPG/NPCSC to gauge their preliminary views.	
(3)	Report to ExCo on the Administration's preliminary views and progress of discussions with the CPG/NPCSC; and report progress to the CA Panel.	about 1 to 2 months
(4)	The Administration to formulate the proposed mechanism and prepare documents for consultation with LegCo, the legal profession, academics, and the general public, etc.	about 3 to 4 months
(5)	Discuss the proposed mechanism with the CPG/NPCSC.	subject to progress of discussions
(6)	Consider the views collected and finalise the Administration's proposal.	about 2 to 3 months

(7)	Consult ExCo on the finalised proposal.	about 1 to 2 months
(8)	Report to the CA Panel on the finalised proposal, and brief the CPG/NPCSC.	about 2 months
(9)	If local legislation is required : the Administration to draft and introduce the legislation into LegCo; and LegCo to examine the bill and enact the necessary legislation.	about 6 to 9 months

**Procedures for Constitutional Amendments in other Countries**

	<b>USA</b>	<b>Australia</b>	<b>Malaysia</b>	<b>South Africa</b>	<b>Switzerland</b>
<b>I. Provision</b>	Article V	Section 128	Article 159	Section 74	Chapter III
<b>II. Who may initiate</b>	(a) a 2/3 vote of both Houses of Congress OR (b) on the application of 2/3 of the State legislatures.	The initial steps have to be taken in the Parliament.	A Bill may originate in either House of the Parliament (Art. 66(2)).	Within the Parliament by (a) a Cabinet member or (b) a Deputy Minister or (c) a member or committee of the National Assembly (“NA”) or (d) a member or committee of the National Council of Provinces (“NCP”).	(a) Total revision of the Constitution can be proposed by (i) one Council of the Federal Assembly or (ii) one hundred thousand Swiss citizens entitled to vote.  (b) Partial revision may be brought about either (i) by means of a popular initiative (presented by one hundred thousand Swiss citizens entitled to vote) or (ii) according to the forms laid down for federal legislation.
<b>III. Forms</b>	In situation (a) above, the Congress shall propose Amendments to the Constitution.  In situation (b) above, the Congress shall on the application of the State legislatures call a Convention for proposing Amendments.	A Bill	A Bill	A Bill	In respect of popular initiative, if several different provisions are to be modified or introduced, each one must be the subject of a separate initiative request. An initiative request may consist of: (i) a general proposal or (ii) take the form of a complete draft.

IV. Sequence and timeframe of deliberation	In both cases, the Amendments shall be valid when ratified by (a) 3/4 of the States legislatures OR (b) 3/4 of special State (ratifying) Conventions.	(a) The proposed law must be passed by an absolute majority of each House of Parliament and, not less than 2 months and not more than six months after its passage through both Houses, submitted in each State and Territory to the electors qualified to vote for the election of members of the House of Representatives OR (b) alternatively, if one of the Houses rejects the proposed law passed by an absolute majority of the other House or passes it with amendments the second mentioned House will not agree, and if after an interval of three months the second mentioned House again passes the proposed law by an absolute majority but the	(a) Subject to certain exceptions, a Bill for making any amendment to the Constitution shall not be passed in either House of Parliament unless it has been supported on Second and Third Readings by the votes of not less than 2/3 of the total number of members of that House.	(a) Section 1 may be amended by a Bill passed by the NA with a supporting vote of 75% of its members and the NCP with a supporting vote of at least 6 provinces;  (b) Chapter 2 may be amended by a Bill passed by the NA with a supporting vote of 2/3 of its members and the NCP with a supporting vote of at least 6 provinces;  (c) Other provisions may be amended by a Bill passed by (i) the NA with a supporting vote of 2/3 of its members, and (if the amendment (1) relates to a matter that affects the NCP; (2) alters provincial boundaries, powers, functions or institutions; or (3) amends a provision that deals specifically with a provincial matter) (ii) the NCP with a supporting vote of at least 6 provinces;	(a) For Total revision, in either of the cases specified in para (a) in Part II above, if the majority of the Swiss citizens casting a vote give a positive answer, both Councils shall be elected anew in order to undertake the revision.  (b) For Partial revision - (i) if the request consists of a general proposal and if it meets with the approval of the Federal Chambers <sup>1</sup> , the latter shall prepare a partial revision along the lines of the proposal and submit its draft to the people and the Cantons for adoption or rejection. If the Federal Chambers do not approve of the request, the question of partial revision shall be submitted to the decision of the people; if the majority of the Swiss citizens casting a vote decide in the affirmative, the Federal Assembly shall undertake the
---	--	---	--	--	--

<sup>1</sup> The expression “Federal Chambers” is used in the unofficial English translation of the Federal Constitution of the Swiss Confederation collected in Albert P. Blaustein and Gisbert H. Flanz (eds), *Constitutions of the Countries of the World* (Oceana Publications Inc), Vol XIX. It appears from the discussion of Professor J.-F. Aubert and Professor E. Grisel, “The Swiss Federal Constitution”, in F. Dessemontet and T. Ansay (eds), *Introduction to Swiss Law* (Hague: Kluwer Law International, 2nd edition, 1995), pp 15-26 that the expression refers to the two Councils of the Federal Assembly of Switzerland, namely the National Council and the Council of States (see p. 19).

		<p>other House again rejects it, the Governor-General may submit the proposed law, either with or without any amendment subsequently agreed to by both Houses, to the electors in each State and Territory qualified to vote for the election of the House of Representatives.</p> <p>(c) When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half of the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.</p> <p>(d) If in a majority of the States a majority of the electors voting approve the</p>		<p>(d) A Bill introduced by the persons or committees set out in (a) (b) &amp; (c) of Part II above shall, at least 30 days before it is introduced, be published in the national Government Gazette for public comment; submit to the provincial legislatures for their views; and submit to NCP for a public debate if the amendment is not one that is required to be passed by NCP.</p> <p>(e) The person or committee introducing the Bill must submit any written comments received from public and provincial legislatures to the Speaker for tabling in the NA and, in respect of certain amendments, to the Chairperson of the NCP for tabling in the NCP.</p> <p>(f) A Bill passed by NA and where applicable NCP must be referred to the President for assent.</p>	<p>revision in conformity with the decision of the people;</p> <p>(ii) if the request is in the form of a complete draft and if it meets with the approval of the Federal Assembly, the draft shall be submitted to the people and the Cantons for adoption or rejection. If the Federal Assembly disagrees, it may prepare its own draft or recommend the rejection of the proposed draft and submit its own draft or recommendation of rejection together with the draft proposed by the initiative to the decision of the people and the Cantons.</p> <p>(c) A federal law shall determine the procedure to be followed in the case of popular initiative requests and votes on the revision of the Federal Constitution.</p> <p>(d) The revised Federal Constitution or the revised part of it, as the case may be, shall enter into force if it has been adopted by the majority of the Swiss citizens casting a vote and the majority of the Cantons.</p>
--	--	---	--	---	---



		proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.			
V. Special Provisions	<p>(a) No amendment may be made prior to 1808 to certain parts of Article 1.</p> <p>(b) No State without its consent shall be deprived of its equal suffrage in the Senate.</p>	<p>No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing or otherwise altering the limits of the State, etc. shall become law unless the majority of the electors voting in that State approve the proposed law.</p>	<p>(a) A law making an amendment to certain provision of the Constitution (e.g. provisions in relation to Conference of Ruler, privileges of Legislative Assembly, national language, constitutional amendment etc.) shall not be passed without the consent of the Conference of Rulers.</p> <p>(b) Article 161E provides safeguards for constitutional position of States of Sabah and Sarawak.</p>	<p>If a Bill relates to a matter which concerns a specific province, the NCP may not pass it unless it has been approved by the legislature(s) of the province(s) concerned.</p>	