

**Extract from minutes of meeting on
Panel on Constitutional Affairs on 17 March 2008**

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VIII. Mechanism for amending the Basic Law

(LC Paper No. CB(2)1336/07-08(04) - Background Brief prepared by the Legislative Council Secretariat on "Mechanism for amending the Basic Law"

LC Paper No. CB(2)1595/07-08(01) - "Speaking points on Mechanism for amending the Basic Law" made by the Secretary for Constitutional and Mainland Affairs at the meeting on 17 March 2008)

59. SCMA stated the position of the Administration on the mechanism for amending the Basic Law (a copy of his speaking note was issued to members after the meeting). In gist, the Administration had discussed the issue with the Central Authorities and the latter considered that the Basic Law had been implemented smoothly since its enactment. There was no need to amend the Basic Law at this stage and hence, there was no need to specify the relevant amendment mechanism.

60. Ms Emily LAU expressed disappointment that after a lapse of 10 years, the Administration had no intention to put in place a mechanism for amending the Basic Law. She said that the HKSAR Government should have a mechanism in place to deal with the need to amend the Basic Law when it arose. She enquired whether the Administration's position represented that of the Central People's Government (CPG).

61. SCMA responded that in the past few years, the Administration had been studying and discussing the relevant issues with the relevant departments of the Central Authorities. The Administration had also reflected the views of LegCo to the Central Authorities. It was the consistent position of the Central Authorities and the HKSAR Government that the Basic Law should not be amended lightly. Article 159 of the Basic Law (BL 159) had prescribed the major requirements for amending the Basic Law. The provision stipulated that before a bill for amendments to the Basic Law proposed by the HKSAR was submitted to the National People's Congress (NPC) for consideration, the consent of two-thirds of the NPC Deputies of the Region, two-thirds of all the LegCo Members and the CE should be obtained.

62. Mr TAM Yiu-chung, a member of the Drafting Committee for the Basic Law, informed members of the major considerations in drafting the Basic Law at that time. The public sentiment then was that the Basic Law should not be

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amended lightly, in order to safeguard the rights and interests conferred to the people of Hong Kong by the CPG. To this end, some of the provisions in the Basic Law governing the policies of Hong Kong could not be amended. BL 159 also provided that the power of amendment of the Basic Law should be vested in the NPC. Mr TAM said that the current position of the HKSAR Government was consistent with the public sentiment. He agreed that there was no urgency to specify the relevant amendment mechanism.

63. Mr Howard YOUNG concurred with Mr TAM. He said that while some people disliked some of the provisions in the Basic Law, the Basic Law did contain provisions favourable to the people of Hong Kong, such as no foreign exchange control policies should be applied in Hong Kong, and the CPG should not levy taxes in the HKSAR, etc. He considered that the implementation of the Basic Law in the past 10 years had been successful.

64. SCMA said that BL 159 stipulated that no amendment to the Basic Law should contravene the established basic policies of the CPG regarding Hong Kong. In accordance with the preamble and general principles set out in the Basic Law, the established policies of the Central Authorities regarding Hong Kong included the following: "one country, two systems" should be implemented in the HKSAR; the socialist system and policies should not be practised in Hong Kong; the HKSAR enjoyed a high degree of autonomy; and the previous capitalist system and way of life should remain unchanged. Any amendments to the Basic Law that were in contravention with the above established basic policies could not be made. The drafting of the Basic Law had reflected the principle of not amending the Basic Law lightly and the wish of the people of Hong Kong. In concluding the experience gained from the past ten years, the people of Hong Kong generally valued the legal safeguard provided by the Basic Law for implementing the basic policies of "one country, two systems" and for maintaining the long term prosperity and stability of Hong Kong.

65. In further response to Ms Emily LAU on whether the Administration would no longer deal with the issue, SCMA said that the conclusion drawn by the Administration was very clear.

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