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Panel on Constitutional Affairs

**Background brief prepared by the Legislative Council Secretariat for the
meeting on 17 March 2008**

Mechanism for amending the Basic Law

Purpose

This paper provides background information on the past discussions of the Members of the Legislative Council (LegCo) on the mechanism for amending the Basic Law and other related issues.

Background

2. The issue of devising an appropriate mechanism for amending the Basic Law arose upon the giving of notice by Hon LEUNG Yiu-chung to move a motion under Article 159 of the Basic Law at the Council meeting on 2 December 1998.
3. Article 159 of the Basic Law stipulates that the power to propose bills for amendment to the Basic Law shall be vested in the Standing Committee of the National People's Congress (NPCSC), the State Council and the Hong Kong Special Administrative Region (HKSAR). Amendment bills from the HKSAR shall be submitted to the NPC by the delegation of the Region to the NPC after obtaining the consent of two-thirds of the deputies of the Region to the NPC, two-thirds of all members of the LegCo of the Region, and the Chief Executive (CE) of the Region (the "three concerned parties").
4. As Article 159 of the Basic Law does not provide for the mechanism and procedure for proposing bills for amending the Basic Law, the House Committee discussed and agreed on 20 November 1998 that matters relating to the amendment mechanism be referred to the Panel on Constitutional Affairs (the Panel) for study. Pending discussion by the Panel, Hon LEUNG Yiu-chung subsequently withdrew the notice for moving the motion at the Council meeting on 2 December 1998.

Progress of discussion of the Panel

1998-1999 session

5. When the matter was first discussed by the Panel at its meeting on 21 December 1998, the Administration advised that a number of complicated issues had to be fully studied and considered by the parties concerned, before an appropriate mechanism could be worked out to implement Article 159 of the Basic Law. The Panel held two special meetings in March 1999 to receive views from the public and other interested parties on the issues identified by the Administration and the Panel. A summary of the views received is in **Appendix I**.

6. The Panel followed up the matter with the Administration at three meetings in 1999. The Administration advised that a number of new and important issues emerged as a result of the public consultation conducted by the Panel. The Administration had completed a preliminary analysis of the major issues identified. As some of the issues raised were related to the NPCSC, the State Council, the local NPC deputies and the Committee on Basic Law, discussion with the Central Authorities were required. The preliminary views of the Administration on the major issues are summarized in **Appendix II**.

7. In June 1999, the Department of Justice (DOJ) also briefed the Panel on the preliminary findings of a comparative study on the procedures for constitutional amendments in five countries: USA, Australia, Malaysia, South Africa and Switzerland, a summary of which is in **Appendix III**. The scope of the study covered parties who might initiate an amendment, forms of amendment, sequence and timeframe of deliberation, and special provisions. The next step was to study how these procedures for amending constitutional laws were implemented in these countries.

8. In response to the Panel's repeated requests for a concrete timetable for devising the mechanism for amending the Basic Law, the Administration provided a preliminary rough timetable in June 1999, as set out in **Appendix IV**. The Panel noted that the estimated time required for those steps and procedures that were entirely within the ambit of the HKSAR was about 15 to 22 months.

1999-2000 session

9. The matter was followed up at two meetings held in January and May 2000 respectively. According to the Administration, the Central Authorities had agreed to study the issues raised, but would need some time in view of the complexity involved.

2000-2001 session

10. The Panel discussed the issue at its meetings in October 2000 and July 2001. The Panel was advised that -

- (a) the HKSAR Government had been discussing the matter with the Central Government since 1999. Between 1999 and November 2000, the HKSAR Government had held seven meetings with the Central Government to discuss the matter; and
- (b) at a meeting with the Central Government to discuss certain issues in February 2001, the HKSAR Government raised the matter again at the margins of the meeting. The Central Government did not indicate any progress at that time. The HKSAR Government would follow up the matter and report to the Panel when there was further progress.

11. Some members expressed regret about the little progress made in the past two years and cast doubt on the prospect of achieving further progress in the foreseeable future. A member expressed the view that Article 159 could be invoked by any one of the "three concerned parties" in the absence of any mechanism, and there were two such precedents (see paragraphs 14-15 below). Another member considered that if any one of the "three concerned parties" initiated a proposal to amend the Basic Law under Article 159, and when this occurred, it was the duty of the other two parties to respond. As such a proposal could come from the Hong Kong deputies to the NPC, the member urged the establishment of a mechanism as soon as possible. A member requested the Administration to arrange informal meetings for the "three concerned parties" so as to expedite the process.

Sessions after 2000-2001

12. At the Council meeting on 9 November 2005, Hon LEUNG Yiu-chung raised an oral question concerning the progress of the study of the amendment mechanism. An extract from the Official Record of Proceedings of the meeting is in **Appendix V**.

13. The issue of the mechanism for amending the Basic Law has remained on the list of outstanding items of the Panel. The Administration advised on a number of occasions that it would report to the Panel when it was in a position to do so.

Motions relating to amendments to the Basic Law moved under Article 159 of the Basic Law

14. Hon LEUNG Yiu-chung moved two motions to amend Basic Law Articles and Annexes I and II to the Basic Law under Article 159 of the Basic Law as follows -

- (a) at the Council meeting on 19 January 2000, Mr LEUNG moved a motion to seek the consent of the Council to forward the proposed amendments to Article 74 of and Annex II to the Basic Law to the delegation of the HKSAR to the NPC, for submission to the NPC. The purpose of the motion was to restore the right of Members to propose bills for amendments and to determine a reasonable procedure for voting, with a view to enabling the Council to become a legislature with genuine powers ; and

- (b) at the Council meeting on 4 July 2001, Mr LEUNG moved a motion to seek the Council's consent to forward the proposed amendments to Article 45 and proposed deletion of Annex I of the Basic Law to the delegation of the HKSAR to the NPC, for submission to the NPC. The purpose of the motion was to allow Hong Kong to elect the CE by universal suffrage of "one-person, one-vote".

15. During the debates on the two motions, the Administration responded that it had made certain headway in respect of the mechanism for amending the Basic Law and was now at the stage of consultation with the Central Authorities. In the absence of a mechanism agreed to by all parties concerned, the motions could only be regarded as Mr LEUNG's own proposals. The motions were constitutionally immature, inappropriate and unacceptable to the Administration, and could not be regarded as a proper way to initiate the process of amending the Basic Law. Both motions were negated by the Council.

Procedures for amending Annexes I and II to the Basic Law

16. The procedures for amending the methods for selecting the CE and for forming the LegCo (the electoral methods) in Annexes I and II have been addressed in the following context –

- (a) the Reports of the Constitutional Development Task Force; and
- (b) the interpretation adopted by NPCSC on Article 7 of Annex I and Article III of Annex II to the Basic Law on 6 April 2004 (the NPCSC Interpretation).

17. The First Report of the Constitutional Development Task Force made the following conclusions –

- (a) the "electoral methods" can be amended in accordance with the special procedures in Annexes I and II to the Basic Law. As long as the relevant amendments are not inconsistent with the provisions in the main text of the Basic Law (such as Articles 45 and 68), it is unnecessary to invoke the amendment procedures in Article 159; and
- (b) if it is decided that there is a need to amend the "electoral methods", the procedures in Annexes I and II to the Basic Law should be followed. Having regard to Article 74, bills which relate to the political structure should only be introduced to LegCo by the HKSAR Government. After being introduced by the HKSAR Government, the proposed amendments must, in accordance with the provisions in the Annexes, be endorsed by a two-thirds majority of all LegCo Members and must have the consent of the CE, and must be reported to NPCSC for approval or

for the record. On completion of the procedures in the relevant Annexes to the Basic Law, local legislation could then be made accordingly.

18. The NPCSC Interpretation stipulates, inter alia, that the bills on the amendments to the "electoral methods" and LegCo's procedures for voting on bills and motions and the proposed amendments to such bills shall be introduced by the HKSAR Government into the LegCo.

19. The Fifth Report of the Constitutional Development Task Force was published in October 2005. The Report had set out in the Annexes two draft motions to be put by the Government to the LegCo concerning the amendments to the "electoral methods". The Administration explained that the draft Amendments appended to the two motions were the "bills" referred to in the NPCSC Interpretation. The Amendments would be submitted to the LegCo by way of motions and should have effect only after they had had the endorsement of a two-thirds majority of all LegCo Members and the consent of the CE, and after they had been reported to the NPCSC for approval or record. The two motions on the Amendments were presented to the LegCo on 21 December 2005 but were not endorsed by a two-thirds majority of all Members as required by Annexes I and II to the Basic Law.

Latest development

20. In response to Hon LEUNG Yiu-chung's request at the Panel meeting on 22 October 2007, the Administration agreed to provide a progress report on the subject.

Relevant papers

21. A list of the relevant papers which are available on the LegCo website is in **Appendix VI**.

Council Business Division 2
Legislative Council Secretariat
12 March 2008

Appendix I

Mechanism for amending the Basic Law

A summary of views received by the Panel on Constitutional Affairs in March 1999

	(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

	(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
								<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

	(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
								<ul style="list-style-type: none"> The three parties have the obligation to respond to the amendment proposal within a reasonable time
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 - Committee for	-

	(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
	initiate amendments)						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
Prof King-kwun	CE, LegCo or	-	-	-	-	-	-	<ul style="list-style-type: none"> Amendments initiated by CE to follow

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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
TSAO 1490/98-99(02)	Deputies							<p>existing legislative process</p> <ul style="list-style-type: none"> • 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 	<p>Amendments relating to Central Government affairs, foreign affairs and defence should only be initiated by the NPCSC or State Council. Not necessary to consult people of</p>	<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 • In the longer term, voting on proposals

	(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
							Hong Kong	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 Committee for BL, NPC and State

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
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								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 regulating the	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. public opinion	<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 • To revisit the amendment process if

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
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					Deputies		survey or a referendum)	amendments to the proposal are introduced
願民安 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

Appendix II

Mechanism for Amending the Basic Law

(July 1999)

	Major issues	The Administration's preliminary views
(1)	How will the public be consulted on the amendment proposal? Should there be a referendum? Should the referendum be binding or advisory?	We note that LegCo Members, the legal profession, the academics, the relevant organisations and individuals, etc. place a lot of emphasis on the importance of putting in place a mechanism which would allow the general public to be fully consulted or to participate directly in the process (e.g. by way of a referendum). We have commissioned a comparative study of the experience of other countries on constitutional amendments. (The Administration made a presentation on the preliminary findings at the Panel meeting on 21 June 1999.)
(2)	What should be the form of the amendment proposal?	Our preliminary analysis is that any amendment proposal as agreed to by the three parties (i.e. the LegCo, the local NPC deputies and the Chief Executive of the HKSAR) will become an amendment bill of the HKSAR and be submitted to the NPC by the HKSAR delegation attending the NPC meetings. As such, we need to find out whether an amendment proposal should be in the form of a bill to facilitate submission to the NPC for examination.
(3)	Who will be in a position to initiate the amendment process? Will members of the public be able to initiate the process? Should local NPC deputies voluntarily give up their right to initiate any proposal?	<p>We note that many share the view that any of the three parties concerned referred to in BL 159 should be in a position to initiate a proposal to amend the Basic Law. But there is, at the same time, a view shared by many that the Basic Law, being a constitutional document, should not be amended lightly. We are studying the requirements in other models and will formulate our proposed requirement, taking into account the circumstances in the HKSAR.</p> <p>We note that the Basic Law has not stipulated who can initiate an amendment proposal. We need to consider whether individual members of the public or a specified number of them should be able to initiate an amendment proposal. We also need to consider whether there are already other effective channels available for the public to achieve the same purpose.</p>

<p>(4)</p>	<p>How the local NPC deputies should discharge their duties under BL 159, whether it will be up to the local NPC deputies to decide their own rules of procedures and the contents?</p>	<p>We note that it is stipulated in the "Measures Concerning the Discharge of Duties of the Deputies of the Hong Kong Special Administrative Region to the National People's Congress" promulgated by the General Office of the NPCSC in late 1998 that the local NPC deputies should discharge their duties in accordance with BL 159. We need to consult the relevant Mainland authorities as to whether the General Office of the NPCSC will provide further details on how the local NPC deputies will discharge their duties as laid down in BL 159, or whether the local NPC deputies will formulate their own rules of procedure.</p>
<p>(5)</p>	<p>Should a constitutional conference (involving the three parties and others) be held? What is the nature of such a constitutional conference? What are the rules of procedure? Who should preside?</p>	<p>--</p>
<p>(6)</p>	<p>Should it be stipulated that any amendment proposal must have the support of more than a specified number of LegCo Members/local NPC deputies before it can be put forward?</p>	<p>We need to discuss with the relevant authorities the following issues : whether the relevant rules of procedure should be made by the LegCo on its own according to BL 75 provided that they do not contravene the Basic Law; whether the NPCSC will provide further details on how the local NPC deputies will discharge their duties, or whether the local NPC deputies will formulate their own rules of procedure, etc.</p>
<p>(7)</p>	<p>Should there be a specified sequence for any amendment proposal to be considered by the three parties?</p>	<p>We note that it has been suggested that the Chief Executive should be the last one to give his consent. We will need to consider how this suggestion will work in the case of an amendment proposal initiated by the Administration.</p>

<p>(8)</p>	<p>Should the three parties consider whether or not to set a specified time frame within which an amendment proposal will be considered?</p>	<p>Our preliminary analysis is that any decision on the time frame will be partly related to the question of whether the relevant rules of procedure of the LegCo should be made by the Council on its own provided that they do not contravene the BL 75. We also need to know from the relevant Central Authorities as to whether the General Office of the NPCSC will provide further details on how the local NPC deutes will discharge their duties as laid down in BL 159, or whether the local NPC deputies will formulate their own rules of procedures.</p>
<p>(9)</p>	<p>What is the mechanism for forwarding the amendment proposal agreed by one party to the other parties?</p>	<p>--</p>
<p>(10)</p>	<p>How to deal with amendments to the amendment proposal?</p>	<p>We need to study in the event that an amendment proposal is amended by any of the three parties during the process, whether the amended version should be forwarded to the other two parties afresh for consideration.</p>
<p>(11)</p>	<p>Should the Basic Law Committee consult the HKSAR before giving its view?</p>	<p>We note that the Basic Law Committee is a working committee under the NPCSC and its function is to study questions arising from the implementation of BL 17, 18, 158 and 159 and submit its views thereon to the NPCSC. These Basic Law provisions do not set out whether there should be any requirements for consultations with the HKSAR. We need to understand the views of the relevant Central Authorities.</p>
<p>(12)</p>	<p>Whether a mechanism to ensure that proposed amendments shall not contravene the established basic policies of the PRC regarding Hong Kong</p>	<p>We need to consider whether we should put in place such a mechanism. Some suggest that in considering an amendment proposal, each of the three parties should examine whether the proposal is in compliance with BL 159(4). Before an amendment bill is put on the agenda of the NPC, the Basic Law Committee should, in accordance with the Basic Law, study it and</p>

	<p>under BL 159(4) should be built into the process, and if so, how and at which stage?</p>	<p>submit its views. We believe that the Basic Law Committee and the NPCSC will of course consider whether an amendment bill contravenes the established basic policies of the PRC regarding Hong Kong. We also need to discuss this with the relevant Central Authorities.</p>
(13)	<p>Whether the NPCSC and the State Council should consult the HKSAR on their amendment proposal and if so, how?</p>	<p>We need to discuss this with the Central Authorities.</p>

Procedures for Constitutional Amendments in other Countries

	USA	Australia	Malaysia	South Africa	Switzerland
I. Provision	Article V	Section 128	Article 159	Section 74	Chapter III
II. Who may initiate	(a) a 2/3 vote of both Houses of Congress OR (b) on the application of 2/3 of the State legislatures.	The initial steps have to be taken in the Parliament.	A Bill may originate in either House of the Parliament (Art. 66(2)).	Within the Parliament by (a) a Cabinet member or (b) a Deputy Minister or (c) a member or committee of the National Assembly (“NA”) or (d) a member or committee of the National Council of Provinces (“NCP”).	(a) Total revision of the Constitution can be proposed by (i) one Council of the Federal Assembly or (ii) one hundred thousand Swiss citizens entitled to vote. (b) Partial revision may be brought about either (i) by means of a popular initiative (presented by one hundred thousand Swiss citizens entitled to vote) or (ii) according to the forms laid down for federal legislation.
III. Forms	In situation (a) above, the Congress shall propose Amendments to the Constitution. In situation (b) above, the Congress shall on the application of the State legislatures call a Convention for proposing Amendments.	A Bill	A Bill	A Bill	In respect of popular initiative, if several different provisions are to be modified or introduced, each one must be the subject of a separate initiative request. An initiative request may consist of: (i) a general proposal or (ii) take the form of a complete draft.

IV. Sequence and timeframe of deliberation	In both cases, the Amendments shall be valid when ratified by (a) 3/4 of the States legislatures OR (b) 3/4 of special State (ratifying) Conventions.	(a) The proposed law must be passed by an absolute majority of each House of Parliament and, not less than 2 months and not more than six months after its passage through both Houses, submitted in each State and Territory to the electors qualified to vote for the election of members of the House of Representatives OR (b) alternatively, if one of the Houses rejects the proposed law passed by an absolute majority of the other House or passes it with amendments the second mentioned House will not agree, and if after an interval of three months the second mentioned House again passes the proposed law by an absolute majority but the	(a) Subject to certain exceptions, a Bill for making any amendment to the Constitution shall not be passed in either House of Parliament unless it has been supported on Second and Third Readings by the votes of not less than 2/3 of the total number of members of that House.	(a) Section 1 may be amended by a Bill passed by the NA with a supporting vote of 75% of its members and the NCP with a supporting vote of at least 6 provinces; (b) Chapter 2 may be amended by a Bill passed by the NA with a supporting vote of 2/3 of its members and the NCP with a supporting vote of at least 6 provinces; (c) Other provisions may be amended by a Bill passed by (i) the NA with a supporting vote of 2/3 of its members, and (if the amendment (1) relates to a matter that affects the NCP; (2) alters provincial boundaries, powers, functions or institutions; or (3) amends a provision that deals specifically with a provincial matter) (ii) the NCP with a supporting vote of at least 6 provinces;	(a) For Total revision, in either of the cases specified in para (a) in Part II above, if the majority of the Swiss citizens casting a vote give a positive answer, both Councils shall be elected anew in order to undertake the revision. (b) For Partial revision - (i) if the request consists of a general proposal and if it meets with the approval of the Federal Chambers ¹ , the latter shall prepare a partial revision along the lines of the proposal and submit its draft to the people and the Cantons for adoption or rejection. If the Federal Chambers do not approve of the request, the question of partial revision shall be submitted to the decision of the people; if the majority of the Swiss citizens casting a vote decide in the affirmative, the Federal Assembly shall undertake the
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¹ The expression “Federal Chambers” is used in the unofficial English translation of the Federal Constitution of the Swiss Confederation collected in Albert P. Blaustein and Gisbert H. Flanz (eds), *Constitutions of the Countries of the World* (Oceana Publications Inc), Vol XIX. It appears from the discussion of Professor J.-F. Aubert and Professor E. Grisel, “The Swiss Federal Constitution”, in F. Dessemontet and T. Ansay (eds), *Introduction to Swiss Law* (Hague: Kluwer Law International, 2nd edition, 1995), pp 15-26 that the expression refers to the two Councils of the Federal Assembly of Switzerland, namely the National Council and the Council of States (see p. 19).

	<p>other House again rejects it, the Governor-General may submit the proposed law, either with or without any amendment subsequently agreed to by both Houses, to the electors in each State and Territory qualified to vote for the election of the House of Representatives.</p> <p>(c) When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half of the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.</p> <p>(d) If in a majority of the States a majority of the electors voting approve the</p>		<p>(d) A Bill introduced by the persons or committees set out in (a) (b) & (c) of Part II above shall, at least 30 days before it is introduced, be published in the national Government Gazette for public comment; submit to the provincial legislatures for their views; and submit to NCP for a public debate if the amendment is not one that is required to be passed by NCP.</p> <p>(e) The person or committee introducing the Bill must submit any written comments received from public and provincial legislatures to the Speaker for tabling in the NA and, in respect of certain amendments, to the Chairperson of the NCP for tabling in the NCP.</p> <p>(f) A Bill passed by NA and where applicable NCP must be referred to the President for assent.</p>	<p>revision in conformity with the decision of the people;</p> <p>(ii) if the request is in the form of a complete draft and if it meets with the approval of the Federal Assembly, the draft shall be submitted to the people and the Cantons for adoption or rejection. If the Federal Assembly disagrees, it may prepare its own draft or recommend the rejection of the proposed draft and submit its own draft or recommendation of rejection together with the draft proposed by the initiative to the decision of the people and the Cantons.</p> <p>(c) A federal law shall determine the procedure to be followed in the case of popular initiative requests and votes on the revision of the Federal Constitution.</p> <p>(d) The revised Federal Constitution or the revised part of it, as the case may be, shall enter into force if it has been adopted by the majority of the Swiss citizens casting a vote and the majority of the Cantons.</p>
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		proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.			
V. Special Provisions	<p>(a) No amendment may be made prior to 1808 to certain parts of Article 1.</p> <p>(b) No State without its consent shall be deprived of its equal suffrage in the Senate.</p>	<p>No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing or otherwise altering the limits of the State, etc. shall become law unless the majority of the electors voting in that State approve the proposed law.</p>	<p>(a) A law making an amendment to certain provision of the Constitution (e.g. provisions in relation to Conference of Ruler, privileges of Legislative Assembly, national language, constitutional amendment etc.) shall not be passed without the consent of the Conference of Rulers.</p> <p>(b) Article 161E provides safeguards for constitutional position of States of Sabah and Sarawak.</p>	<p>If a Bill relates to a matter which concerns a specific province, the NCP may not pass it unless it has been approved by the legislature(s) of the province(s) concerned.</p>	

Mechanism for Amending the Basic Law

Procedures and timetables for devising the mechanism

(June 1999)

	Steps and Procedures	Timeframe
(1)	Summarise views expressed and discuss the relevant issues/questions with the CPG/NPCSC; and allow time for the CPG/NPCSC to study the relevant issues/questions, consult the Hong Kong NPC deputies and the Basic Law Committee, etc. and to formulate their views on the relevant issues.	Discussions with the CPG have commenced. The exact timeframe is subject to progress of discussions.
(2)	Meetings with CPG/NPCSC to gauge their preliminary views.	
(3)	Report to ExCo on the Administration's preliminary views and progress of discussions with the CPG/NPCSC; and report progress to the CA Panel.	about 1 to 2 months
(4)	The Administration to formulate the proposed mechanism and prepare documents for consultation with LegCo, the legal profession, academics, and the general public, etc.	about 3 to 4 months
(5)	Discuss the proposed mechanism with the CPG/NPCSC.	subject to progress of discussions
(6)	Consider the views collected and finalise the Administration's proposal.	about 2 to 3 months

(7)	Consult ExCo on the finalised proposal.	about 1 to 2 months
(8)	Report to the CA Panel on the finalised proposal, and brief the CPG/NPCSC.	about 2 months
(9)	If local legislation is required : the Administration to draft and introduce the legislation into LegCo; and LegCo to examine the bill and enact the necessary legislation.	about 6 to 9 months

~~**PRESIDENT** (in Cantonese): We have spent a record-breaking 27 minutes on this question. In view of this, I will have to stop Members from raising further ~~supplementaries in respect of this question.~~~~

PRESIDENT (in Cantonese): Fifth question.

Amendment of Basic Law

5. **MR LEUNG YIU-CHUNG** (in Cantonese): *President, while Article 159 of the Basic Law provides for the power of amendment of the Basic Law and the power to propose bills for such amendments, it does not clearly set out a specific amendment mechanism. Although the Government said in July 2001 that it would study, analyse and conduct extensive consultations on the matter, discuss with the Legislative Council and the Central Authorities, and then put forward the proposals, no specific proposal has been presented so far. In this connection, will the Government inform this Council:*

- (a) *of the details and progress of the study, analysis and consultations;*
- (b) *whether it will arrange for the Legislative Council to have exchanges and discussions with the National People's Congress (NPC) and the relevant authorities of the Central Government regarding this matter; if so, of the details of the arrangements; if not, the reasons for that; and*
- (c) *how it will ensure that the wishes of the Hong Kong people will be given due consideration and respect, and the principles of "one country, two systems" and "a high degree of autonomy" will be given effect in the formulation of such a mechanism?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, on the first part of the question raised by Mr LEUNG Yiu-chung, we have continued to study issues relating to Article 159 of the Basic Law and communicate with the relevant departments of the Central Authorities in the past few years. We will brief the Legislative Council Panel on Constitutional Affairs when we are in a position to do so.

As regards the second part of the question, we are of the view that at this stage there is no need to arrange for the Legislative Council to have exchanges and discussions with the NPC and the relevant departments of the Central Authorities on issues relating to Article 159 of the Basic Law, as we have relayed to the relevant departments of the Central Authorities in the past the views and concerns of Members expressed on this subject matter. If Members have any further comments on the issues, we are prepared to reflect them to the relevant departments of the Central Authorities.

As for the third part of the question, the various requirements prescribed in Article 159 of the Basic Law are themselves built-in safeguards to ensure that in the event that amendments are required to be made to the Basic Law, the views of the people in Hong Kong will be considered and the principles of "one country, two systems" and "high degree of autonomy" realized.

The provision stipulates that before a bill for amendments to the Basic Law proposed by the Hong Kong Special Administrative Region (SAR) is submitted to the NPC for consideration, the consent of two-thirds of the NPC Deputies of the Region, two-thirds of all the Legislative Council Members and the Chief Executive shall be obtained. The provision further provides that before an amendment bill is put on the agenda of the NPC, the Committee for the Basic Law of the SAR shall study it and submit its views. In discharging their constitutional obligations under Article 159 of the Basic Law, we trust that the above four relevant parties will consider carefully the views of the Hong Kong community. Furthermore, making amendments to the Basic Law is an important constitutional issue for Hong Kong. Naturally, there will be a lot of discussions within the local community and the SAR Government will in no doubt relay the full spectrum of views to the NPC and the relevant departments of the Central Authorities.

Article 159 of the Basic Law stipulates that no amendment to the Basic Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong. In accordance with the preamble and general principles set out in the Basic Law, the established basic policies of the Central Authorities regarding Hong Kong include the following: "one country, two systems" shall be implemented in the SAR; the socialist system and policies shall not be practised in Hong Kong; the SAR enjoys a high degree of autonomy under authorization; and the previous capitalist system and way of life shall remain

unchanged. Any amendments to the Basic Law that are in contravention with the above established basic policies cannot be made. These requirements ensure that the country's basic policies regarding Hong Kong will not be altered as a result of any amendments made to the Basic Law, thereby preserving the integrity of "one country, two systems" and "high degree of autonomy".

MR LEUNG YIU-CHUNG (in Cantonese): *President, more than five years have passed since July 2001. According to the reply furnished by the Secretary, the Government has been studying the issue during the past few years. But we have not heard of any result of their study. We have absolutely no knowledge of such a result.*

In fact, the Secretary said in July 2001 that the Government would conduct analysis and extensive consultation. So, can he inform us in detail what kinds of analysis and extensive consultation have been conducted? If not, can the Secretary tell us in detail why such actions have not been taken, and whether the relevant authorities of the Government will initiate a thorough investigation to find out why the relevant work has not been done over such a long period of time? Is it due to the negligence of duties of certain departments or certain senior officials, or whether it is because the Secretary does not want to do work in this regard?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the Government has all along been studying this subject internally, and we have maintained communication with the Central Government according to our progress of this study. So, the work has not come to a standstill.

We do appreciate the concern of Members for this issue. However, when compared with other items which are handled by us in conjunction with the Central Government, the urgency of the subject of amending the Basic Law is not so great. For example, we are processing the amendments to Annex I and Annex II to the Basic Law, and any issues that are related to the constitutional system will be dealt with according to their priorities and urgency. However, during the recent days, we have kept an interest in this subject, and whenever we have any opportunities, we would grasp them to communicate with the relevant departments of the Central Authorities. Once we have received their reply, we

shall brief the Legislative Council first. Of course, if the public has any opinion in this regard, we are ready to listen.

MR LEUNG YIU-CHUNG (in Cantonese): *President, when the Secretary replied just now, he said at the moment they were concerned about the amendments to Annex I and Annex II to the Basic Law. However, when I raised the supplementary question, I already asked specifically what the Government had done with the lapse of five years. We all know, the amendments to Annex I and Annex II to the Basic Law happened only during the past several months. As such, what has the Government done during the past five years?*

Besides, I have asked the Secretary just now whether the Government is unwilling to do the work? If the answer is in the negative, is the Government not duty-bound to investigate whether any department has been negligent in performing their duties? If the Government cannot come to any conclusive results after five years, will it consider such an endless procrastination acceptable?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, when we undertake the work of amending the Basic Law, we must first of all communicate with the relevant departments of the Central Authorities and formulate the relevant procedures. Therefore, in undertaking the work in relation to this issue, we must first reach a common understanding with the relevant departments of the Central Authorities before the relevant procedures can be formulated. The stance and principle in respect of the Basic Law upheld by the relevant departments of the Central Authorities is very explicit, that is, the Basic Law is a constitutional document, so in order to maintain its stability and integrity, it will not be amended easily. Therefore, in undertaking work in this regard, they are also very prudent. Up till now, we still have not reached the stage that can allow us to discuss the relevant procedures with Members.

~~**PRESIDENT** (in Cantonese): There are altogether eight Members waiting for their turns to raise supplementaries. Will Members who have the chance to raise supplementaries please be as concise as possible.~~

Mechanism for Amending the Basic Law

Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Motion/Question</u>
Panel on Constitutional Affairs	17 May 1999	<p>Summary of views on Mechanism for amending the Basic Law [LC Paper No. CB(2)1935/98-99(01)]</p> <p>Administration's paper on "Preliminary study of the questions identified at the CA Panel meetings of 15 and 22 March 1999 and the way forward" [LC Paper No. CB(2)1951/98-99(05)]</p> <p>Minutes of meeting [LC Paper No. CB(2)2560/98-99]</p>
	21 June 1999	<p>Speaking note of the Deputy Secretary for Constitutional Affairs at the Panel meeting on 17 May 1999 [LC Paper No. CB(2)2306/98-99(04)]</p> <p>Administration's paper on "Procedures for Constitutional Amendments in other Countries " [LC Paper No. CB(2)2306/98-99(05)]</p> <p>Administration's paper on " Procedures and Timetable for devising the mechanism" [LC Paper No. CB(2)2306/98-99(06)]</p> <p>Minutes of meeting [LC Paper No. CB(2)2771/98-99]</p>
	19 July 1999	<p>Administration's paper on "Mechanism for amending the Basic Law" [LC Paper No. CB(2)2558/98-99(04)]</p> <p>Minutes of meeting [LC Paper No. CB(2)29/99-00]</p>
	17 January 2000	<p>Minutes of meeting [LC Paper No. CB(2)1395/99-00]</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Motion/Question</u>
Legislative Council	19 January 2000	Motion moved by Hon LEUNG Yiu-chung on "Proposed Resolution under Article 159 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China" [Hansard]
Panel on Constitutional Affairs	15 May 2000	Minutes of meeting [LC Paper No. CB(2)2523/99-00]
	31 October 2000	Background brief on "Mechanism for amending the Basic Law" prepared by the LegCo Secretariat [LC Paper No. CB(2)126/00-01(07)] Minutes of meeting [LC Paper No. CB(2)493/00-01]
Legislative Council	4 July 2001	Motion moved by Hon LEUNG Yiu-chung on "Proposed Resolution under Article 159 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China" [Hansard]
Panel on Constitutional Affairs	17 July 2001	Administration's paper on "Mechanism for Amending the Basic Law" [LC Paper No. CB(2)2047/00-01(01)] Background brief on "Mechanism for amending the Basic Law" prepared by the LegCo Secretariat [LC Paper No. CB(2)1763/00-01(04)] Minutes of meeting [LC Paper No. CB(2)2222/00-01]
	18 October 2004	The First Report of the Constitutional Development Task Force : Issues of Legislative Process in the Basic Law Relating to Constitutional Development (March 2004)

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Motion/Question</u>
		<p>The Second Report of the Constitutional Development Task Force : Issues of Principle in the Basic Law Relating to Constitutional Development (April 2004)</p> <p>Gazette copy of the Interpretation adopted by the Standing Committee of the National People's Congress on Article 7 of Annex I and Article III of Annex II to the Basic Law on 6 April 2004 [LC Paper No. CB(2)35/04-05(01)]</p> <p>Gazette copy of the Decision adopted by the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in the Year 2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008 on 26 April 2004 [LC Paper No. CB(2)35/04-05(02)]</p> <p>Minutes of meeting [LC Paper No. CB(2)199/04-05]</p>
	21 October 2005	<p>The Fifth Report of the Constitutional Development Task Force : Package of Proposals for the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008</p> <p>Minutes of meeting [LC Paper No. CB(2)597/05-06]</p>
Legislative Council	9 November 2005	<p>Official Record of Proceedings of an oral question raised by Hon LEUNG Yiu-chung on "Amendment of Basic Law"</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Motion/Question</u>
	21 December 2005	<p>Motion moved by the Secretary for Constitutional Affairs to amend Annex I to the Basic Law regarding the method for the selection of the Chief Executive of the Hong Kong Special Administrative Region [Hansard]</p> <p>Motion moved by the Secretary for Constitutional Affairs to amend Annex II to the Basic Law regarding the method for the formation of the Legislative Council [Hansard]</p>