

LegCo Panel on Constitutional Affairs

Summary of views on Mechanism for amending the Basic Law

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Deputations/ Individuals (LC Paper No. CB(2))	Initiator of amendment proposal	Form of amendment proposal	Public consultation	Referendum	Need for local legislation to underpin the amendment process	Means to ensure conformity of proposal with basic policies	Public consultation on proposal initiated by NPCSC/ State Council	Proposed mechanism/other proposals
Prof Albert H Y CHEN 1475/98- 99(02)	CE, LegCo or Deputies (People of HK do not have right to initiate amendments)	motion (not subject to Articles 48(10) or 74)	opinion polls, media, hearings, etc.	advisory referendum	To amend RoP to provide for the procedures	-	-	<ul style="list-style-type: none"> • LegCo to consider amending its RoP to include provisions on how amendment proposals from CE, Deputies and LegCo should be handled • Amendment proposals to be gazetted, scrutinised by a LegCo committee to facilitate public discussion, to be debated and voted upon by Members, similar to the existing legislative procedures • Deputies have the implied authority to devise procedural rules on how they should give consent. These rules should be strictly set, similar to the ones made by LegCo. Draft rules may be submitted to the NPCSC for confirmation • LegCo and Deputies to convene informal joint meetings to resolve differences and come up with amendment proposals before the proposals go through the amendment mechanism which are subject to formal rules

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								<ul style="list-style-type: none"> The three parties have the obligation to respond to the amendment proposal within a reasonable time
Mr CHANG Hsin	-	-	advertised in media to invite views	not desirable	-	-	-	<ul style="list-style-type: none"> Amendment proposals to be gazetted and advertised for public information To exchange views with Mainland academics to understand the views of Mainland authorities
Hong Kong Bar Association 1490/98-99(01)	Government or LegCo (Deputies shall not enjoy the power of initiating or amending an amendment, their power should be confined to approve or reject an amendment proposal)	motion or bill (not subject to Article 74)	Yes	non-binding referendum before submitting to CE	Yes (Procedures for Deputies may be a matter outside the jurisdiction of the HKSAR)	-	-	<ul style="list-style-type: none"> Amendment proposals initiated by LegCo Members or the Government should be submitted first to LegCo and then the Deputies. If the requisite support under Article 159 has been obtained, the proposal should be subject to confirmation in a referendum Unless the proposed amendment receives the required support in the referendum, CE shall not give his consent After the CE's consent is obtained, the proposed amendment shall then be forwarded to the Deputies who shall submit the same to the NPC through the delegation of the Region to the NPC

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Hong Kong Human Rights Monitor 1483/98- 99(01)	CE, LegCo or Deputies (People of HK do not have the right to initiate amendments) (To restrict the power of Deputies will contravene Article 159)	bill (not subject to Article 74)	Yes (Public hearings should be held by LegCo and the Deputies)	advisory referendum (after consent given by the three parties and before submission to NPC)	Yes (a comprehensive legislation governing procedures for both LegCo and the Deputies is possible provided consultation is done with NPC)	- all parties involved to ensure conformity - Committee for BL to advise HKSAR - courts may review validity of the proposal	Yes	<ul style="list-style-type: none"> Amendments proposed by LegCo Members to be debated and voted upon in accordance with RoP. If passed, it should be submitted to the Deputies who will vote on it in accordance with their own procedures. If passed, it would be sent to CE who will consult the Executive Council before deciding on whether or not to give consent The above process could apply to amendments initiated by a Deputy or CE Formal and informal meetings among the three parties to resolve differences A convention to be agreed upon that amendments concerning the autonomy of Hong Kong should be initiated by the HKSAR only
Dr LIN Feng 1475/98-99(03)	Government or LegCo (To restrict the power of Deputies to	-	Yes	advisory referendum	Yes	-	- may be feasible to demand consultation with LegCo	-

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	initiate amendments)						- Committee for BL can be consulted, but whether it can represent the people is arguable	
Prof Benjamin C OSTROV 1475/98- 99(04)	-	-	-	-	-	-	-	<ul style="list-style-type: none"> The final power of amendment should be vested with HKSAR, not NPC To remove the Deputies from the three parties and replace them with District Boards
Mr Benny TAI 1475/98- 99(05)	CE, LegCo or Deputies (To restrict the power of Deputies will contravene Article 159)	-	Yes	advisory referendum before the three parties give their consent	Yes (HKSAR has the power to introduce legislation to govern the procedures for amending BL by the three parties including Deputies)	difficult to monitor	Not provided under BL. Consultation only possible with the authorisation of the NPCSC or State Council	<ul style="list-style-type: none"> To set up a constitutional convention comprising CE, LegCo Members and Deputies. A judge of the Court of Final Appeal to be the chairman of the convention but has no right to vote. CE or LegCo and Deputies can initiate an amendment if the requisite support (e.g. 1/3 of members) is obtained. Amendments to the amendment proposal may be proposed by any of the three parties. Legislative proceeding will be similar to that of the passage of a bill in LegCo. Voting to be conducted in three groups in order to meet the voting requirements set out in Article 159

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Prof King-kwun TSAO 1490/98- 99(02)	CE, LegCo or Deputies	-	-	-	-	-	-	<ul style="list-style-type: none"> • Amendments initiated by CE to follow existing legislative process • Amendments may be proposed by LegCo Members from either one or both of the two groups of LegCo Members: Members returned by functional constituencies and those returned by geographical constituencies and the Election Committee • Proposal passed by 2/3 of LegCo Members should be submitted to the Deputies and CE for voting • Procedure for Deputies to initiate amendments and to give consent to a proposal to be worked out by themselves
Hong Kong & Kowloon Trades Union Council 1533/98-99(01)	LegCo	bill	Yes	-	Yes	<ul style="list-style-type: none"> - Court to interpret - consult the Committee for BL 	Amendments relating to Central Government affairs, foreign affairs and defence should only be initiated by the NPCSC or State Council. Not necessary to	<ul style="list-style-type: none"> • Amendments to provisions relating to local affairs should be initiated by LegCo on behalf of HKSAR • Amendments passed by 2/3 of LegCo Members should be supported by Deputies and respected by CE • To set up a consultative committee to gather views from the public

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							consult people of Hong Kong	<ul style="list-style-type: none"> In the longer term, voting on proposals should adopt a simple majority rule
People Constitutionalist Society 1519/98-99(01)	People of HK	-	Yes	Yes	-	-	-	<ul style="list-style-type: none"> To set up a constitutional assembly (CA) to review and amend BL. Amendment proposals which have received the requisite support from the people of Hong Kong will be tabled in CA and voted upon. If the proposal is passed by CA and supported by a referendum, no authorities may raise objection
The Frontier 1542/98-99(01)	CE, LegCo, or people of HK (Deputies should not be allowed to initiate amendments)	-	Yes	The three parties to give consent in accordance with the result of referendum	-	-	-	<ul style="list-style-type: none"> Amendments may be initiated by people if they have received at least 1% support from people aged 18 or above. LegCo to introduce the proposal on behalf of the people Government to set up a constitutional consultative convention comprising CE, LegCo Members and the public to discuss the proposal. LegCo and CE may introduce amendments to the amendment proposal. All proposals put to vote in a referendum. A proposal which is passed by a simple majority vote will be submitted by CE to the Deputies who will in turn submit it to NPC for record. The whole process to be completed within a reasonable time

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								<ul style="list-style-type: none"> Committee for BL, NPC and State Council to respect the result of the referendum
The Neighbourhood and Workers Service Centre 1519/98-99(02)	CE, LegCo, or registered electors (The power of Deputies to initiate an amendment should be restricted, since they may raise it through the (NPCSC)	-	Yes	only when consensus can not be reached by the three parties (on the assumption that the CE and 60 LegCo Members are directly elected)	-	-	Yes	<ul style="list-style-type: none"> Amendments may be initiated by registered electors if they have received the requisite support. The Government to introduce the amendments on behalf of the electors. When consent is obtained from LegCo Members, the proposal shall be submitted to CE for consent. The proposal shall then be published in gazette for the Deputies to give consent Special provisions in RoP should be drawn up for handling amendments initiated by LegCo Amendments initiated by CE should follow existing procedures for handling bills
Prof Wilson WONG 1519/98-99(03)	CE, LegCo, or Deputies	Legislation	Yes	advisory referendum	Not necessary for LegCo. Regulations may be passed by the other parties within HKSAR which would have the effect of	NPC will reject any proposal which is inconsistent with basic policies	Yes Consultation through both institutional (e.g. voting in LegCo)and non- institutional means (e.g.	<ul style="list-style-type: none"> Except for CE, the support required for initiating the amendment process should not be above the 2/3 majority required in BL (e.g. 1/4 of LegCo Members) Procedures to obtain consent of the three parties : CE to give consent in written form; LegCo and the Deputies to take a vote

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					regulating the Deputies		public opinion survey or a referendum)	<ul style="list-style-type: none"> To revisit the amendment process if amendments to the proposal are introduced
1519/98- 99(04)	LegCo	-	Yes	-	-	-	-	<ul style="list-style-type: none"> Proposal to be drafted by LegCo in consultation with the public. Other procedures to follow existing legislative process Proposal should be debated in LegCo and passed by 2/3 of its members All LegCo Members should be returned by direct election

Abbreviation

BL - Basic Law

CE - Chief Executive

Deputies - deputies of the Region to the NPC

HKSAR - Hong Kong Special Administrative Region

NPCSC - Standing Committee of National People's Congress

RoP - Rules of Procedure

The three parties - CE, LegCo and Deputies