



## The Basic Law

### Enactment of the “One Country, Two Systems” Concept

Before the enactment of the Basic Law, “One Country, Two Systems” was only a basic principle and policy of the CPC and the CPG. Believing that Taiwan could enjoy a high degree of autonomy as a Special Administrative Region within China if peaceful reunification was achieved, the Fifth Session of the Third National People’s Congress (NPC) adopted the Constitution of the PRC in December 1982. Its Article 31 provides that:

*“The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People’s Congress in the light of specific conditions.”*

This Article establishes the constitutional basis for the enactment of the Basic Law.

China has a unitary system in which sovereignty is exercised by the Central Authorities. The Constitution prescribes that the NPC is the supreme institution of authority, vested with national legislative power. Also, according to the Constitution, the NPC is vested with the power to establish special administrative regions and to prescribe the systems for such regions. Therefore, both the establishment of the Hong Kong Special Administrative Regions (HKSAR) and the high degree of autonomy enjoyed by the HKSAR stem from the exercise of sovereignty by the Central Authorities derived from the powers of the Constitution. In other words, powers not delegated to the HKSAR are held by the Central Authorities.

### The Principles of implementing “One Country, Two Systems” in Hong Kong

In sub-paragraph (12) of Part 3 of the Sino-British Joint Declaration, the CPG declared that...

*“The above-stated basic policies of the People’s Republic of China regarding Hong Kong and the elaboration of them in Annex I to this Joint Declaration will be stipulated, in a Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, by the National People’s Congress of the People’s Republic of China, and they will remain unchanged for 50 years.”*

In June 1984, in separate meetings with visiting members of a Hong Kong industrial and commercial delegation comprising prominent Hong Kong figures, Deng Xiaoping said:

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*“The CPG is firm in its position, principles, and policies on Hong Kong. We have stated on many occasions that after the CPG resumes the exercise of sovereignty over Hong Kong in 1997, Hong Kong’s current social and economic systems will remain unchanged; its legal system will basically remain unchanged; its way of life and its status as a free port and as an international trade and financial centre will remain unchanged; and it can continue to maintain or establish economic relations with other countries and regions. We have also stated repeatedly that apart from stationing troops there, Beijing will not send officials to the Government of the HKSAR. This policy also will remain unchanged. We shall station troops there to safeguard our national security and shall not interfere in Hong Kong’s internal affairs. Our policies with regard to Hong Kong will remain unchanged for 50 years, and we will keep our word.”*

On 3 October, during meeting with Hong Kong and Macao compatriots attending the National Day Ceremony, Deng Xiaoping again addressed the question of maintaining Hong Kong’s stability and prosperity.

## **Drafting and Promulgating the Basic Law**

After the Sino-British Joint Declaration was signed, the Third Session of the Sixth NPC decided to form the Drafting Committee for the Basic Law of the HKSAR of the PRC. This Committee was composed of people from all walks of life and experts from the Mainland and Hong Kong. Its task was to prescribe the system to be practised in the HKSAR in the form of law (i.e., the Basic Law), based on the 12 Principles stipulated in the Joint Declaration.

*On 1 July 1985, the Drafting Committee for the HKSAR Basic Law held its first plenary meeting in Beijing. Chairman Ji Pengfei presided at the meeting. (Photograph by Wang Xinqing, courtesy Xinhua News Agency.)*





*National leaders Deng Xiaoping, Li Xiannian, Peng Zhen and Hu Yaobang and Members of the Drafting Committee. (Photograph by Wang Xinqing, courtesy Xinhua News Agency.)*

## 1. Basic Law Drafting Committee

On 18 June 1985, the list of the Members of the Drafting Committee was adopted at the 11th Session of the Standing Committee of the Sixth NPC. The Drafting Committee consisted of 59 members, 36 from the Mainland and 23 from Hong Kong.

From 1-5 July 1985, the Drafting Committee held its first plenary meeting in Beijing, during which the general plan to draft the Basic Law was drawn up. It also decided to authorise the Hong Kong members to jointly initiate and form a non-governmental and broadly representative Consultative Committee for the Basic Law. The members attending this meeting were received by state leaders Deng Xiaoping, Li Xiannian, Peng Zhen, etc.

## 2. The Basic Law Consultative Committee

The Constituent Conference for the Consultative Committee was held when the Hong Kong members of the Drafting Committee returned to Hong Kong. After almost six months of preparations, the Consultative Committee was formally established on 18 December 1985, with Ann Tse-kai as Chairman.

With members from all sectors of society such as industry and commerce, finance, real estate, judiciary, legal services, professional services, education, the media, labour, civil service, political groups, students, social services, neighborhood and community groups, religious organisations and a few foreign nationals, the Consultative Committee was described as “the largest and most

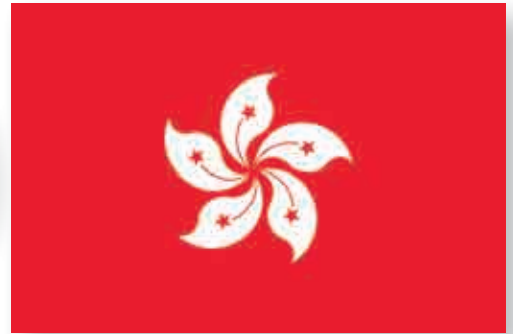


representative advisory organisation in the history of Hong Kong”.

The Consultative Committee formed eight sub-groups, collecting views and comments on issues relating to the Basic Law, namely, (1) the structure of the Basic Law; (2) the political structure; (3) law; (4) residents’ rights and duties; (5) finance, business, and economy; (6) culture, science and technology, education and religion; (7) external affairs; and (8) the relationship between the Central Authorities and the Special Administrative Region (SAR). The Consultative Committee held two rounds of consultation on drafting the Basic Law. The first was from May to September in 1986, the second from February to October in 1989.

The Drafting Committee spent five years on drafting the Basic Law, based on the “One Country, Two Systems” principle. (Appendix 1: Explanations on the Basic Law (Draft) and other Relevant Documents by Ji Pengfei) The Third Session of the Seventh NPC held on 4 April 1990 then adopted the Decision of the National People’s Congress on the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (including Annex I: Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region, Annex II: Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedure, and Annex III: National Laws to be Applied in the Hong Kong Special Administrative Region, and the designs of the regional flag and regional emblem of the Hong Kong Special Administrative Region). On the same day, the Basic Law was promulgated by the President of the PRC Yang Shangkun. The Decision prescribes that:

*Ji Pengfei and Hong Kong Members of the Drafting Committee. (Photo courtesy China News Service.)*



*At its ninth plenary meeting in February 1990, the Drafting Committee voted on the Basic Law (Draft) and the Regional Flag and Regional Emblem (Amendment). A two-thirds majority (34 votes) voted in favour of No. 2 design (centre). (Photograph by Tang Mengzong, courtesy Xinhua News Agency.)*

*“The Basic Law of the Hong Kong Special Administrative Region is constitutional as it is enacted in accordance with the Constitution of the People’s Republic of China and in the light of the specific conditions of Hong Kong. The systems, policies and laws to be instituted after the establishment of the Hong Kong Special Administrative Region shall be based on the Basic Law of the Hong Kong Special Administrative Region.”*



The Basic Law was highly lauded by Deng Xiaoping for its historical and international significance, and as a masterpiece of creativity.

The Third Session of the Seventh NPC also adopted a series of other Decisions, namely, Decision of the National People's Congress on the Establishment of the Hong Kong Special Administrative Region of the People's Republic of China, Decision of the National People's Congress on the Methods for Forming the First Government and the First Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China, and Decision of the National People's Congress Approving the Proposal by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region on the Establishment of the Committee of the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress.

According to the basic principles stipulated in the Sino-British Joint Declaration and in light of the actual situation in Hong Kong, the Basic Law was enacted in accordance with Article 31 of the Constitution, prescribing the establishment of the HKSAR directly under the CPG and the basic contents of the "One Country, Two Systems" principle to be practised in the



*The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China was adopted at the Third Session of the Seventh National People's Congress on 4 April 1990. (Photograph by Li Zhiyuan, courtesy Xinhua News Agency.)*





HKSAR. Thus, the basic principles and policies regarding Hong Kong were translated into a national law with general binding effect, forming the basis for the operation of the HKSAR and for compliance by people all over the country. The enactment of the HKSAR Basic Law marked the completion of the transformation of “One Country, Two Systems” from a concept into a basic policy, and finally a national law.

### **The Establishment and Function of the Preliminary Working Commission, the Preparatory Committee, the Selection Committee and the Provisional Legislative Council**

The CPG remained faithful to its position that China and Britain should fully cooperate to ensure a smooth transition for Hong Kong.

*Having released the constitutional reform package, Governor Christopher Patten visited Beijing on 21 October 1992. During his visit, Patten and Lu Ping—Director of the Hong Kong and Macao Affairs Office of the State Council— held talks. But, the two sides failed to reach an agreement. (Photo courtesy Wen Wei Po.)*

On 9 July 1992, the 28th Governor of Hong Kong, Christopher Patten, was sworn. In the section on “constitutional reform package” of his first policy address on 7 October, Patten proposed to introduce radical changes to the political system of Hong Kong by substantially increasing the number of directly elected seats in the Legislative Council and drastically amending many original laws of Hong Kong. The proposal violated the Sino-British Joint Declaration, the principles of continuity stipulated by the Basic Law, and the

