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Legislative Council Secretariat  
for Members' reference only)

(Letterhead of the Office of LEUNG Yiu-chung,  
Legislative Council Member)

17 November 1998

Dr LEONG Che-hung,  
Chairman, House Committee

Dear Sir,

**A resolution to amend the Basic Law**

I have given notice to move a resolution to amend Article 74 and Annex II of the Basic Law at the Legislative Council meeting on 2 December. I wish to include an item into the agenda of the House Committee meeting to be held on 20 November, so as to let Members know the contents of my resolution and discuss the mechanism for amending the Basic Law.

I attach a discussion paper for your reference and I hope that you would agree to include it in the agenda for discussion at the House Committee meeting.

Yours faithfully,

(TSOI Yiu-cheong)  
For Hon LEUNG Yiu-chung

**Paper for the House Committee Meeting  
of the Legislative Council  
on 20 November 1998**

**A Resolution to amend the Basic Law  
to be moved by Hon LEUNG Yiu-chung**

**Purpose**

This paper informs Members of Hon LEUNG Yiu-chung's intention to move a resolution to amend the Basic Law in accordance with Article 159 of the Basic Law at the Legislative Council meeting on 2 December and his hope that the House Committee will discuss the mechanism for amending the Basic Law.

**Background and arguments**

2. Hon LEUNG Yiu-chung has given notice to move a resolution to amend the Basic Law in accordance with Article 159 of the Basic Law at the Legislative Council meeting on 2 December. The resolution proposes to amend Article 74 and provisions in Annex II of the Basic Law.

3. Article 74 of the Basic Law has laid down many barriers for a Member who wishes to introduce a bill relating to public interests: no bills relating to public expenditure or political structure or the operation of the government are allowed, while bills relating to government policies must have the written consent of the Chief Executive before they can be introduced. Hon LEUNG Yiu-chung considers that it is a constitutional right for Members of Legislative Council to introduce "Members' bills". However, the barriers in the Basic Law are contrary to the efforts of the Legislative Council in achieving its objective of a true law-making body, and also deprived the elected Members of their right. As a matter of fact, the barriers laid down in Article 74 of the Basic Law are even worse than the practice adopted during the period of colonial rule (when Members were just not allowed to introduce a bill relating to government expenditure). This is indeed a retrograde step in the development of democracy. Therefore, Article 74 of the Basic Law must be amended immediately to revert to the practice of the former Legislative Council, i.e. the only restriction on introducing a "Member's bill" is that "the written consent of the Chief Executive shall be required before bills relating to government expenditure are introduced."

4. Regarding the voting procedures of the Legislative Council, Hon LEUNG Yiu-chung is of the view that the current “bicameral voting” system was not only wasteful of resources because of the difficulty in getting bills, motions and amendments to bills passed in the Council, but it was also farcical in that the majority had to submit to the minority. One “classic example” was the “Motion of Thanks” moved by Dr LEONG Che-hung two weeks ago. Although 38 votes were in favour of this motion while 19 opposed it, and those in favour of it outnumbered those who were against in each of the “two groups”, it was still voted down under the “split voting” mechanism. The same fate befell the motion which was moved by Hon Gary CHENG Kai-nam last Wednesday (11 November). Hon LEUNG Yiu-chung is of the view that in a legislature whose election methods are already highly “divisive”, the continued adoption of the bicameral type of split voting system will only render the Legislative Council even more divisive and ineffective. Therefore, the “bicameral voting” procedure must be amended. The simplest way to do it is to revert to the long-standing “simple majority system” adopted in the past.

5. According to Article 159 of the Basic Law, the Hong Kong Special Administrative Region (HKSAR) is vested with the power to propose bills for amendments to the Basic Law, and amendment bills shall obtain the consent of two-thirds of the deputies of the HKSAR to the National People’s Congress (NPC), two-thirds of all the Members of the Legislative Council of the HKSAR, and the Chief Executive of the HKSAR before they are submitted to the NPC by the delegation of the HKSAR to the NPC. By proposing this resolution to the Legislative Council, Members of this council are exercising their right, in order to obtain the consent of two-thirds of all the members of the Legislative Council to introduce a bill for amendment to the Basic Law. The consent of the Chief Executive and the local NPC deputies will subsequently be sought.

### **The mechanism for proposing amendment bills**

6. No existing legislation provides specifically for the mechanism and procedure for proposing bills for amending the Basic Law. There is no provision on such important issues as who has the right to propose bills for amending the Basic Law (Will persons other than the local NPC deputies, Members of the Legislative Council and the Chief Executive, such as members of the public, also have the right to propose amendment bills?), and the mechanism under which amendment bills are to seek the joint consent of the local NPC deputies, the Legislative Council and the Chief Executive. A lack of effective legislation in this respect is undoubtedly very inappropriate. As a result, it may be almost impossible to amend the Basic Law. Hon LEUNG Yiu-chung therefore hopes that the House Committee would follow up these issues with a view to urging the HKSAR Government to enact legislation, hence putting in place a clear mechanism and procedure for dealing with the introduction of bills for amending

the Basic Law.

7. Hon LEUNG Yiu-chung has proposed that the House Committee could refer the issues in question to the Committee on Rules of Procedure and the Panel on Constitutional Affairs for follow-up actions, or a subcommittee could be set up to look into the issues. As amendment bills must obtain the consent of the Legislative Council, the Chief Executive and the local NPC deputies, it is necessary to invite representatives from the Government and the local NPC deputies to take part in the discussions on the mechanism for amending the Basic Law.

### **Recommendation**

8. Members are invited to study the attached proposed resolution and consider how the issue of putting in place a Basic Law amendment mechanism should be followed-up.

Office of Hon LEUNG Yiu-chung  
17 November 1998

**Paper for the House Committee Meeting  
of the Legislative Council  
on 20 November 1998**

**The mechanism for the introduction of bills  
for amending the Basic Law**

**Purpose**

This paper discusses the mechanism for the introduction of bills for amending the Basic Law and requests the House Committee to form a subcommittee to study the institution of legislation on such a mechanism.

**The legal basis for amending the Basic Law**

2. The Basic Law, a constitutional paper of the Hong Kong Special Administrative Region (HKSAR), came into effect on 1 July 1997, while the provisions for amending the Basic Law are laid down in Article 159 of the Basic Law as follows:

“The power of amendment of this Law shall be vested in the National People’s Congress.

The power to propose bills for amendments to this Law shall be vested in the Standing Committee of the National People’s Congress, the State Council and the Hong Kong Special Administrative Region. Amendment bills from the Hong Kong Special Administrative Region shall be submitted to the National People’s Congress by the delegation of the Region to the National People’s Congress after obtaining the consent of two-thirds of the deputies of the Region to the National People’s Congress, two-thirds of all the members of the Legislative Council of the Region, and the Chief Executive of the Region.

Before a bill for amendment to this Law is put on the agenda of the National People’s Congress, the Committee for the Basic Law of the Hong Kong Special Administrative Region shall study it and submit its views.

No amendment to this Law shall contravene the established basic policies of the People’s Republic of China regarding Hong Kong.”

3. However, Article 159 of the Basic Law only provides guiding principles. Clarifications and specifications are still required in many areas regarding the power of the HKSAR to propose bills and the mechanism for the introduction of bills.

### **The questions arising from the introduction of bills for amending the Basic Law**

4. Firstly, which persons in the HKSAR have actually the right to propose bills for amending the Basic Law? Article 159 of the Basic Law does not have specific provisions in this respect. Our initial understanding is that it is reasonable for the local deputies to the National People's Congress (NPC), the Legislative Council and the Chief Executive, who exercise the "right to consent", to have the power to propose bills in this respect. But at the same time, we are of the view that as the Basic Law does not have specific provisions on the persons who have the power to propose amendment bills, the HKSAR should therefore have the autonomy to confer the power through legislation upon, say, its residents to propose amendment bills in the form of a joint submission. This is a matter worthy of a detailed study.

5. Secondly, another problem is, after the introduction of the amendment bills, how the local NPC deputies, the Legislative Council and the Chief Executive exercise the right to consent (or disagree)? As the President of the Legislative Council has ruled that the resolution to amend the Basic Law to be moved by Hon LEUNG Yiu-chung is in order, there will not be much controversy about the procedure for exercising the "right to consent" on the part of the Legislative Council. It will also be quite straightforward for the Chief Executive to exercise the "right to consent". The biggest problem lies with the part concerning the local NPC deputies who do not have a set of formal rules and procedure of meetings. They have therefore no statutory mechanism for convening meetings, introducing bills and adopting a voting procedure. This is extremely inappropriate.

6. Can the local NPC deputies, the Legislative Council and the Chief Executive amend bills introduced for amending the Basic Law? Is there a mechanism for discussion and coordination among the local NPC deputies, the Legislative Council and the Chief Executive if they disagree on the amendment bills, before the "right to consent" is exercised? The establishment of such a mechanism is also very important.

7. In conclusion, it is both necessary and appropriate to enact a piece of local legislation to define and provide for the matters mentioned in paragraphs 4 to 6 above.

## **Recommendation**

8. The House Committee is requested to form a subcommittee to study the institution of legislation on the mechanism for the introduction of bills for amending the Basic Law, and to invite representatives from the Government and the local NPC deputies to take part in the discussions if necessary.

**Office of Hon LEUNG Yiu-chung**

20 November 1998