

**The Second Report of the
Constitutional Development Task Force :**

**Issues of Principle in the Basic Law
Relating to Constitutional Development**

April 2004

Content

Chapter One :	Introduction	1
Chapter Two :	The Consultation conducted by the Task Force	4
Chapter Three :	The Constitutional Basis of Constitutional Development and the Actual Situation at Present	7
	<i>The Constitutional Basis</i>	7
	<i>The Basic Policies and the Design of the Political Structure</i>	8
	<i>The Process of Constitutional Development</i>	11
	<i>The Actual Situation at Present</i>	14
	<i>Political Talent</i>	18
	<i>The Maturity of Political Groups</i>	18
	<i>Public Policy Research</i>	19
	<i>The Executive-led System and the Relationship between the Executive Authorities and the Legislature</i>	19
	<i>Problems to be dealt with at present</i>	20

Chapter Four :	Views received by the Task Force on Issues of Principle	22
Chapter Five :	Views of the Task Force on Issues of Principle relating to Constitutional Development	28
(A)	<i>The Relationship between the Central Authorities and the HKSAR</i>	29
(B)	<i>“Actual Situation” and “Gradual and Orderly Progress”</i>	34
(C)	<i>“Meeting the Interests of the Different Sectors of Society” and “Facilitating the Development of the Capitalist Economy”</i>	36
	<i>Summary on Issues of Principle</i>	37
Chapter Six :	Conclusion	40
 Annexes 1 – 3		

Chapter One : Introduction

- 1.01 The development of the political structure in the Hong Kong Special Administrative Region (HKSAR) is a matter that relates to the implementation of the Basic Law, the relationship between the Central Authorities and the HKSAR, the interests of various strata and sectors of the community, and the long term prosperity and stability of Hong Kong. To prepare for handling matters relating to constitutional development after 2007, the HKSAR Government conducted internal research in 2003.
- 1.02 In December 2003, during the duty visit by the Chief Executive to Beijing, the President informed the Chief Executive of the serious concerns and principled position of the Central People's Government (CPG) regarding Hong Kong's constitutional development.
- 1.03 In his Policy Address delivered on 7 January 2004, the Chief Executive said that the HKSAR Government understood the concerns of the community over future constitutional development. The Chief Executive undertook that on the basis of maintaining "One Country, Two Systems" and adhering to the Basic Law, the Government would actively promote constitutional development in Hong Kong. The Chief Executive also announced the establishment of the Constitutional Development Task Force. The Task Force is led by the Chief Secretary for Administration. Its members include the Secretary for Justice and the Secretary for Constitutional Affairs. Its tasks are to examine in depth the relevant issues of principle and legislative process in the Basic Law relating to constitutional development, to consult the relevant departments of the Central Authorities, and to gather the views of the public on the relevant issues.

- 1.04 On the same day, the Hong Kong and Macao Affairs Office (HKMAO) of the State Council issued a statement on the Chief Executive's Policy Address, reiterating the serious concerns of the CPG, and expressing the wish that the HKSAR Government would thoroughly discuss the issues with the relevant departments of the Central Authorities before deciding on how to take matters forward.
- 1.05 As arranged by the HKMAO of the State Council, the Task Force visited Beijing from 8 February to 10 February this year, and met with the HKMAO and the Legislative Affairs Commission of the Standing Committee of the National People's Congress (NPCSC) to discuss issues relating to constitutional development. The Task Force also had discussions with a group of Mainland legal experts. On the day following its return to Hong Kong, the Task Force briefed the Legislative Council and the public in detail about the visit.
- 1.06 On 26 March, the HKSAR Government was notified formally by the Central Authorities that the issues relating to the legislative process concerning Hong Kong's constitutional development would be put on the agenda of the meeting of the NPCSC from 2 April to 6 April. On 30 March, the Task Force visited Shenzhen and met with the representatives of the NPCSC and the HKMAO of the State Council. The Task Force provided them with a full account of community views received over the past two months on issues relating to the legislative process, as well as the views of the HKSAR Government on these issues. The views of the community and the HKSAR Government have been set out in detail in the First Report of the Task Force issued on 30 March. On 6 April, the NPCSC reached a decision on the interpretation of

Article 7 of Annex I and Article III of Annex II to the Basic Law in accordance with the provisions of Article 67(4) of the Constitution and Article 158 of the Basic Law. The decision was promulgated on the same day.

- 1.07 This Report focuses on the issues of principle in the Basic Law relating to constitutional development.

Chapter Two : The Consultation conducted by the Task Force

- 2.01 The arrangements for the consultation conducted by the Constitutional Development Task Force have been set out in detail in Chapter Two of the First Report of the Task Force.
- 2.02 As at 3 April, the Task Force had met with 86 organisations and individuals to gather their views on the relevant issues of principle and legislative process.
- 2.03 On 19 February, the Task Force launched its website on constitutional development. As at 3 April, the website had been visited by the public more than 148,000 times.
- 2.04 From 7 January to 3 April, the Task Force received from the public around 660 letters, facsimiles and e-mails, expressing views on matters relating to constitutional development and the issues of principle and legislative process in the Basic Law relating to constitutional development.
- 2.05 Annex 1 to the First Report contained 91 submissions from organisations and individuals, received around the time of their meetings with the Task Force before 24 March.
- 2.06 After meeting representatives of the organisations and individuals, the Task Force summarised the views expressed on the 12 issues of principle and legislative process in the form of draft records of the meetings. These drafts were then sent to the relevant organisations and individuals for confirmation. Consent for

publishing their views was also sought. As the First Report went to print, some of the records had already been confirmed, and consent for publishing them obtained. Annex 2 to the First Report included 38 relevant records of meetings which had to do with issues relating to the legislative process. These records were listed in chronological order according to the date of the meetings with the Task Force. At the time when the First Report went to print, some of the draft records had yet to be confirmed. These were marked as such when published.

2.07 Annex 3 to the First Report included 241 submissions from other members of the public on issues relating to the legislative process. In addition, the Task Force issued an Addendum to Annex 1 and Annex 2, containing submissions and confirmed records of meetings, which were received between 24 March and 29 March, from organisations and individuals whom the Task Force had met. The Addendum was published on 30 March, together with the First Report. On the same day, the Task Force handed over these materials to the representatives of the NPCSC and the HKMAO.

2.08 This Report focuses on the issues of principle in the Basic Law relating to constitutional development. The views gathered on these issues have been included in the following Annexes :

Annex 1 – Copies of submissions received between 24 March and 3 April from organisations and individuals whom the Task Force has met. (The submissions received before 24 March were included in Annex 1 to the First Report.)

Annex 2 – Extracts of records of meetings (relating to issues of principle) between the Task Force and the organisations and individuals.

Annex 3 – Copies of public views gathered through other channels including e-mails and facsimiles up to 3 April. These views relate to constitutional development and have not been included in Annex 3 to the First Report.

The above annexes are available for reference in District Offices. Members of the public may also browse through these annexes on the Task Force's website.

Chapter Three : The Constitutional Basis of Constitutional Development and the Actual Situation at Present

The Constitutional Basis

3.01 In considering matters relating to constitutional development, the Task Force first examines the constitutional basis of any such development. The Constitution of the People's Republic of China (PRC) is the basic law of the State. It enjoys the highest legal status and is applicable to the whole country. Upholding national unity and territorial integrity, preserving the prosperity and stability of Hong Kong, and taking account of its history and realities, the State decided that, upon its resumption of the exercise of sovereignty over Hong Kong, the HKSAR should be established in accordance with the provisions of Article 31 of the Constitution. Under the principle of "One Country, Two Systems", the socialist system and policies would not be practised in Hong Kong. In accordance with the Constitution, the National People's Congress (NPC) enacted the Basic Law, prescribing the systems to be practised in the HKSAR, in order to ensure the implementation of the basic policies of the State regarding Hong Kong.

3.02 On 4 April 1990, the Seventh NPC at its Third Session adopted the "Decision of the National People's Congress on the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China". It is clearly stated in the Decision that "[t]he Basic Law of the Hong Kong Special Administrative Region is

constitutional as it is enacted in accordance with the Constitution of the People’s Republic of China and in the light of the specific conditions of Hong Kong. The systems, policies and laws to be instituted after the establishment of the Hong Kong Special Administrative Region shall be based on the Basic Law of the Hong Kong Special Administrative Region.”

3.03 Article 11 of the Basic Law also provides in this respect that “[i]n accordance with Article 31 of the Constitution of the People’s Republic of China, the systems and policies practised in the Hong Kong Special Administrative Region, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, and the relevant policies, shall be based on the provisions of this Law. No law enacted by the legislature of the Hong Kong Special Administrative Region shall contravene this Law.”

3.04 The establishment of the HKSAR and its systems have been determined by the Central Authorities in accordance with the Constitution and through the Basic Law. The HKSAR cannot unilaterally change the systems prescribed by the Central Authorities.

The Basic Policies and the Design of the Political Structure

3.05 The Preamble to the Basic Law states that the purpose of enacting the Basic Law is to prescribe “the systems to be practised in the Hong Kong Special Administrative Region, in order to ensure the implementation of the basic policies of the People’s Republic of China regarding Hong Kong”. In accordance with the policies of

the Central Authorities adopted upon its resumption of the exercise of sovereignty over Hong Kong,^(Note 1) constitutional development in the HKSAR must be consistent with the basic policies of “One Country, Two Systems”, “Hong Kong people ruling Hong Kong” and “a high degree of autonomy”. Recently, the Central Authorities have also expressed their views on various issues of principle through different means. In summary, “One Country” is the premise on which “Two Systems” is implemented. “One Country” refers to the PRC. “Hong Kong people ruling Hong Kong” refers to patriots^(Note 2) forming the main body of people responsible for managing Hong Kong affairs. Hong Kong’s “high degree of autonomy” is exercised under authorisation by the Central Authorities. Hong Kong’s constitutional development must not contradict the principle of an executive-led system. The

^(Note 1) The Government of the PRC explained its basic policies regarding Hong Kong in Article 3 and Annex I to the “Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong”. Besides, in his Report on the Work of the Government delivered at the Second Session of the Sixth NPC on 15 May 1984, the Premier of the State Council announced : “Our country will, in 1997, resume the exercise of sovereignty over Hong Kong. This is our unswerving decision and policy. In order to preserve the stability and prosperity of Hong Kong, we will adopt, upon our resumption of the exercise of sovereignty, a series of special policies regarding Hong Kong which will remain unchanged for 50 years. These policies include : in accordance with Article 31 of our Constitution, to set up the Hong Kong Special Administrative Region, which will be managed by Hong Kong people themselves and will enjoy a high degree of autonomy; the original social and economic systems 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 a free port and an international financial and trading centre will be maintained, and Hong Kong will continue to maintain and develop its economic relations with various countries and places as well as relevant international organizations; the economic interests of Britain and other countries in Hong Kong will be taken into consideration. The above policies of the Government of the PRC take into full account the history and present situation of Hong Kong, accord with the fundamental interests of all people in China, including the compatriots in Hong Kong, and are pragmatic and reasonable. We hope and believe that the question of Hong Kong can be fully resolved shortly.”

^(Note 2) On 22 June and 23 June 1984, when meeting members of a Hong Kong industrial and commercial delegation and Sze-yuen Chung and other prominent Hong Kong figures, Mr Deng Xiaoping said that “[s]ome requirements or qualifications should be established with regard to the administration of Hong Kong affairs by the people of Hong Kong. It must be required that patriots form the main body of administrators,..... A patriot is one who respects the Chinese nation, sincerely supports the motherland’s resumption of sovereignty over Hong Kong and wishes not to impair Hong Kong’s prosperity and stability.....”

principle of “balanced participation” means that in pursuing constitutional development in Hong Kong, consideration must be given to the interests of different sectors and strata of the community. Hong Kong’s constitutional development must progress in a gradual and orderly manner and must be consistent with the actual situation in Hong Kong.^(Note 3)

3.06 In submitting the Basic Law (Draft) and related documents at the Third Session of the Seventh NPC on 28 March 1990, Director Ji Pengfei said, “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.”

3.07 Chapter IV of the Basic Law and the relevant Annexes prescribe the political structure of the HKSAR, define 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 and the members of the Legislative Council.

3.08 Article 45 of the Basic Law provides that “[t]he Chief Executive of the Hong Kong Special Administrative Region shall be selected by

^(Note 3) See the speech of the Chief Executive delivered at the reception hosted for members of the NPC and the Chinese People’s Political Consultative Conference on 4 March 2004.

election or through consultations held locally and be appointed by the Central People's Government. The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures. The specific method for selecting the Chief Executive is prescribed in Annex I: 'Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region'."

3.09 Article 68 of the Basic Law provides that "[t]he Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election. The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage. The specific method for forming the Legislative Council and its procedures for voting on bills and motions are prescribed in Annex II: 'Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures'."

The Process of Constitutional Development

3.10 Before reunification, Governors of Hong Kong were appointed by the British Government for the implementation of colonial rule in Hong Kong. After reunification, in accordance with the principle of "Hong Kong people ruling Hong Kong" and the relevant

provisions of the Basic Law, the Chief Executive is a permanent resident of the HKSAR, and is elected by the Election Committee. The number of Election Committee members has also increased from 400 in the election of the first term Chief Executive, to 800 in the election of the second term Chief Executive. The Election Committee is selected, in accordance with law, by around 163,000 eligible voters from different subsectors. Most Election Committee members are returned through elections.

- 3.11 Before reunification, Hong Kong was under colonial rule, and for many years before the early 1980s, there was not much progress in democratisation. It was not until 1985 that elections through functional constituencies and an electoral college were introduced in respect of the Legislative Council. In 1991, the seats returned by the electoral college were abolished; the seats returned by functional constituencies were retained; and seats returned by geographical constituencies through direct elections were introduced.
- 3.12 A few years before reunification, as a consequence of the British side unilaterally implementing constitutional reform in the absence of an agreement, the “through train” arrangement for Legislative Council members could not be realised. To avoid the problem of not having a legislature that could begin to operate immediately upon the establishment of HKSAR, the NPC Preparatory Committee for the Hong Kong Special Administrative Region adopted on 24 March 1996 the “Decision of the Preparatory Committee on the Establishment of a Provisional Legislature of the Hong Kong Special Administrative Region”. The Provisional Legislative Council was established to handle matters as necessary in order to ensure a smooth transition for Hong Kong during the transitional period and the normal operation of the HKSAR.

- 3.13 Since then, Hong Kong's political structure has been developing in accordance with the provisions of the relevant Annexes to the Basic Law, and has been making progress towards the ultimate aim of universal suffrage in a gradual and orderly manner. The number of seats returned by direct geographical elections increased from 20 in 1998, to 24 in 2000, and to 30 in 2004. After the 2004 elections, the proportion of seats returned by direct geographical elections will have been increased by 50% in the seven years since reunification, and will account for half of all Legislative Council seats. All eligible permanent residents have the right to elect, under the "one person one vote" system, members of the Legislative Council in geographical constituency elections. Within a few years after the establishment of the HKSAR, democratic elements in Hong Kong's political structure exceed those which pertained before reunification.
- 3.14 Since 1995, the voter registration rate has been maintained at above 65%. The voter turnout rate for direct elections in geographical constituencies increased from 36% in 1995, to 53% in 1998, and 44% in 2000. The number of candidates standing in the geographical constituency elections increased from 50 in 1995 to 88 in 2000.
- 3.15 It is the common goal of the Central Authorities, the HKSAR Government and the Hong Kong community to pursue constitutional development. The Basic Law provides that the ultimate aim is the selection of the Chief Executive and the election of all the members of the Legislative Council by universal suffrage. What the community has yet to reach consensus on are the pace and specific options for constitutional development.

The Actual Situation at Present

3.16 In considering further development of the political structure, proper regard should be given to the actual situation in Hong Kong at present. Hong Kong is a market-oriented and open economy and a cosmopolitan city. It is a financial centre, shipping centre, communication centre and commercial centre in Asia. In 2003, our per capita Gross Domestic Product exceeded US\$23,000. Our level of economic development ranks among the highest in the world. Hong Kong has long been renowned for its rule of law. It has a civil service whose members are persons of integrity and dedicated to their duties. There is a high degree of social mobility in Hong Kong. Our work ethic is positive. People are pragmatic and keen to upgrade their levels of educational and professional attainment through continuing learning. There is free flow of information. The mass media is multi-faceted and flourishing. There is freedom of expression. The public in general takes an interest in public affairs and in their community.

3.17 Since reunification, the Chief Executive, and the HKSAR Government under his leadership, have been exercising executive powers as authorised by the Basic Law. They have governed Hong Kong in strict adherence with the provisions of the Basic Law. Over the past six years, Hong Kong's economy has been undergoing a difficult process of restructuring. As pointed out by the Chief Executive in his Policy Address this year, this restructuring has been particularly painful and protracted for several important reasons. First, we inherited pre-existing problems including a bubble economy and a mismatch of human resources. Second, the Asian financial crisis pierced the bubble economy and led to sustained deflation. Third, there is the

challenge of rapid globalisation. Fourth, deflation affected public finances.^(Note 4) In the face of these daunting challenges, the HKSAR Government devised economic policies and measures to tackle the phenomenon of rapid globalisation and to take full advantage of the development of our country. After years of sustained effort, these strategies are beginning to bear fruit. The decision of the Central Authorities to allow individual Mainland residents to visit Hong Kong, the Mainland and Hong Kong Closer Economic Partnership Arrangement, regional co-operation (in particular the development of closer links with Guangdong and Shanghai), and Hong Kong banks doing business in Renminbi have all been implemented either last year or earlier this year. These strategies and measures, together with the hard work of Hong Kong people, have led to a clear recovery of Hong Kong's economy.

- 3.18 In addition, with the full implementation of “One Country, Two Systems” and the closer trading and economic links between the Mainland and Hong Kong, Hong Kong people's identification with the country and their sense of belonging have been enhanced. At the same time, under the safeguards of the Basic Law, Hong Kong people continue to enjoy all the rights associated with a free and open community, which are on par with the rights enjoyed in other developed places. Hong Kong people have high expectations of the HKSAR Government. They actively participate in public affairs and express their demands through different channels.

^(Note 4) For the full text, please refer to paragraph 5 of the 2004 Policy Address of the Chief Executive.

3.19 The HKSAR Government understands the expectations and demands of the Hong Kong people. One of the major policy objectives of the HKSAR Government in the past few years has been to further consolidate and improve the quality of governance. In July 2002, the HKSAR Government launched the Accountability System for Principal Officials, which was designed to enhance the quality of governance.

3.20 At the same time, the HKSAR Government has also encountered a range of challenges in its governance. Many problems arose when the HKSAR had to face the most serious cyclical and structural economic difficulties in 40 years. Coupled with avian flu, Severe Acute Respiratory Syndrome and the controversy surrounding the implementation of Article 23 of the Basic Law, a considerable level of grievances has accumulated within the community. As a result, the community have doubts and concerns about the governance of the HKSAR Government. In turn, this has led to expression of dissatisfaction in various ways. While the overall popularity rating of the HKSAR Government has risen following recent improvements in economic performance, it has remained at a relatively low level for some time. The Chief Executive pointed out that there were still inadequacies on the part of the HKSAR Government, and that this situation would require significant improvement in future. The operation of the accountability system in the initial stage had not been entirely smooth. The Chief Executive said that the Government would need to make improvements to the system on the basis of experience gained. He pointed out in his Policy Address this year that the Government would, in the months ahead, focus on improving its policy making capabilities, in particular the quality of policies. At the same time, the Government must have the

capability to assess public sentiment promptly and accurately, and to respond effectively. The Government would endeavour to stay in touch with the public through different channels and deepen the understanding of their aspirations through different means.^(Note 5)

3.21 Against this background, there is a body of opinion in the community which aspires for more room in the political structure, to allow the public to express their views actively, to participate in public affairs, and even to participate directly in choosing the Chief Executive. A number of political groups in the community have transformed these aspirations into calls for the introduction of “two direct elections”. Their belief and premise are that introduction of universal suffrage could resolve the present problems of governance. Recent opinion polls have indicated that more than 50% of those polled are in favour of selecting the Chief Executive by universal suffrage in 2007, while around 60% of those polled support election of all members of the Legislative Council by universal suffrage in 2008. At the same time, considerable reservations exist in the community. There are those who take the view that premature introduction of universal suffrage would not help to resolve the problems of governance; neither would it resolve economic and livelihood issues which are real and substantive. That said, there appears to be a consensus in the community that constitutional development should proceed, and that the methods for selecting the Chief Executive and for forming the Legislative Council should be amended.

^(Note 5) Please refer to paragraphs 60 and 64 of the Chief Executive’s Policy Address on 7 January 2004.

Political Talent

3.22 To resolve the problems of governance, one critical factor is the experience and calibre of political talent. For a long time under colonial rule, not much effort was made in Hong Kong to groom local political talent. Local and publicly spirited individuals who aspired to participate in the management of Hong Kong's public affairs could only do so by joining the Government as Administrative Officers or senior civil servants. Since reunification, with the implementation of "Hong Kong people ruling Hong Kong", more local talents have the opportunity to develop their skills and render public service through established institutions. In his Policy Address this year, the Chief Executive also pledged to involve more middle class people in public affairs. However, it will take time and a relatively long process to recruit and groom sufficient political talent.

The Maturity of Political Groups

3.23 Over the years, through participation in the District Councils and the Legislative Councils, political groups in Hong Kong have gradually established a presence in the community. However, members of the general public still show little interest in joining political groups. The membership of various political groups is still relatively small. (According to information on the websites of political groups, membership varies from around a few dozen to over 1 000, amounting to only a very small percentage of the Hong Kong population.) There are quite a number of more experienced members who are well seasoned in dealing with business in the legislative and district councils. However there are only a few who have experience in public administration or in running the

government. At present, political groups focus more on issues of the day and individual political episodes. They lack an overall governing manifesto and an overview in policy research in different areas. As a result, the public is not certain whether political groups are able to look after the interests of different sectors of society, as well as the long term interests of the HKSAR.

Public Policy Research

3.24 Public policy research, especially research conducted from an objective and long term perspective, is very important in enhancing effective governance. However, at present, public policy research is not being pursued vigorously within the Government and in the community, and there are not enough experts in this area. The Chief Executive said in this year's Policy Address that, to enhance effectiveness of governance on a long term basis, the Central Policy Unit would continue to explore this area of work.

The Executive-led System and the Relationship between the Executive Authorities and the Legislature

3.25 Basically, the political structure in Hong Kong is an executive-led system headed by the Chief Executive. The Chief Executive is the head of the HKSAR. At the same time, he leads the HKSAR Government. The Chief Executive represents the HKSAR and is accountable to the CPG and the HKSAR. He is also responsible for implementing the Basic Law. The power of the Chief Executive to govern HKSAR is derived by way of authorisation by the Central Authorities through the Basic Law. (For details, please refer to Chapter Five of this Report.)

3.26 As regards the relationship between the executive authorities and the legislature, it can be seen from the statement made by Director JI Pengfei on the legislative intent of the Basic Law at the Third Session of the Seventh NPC on 28 March 1990 when submitting the Basic Law (Draft) and related documents, that “[t]he 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.”

3.27 However, in reality, the executive authorities and the legislature are respectively taken up by people of different backgrounds and perspectives; the executive authorities and the legislature often are able to “regulate” (i.e. to act as a mutual check) but are not able to “co-ordinate” (i.e. to fully complement) each other. Furthermore, under the present system, the Chief Executive does not have established support in the Legislative Council. This has had an adverse effect on the executive-led system and administrative efficiency.

Problems to be dealt with at present

3.28 The discussion on political development entails wide-ranging and complicated issues. These issues cannot be resolved overnight. The methods and channels to resolve them vary from issue to issue. Constitutional development is a long-term process. We must proceed strictly in accordance with the provisions of the Basic Law. We should adhere to the premise of not changing the design of the political structure in the Basic Law. On this basis, we can examine what room there is for changing the methods for selecting

the Chief Executive and for forming the Legislative Council in the Annexes to the Basic Law.

3.29 Indeed, if any proposed amendments for constitutional development are to be successfully implemented, they 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 shall be reported to the NPCSC for approval or for the record. None of these steps is dispensable. All these elements are essential. For the process to bear fruit, we must understand this political reality, and we must try to appreciate and consider each other's position. In addressing this important issue, we must consider the basic policies of the State regarding Hong Kong, the interests of the country, the long-term development of the HKSAR, the effectiveness of governance and public aspirations. We must also adopt a receptive attitude and seek to act in the common interests of the community.

Chapter Four : Views received by the Task Force on Issues of Principle

4.01 There are divergent views in the community on issues of principle relating to constitutional development. The Task Force has included the full set of views received on these issues of principle in the Annexes to the Report. This Chapter briefly sets out the various public views expressed on issues of principle.

A1. How could Hong Kong's political structure develop in accordance with the following principles in the relevant Basic Law provisions which relate to the relationship between the Central Authorities and the HKSAR:

- (1) Hong Kong is an inalienable part of China (Article 1 of the Basic Law) ?**
- (2) HKSAR comes directly under the CPG (Article 12 of the Basic Law) ?**
- (3) The Chief Executive is appointed by the CPG. He is accountable to both the CPG and the HKSAR (Articles 43 and 45 of the Basic Law) ?**

4.02 The majority of views received confirm agreement with the above principles without dissenting views. Also, the majority of views received agree that Hong Kong's constitutional development should be pursued in accordance with the provisions of the Basic Law.

4.03 There are views that as “universal suffrage” is already stipulated in the Basic Law as the ultimate aim, introducing universal suffrage will not violate these provisions on principles. Also, there are views that the Chief Executive elected by universal suffrage still needs to be appointed by the Central Authorities. This arrangement realises the principle of the Chief Executive being accountable to the Central Authorities and the HKSAR, and that of “One Country, Two Systems”. There are views that the Hong Kong community is demanding universal suffrage, not “independence”.

4.04 There are quite a number of views which affirm that “One Country” is the premise on which “Two Systems” is implemented. The high degree of autonomy enjoyed by Hong Kong comes by way of authorisation by the Central Authorities. There are views that we must pay heed to the views of the Central Authorities on Hong Kong’s constitutional development, and discuss the issues with them to seek consensus. Some consider that the Central Authorities have responsibilities and powers to oversee and determine constitutional development in Hong Kong. There are also views that “One Country” is as important as “Two Systems”. Under “One Country”, the essence of “Two Systems” must be preserved. The principles of “Hong Kong people ruling Hong Kong” and “a high degree of autonomy” must be implemented and that the views of Hong Kong people must be taken seriously.

A2. On the principles of “actual situation” and “gradual and orderly progress”:

(1) what should “actual situation” constitute?

(2) how “gradual and orderly progress” should be understood?

“Actual Situation”

- 4.05 There are many views that the “actual situation” should constitute the prevailing aspirations of the general public – that is the realisation of universal suffrage in 2007 and 2008. There are views that in accordance with the actual situation in Hong Kong, Hong Kong is ready for universal suffrage. The political maturity and calibre of Hong Kong people are such that they are ready for universal suffrage.
- 4.06 There are views that Hong Kong already has experience of elections for more than 20 years. The conditions are ripe for implementing universal suffrage. The early realisation of full democratisation would be compatible with the “actual situation” and public demand.
- 4.07 There are views that the “actual situation” is that the governance of the HKSAR Government is unsatisfactory. There are also views that the current method for selecting the Chief Executive provides insufficient representativeness and an inadequate public mandate.
- 4.08 Conversely, there are many views that based on the current “actual situation”, it is not suitable to implement universal suffrage in Hong Kong in 2007 and 2008. There are views that the “actual situation” in Hong Kong is that the political conditions are not ripe, that the public notion of statehood is not deep and that their understanding of the Basic Law is limited. In addition, there are quite a number of views that the “actual situation” should include factors such as public aspirations, civic awareness, and the economic, political and social conditions of the HKSAR. Some consider that public notion of statehood should also be included.

“Gradual and Orderly Progress”

- 4.09 There are views that implementating universal suffrage in 2007 and 2008 would be too hasty, and would not accord with the meaning of “gradual and orderly progress”. To preserve the prosperity and stability of Hong Kong, constitutional development should proceed step by step. There are also views that constitutional development should not be rushed. There are views that the community should first focus on improving the economy and addressing livelihood issues. As Hong Kong has returned to the motherland for just over six years, the time is not yet ripe for introducing universal suffrage. There are quite a number of views which point out that in pursuing constitutional development, the stability of Hong Kong society and our economic prosperity should be considered.
- 4.10 Conversely, there are views that Hong Kong’s constitutional development has been progressing in a gradual and orderly manner since the 1980s. The time is now ripe for introducing universal suffrage. There are also views that “gradual and orderly progress” is subject to the “actual situation”. The two factors should be considered together.
- 4.11 There are views that, in order to comply with the principle of “gradual and orderly progress”, changes must be made to the methods for selecting the third term Chief Executive and for forming the fourth term Legislative Council. The current methods should no longer be retained. There are quite a number of views which express the wish that a timetable for implementing universal suffrage should be established.

A3. Basing on Mr JI Pengfei’s explanation in 1990, how could the development of Hong Kong’s political structure:

(1) “meet the interests of the different sectors of society”?

(2) “facilitate the development of the capitalist economy”?

“Meeting the Interests of Different Sectors of Society”

4.12 There are quite a number of views that, in order to “meet the interests of different sectors of society”, there should be “balanced participation” and that functional constituencies should be maintained. There are views that in pursuing constitutional development, consideration should be given to the interests of all sectors, including the industrial and commercial sectors, the professional sectors, the middle class and the working class/grassroot. There are views suggesting that the Government should draw up a timetable for constitutional development. This will enable the various sectors to organise themselves and will encourage them to participate in politics.

4.13 Conversely, there are views that universal suffrage is already practised in many places, and that it can best represent and meet the interests of different sectors. Therefore, the election of the Chief Executive and members of the Legislative Council by universal suffrage will best give effect to the principle of meeting “the interests of different sectors”.

“Facilitating the Development of the Capitalist Economy”

- 4.14 There are views that constitutional development should ensure the prosperity and stability of society. Only then can the development of the capitalist economy be facilitated. There are some concerns that Hong Kong has a narrow tax base, and that only 39% of the working population are paying salaries tax. The worry is that if universal suffrage were implemented hastily, or if functional constituencies were abolished, Hong Kong might become a welfare state. In turn, this might affect the investment and economic environment of Hong Kong. There are views that functional constituencies and the existing electoral methods should be maintained in order to facilitate the development of the capitalist economy.
- 4.15 Conversely, there are views that as democratic elections are also practised in other capitalist societies and developed countries, democracy is not necessarily correlated with a welfare state. Instead, implementation of full democratisation will be the most favourable means of facilitating the development of the capitalist economy in Hong Kong. Only under a democratic and fair system will the potential of a capitalist economy be fully realised.

Chapter Five : Views of the Task Force on Issues of Principle relating to Constitutional Development

5.01 In its paper issued to the Legislative Council Panel on Constitutional Affairs on 14 January, the Task Force referred to the issues of principle in the Basic Law relating to constitutional development. These issues of principle could be classified into three broad categories –

- (i) the principles relating to the relationship between the Central Authorities and the HKSAR;
- (ii) the principles of “actual situation” and “gradual and orderly progress” that must be followed in pursuing constitutional development in the HKSAR;
- (iii) the principles of “meeting the interests of the different sectors of society” and of “facilitating the development of the capitalist economy” as referred to by Director Ji Pengfei in 1990.

5.02 The Task Force has given full consideration to the views of different organisations and individuals regarding the above issues of principle. During its visit to Beijing, the Task Force had thorough discussions with the relevant departments of the Central Authorities and exchanged views with some Mainland legal experts. The Task Force has formed its views on these issues of principle having regard to the above. These views are set out in detail in the ensuing paragraphs.

(A) ***The Relationship between the Central Authorities and the HKSAR***

5.03 Upon its resumption of the exercise of sovereignty over Hong Kong, the State established the HKSAR in accordance with the Constitution. On the basis of the basic policies of “One Country, Two Systems”, “Hong Kong people ruling Hong Kong” and “a high degree of autonomy”, the State enacted the Basic Law, prescribing the systems, including the political structure, to be practised in the HKSAR.

5.04 The Constitution is the legal basis of the Basic Law. The provisions of the Constitution which provide for the relationship between the Central Authorities and the HKSAR include –

- (i) the State may establish special administrative regions when necessary (Article 31 of the Constitution);
- (ii) the systems to be instituted in special administrative regions shall be prescribed by law enacted by the NPC in the light of specific conditions (Article 31 of the Constitution);
- (iii) NPC decides on the establishment of special administrative regions and the systems to be instituted there (Article 62(13) of the Constitution);
- (iv) NPC enacts and amends basic laws (Article 62(3) of the Constitution); and
- (v) NPCSC interprets laws (Article 67(4) of the Constitution).

5.05 The provisions of the Basic Law which provide for the relationship between the Central Authorities and the HKSAR include –

- (i) the HKSAR is an inalienable part of the PRC (Article 1 of the Basic Law);
- (ii) the HKSAR shall be a local administrative region of the PRC, which shall enjoy a high degree of autonomy and come directly under the CPG (Article 12 of the Basic Law); and
- (iii) the Chief Executive shall be appointed by the CPG (Article 45 of the Basic Law), and shall be accountable to the CPG and the HKSAR (Article 43 of the Basic Law).

5.06 Besides, Article 2 of the Basic Law clearly provides that the NPC authorises the HKSAR to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of the Basic Law. Article 20 of the Basic Law also provides that the HKSAR may enjoy other powers granted to it by the NPC, the NPCSC or the CPG. In other words, all powers exercised by the HKSAR are derived by way of authorisation by the Central Authorities. There are no “residual powers” for the HKSAR.

5.07 The establishment of the HKSAR, including the design of its political structure, is implemented by the Central Authorities through the enactment of the Basic Law in accordance with powers granted by the Constitution. Therefore, the Central Authorities have constitutional powers and responsibilities to oversee and determine constitutional development in the HKSAR, in order to

ensure the implementation of the basic policies of the State regarding Hong Kong. The Basic Law is a law enacted by the NPC. It is binding on Hong Kong, as well as the whole country. As the HKSAR comes directly under the CPG, the CPG has responsibilities to be accountable to the whole country for constitutional development in the HKSAR. In examining the direction and pace of its constitutional development, the HKSAR must pay heed to the views of the Central Authorities. Any changes to the political structure are subject to the consent of the Central Authorities. In any case, according to the provisions of the Annexes to the Basic Law, any amendments to the methods for selecting the Chief Executive and for forming the Legislative Council 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 shall be reported to the NPCSC for approval or for the record. According to the interpretation made by the NPCSC, in respect of Article 7 of Annex I and Article III of Annex II to the Basic Law as promulgated on 6 April 2004, the Chief Executive shall make a report to the NPCSC as regards whether there is a need to amend the methods for selecting the Chief Executive and for forming the Legislative Council; and the NPCSC shall make a determination in accordance with the relevant provisions and principles in the Basic Law.

- 5.08 Moreover, the design of the political structure is relevant to giving effect to the exercise of sovereignty, as well as the full implementation of “One Country, Two Systems” and the basic policies of the Central Authorities. The HKSAR does not have any right to change unilaterally the systems prescribed by the Central Authorities. Any proposed amendments must comply with the provisions of the Basic Law. Amendments to the design and principles of the political structure prescribed in the Basic Law

must not be lightly contemplated.

- 5.09 Under “One Country, Two Systems”, the Chief Executive shall be accountable to both the CPG and the HKSAR. The method for selecting the Chief Executive is also designed on the basis of this principle. In accordance with Article 45 of the Basic Law, the Chief Executive shall be selected by election or through consultations held locally in the HKSAR and be appointed by the CPG. The appointment of the Chief Executive by the Central Authorities is substantive. No proposed amendments shall affect the substantive power of appointment of the Central Authorities.
- 5.10 In addition, constitutional development must be consistent with the interests of the State, including national unity and territorial integrity, and must facilitate the exercise of sovereignty by the State. The State exercises its sovereignty over the HKSAR through the Chief Executive, and requires the Chief Executive to be accountable to both the CPG and the HKSAR. The Chief Executive is the head of the HKSAR. At the same time, he leads the HKSAR Government. The Chief Executive is responsible for implementing the Basic Law, and is responsible for developing and implementing the systems and policies of the HKSAR, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judiciary systems, and the relevant policies. To meet these requirements, we must implement an executive-led system. This is also part of the previous political structure which has proven to be effective.

- 5.11 As a matter of fact, according to the design of the Basic Law, the political structure of the HKSAR is an executive-led system headed by the Chief Executive.^(Note 6)
- 5.12 “Executive-led” is an important principle underlying the design of the political structure in the HKSAR, and is a crucial feature for giving effect to State sovereignty. Any proposed amendments must aim at consolidating the executive-led system headed by the Chief Executive and must not deviate from this principle of design. At present, the executive authorities and the legislature do not co-ordinate fully with each other, thus affecting the executive-led system and administrative efficiency. Therefore, any proposed amendments should aim at perfecting the executive-led system, and should not lead to a deterioration of the co-ordination problem of the current relationship between the executive authorities and the legislature.

(Note 6) This is mainly realised in the following areas :

- (i) the Chief Executive shall be the head of the HKSAR and shall represent the Region (Article 43 of the Basic Law);
- (ii) the Chief Executive is at the same time the head of the HKSAR Government (that is, the executive authorities) (Article 60 of the Basic Law);
- (iii) in accordance with Article 48 of the Basic Law, the Chief Executive is responsible for the implementation of the Basic Law;
- (iv) in accordance with Article 48 of the Basic Law, the Chief Executive leads the government of the Region, decides on government policies, nominates and reports to the CPG for appointment the principal officials and recommends to the CPG the removal of them, to conduct, on behalf of the HKSAR, external affairs and other affairs as authorized by the Central Authorities;
- (v) according to Article 62 of the Basic Law, the Chief Executive leads the HKSAR Government to exercise relevant powers and functions, including drawing up and introducing budgets, and drafting and introducing bills, motions and subordinate legislation;
- (vi) the Chief Executive plays an important role in the legislative process, including the signing of bills and the promulgation of laws (Articles 48 and 76 of the Basic Law), as well as other relevant provisions (Articles 49, 50 and 51 of the Basic Law);
- (vii) according to Article 74 of the Basic Law, members of the Legislative Council may not introduce bills relating to public expenditure or political structure or the operation of the government. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced by members;
- (viii) independent organisations, such as the Independent Commission Against Corruption and the Commission of Audit, shall be accountable to the Chief Executive (Articles 57 and 58 of the Basic Law); and
- (ix) the Chief Executive also plays an important role in relation to the judiciary, for instance, by appointing judges of the courts at all levels (Article 48 of the Basic Law); as well as other relevant provisions (Articles 90 and 19 of the Basic Law etc.).

(B) “Actual Situation” and “Gradual and Orderly Progress”

5.13 “Actual situation” and “gradual and orderly progress” are referred to in both Article 45 and Article 68 of the Basic Law.

5.14 The “actual situation” of the HKSAR referred to in the Basic Law includes not only public opinions, but also factors such as the legal status of the HKSAR, the present stage of constitutional development, economic development, social conditions, the understanding on the part of the public of “One Country, Two Systems” and the Basic Law, public awareness on political participation, the maturity of political talent and political groups, as well as the relationship between the executive authorities and the legislature.^(Note 7) The “actual situation” evolves over the course of time. Certainly, due to economic globalisation and the status of Hong Kong as a cosmopolitan city in Asia, HKSAR’s external environment, including that of the Mainland, will have an impact on the actual situation in the HKSAR. We need to take into account these factors as well.

5.15 It is no easy task to have an accurate assessment of the actual situation. Objective factors as well as subjective judgements are involved. The views of individual members of our community on the actual situation may vary according to their background, economic status, values and inclinations. Every person has his own standpoint, and there is no absolute yardstick to judge right from wrong. The HKSAR Government must fully grasp the situation in the community, proceed cautiously, and make a fair judgement.

^(Note 7) Please refer to Chapter 3 of this Report.

5.16 It is generally given to understand that “gradual and orderly progress” means proceeding step by step in an orderly fashion to move forward. It involves a step by step transition, and different stages of evolution over time. With regard to arriving at the ultimate aim of selecting the Chief Executive and electing all members of the Legislative Council by universal suffrage, the evolutionary process should not stagnate. It should proceed in stages, but the process should not be too fast. The Task Force has noted that there are certain views which have raised similar observations.^(Note 8)

5.17 In summary, the methods for selecting the Chief Executive and for forming the Legislative Council should proceed towards the ultimate aim of universal suffrage. However, the pace should not be too fast; progress should be made in a gradual and orderly manner step by step. The progress should accord with the actual situation in the HKSAR, in order to preserve its prosperity and stability. When considering the actual situation, public opinion must be taken into account, as well as other factors including those referred to in paragraph 5.14.

^(Note 8) Reference can also be made to page 447 – 448 of the “Introduction to the Basic Law of the Hong Kong Special Administrative Region” written by Wang Shuwen (chief editor) : “The election system for the HKSAR cannot remain as it was....., nor can it develop too fast. If it remains unchanged, the demand of part of the Hong Kong residents for more democratic participation cannot be met and the ultimate aim for electing all the members of the Legislative Council of the HKSAR by universal suffrage would be neglected. The aim cannot be attained unless direct election is adopted gradually and conditions are created step by step to enhance the awareness of Hong Kong residents of the need to participate in political activities and to accumulate experience in election. However, it is impossible to have the Legislative Council constituted immediately by universal suffrage..... without a process of gradual and orderly progress, such development would be too fast to ensure participation by representatives of all social sectors in the Legislative Council or to have the interests of the various social strata taken into consideration - - which would give rise to social unrest and adversely affect social stability and economic development.”

(C) “Meeting the Interests of the Different Sectors of Society” and “Facilitating the Development of the Capitalist Economy”

5.18 When submitting the Basic Law (Draft) and related documents at the Third Session of the Seventh NPC on 28 March 1990, Director JI Pengfei explained that, with regard to the political structure of the HKSAR, consideration must be given to the interests of the different sectors of society. As seen from the history of Hong Kong’s economic development, its economic prosperity is largely attributable to the joint efforts of the trade and industrial sectors, the middle class, professionals, the working class and other sectors of society. Therefore, this principle deals with a proper appropriation of political power among all sectors, with the aim of preserving prosperity and stability. In accordance with this principle and the actual situation at that time, half of the seats in the Legislative Council were reserved for functional constituencies for the 10 years after reunification.

5.19 The Task Force is of the view that, any proposed amendments must enable different sectors of society to be represented within the political structure and to participate in politics through various channels, with consideration given to the interests of different sectors of society.

5.20 In his statement, Director JI also cited the voting procedures in the Legislative Council stipulated in Annex II to the Basic Law as an example of meeting the interests of different sectors of society. As such, any proposed amendments should also have regard to the impact on the voting procedures in the Legislative Council.

- 5.21 In his statement, Director JI said that Chapter V of the Basic Law contained stipulations on the economic system and policies of the HKSAR. These provisions are indispensable to the normal operation of the capitalist economy in Hong Kong and the preservation of the status of Hong Kong as an international financial centre and a free port. All of the above are aimed at preserving prosperity and stability of Hong Kong. The relevant principles have been implemented through Article 5 and other relevant provisions of the Basic Law (see Chapter 5 of the Basic Law).
- 5.22 To preserve the prosperity and stability of Hong Kong, the previous capitalist system and way of life should remain unchanged. Constitutional development should not proceed in a direction which leads to the emergence of populism or a welfare state, thus affecting the operation of the capitalist system. Therefore, any proposed amendments must not bring about adverse effect on the systems of the economy, monetary affairs, public finance and others as prescribed in the Basic Law.

Summary on Issues of Principle

- 5.23 There are many ways to amend the methods for selecting the Chief Executive and for forming the Legislative Council in order to increase the democratic elements therein, so as to arrive at the ultimate aim of selecting the Chief Executive and of electing all the members of the Legislative Council by universal suffrage. However, in accordance with the relevant provisions and principles in the Basic Law, we must have regard to the following factors –

- (i) the Central Authorities have constitutional powers and responsibilities to oversee and determine constitutional development in the HKSAR, in order to ensure the implementation of the basic policies of the State regarding Hong Kong. The HKSAR, in examining the direction and pace of its constitutional development, must pay heed to the views of the Central Authorities, and must also confirm with the NPCSC first as to the need for change. In any case, according to the Basic Law, any amendments can only 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 shall be reported to the NPCSC for approval or for the record (c.f. paragraph 5.07);
- (ii) Any proposed amendments must comply with the provisions of the Basic Law. Amendments to the design and principle of the political structure prescribed in the Basic Law must not be lightly contemplated (c.f. paragraph 5.08);
- (iii) the appointment of the Chief Executive by the Central Authorities is substantive. No proposed amendments shall affect the substantive power of appointment of the Central Authorities (c.f. paragraph 5.09);
- (iv) any proposed amendments must aim at consolidating the executive-led system headed by the Chief Executive and must not deviate from this principle of design. They should aim at perfecting the executive-led system, and should not lead to a deterioration of the co-ordination problem of the current relationship between the executive authorities and the legislature (c.f. paragraph 5.12);

- (v) development towards the ultimate aim of universal suffrage must progress in a gradual and orderly manner step by step. The pace should not be too fast. The progress should accord with the actual situation in the HKSAR, in order to preserve its prosperity and stability (c.f. paragraph 5.17);
- (vi) when considering the actual situation, public opinions, as well as other factors, including the legal status of the HKSAR, the present stage of constitutional development, economic development, social conditions, the understanding on the part of the public of “One Country, Two Systems” and the Basic Law, public awareness on political participation, the maturity of political talent and political groups, as well as the relationship between the executive authorities and the legislature, must be taken into account (c.f. paragraph 5.17);
- (vii) any proposed amendments must enable different sectors of society to be represented in the political structure, and to participate in politics through various channels (c.f. paragraph 5.19);
- (viii) any proposed amendments should ensure that consideration would continue to be given to the interests of different sectors of society (c.f. paragraph 5.19); and
- (ix) any proposed amendments must not bring about adverse effect on the systems of economy, monetary affairs, public finance and others as prescribed in the Basic Law (c.f. paragraph 5.22).

Chapter Six : Conclusion

- 6.01 In the First Report and in this Report, the Task Force has set out in detail the views of the community its has gathered on the issues of principle and legislative process in the Basic Law relating to constitutional development, as well as the views of the Task Force on these issues, including its understanding on the relevant provisions relating to amendments to the methods for selecting the Chief Executive and for forming the Legislative Council in Articles 45 and 68 and the relevant Annexes to the Basic Law.
- 6.02 On the basis of the views of the Task Force on these issues of principle and legislative process, and taking into account its observations on the actual situation as set out in the HKSAR in Chapter 3 of this Report, as well as having full regard to the views of the community as set out in Chapter 4 and Annexes to this Report, the Task Force recommends that in order to ensure the prosperity and stability of the HKSAR, the Chief Executive should, in accordance with the interpretation of the Basic Law made by the NPCSC and promulgated on 6 April 2004, submit a report to the NPCSC.^(Note 9) Such a report should recommend that the methods for selecting the Chief Executive and for forming the Legislative Council be amended, and should request the NPCSC to make a determination to that effect in accordance with the relevant

^(Note 9) In accordance with the “Interpretation by the Standing Committee of the National People’s Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China” adopted by the Standing Committee of the Tenth NPC at its Eighth Session on 6 April 2004, “[t]he Chief Executive of the Hong Kong Special Administrative Region shall make a report to the Standing Committee of the National People’s Congress as regards whether there is a need to make an amendment; and the Standing Committee of the National People’s Congress shall, in accordance with the provisions of Articles 45 and 68 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, make a determination in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress.....”

provisions and principles in the Basic Law, so as to enable the HKSAR to examine, in accordance with the legislative process prescribed in Article 7 of Annex I and Article III of Annex II to the Basic Law, amendments to the methods for selecting the Chief Executive in 2007 and for forming the Legislative Council in 2008.

Constitutional Development Task Force
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