

(Translation)

Views on the mechanism for amending the Basic Law

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1. *The parties within the Hong Kong Special Administrative Region (HKSAR) who/which may initiate the amendment process*

While Article 159 of the Basic Law stipulates that three parties within the HKSAR, i.e. the Chief Executive (CE), the Legislative Council (LegCo) and the delegation of the HKSAR to the National People's Congress (NPC) may take part in the decision of submitting bills for amendments to the Basic Law to the NPC, it does not specify which one of them may put forward the proposal for amending the Basic Law. Theoretically speaking, all of the three concerned parties may initiate the amendment process.

2. *The procedure for obtaining consent of the three concerned parties in the HKSAR, the form of the amendment proposal and the mechanism for amending an amendment proposal*

Although the HKSAR Government may introduce bills and motions to the LegCo under Article 62 of the Basic Law, and individual Members of the LegCo may also introduce bills and motions to the Council under Article 74 of the Basic Law and the Rules of Procedure of the LegCo, the nature of these bills and motions is very much different from that of the bills proposed for amendments to the Basic Law.

The final decision on the passage of bills and motions, as well as the version to be approved, lies with the LegCo, irrespective of their being introduced by the HKSAR Government or by individual Members of the LegCo. However, the LegCo cannot decide by itself whether to approve bills for amendments to the Basic Law or not. It does not have the final and overriding power to do so.

A solution to the problem is to regulate by legislation the nature of bills proposed for amendments to the Basic Law, as well as the procedure for submitting, amending and approving the amendment proposal.

3. *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 deputies to the National People's Congress discharge their constitutional duties and responsibilities*

It is essential to regulate by local legislation the manner in which the CE, LegCo Members and local deputies to the NPC discharge their constitutional duties and responsibilities.

A mechanism to this end is proposed as follows:

To establish by legislation a HKSAR Constitutional Council for Amending the Basic Law (Constitutional Council), which comprises the CE, all LegCo Members and local deputies to the NPC, and is under the chairmanship of the Chief Justice of the Court of Final Appeal, who shall have no right to vote. An amendment proposal may be submitted to the Constitutional Council by the CE, or by a certain proportion (such as one-third) of LegCo Members or local deputies to the NPC. The arrangement will ensure that the amendment process would not be initiated lightly.

As in the case for introducing bills, an amendment proposal shall be made by publication in the Gazette. Meeting of the Constitutional Council shall be convened sometime (such as one month) after the amendment proposal is gazetted.

The meeting shall be held publicly and every member of the Constitutional Council may, at a certain time before the convening of the meeting, propose amendments to the amendment proposal.

Every member of the Constitutional Council may speak during the public debates on the amendment proposal as well as the amendments moved to the proposal.

Voting on the amendment proposal and the amendments moved to the proposal shall be conducted in three groups, with the CE in group 1, LegCo Members in group 2 and local deputies to the NPC in group 3. The passage of the amendment proposal and the amendments moved to the proposal shall require the consent of group 1, i.e. the CE, together with a vote of two-thirds of the members in group 2 and group 3.

4. *The need to consult the public on the amendment proposal*

It is not stipulated in the Basic Law that the public should be consulted on the bills proposed for amendments to the Law. If the suggestions mentioned above are adopted, an amendment proposal will be publicized in the gazette and all debates will be held in public. Under such circumstances, public consultation is not considered an essential process.

5. *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*

This is a really difficult task. A court of common law will not exercise its advisory jurisdiction before an amendment proposal is passed to examine if it complies with the established basic policies of the People's Republic of China regarding Hong Kong.

Even though the amendment proposal is passed by the NPC, the court may still not be able to review the proposal to ascertain if it contravenes the established basic policies of the People's Republic of China regarding Hong Kong and thus becomes invalid.

6. *The need to consult the people of HKSAR on an amendment to the Basic Law proposed by the Standing Committee of the National People's Congress and the State Council*

It is again not stipulated in the Basic Law that the people of HKSAR should be consulted under such circumstances. Given that the amendment proposal will not be publicized in the gazette, and that the debates on the proposal will not be held in public, public consultation will give the people of HKSAR a chance to express their views directly. The problem is that the laws of HKSAR cannot impose any requirement on the Standing Committee of the NPC and the State Council for conducting public consultation in Hong Kong. Only after authorization is given by these two bodies may the HKSAR Government conduct public consultation in Hong Kong on the relevant proposal. Yet, another problem also emerges as to how we should quantify the views collected and in what way would these views influence the final proposal for amendments to the Basic Law.