

Article 97 of the Basic Law

BL97

BL97 provides that “[d]istrict organizations which are not organs of political power may be established in the Hong Kong Special Administrative Region, to be consulted by the government of the Region on district administration and other affairs, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation.”

Analysis of BL97

2. BL97 is an empowering provision. It is permissive in the sense that it permits the HKSAR to establish district organizations. But it does not impose any constitutional obligation on the HKSAR to establish district organizations. It is prescriptive in that district organizations shall not be organs of political power.

BL98

3. BL98 provides that “[t]he powers and functions of the district organizations and the method for their formation shall be prescribed by law.”

Powers and functions of district organizations

4. BL97, when read together with BL98, provides flexibility for the HKSAR to determine whether or not to establish district organizations, and if so, whether they should perform both or either one of the two functions set out in BL97. Provided that they operate within the framework laid down in BL97, the powers and functions of the district organizations are matters for policy decision, and according to BL98 such policy decisions must be prescribed by law.

Relevant court case

5. It is relevant to take note of the ruling handed down by the Court of First Instance in *Chan Shu Ying v The Chief Executive of the HKSAR*¹ (a case in which the constitutionality of the *Provision of Municipal Services (Reorganisation) Ordinance (Cap. 552)* was upheld). Hartmann J held that -

“Clearly, Article 97 is no more than an empowering provision. It is permissive in the sense that it permits the establishment of district organizations but does not create a constitutional obligation to establish them.

But the matter goes further. For in my view, it is equally plain that if Government and the Legislature do decide to establish district organizations, they may do so either to act as consultative bodies on matters of district administration and related affairs or to be responsible for providing local services. No obligation exists therefore to create district organizations which possess executive or administrative powers.”²

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¹ [2001]1 HKLRD 405.

² Ibid, at 424 B – D.