

HONG KONG : THE FACTS



The Basic Law

BACKGROUND

The *Sino-British Joint Declaration on the Question of Hong Kong* (the Joint Declaration) was signed between the Chinese and British Governments on December 19, 1984. It sets out, among other things, the basic policies of the People's Republic of China (PRC) regarding Hong Kong. Under the principle of 'one country, two systems', the socialist system and policies shall not be practised in the Hong Kong Special Administrative Region (HKSAR) and Hong Kong's previous capitalist system and life-style shall remain unchanged for 50 years. The Joint Declaration provides that these basic policies will be stipulated in a Basic Law of the HKSAR. The *Basic Law of the Hong Kong Special Administrative Region* (The Basic Law) was adopted on April 4, 1990 by the Seventh National People's Congress (NPC) of the PRC. It was put into effect on July 1, 1997.

THE DOCUMENT

The Basic Law is a constitutional document for the HKSAR. It enshrines within a legal document the important concepts of 'one country, two systems', 'Hong Kong People administering Hong Kong' and a high degree of autonomy. It also prescribes the various systems to be practised in the HKSAR. The Basic Law consists of:

- the body of the Basic Law which comprises a total of nine chapters with 160 articles;
- Annex I, which sets out the method for the selection of the Chief Executive of the HKSAR;
- Annex II, which sets out the method for the formation of the Legislative Council of the HKSAR and its voting procedures;
- Annex III, which sets out the national laws to be applied in the HKSAR; and
- designs of the regional flag and emblem of the HKSAR.

DRAFTING PROCESS

The Basic Law was drafted by a committee composed of members from both Hong Kong and the Mainland. A Basic Law Consultative Committee formed purely by Hong Kong people was established in 1985 to canvass views in Hong Kong on the drafts. The first draft was published in April 1988, followed by a five-month public consultation exercise. The second draft was published in February 1989, and the subsequent consultation period ended in October 1989. The Basic Law was formally adopted on April 4, 1990 by the NPC, together with the designs of the flag and emblem of the HKSAR.

BLUEPRINT FOR THE HKSAR

The Basic Law provides the blueprint for the development of the HKSAR. Major provisions which set out the basic policies of the PRC regarding the HKSAR are described below.

General Principles: The National People's Congress authorizes the HKSAR to exercise a high degree of autonomy and enjoys executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of the Basic Law. (*Basic Law (BL) Article 2*)

The executive authorities and legislature of the HKSAR shall be composed of permanent residents of Hong Kong in accordance with the relevant provisions of the Basic Law. (*BL Article 3*)

The socialist system and policies shall not be practised in the HKSAR, and the previous capitalist system and way of life shall remain unchanged for 50 years. (*BL Article 5*)

The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene the Basic Law and subject to any amendment by the legislature of the HKSAR. (*BL Article 8*)

Relationship between the Central Authorities and the HKSAR: The Central People's Government (CPG) shall be responsible for defence and foreign affairs relating to the HKSAR. (*BL Articles 13; 14*)

The CPG authorizes the HKSAR to conduct relevant external affairs on its own in accordance with the Basic Law. (*BL Article 13*)

The HKSAR Government (HKSARG) shall be responsible for the maintenance of public order in the Region. (*BL Article 14*)

National laws shall not be applied in the HKSAR except for those listed in Annex III to the Basic Law. Laws listed in Annex III shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the HKSAR. The laws listed in Annex III shall be applied locally by way of promulgation or legislation by the HKSAR. (*BL Article 18*)

No department of the CPG and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the HKSAR administers on its own in accordance with the Basic Law. (*BL Article 22*)

Protection of Rights and Freedoms: The HKSAR shall protect the right of private ownership of property in accordance with law. (*BL Article 6*)

All Hong Kong residents shall be equal before the law. Permanent residents of the HKSAR shall have the right to vote and the right to stand for election in accordance with law. (*BL Articles 25; 26*)

The freedom of the person of Hong Kong residents shall be inviolable. (*BL Article 28*)

Hong Kong residents shall have, among other things, freedom of speech, of the press and of publication; freedom of association, of assembly, of procession, of demonstration, of communication, of movement, of conscience, of religious belief, and of marriage; and the

right and freedom to form and join trade unions, and to strike. (BL Articles 27-38)

The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR. (BL Article 39)

Political Structure: The Executive Authorities: The Chief Executive of the HKSAR shall be a Chinese citizen of not less than 40 years of age who is a permanent resident of the HKSAR with no right of abode in any foreign country and has ordinarily resided in Hong Kong for a continuous period of not less than 20 years. (BL Article 44)

The Chief Executive shall be selected by election or through consultations held locally and be appointed by the CPG. The method for selecting the Chief Executive shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures. (BL Article 45)

The HKSARG must abide by the law and be accountable to the Legislative Council of the HKSAR: it shall implement laws passed by the Council and already in force; it shall present regular policy addresses to the Council; it shall answer questions raised by members of the Council; and it shall obtain approval from the Council for taxation and public expenditure. (BL Article 64)

•**The Legislature:** The Legislative Council of the HKSAR shall be constituted by election. The method for forming the Legislative Council shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage. (BL Article 68)

The powers and functions to be exercised by the Legislative Council of the HKSAR mainly include, to:

- enact, amend or repeal laws;
- examine and approve budgets introduced by the Government;
- approve taxation and public expenditure;
- raise questions on the work of the Government;
- debate any issue concerning public interests;
- endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court. (BL Article 73)

•**The Judiciary:** The power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal of the HKSAR, which may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal. (BL Article 82)

The courts of the HKSAR shall exercise judicial power independently, free from any interference. (BL Article 85)

The principle of trial by jury previously practised in Hong Kong shall be maintained. Anyone who is lawfully arrested shall have the right to a fair trial by the judicial organs without delay and shall be presumed innocent until convicted by the judicial organs. (BL Articles 86; 87)

The HKSAR may, through consultations and in accordance with law, maintain juridical relations with the judicial organs of other parts of the PRC, and they may render assistance to each other. With the assistance or authorization of the CPG, the HKSARG may also make appropriate arrangements with foreign states for reciprocal juridical assistance. (BL Articles 95; 96)

Economy: The HKSAR remains a free port, a separate customs territory and an international financial centre. Its markets for foreign exchange, gold, securities and futures shall continue. There shall be free flow of capital. (BL Articles 109; 112; 114; 116)

The Hong Kong dollar, as the legal tender in the HKSAR, shall continue to circulate. The authority to issue the currency shall be vested in the HKSARG. (BL Article 111)

The HKSAR shall pursue the policy of free trade and safeguard the free movement of goods, intangible assets and capital. (BL Article 115)

The HKSAR shall be authorised by the CPG to continue to maintain a shipping register and issue related certificates under the name 'Hong Kong, China'. Private shipping businesses and shipping-related businesses and private container terminals in the HKSAR may continue to operate freely. (BL Articles 125; 127)

The HKSAR shall continue the previous system of civil aviation management in Hong Kong and keep its own aircraft register. The HKSAR may, under the authorization of the CPG, negotiate and conclude air services agreements with foreign states or regions. (BL Articles 129-134)

Education, Science, Culture, Sports, Religion, Labour and Social Services: The HKSARG shall on its own formulate policies on the development and improvement of education, science and technology, culture, sports, social welfare and labour. (BL Articles 136-147)

Non-governmental organizations in fields such as education, science, technology, culture, art, sports, the professions, medicine and health, labour, social welfare and social work as well as religious organizations in the HKSAR may maintain and develop relations with their counterparts in foreign countries and regions and with relevant international organizations. They may, as required, use the name 'Hong Kong, China' in the relevant activities. (BL Article 149)

External Affairs: The HKSAR may on its own, using the name 'Hong Kong, China', maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organizations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields. (BL Article 151)

Representatives of the HKSARG may, as members of delegations of the PRC, participate in international organizations or conferences in appropriate fields limited to states and affecting the HKSAR, or may attend in such other capacity as may be permitted by the CPG and the international organization or conference concerned, and may express their views, using the name 'Hong Kong, China'. The HKSAR may also, using the name 'Hong Kong, China', participate in international organizations and conferences not limited to states. (BL Article 152)

The application to the HKSAR of international agreements to which the PRC is or becomes a party shall be decided by the CPG, in accordance with the circumstances and needs of the HKSAR, and after seeking the views of the HKSARG. International agreements to which the PRC is not a party but which are implemented in Hong Kong may continue to be implemented in the HKSAR. The CPG shall, as necessary, authorize or assist the HKSARG to make appropriate arrangements for the application to the HKSAR of other relevant international agreements. (BL Article 153)

INTERPRETATION AND AMENDMENT OF THE BASIC LAW

The power of interpretation of the Basic Law shall be vested in the Standing Committee of the National People's Congress (SCNPC). The SCNPC shall authorize the courts of the HKSAR to interpret on their own, in adjudicating cases, the provisions of the Basic Law which are within the limits of the autonomy of the HKSAR. The courts of the HKSAR may also interpret other provisions of the Basic Law in adjudicating cases. However, if the courts

of the HKSAR, in adjudicating cases, need to interpret the provisions of the Basic Law concerning affairs which are the responsibility of the CPG, or concerning the relationship between the Central Authorities and the HKSAR, and if such interpretation will affect the judgments on the cases, the courts of the HKSAR shall, before making their final judgments which are not appealable,

seek an interpretation of the relevant provisions from the SCNPC through the Court of Final Appeal of the HKSAR.
(BL Article 158)

The power of amendment of the Basic Law shall be vested in the NPC. No amendment to the Basic Law shall contravene the established basic policies of the PRC regarding Hong Kong. *(BL Article 159)*