

LegCo Panel on Constitutional Affairs

Meeting on 19 July 1999

Mechanism for Amending the Basic Law

The Administration has all along emphasised that any proposal to amend the Basic Law is a matter of great importance, which has to be thoroughly discussed and handled with prudence. This view is shared by various parties concerned.

2. We recall that at the request of the CA Panel, the Administration studied and put forward a number of questions which required careful consideration. Subsequently, the CA Panel consulted the public on the basis of the questions put forward by the Administration and invited individuals and organisations to express views on the matter. At the two special meetings held in March, the legal profession, the academics as well as relevant organisations and individuals expressed views on the mechanism for amending the Basic Law and raised a number of issues. We note that different individuals and organisations have different views and stances on the issues. This just shows how complicated the matter is.

3. The Administration have high regard to the different views expressed by the various parties. After consolidating and analysing the views expressed, we are conducting further study on the various issues. At the CA Panel meeting held in May, we consolidated the questions raised and set out the procedures and steps which we considered necessary for the whole process. The Department of Justice also briefed the Panel on the preliminary findings of their study of the experience of other countries on constitutional amendments, including: who are in a position to initiate the amendment process, what are the procedures and time frame for discussions, as well as the issue of referendum and so on. At the meeting in June, at the request of the Panel, we have, so far as possible for the HKSAR to do so, provided a rough estimate of the time required for some of the steps. Now that we have had the benefit of so many rounds of discussions and exchanges with the Panel, we have come to a better understanding of the procedures required for setting up a mechanism for amending the Basic Law as well as the various issues which require careful consideration.

4. In response to the major issues raised by the various parties, we have already briefed the Panel on our preliminary analyses of some of the issues at the meeting in May. These include -

- (i) whether there should be a specified sequence for any amendment proposal to be considered by the three parties;
- (ii) on the question of how the local NPC deputies should discharge their duties under Article 159 of the Basic Law, whether it will be up to the local NPC deputies to decide their own rules of procedure and the contents;
- (iii) whether a mechanism to ensure that the proposed amendment should not contravene the established basic policies of the PRC regarding Hong Kong should be built into the process, and if so, how and at which stage;
- (iv) whether the NPCSC and the State Council should consult the HKSAR on their amendment proposal and if so, how; and
- (v) whether the Basic Law Committee should consult the HKSAR before giving their views.

5. As regards the remaining issues, our preliminary views are as follows -

(i) **Will the general public be able to initiate an amendment proposal?**

At the CA Panel meetings, it was suggested that the public should have the power to initiate a proposal to amend the Basic Law.

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.

- (ii) **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?**

At the CA Panel meetings, many shared the view that the Basic Law, being a constitutional document, should not be amended lightly. Some were therefore of the view that any amendment proposal must have the support of more than a specified number of LegCo members or local NPC deputies before it can be put forward. We will take into account the circumstances of the HKSAR. We also 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 Article 75 of the Basic Law 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.

- (iii) **What should be the form of the amendment proposal?**

Our preliminary analysis is that any amendment proposal as agreed to by the three parties 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.

- (iv) **Should the three parties consider whether or not to set a specified time frame within which an amendment proposal will be considered?**

At the CA Panel meetings, it was suggested that the three parties should consider the amendment proposal within a reasonable time frame. It was also pointed out that if any of the three parties could not make a decision within the specified time frame, the party concerned would be regarded as disagreeing with the amendment proposal. 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 Basic Law under

Article 75 of the Basic Law. 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 deputies will discharge their duties as laid down in Article 159 of the Basic Law, or whether the local NPC deputies will formulate their own rules of procedures.

(v) **How to deal with amendments to the amendment proposal?**

Many suggested at the meetings that a constitutional conference be set up to enable the three parties to effectively discuss any Basic Law amendment proposal, or when necessary, to effectively make amendments to the proposal which are acceptable to all three parties. We note that the Basic Law does not provide for the question of whether such arrangements can be made. 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.

6. We have already briefed the Panel on the Administration's preliminary analysis on the major issues raised at the two special meetings of the Panel. We must point out that the many issues which need to be studied involve arrangements for the three parties (i.e. the local NPC deputies, the LegCo and the Chief Executive). They are inter-linked. It is not possible for us to work out proposals on certain parts of certain issues on our own. All the issues have to be discussed and studied thoroughly with the relevant parties.

7. As reported at the CA Panel meeting in June, during our meeting with the Hong Kong and Macau Affairs Office (HKMAO) in late May, we sought their views on the time required for the various steps and procedures and the various issues identified at the special meetings held in March, including those relating to the NPCSC, the State Council, the local NPC deputies and the Basic Law Committee. HKMAO undertook to consider the relevant issues. In view of the complexity of the issues, we expect that the central authorities will need some time to study the issues. We will report to the CA Panel when there is further progress on the matter.

Constitutional Affairs Bureau

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