

The Reading Materials for Relevant Concepts below provide conceptual reference for the enquiry of issues related to the Liberal Studies curriculum. These Notes are not unalterable definitive interpretations, and they do not represent the view of the Education Bureau.

Basic Law

The Basic Law of the Hong Kong Special Administrative Region (The Basic Law) was enacted by the National People's Congress (NPC) in accordance with the Constitution of the People's Republic of China (PRC). It was adopted at the Seventh National People's Congress of the PRC and took effect on 1 July 1997 on the establishment of the Hong Kong Special Administrative Region (HKSAR). To safeguard the implementation of the basic policies of PRC regarding Hong Kong, the Basic Law stipulates the system being practised in HKSAR.

Under the principle of "One Country, Two Systems"¹ Hong Kong's previous capitalist system and life-style shall remain unchanged for 50 years. All the laws previously in force in Hong Kong shall be maintained. National laws of the People's Republic of China shall not be applied in the HKSAR (except for those listed in Annex III to the Basic Law relating to National Anthem, National Flag, National Day, National Emblem, Territorial Sea, Nationality and Diplomatic Privileges.) The Basic Law also sets out the major provisions of the basic policies regarding Hong Kong as described below:

- Relationship between the Central Authority & the HKSAR:
 - The HKSAR shall be a local administrative region of the PRC, which shall enjoy a high degree of autonomy and come directly under the Central People's Government (CPG). The CPG:
 - ◆ shall be responsible for the foreign affairs and defense relating to the HKSAR;
 - ◆ shall station military force in the HKSAR for defense and shall not interfere in the local affairs of the Region;
 - ◆ 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. Hong Kong residents shall be equal before the

¹ Paragraph 2, Preamble to *Basic Law*

law and enjoy different kinds of freedom and rights. 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 the HKSAR.

- Political Structure:

- The Chief Executive of the Hong Kong Special Administrative Region 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 Hong Kong Special Administrative Region shall be an organ for assisting the Chief Executive in policy-making. Members of the Executive Council of the Hong Kong Special Administrative Region 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. 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. The power of the Legislative Council includes : to enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures; to examine and approve budgets introduced by the government; to approve taxation and public expenditure; to receive and debate the policy addresses of the Chief Executive; to raise questions on the work of the government; to debate any issue concerning public interests; to endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court;.
- The power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal of the Region.

- Economy:

The Hong Kong Special Administrative Region shall pursue the policy of free trade, separate customs and the maintenance of the status of Hong Kong as an

international financial centre. The Government of the Hong Kong Special Administrative Region shall safeguard the free flow of capital within, into and out of the Region and markets for foreign exchange, gold, securities, shall continue.

- Education, Science, Culture, Sports, Religion, Labour and Social Services:

The Government of the HKSAR shall, on its own, formulate policies on the development and improvement of these services. Non-governmental organizations as well as religious organizations may maintain and develop relations with their counterparts in foreign countries and regions and with relevant international organizations.

- External Affairs:

The Hong Kong Special Administrative Region 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.

Interpretation and Amendment of the Basic Law

Under the Basic Law, article 159 has stipulated clearly that the power of amendment of this Law shall be vested in the NPC. The power to propose bills for amendments to this Law shall be vested in the Standing Committee of the National People's Congress (NPCSC), the State Council and the 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 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 NPC, the Committee for the Basic Law of the HKSAR 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.

As for the interpretation of the Basic Law, article 158 of the Basic Law provides that the power of interpretation of this law shall be vested in the NPCSC. The NPCSC shall authorise the courts of the HKSAR to interpret on their own, in adjudicating cases, the provisions of this Law which are within the limits of autonomy of the Region. The

courts of the HKSAR may also interpret other provisions of this Law in adjudicating cases. However, if the courts of the Region, in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the CPG, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments on the cases, the courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the NPCSC through the Court of Final Appeal of the Region. When the Standing Committee makes an interpretation of the provisions concerned, the courts of the Region, in applying those provisions, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected.

There have been occasions for the Organizing Committee of the HKSAR (before the resumption of sovereignty) and the HKSAR Government (after the resumption of sovereignty) to seek NPCSC interpretation to solve the “imminent and substantial problems”² of the HKSAR. According to the stance of the HKSAR Government, seeking interpretation of the Basic Law is different from making amendment to the Basic Law because “amending a law could render a total different meaning from the original while seeking interpretation would mean making clarification and supplement to the original context, which cannot deviate from the original meaning of the text.”³ However, some politicians took the view that since the procedures for the amendment to Basic Law are tedious; the HKSAR Government tends to “take the easy way out as to seek interpretation from NPCSC instead of making amendments to the Basic Law”⁴ to resolve social disputes. Such an opinion could only be seen as one amongst others viewpoints on the interpretation of the provision of the Basic Law.

The occasions when interpretations have been made by NPCSC on the Basic Law include: the implementation of Nationality Law of the PRC in Hong Kong (1996); the right of abode of mainland children born to a Hong Kong permanent resident (1999), the elections of the Chief Executive and Legislative Council respectively in 2007 and 2008 (2004); and the remaining term of office of Chief Executive (2005). Since the resumption of sovereignty of Hong Kong, there has been a general discussion every time when NPCSC interpreted the Basic Law. Some believed that it would help resolve the problem and settle disputes, while others took the views that it would destroy not

² extracted from the speech made by Secretary for Constitutional and Mainland Affairs at the 16th Anniversary Seminar on Basic Law (Chinese version only)
<http://www.info.gov.hk/gia/general/200604/22/P200604220162.htm>

³ extracted from the speech made by the Secretary for Justice on the motion debate for the Basic Law (Chinese version only) <http://www.info.gov.hk/gia/general/199905/26/0526248.htm>

⁴ an article from “SingPao” on 18 May 1999 on 〈港府十三項諮詢受抨 修改基本法太遙遠〉

only the independence of the judiciary system but also the “one country two systems” of HKSAR.

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Constitutional Document

The Basic Law of the Hong Kong Special Administrative Region (also known as “The Basic Law”) came into effect after the establishment of the Hong Kong Special Administrative Region of the People's Republic of China on 1 July in 1997. It is the constitutional document for the HKSAR since then. Prior to that, during the colonial period, the Letters Patent, which set out rules of operation of the former Legislative Council and former Executive Council, and the Royal Instructions, which is the source of power of the former Legislative Council, were constitutional documents in a similar manner. The Basic Law, which is derived from Article 31 of the PRC constitution, is one of the fundamental laws in China. In practice, it is served as a “self-governance and organic law of a local government” (Chan, Johannes M.M., 1999; Tai, Benny Y.T., 1999).

A constitution is commonly viewed as a contract between the state and its citizens. It defines the basic political ideals and principles, political structure of a state, the formation, functions and mode of check and balance of power of the government, and citizens' rights and responsibilities. It is a set of fundamental principles that governs every social institution in a society. The Basic Law derives its legal status from the PRC constitution and is subordinate to this constitution but superior to other laws in Hong Kong. As a fundamental law in Hong Kong, the Basic Law is also known as a “constitutional law” or commonly as a “mini-constitution” (Tai, Benny Y.T., 1999).

According to the Article 31 of the PRC constitution, unlike in the case of other regions in the PRC, the Mainland's socialist system and policies shall not be practised in the Special Administrative Region and Hong Kong's existing capitalist system shall remain unchanged. This “One Country, Two Systems” principle was not only stated in Sino-British Joint Declaration but has also been incorporated into the Basic Law. The Basic Law also prescribes the procedures of forming Government, its powers and obligations, as well as the relationship between the Central Authority and the HKSAR (Hong Kong Special Administrative Region). The laws previously in force in Hong Kong, except for any that contravene the Basic Law, shall be maintained after the handover.

The Basic Law consists of 9 chapters and 3 Annexes. The chapters are: 1. General Principles; 2. Relationship between the Central Authority and the HKSAR; 3. Fundamental Rights and Duties of the Residents; 4. Political Structure; 5. Economy; 6. Education, Science, Culture, Sports, Religion, Labour and Social Services; 7. External Affairs; 8. Interpretation and Amendment of the Basic Law and 9. Annex. The 3 annexes are (I) *Method for the Selection of the Chief Executive of the HKSAR*; (II) *Method for the Formation of the Legislative Council of the HKSAR and Its Voting Procedures* and (III) *National Laws to be Applied in the HKSAR*.

Since Hong Kong has a special status under the principle of “One Country, Two Systems”, the interpretation and amendment of the Basic Law requires special attention. According to Articles 158 and 159 of the Basic Law, the power of amendment of the Basic Law shall be vested in the National People's Congress (NPC) and the power of interpretation in the Standing Committee of the National People's Congress (SCNPC). The courts of the HKSAR are authorised in adjudicating cases to interpret on their own the provisions of the Basic Law that fall within the scope of the autonomy of the HKSAR. However, if the courts of the HKSAR, in adjudicating cases, need to interpret the provisions of the Basic Law concerning matters which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the HKSAR, the courts of the HKSAR shall seek an interpretation of the relevant provisions from the SCNPC through the Court of Final Appeal of the HKSAR.

Several controversies concerning the power to interpret the Basic Law have arisen since 1999. The HKSAR government has up to now sought the NPCSC's interpretation of the Basic Law twice (the issue of the Right Abode of the children of Hong Kong Citizens born in China, in 1999; and the issue of Universal Suffrage concerning the election of the Chief Executive and Legislative Council in 2007 and 2008 respectively, in 2004) and the SCNPC interpreted the Basic Law once on its own initiative (the issue of the term of the new Chief Executive after the first Chief Executive resigned).

As a constitutional document, the Basic Law also provides specific guidance on the legislation of Hong Kong. For example, the Basic Law Article 23 states that “the Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.” From 2002 to 2003, the HKSAR government tried to legislate for this Article

23. However, this aroused serious opposition within the society, and the proposal was then shelved.

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