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策略發展委員會
管治及政治發展委員會

《基本法》有關資本主義經濟的條文

引言

在委員會第一次會議上，委員討論過在政制發展過程中及達至最終普選目標時，如何可有效地確保各項《基本法》原則得以貫徹落實。這些原則包括有利於資本主義經濟的發展和兼顧社會各階層利益，以保障香港的經濟繁榮與社會穩定。

2. 本文件旨在就《基本法》有關資本主義經濟的條文提供背景資料，方便委員會探討有關課題。

選舉制度設計的指導原則

3. 根據《基本法》序言，國家對香港特區的基本方針政策是，為保持香港的繁榮和穩定，並考慮到香港的歷史和現實情況，國家決定設立香港特別行政區，並按照“一國兩制”的方針，不在香港實行社會主義的制度和政策。

4. 姬鵬飛主任在一九九零年三月二十八日第七屆全國人民代表大會第三次會議上發表關於《基本法(草案)》及其有關文件的說明中指出：

“香港特別行政區的政治體制，要符合「一國兩制」的原則，要從香港的法律地位和實際情況出發，以保障

香港的穩定繁榮為目的。為此，必須兼顧社會各階層的利益，有利於資本主義經濟的發展；既保持原政治體制中行之有效的部分，又要循序漸進地逐步發展適合香港情況的民主制度。”

5. 從上述說明可見，在設計行政長官及立法會普選制度時，須考慮有利於香港的經濟繁榮與社會穩定，有助於香港的資本主義經濟發展，同時兼顧社會各階層的利益。這個指導原則體現在《基本法》的條文規定中。

《基本法》有關資本主義經濟的條文

6. 《基本法》的總則（第一章）規定了香港特別行政區實行的制度和政策的基本原則。香港在回歸前已經是一個重要的國際貿易和金融中心，要保持香港繁榮，必須維持香港原有的資本主義制度。《基本法》第 5 條規定：“香港特別行政區不實行社會主義制度和政策，保持原有的資本主義制度和生活方式，五十年不變。”資本主義經濟的基礎乃是私有財產制，因此，《基本法》第 6 條規定：“香港特別行政區依法保護私有財產權。”¹

7. 《基本法》第五章有關條文規定了各種具體的經濟制度，為香港特別行政區的經濟指導方針。有關的條文可分為以下幾方面。

獨立的財政制度

8. 《基本法》第 106 條規定：“香港特別行政區保持財政獨立。”香港特別行政區的財政不納入國家財政之內，由香港特別行政區政府自行管理；但特區政府在自行制定預算時，須按照《基本法》所列明的財政政策。

¹ 王叔文《香港特別行政區基本法導論》第 327 頁

9. 《基本法》第 107 條規定：“香港特別行政區的財政預算以量入為出為原則，力求收支平衡，避免赤字，並與本地生產總值的增長率相適應。”這個規定是根據香港以往成功的經驗，以期使香港特別行政區經濟得以長期實現繁榮穩定。根據王叔文在《香港特別行政區基本法導論》中的分析²，有關規定背後的理念是：

- (a) 制定預算應該以量入為出為原則。如果不顧收入的多少而任意提高支出，必然要造成赤字預算，或者要增加稅收、舉借外債、對內發行公債或者增發通貨來增加收入以應付支出。這只能造成財政上的困難，結果引致經濟危機。
- (b) 財政應該力求收支平衡，避免赤字。在量入為出的預算的基礎上，收入與支出之間保持基本平衡。這樣是一種穩妥的財政政策。如果為了達到某種目的，盡量擴大支出，例如提高福利性開支，即使暫時能使人民福利水平提高，也非長久之計。
- (c) 財政上收支的增長率應該與生產總值的增長率相適應，以不超過或不大量超過生產增長率為原則。生產總值是標誌財富量的，生產總值增加表示社會生產提高，政府在提高生產的基礎上增加收入和支出，這種增加才是確實的。

10. 王叔文於同文亦指出，上述的三點都不是機械的，只就某一年度或某一短期間說的。在個別年度或某一短期間，可能出現例外的情況，或者因為某種特殊原因而不得不採取非常的措施，都是可能的。不過從長遠看，上述三點對於保持一個穩定的經濟還是重要的。

² 王叔文《香港特別行政區基本法導論》第 335 頁

獨立的稅收制度

11. 根據《基本法》第 108 條，“香港特別行政區實行獨立的稅收制度。香港特別行政區參照原在香港實行的低稅政策，自行立法規定稅種、稅率、稅收寬免和其他稅務事項。”這是有見於香港一向實行稅率較低的制度，能有助吸引海外及本地投資，有利香港持續穩定繁榮。

保持私有制的經濟

12. 在“一國兩制”下，《基本法》規定了要在香港保留私有制經濟。除了第 6 條外(見上文第 6 段)，第 105 條規定：“香港特別行政區依法保護私人和法人財產的取得、使用、處置和繼承的權利，以及依法徵用私人和法人財產時被徵用財產的所有人得到補償的權利。”

其他

13. 除財政和稅制方面外，《基本法》第五章亦在金融、貿易、工商業、土地契約、航運、民用航空等方面作了規定。姬鵬飛主任在有關《基本法(草案)》的說明中指出，這些規定對保障香港的資本主義經濟機制的正常運行，保持香港的國際金融中心地位和自由港地位很有必要。

《基本法》有關兼顧社會各階層利益的條文

14. 委員會第一次會議的討論文件 CSD/GC/1/2005 已指出，香港的經濟發展歷史說明，經濟繁榮主要倚靠工商界、中產階層、專業人士、勞工階層和社會其他各階層的共同努力。要達到保障繁榮穩定的目標，必須妥善處理兼顧社會各階層的利益。根據這個原則以及當時的實際情況，《基本法》附件二規定第一到第三屆的立法會保留一半議席由功能界別

選舉產生³。姬鵬飛主任在有關說明中，以《基本法》附件二就立法會表決程序的規定為例，說明何謂兼顧各階層的利益。

15. 全國人民代表大會常務委員會在 2004 年 4 月 26 日就 2007/08 行政長官和立法會的產生辦法所作的《決定》，除了指出兩個選舉辦法應根據實際情況和循序漸進的原則而規定，最終達至普選的目標，亦提出兩個產生辦法的任何改變，“都應遵循與香港社會、經濟、政治的發展相協調，有利於社會各階層、各界別、各方面的均衡參與，有利於行政主導體制的有效運作，有利於保持香港的長期繁榮穩定等原則”。

總結

16. 從上文可見，在“一國兩制”的方針下，在達致最終普選目標的過程中，以及在制定落實普選的模式時，我們須確保上述原則得以貫徹，有利資本主義經濟的發展和兼顧社會各階層的利益。

政制事務局

2006 年 3 月

³ 全國人民代表大會常務委員會在 2004 年 4 月 26 日所作的《決定》，規定第四屆立法會功能團體和分區直選產生的議員各佔半數的比例維持不變。

**Commission on Strategic Development
Committee on Governance and Political Development**

Provisions in the Basic Law concerning the Capitalist Economy

Introduction

At the first meeting of the Committee, Members discussed how we could effectively ensure that the various Basic Law principles could be fully implemented in the process of constitutional development and when the ultimate aim of universal suffrage is attained. These principles include facilitating the development of the capitalist economy and meeting the interests of different sectors of society, so as to maintain the stability and prosperity of Hong Kong.

2. This paper aims at providing background information on the Basic Law provisions concerning the capitalist economy to facilitate members' discussion on the subject.

Guiding principles for designing the electoral system

3. According to the Preamble of the Basic Law, the basic policies of the State regarding the Hong Kong Special Administrative Region ("HKSAR") are that to maintain the prosperity and stability of Hong Kong, and to take account of its history and realities, the State has decided that a HKSAR will be established, and that under the principle of "One Country, Two Systems", the socialist system and policies will not be practised in Hong Kong.

4. In submitting the Basic Law (Draft) and related documents at the Third Session of the Seventh National People's Congress (NPC) on 28 March 1990, Director Ji Pengfei made the following explanation:

"The political structure of the HKSAR should accord with the principle of 'One Country, Two Systems' and aim to maintain stability and prosperity in Hong Kong in line with its legal status and actual situation. To this end, consideration must be given to the interests of the different sectors of society and the structure must facilitate the development of the capitalist economy in the Region. While the part of the existing political structure proven to be effective

will be maintained, a democratic system that suits Hong Kong's reality should gradually be introduced.”

5. From the above explanation, it can be seen that in designing a universal suffrage system for electing the Chief Executive and for forming the Legislative Council (LegCo), consideration must be given to how it could contribute to Hong Kong's prosperity and stability, facilitate the development of its capitalist economy, and meet the interests of different sectors of society. This guiding principle is embodied in the provisions of the Basic Law.

Provisions in the Basic Law concerning the capitalist economy

6. The General Principles of the Basic Law (Chapter 1) provide for the fundamental principles on the systems and policies to be practised in the HKSAR. Before Reunification, Hong Kong was already an important international trade and financial centre. To preserve the prosperity of Hong Kong, it is necessary to maintain its previous capitalist system. Article 5 of the Basic Law provides that “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.” As the foundation of a capitalist economy is a system of private ownership of property, Article 6 of the Basic Law stipulates that “the HKSAR shall protect the right of private ownership of property in accordance with law.”^{Note 1}

7. The various specific economic systems are prescribed in Chapter V of the Basic Law, which provide guiding principles for the economy of the HKSAR. The provisions deal with the following areas.

Independent financial system

8. Article 106 of the Basic Law stipulates that “the HKSAR shall have independent finances.” The finances of the HKSAR are not incorporated into the finances of the State, but are managed by the SAR Government on its own. However, when drawing up its budget on its own, the SAR Government shall follow the fiscal principles laid down in the Basic Law.

9. Article 107 of the Basic law stipulates that “the HKSAR shall follow the principle of keeping expenditure within the limits of revenues in drawing up its budget, and strive to achieve a fiscal balance, avoid deficits and keep the

^{Note 1} Wang Shuwen (ed.), *Introduction to the Basic Law of the Hong Kong Special Administrative Region*, p.327

budget commensurate with the growth rate of its gross domestic product.” This provision is based on Hong Kong’s successful experience in the past, and aims at maintaining the long-term prosperity and stability of the HKSAR. According to the analysis in *Introduction to the Basic Law of the Hong Kong Special Administrative Region* by Wang Shuwen (ed.),^{Note 2} the rationale behind this provision is as follows.

- (a) When drawing up a budget, the principle of keeping expenditures within the limits of revenues shall be followed. If expenditures are allowed to increase without regard to revenues, a deficit is bound to occur, or the HKSAR will need to increase taxes, obtain foreign loans, issue government bonds in the Region or increase money supply to defray its expenditures. This will only lead to financial difficulty, resulting in economic crisis.
- (b) Efforts should be made to achieve a fiscal balance and avoid deficits. To keep expenditures within the limits of revenues, a basic balance between revenues and expenditures should be maintained. This is a prudent financial policy. If expenditures, such as welfare expenditures, are greatly increased to attain a certain aim, it would not be a long-term solution even if the welfare level of the community could be temporarily raised.
- (c) The growth rate of revenues and expenditures should be commensurate with the growth rate of gross domestic product, that is, they should not, in principle, exceed or greatly exceed the growth rate of production. Gross domestic product is an indicator of the level of wealth. An increase in gross domestic product represents an increase in production in the economy. Only when the government increases its revenues and expenditures on the basis of enhanced production can such an increase be considered solid.

10. Wang Shuwen also stated in the same article that the three points mentioned above are not mechanical, applying only to a certain fiscal year or a certain short period of time. In a given fiscal year or a given short period of time, there may be exceptional circumstances, or extraordinary measures may have to be in place for some specific reasons. However, in the long run, the three points above are crucial to maintaining a stable economy.

^{Note 2} Wang Shuwen (ed.), *Introduction to the Basic Law of the Hong Kong Special Administrative Region*, p.566.

Independent Taxation

11. In accordance with Article 108 of the Basic Law, “The HKSAR shall practise an independent taxation system. The HKSAR shall, taking the low tax policy previously pursued in Hong Kong as reference, enact laws on its own concerning types of taxes, tax rates, tax reductions, allowances and exemptions, and other matters of taxation.” This provision has regard to the fact that the relatively low tax system adopted by Hong Kong has helped attract overseas and local investments, and has contributed to Hong Kong’s continuous stability and prosperity.

Maintaining a Private Ownership Economy

12. Under the principle of “One Country, Two Systems”, the Basic Law stipulates that Hong Kong shall remain a private ownership economy. Apart from Article 6 (see paragraph 6 above), Article 105 provides that “The HKSAR shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property.”

Others

13. Apart from the financial and taxation systems, Chapter V of the Basic Law also contains provisions on monetary affairs, trade, industry and commerce, land leases, shipping and civil aviation. Director JI Pengfei pointed out in his Explanation of the Basic Law (Draft) that these provisions were indispensable to ensuring the normal operation of Hong Kong’s capitalist economy and maintaining its status as an international financial centre and a free port.

Provisions of the Basic Law on Meeting the Interests of Different Sectors of Society

14. It is stated in Paper CSD/GC/1/2005 submitted for the first meeting that, as can be seen from the history of Hong Kong’s economic development, economic prosperity is largely dependent on the joint efforts of the industrial and business sectors, the middle class, professionals, the working class, and other sectors of society. To achieve the aim of maintaining prosperity and stability, we must deal with properly the issue of meeting the interests of different sectors. In accordance with this principle and having regard to the actual situation at that

time, Annex II to the Basic Law stipulates that half of the seats in LegCo would be returned by functional constituencies from its first to third terms.^{Note 3} In his statement, Director JI cited the voting procedures in LegCo stipulated in Annex II to the Basic Law as an example of meeting the interests of different sectors of society.

15. In accordance with the Decision of the Standing Committee of NPC (NPCSC) of 26 April 2004 on the methods for selecting the CE in 2007 and for forming the LegCo in 2008, the two methods shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress, with universal suffrage as the ultimate aim. The Decision also states that any change relating to the two methods “shall conform to principles such as being compatible with the social, economic, political development of Hong Kong, being conducive to the balanced participation of all sectors and groups of the society, being conducive to the effective operation of the executive-led system, being conducive to the maintenance of the long-term prosperity and stability of Hong Kong.”

Conclusion

16. It can be seen from the above that, under the principle of “One Country, Two Systems”, we must ensure that, in the process of attaining the ultimate aim of universal suffrage and in designing a model for implementing universal suffrage, the above principles can be fully implemented, facilitating the development of the capitalist economy and meeting the interests of different sectors of society.

Constitutional Affairs Bureau
March 2006

^{Note 3} The “Decision” of the NPCSC of 26 April 2004 stipulates that the ratio between members returned by functional constituencies and members returned by geographical constituencies through direct elections, who shall respectively occupy half of the seats, is to remain unchanged in the fourth term of the Legislative Council.