

(Summary Translation)

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System continuity and amendment to the Basic Law

Constitutional stability and the principles for amending the Basic Law

The Basic Law (BL) is the constitutional basis for the “one country two systems” policy to be implemented in Hong Kong. It ensures a high degree of autonomy for the territory and defines the relationship between Hong Kong and China. Similar to the constitutions of other countries or territories, the BL is designed and formulated to prevent arbitrary amendments. No amendment can be made easily unless it is endorsed by a vast majority vote. Even in the United States, the procedure for constitutional amendments is legally complicated and difficult. A proposal to amend the constitution of the United States requires a two-thirds majority vote in both the Senate and the House of Representatives, together with the endorsement of over 75% of all state legislatures. It is even far more difficult to pass a constitutional amendment than to impeach the President in the United States. Obviously, these requirements, which make constitutional amendments difficult, aim at protecting the constitution so that the existing rules and regulations can be consolidated.

However, certain provisions in the constitution may become outdated given the political, economic and social changes, and it is necessary to have a mechanism and a set of procedures to facilitate constitutional amendments. The BL only lays down the general principle that any amendment proposal requires the consent of two-thirds of all the Members of the Legislative Council (LegCo), the Chief Executive (CE) and two-thirds of the local deputies to the National People’s Congress (NPC) before the proposal can be submitted to the NPC, without detailing the specific amendment procedures. My personal view is that the provisions and procedures for amending the BL should be legitimate, reasonable and highly transparent, and that they should cause minimal changes to the current system. The relevant procedures should be observed and upheld disregarding the results of the amendments.

Procedures for proposing and voting on an amendment

- (1) Under the existing provisions of the BL, the BL cannot be amended without the consent of the LegCo, the CE and the local deputies to the NPC (the local deputies). Hence, amendments to the BL can be proposed by the CE, or by the Executive Council and government departments on the instruction of the CE, for the LegCo to debate on them, and the current procedures for a debate to be held in the LegCo can be followed. Similar to bills introduced by the Government, proposals to amend the BL should initially be gazetted for public consultation and comments by the media.
- (2) Alternatively, amendment proposals can be initiated by LegCo Members in two possible ways: (A) an amendment proposal can be initiated by a certain number of LegCo Members from either one of the two groups (e.g. Members returned by geographical constituencies/the Election Committee) for LegCo to debate on it; if the proposal is passed by two-thirds of LegCo Members, it will be forwarded to the CE and local deputies for voting; and (B) an amendment proposal can be initiated by a certain number of LegCo Members from both groups (i.e. Members returned by geographical constituencies/the Election Committee, and those returned by functional constituencies); if the proposal is passed by two-thirds of LegCo Members, it should be submitted to the CE and the local deputies for voting.
- (3) Under the existing provisions of the BL, amendments to the BL cannot be possibly made without the consent of the local deputies. It follows that the local deputies can have the power to initiate amendment proposals. However, in what way should the local deputies propose amendments to the BL under the existing political structure in Hong Kong? What is their specific role in the amendment process? Is there a need to formulate certain mechanisms to coordinate the relationship between the local deputies, the LegCo and the CE? What is their relationship with the executive and the legislature? All these questions need to be further studied and analyzed in order to be certain about the pros and cons.

Upon receipt of any amendment proposal agreed by the CE and LegCo Members, the local deputies are required to vote on it. If the proposal obtained the requisite support of the local deputies, it will be submitted to the NPC for discussion and voting. Given the difference in the organizational structure of the local deputies, the NPC can authorize the

local deputies to formulate rules and procedures in order that the local deputies can act accordingly in dealing with and voting on amendments initiated by the CE and the LegCo.

Preserving the continuity of the system

The above proposals can safeguard the existing relationship between the executive and the legislature, and preserving continuity in our system. This is a way to amend the BL without making significant changes to the present system. Besides, it is consistent with the existing legislature-led approach in making legislative amendments as well as the established practices in Hong Kong (e.g. the proposed gazettal of amendments for public consultation and comments). These arrangements, which are legitimate, reasonable and consistent with the principle of an open process and which keep changes to a minimum, are proposed for Members' consideration.