

"Hong Kong Today" Module

"Basic Law"

Enacted by the National People's Congress (NPC) in accordance with the Constitution of the People's Republic of China (the Constitution), the Basic Law of the Hong Kong Special Administrative Region (the Basic Law) was officially adopted at the Third Session of the Seventh National People's Congress on 4 April 1990 and put into effect from 1 July 1997 when Hong Kong was handed over to China. The Basic Law prescribes the systems to be practised in the HKSAR, in order to ensure the implementation of the basic policies of the People's Republic of China regarding Hong Kong. The Basic Law is part of the law of the HKSAR, and its source of authority comes from the Constitution. It is also the most fundamental law of Hong Kong, and is a constitutional document. The Constitution provides the legal foundation for the nation and holds legal effect of the highest order. It is widely recognised in the international community that citizens should respect and observe the Constitution.

Under the basic principle of "one country, two systems", Hong Kong's previous capitalist system and way of life shall remain unchanged for 50 years. 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. National laws (except for those listed in Annex III to the Basic Law, namely those concerning the National Anthem, National Flag, National Day, National Emblem, Territorial Sea, Nationality Law and Diplomatic Privileges) shall not be applied in Hong Kong. The Basic Law also states the basis for the following systems and policies:

▼ Relationship between the Central Authorities and the HKSAR:

- The HKSAR shall be a local administrative region of the People's Republic of China (PRC), which shall enjoy a high degree of autonomy and come directly under the Central People's Government. The relationship between the Central Authorities and the HKSAR mainly covers the following three aspects. The Central People's Government:
 - shall be responsible for the foreign affairs relating to the HKSAR and defence of the HKSAR.
 - shall station military forces in the HKSAR for defence but the military forces shall not interfere in the local affairs of the HKSAR.
 - shall appoint the Chief Executive and the principal officials of the executive authorities of the HKSAR.



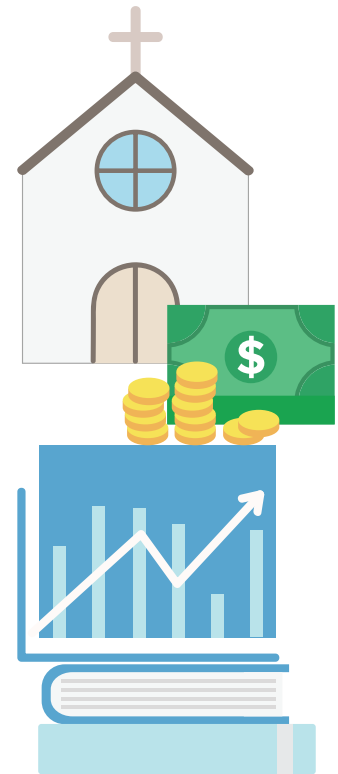


- ▼ Fundamental rights and duties of the residents: The permanent residents of the HKSAR shall have the right of abode, the right to vote and the right to stand for election. All Hong Kong residents shall be equal before the law. They shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike. 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. Hong Kong residents and other persons in Hong Kong shall have the obligation to abide by the laws in force in Hong Kong.
- ▼ Political structure:
 - The Chief Executive of the HKSAR shall be the head of the HKSAR and the head of the HKSAR Government i.e. the executive authorities. The Chief Executive shall be accountable to both the Central People's Government and the HKSAR. The Chief Executive shall be selected by election or through consultations held locally and be appointed by the Central People's Government. 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.
 - The Executive Council of the HKSAR shall be an organ for assisting the Chief Executive in policy-making. Members of the Executive Council of the HKSAR shall be appointed by the Chief Executive from among the principal officials of the executive authorities, members of the Legislative Council and public figures. Their appointment or removal shall be decided by the Chief Executive.
 - The Legislative Council of the HKSAR shall be the legislature of the Region and 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 judiciary of the HKSAR shall exercise judicial power. The power of final adjudication shall be vested in the Court of Final Appeal of the HKSAR.

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- ▼ Economy: The HKSAR shall maintain the status of a free port, a separate customs territory and an international financial centre. Markets for foreign exchange, gold, securities, futures and the like shall continue and the free flow of capital within, into and out of the HKSAR shall be safeguarded.
- ▼ Education, Science, Culture, Sports, Religion, Labour and Social Services: The HKSAR shall, on its own, formulate policies relating to these areas. Non-governmental organisations in these fields and religious organisations may maintain and develop relations with their counterparts in foreign countries and regions and with relevant international organisations.
- ▼ 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 organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields.



Article 158 of the Basic Law stipulates that the power of interpretation of the Basic Law shall be vested in the Standing Committee of the National People's Congress (NPCSC). The NPCSC shall authorise 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 Central People's Government, 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 Standing Committee of the National People's Congress through the Court of Final Appeal of the HKSAR. When the Standing Committee makes an interpretation of the provisions concerned, the courts of the HKSAR, in applying those provisions, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected.



Article 159 of the Basic Law stipulates that the power of amendment of the Basic Law shall be vested in the National People's Congress (NPC). The power to propose bills for amendments to the Basic Law shall be vested in the NPCSC, the State Council and the HKSAR. Amendment bills from the HKSAR shall be submitted to the NPC by the delegation of the HKSAR to the NPC after obtaining the consent of two-thirds of the deputies of the HKSAR to the NPC, two-thirds of all the members of the Legislative Council of the HKSAR, and the Chief Executive. Before a bill for amendment to the Basic Law is put on the agenda of the NPC, the Committee for the Basic Law of the HKSAR shall study it and submit its views. No amendment to the Basic Law shall contravene the established basic policies of the PRC regarding Hong Kong.

As we see from the above, the HKSAR enjoys a high degree of autonomy granted by the Central People's Government pursuant to the Basic Law provisions. Such degree of autonomy is much higher than that of Chinese municipalities, provinces and autonomous regions, and higher than that of many foreign cities, such as Tokyo, New York and London. Since Hong Kong enjoys a high degree of autonomy, the Central People's Government retains its substantive power of appointment, rather than courtesy appointment, of the Chief Executive. On the other hand, Hong Kong has primarily maintained the political system under British rule since the handover, which is different from that of the Mainland. For example, the systems of the People's Congress and the Political Consultative Conference of Mainland cities do not exist in Hong Kong. This is another key illustration of "one country, two systems". In addition, the Chief Executive and members of the Legislative Council are elected under two different electoral systems. Therefore, the government has to lobby members of the Legislative Council from different political camps before implementing any policy and cannot rely on any ruling party's support for a smooth sail at the Legislative Council, unlike the U.K. whose prime minister is the leader of the party that wins the most seats in a general election, making administration relatively smooth.

Since Hong Kong's return to China, the courts of Hong Kong have offered interpretations on different provisions of the Basic Law when adjudicating cases. The NPCSC has also interpreted provisions of the Basic Law on five occasions: interpretation of the right of abode in 1999, interpretation of universal suffrage in 2004, interpretation of the term of office of the new Chief Executive in 2005, interpretation of state immunity in 2011, and interpretation of the meaning and provision of Article 104 of the Basic Law regarding public officers swearing in



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accordance with law in 2016. The arrangement for the NPCSC to interpret the Basic Law is executed as stipulated in the Basic Law. According to Article 158 of the Basic Law, the power of interpretation of the Basic Law is vested in the NPCSC, but the courts of the HKSAR may interpret on their own, in adjudicating cases, the provisions of the Basic Law which are within the limits of the autonomy of the HKSAR. They may also interpret other provisions of the Basic Law in adjudicating cases (however, in some circumstances, the courts shall seek an interpretation of the relevant provisions from the NPCSC through the Court of Final Appeal. For details, please refer to the above paragraphs). These interpretations are legitimate and in compliance with the constitution and do not affect Hong Kong's rule of law and judicial independence.

In short, **the Basic Law is a national law** that specifies the sovereignty, the relationship between the Central Authorities and the HKSAR, and other aspects. It is also **the law of the HKSAR** that specifies rights and obligations of people from all walks of life as well as issues in economy, education, religion and external affairs, etc. The Basic Law gives Hong Kong different types of authority, such as issuing currency and passports. Moreover, the Basic Law responded to Hong Kong people's concerns in the 1980s over the return to the Motherland. For example, the possible use of the renminbi after the handover, which was not liquid in the international market back then, aroused concerns that the use of the currency in Hong Kong would be unfavourable to business, study and travel overseas. As a result, Article 111 of the Basic Law states that "the Hong Kong dollar, as the legal tender in the Hong Kong Special Administrative Region, shall continue to circulate". Another example is that China had its family planning policy in place back then. As there were worries that it would be implemented in Hong Kong after the return to the motherland, Article 37 of the Basic Law states that "the freedom of marriage of Hong Kong residents and their right to raise a family freely shall be protected by law". From the above, we can see that the provisions in the Basic Law reflect China's sovereignty while addressing the needs of Hong Kong people.

