

(Summary Translation)

(Letterhead of the Neighbourhood and Workers Service Centre)

**Preliminary Proposals on
the Power of and Procedures for Amending the Basic Law
under Article 159 of the Basic Law**

17 March 1999

Principle

The Basic Law is a constitutional document of the Hong Kong Special Administrative Region (HKSAR). It stipulates the framework for constitutional development in Hong Kong and provides for the basic principles of human rights of the Hong Kong people. With the on-going development of democracy in Hong Kong's constitutional system and the growing concern on human rights issues, especially after last year's election of the Legislative Council (LegCo), it is obvious that the people of Hong Kong are expecting the pace of democratization to accelerate.

Given that the Basic Law is the fundamental law of the HKSAR, we hold the view that citizens of Hong Kong must have the chance to fully participate in the amendment process and discuss the proposed amendments. On proposals which involve contentious issues, the public should have the right to decide in a vote whether to accept the proposed amendments.

The power to initiate amendments to the Basic Law

Under Article 159 of the Basic Law, amendment bills proposed by the HKSAR shall be submitted to the National People's Congress (NPC) by the local deputies to the NPC only after obtaining the consent of two-thirds of the local deputies to the NPC, two-thirds of all the Members of the LegCo, and the Chief Executive (CE). Yet, it only provides for the requirements for amendment bills to be proposed by the HKSAR, without stating in clear terms which particular party in HKSAR has the power to propose amendments. In this regard, our understanding is that any one of the three parties concerned may introduce amendment proposals but this power should not be confined to these three parties exclusively.

As the Basic Law is the fundamental constitutional document of Hong Kong, the general public should be allowed to participate in the amendment process as well as the discussion process. Moreover, if members of the public generally see the need to amend the Basic Law, they should have the power to introduce amendment proposals. On the question of which party can trigger the

amendment process in relation to proposals introduced by Hong Kong, we are of the view that the citizens should have the power to introduce amendment proposals which are endorsed by the people. Besides, Members of LegCo may do so either individually or jointly with other fellow Members. The CE can also introduce amendment proposals to the Basic Law. As for the local deputies to the NPC, we consider it inappropriate to confer this power on them in order to uphold the principle of autonomy in Hong Kong (this point will be further elaborated below).

Submission of amendment proposals endorsed by the citizens

In our opinion, all registered electors are qualified to introduce amendment proposals which are endorsed by a certain percentage of all electors. Subject to verification by the Registration and Electoral Office (REO), the proposal should be published in the Gazette.

Subsequent to the gazettal of the proposal, the Constitutional Affairs Bureau shall table the proposal at the LegCo and the consent of two-thirds of LegCo Members is required for its approval. Subsequently, the proposal shall be submitted to the CE for his approval. Then, the REO shall publish it in the gazette for the local deputies to the NPC to decide whether the amendment proposal should be agreed to. The consent of two-thirds of the local deputies is required for the proposal to be approved.

Amendment proposals introduced by LegCo Members individually or jointly with fellow Members

On amendment proposals from LegCo Members, our view is that specific provisions should be incorporated in the existing Rules of Procedure of the LegCo to lay down the procedures for handling amendment proposals on the Basic Law. Proposals may be submitted jointly by Members. The proposals and the amendments concerned should obtain the consent of two-thirds of all Members of LegCo within the parameters of the Basic Law.

Amendment proposals introduced by the CE

For amendment proposals from the CE, reference can be made to the procedures for handling bills.

Amendment proposals introduced by local deputies to the NPC

We opine that we should avoid empowering the local deputies to propose amendments to the Basic Law. It is because under the Constitution of China, they can submit to the NPC proposals to amend the Basic Law through the Standing Committee of the NPC. The autonomy of Hong Kong will imperceptibly be jeopardized and the role of the LegCo in representing public

opinions will even be undermined if the local deputies to NPC are empowered to introduce amendment proposals to the Basic Law.

The public should be consulted on all amendment proposals and should have the right to vote on them

In any case, the public should be consulted on any amendment proposal initiated by the HKSAR. On matters which are substantially controversial, for example, when the LegCo, CE and local deputies to the NPC hold differing views on the contents of an amendment proposal, the public should have the right to decide in a vote the final amendment proposal for submission.

Besides, if amendments to the Basic Law are proposed by the State Council or the Standing Committee of the NPC, consultation with the people of Hong Kong is even more warranted and the people of Hong Kong should be allowed to decide in a vote whether or not to accept the proposals put forth by the Mainland.