

**LegCo Panel on Constitutional Affairs
Meeting on 21 December 1998**

Mechanism for amending the Basic Law

(Relevant extract of minutes of the House Committee meeting held on 20 November 1998)

V (d) Members' motions

(i) Proposed resolution under Article 159 of the Basic Law of Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China - to be moved by Hon LEUNG Yiu-chung

(Two papers presented by Hon LEUNG Yiu-chung, one dated 17 November 1998 already circulated and the other dated 20 November 1998 tabled at the meeting)

16. Mr LEUNG Yiu-chung said that the President had given approval for his proposed resolution to be included in the agenda for the Council meeting on 2 December 1998. Referring to his two papers, he pointed out that clarifications on the following aspects in respect of Article 159 of the Basic Law would be required -

- (a) what would be the mechanism for proposing amendments to the Basic Law, and who in the HKSAR had the right to propose such amendments;
- (b) under what mechanism could the consent of two-thirds of the deputies of the HKSAR to the National People's Congress (NPC) be obtained;
- (c) whether the local NPC deputies could amend the resolution after it had been passed by the Council, and if so, whether there would be any channel through which consultation between the Council and the NPC delegation could take place; and
- (d) in what sequence should the consent of the local NPC deputies, the Legislative Council and the Chief Executive be obtained before an amendment bill to amend the Basic Law could be submitted to the NPC.

17. The Legal Adviser explained that Article 159 did not spell out in clear terms the mechanism for proposing amendments to the Basic Law and the process by which the consent of the relevant parties should be obtained. In his view, should Mr LEUNG's proposed resolution be carried by two-thirds of all the Members of the Council, one of the conditions of obtaining the consent of the Council as stipulated in the Article could be said to have been met.

18. The Legal Adviser further explained that Article 159 required that amendment bills from the HKSAR be submitted to the NPC by the delegation of the HKSAR to the NPC after obtaining the consent of two-thirds of the local NPC deputies, two-thirds of all the Members of the Council and the Chief Executive. He considered that Article 159, as presently worded, did not stipulate an order or sequence which had to be followed for obtaining the consent of the relevant parties specified in the Article.

19. The Chairman invited members' views as to how the issues raised by Mr LEUNG Yiu-chung should be followed up.

20. Miss Margaret NG said that Mr LEUNG's proposed resolution sought to amend the Basic Law and would have legal effect if passed. She considered it important that Members should fully understand what the legal implications were before they debated and voted on the motion.

21. Mr James TO, Mrs Selina CHOW, Mr Gary CHENG kai-nam and Mr Jasper TSANG Yok-shing echoed Miss NG's view and suggested that the issue of putting in place a mechanism for amending the Basic Law should be followed up by the Panel on Constitutional Affairs. Members agreed. Mr James TO and Mrs Selina CHOW added that it would not be appropriate for the Committee on Rules of Procedure to take up the task, given that the issue went beyond procedural matters of the Council.

22. Mr SZETO Wah, Mr Jasper TSANG Yok-shing and Mr Andrew WONG pointed out that certain issues arising from Mr LEUNG's proposed resolution, such as whether amendments could be proposed to a motion under Article 159 and whether the passage of such amendments would require the approval of two-thirds of all the Members of the Council, should be considered by the Committee on Rules of Procedure. Members agreed.

23. In reply to Miss Emily LAU, the Secretary General said that Mr LEUNG could withdraw his notice for moving the motion on 2 December 1998 to allow more time for members to study the issues

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involved. He added that a Member could move without notice under Rule 40 of the Rules of Procedure to adjourn the debate on the motion after Mr LEUNG had spoken and moved the motion.

24. Dr YEUNG Sum said that he was in favour of deferring the debate on the motion to a later date to allow time for the Panel on Constitutional Affairs to examine the issues raised by Mr LEUNG and other members. He pointed out, however, that a motion to adjourn the debate under Rule 40 would be put to vote after Members had spoken on the motion, and if negatived, the debate on the main motion would proceed and a vote would be taken at the end of the debate.

25. Mr Andrew WONG and Mr CHAN Kam-lam said that there were no valid reasons for adjourning the debate on the motion, given that the President had already ruled that the motion was in order.

26. The Chairman said that whether Mr LEUNG should withdraw the notice for moving the motion or proceed with the debate at the Council meeting on 2 December 1998 would be a matter for Mr LEUNG to decide.