

The Political Structure of the HKSAR – A Holistic Perspective

1. On 1 July 1997, the HKSAR was established as a local administrative region of the PRC.^{1 2} New institutions and a new political structure have been put in place to facilitate the HKSAR's exercise of its high degree of autonomy under the Basic Law and the implementation of the "one country, two systems" policy. Chapter IV (Political Structure) of the Basic Law defines the formation and powers of and inter-relationship among the executive, legislature and judiciary, as well as the powers and functions of the CE, the HKSARG, the LegCo and the courts.³ The nature of the HKSAR's political structure has given rise to much heated discussion both during the drafting stage and after the enactment of the Basic Law. Some opined that the political structure of the HKSAR is based on the principle of separation of powers.⁴ Narrating the process of the drafting of Chapter IV of the Basic Law, Xiao Weiyun, a member of the Basic Law Drafting Committee, observed:⁵

"Some people advocated an executive-led system, maintaining that the power of the executive

authorities should be further strengthened, while others favoured a legislature-orientated pattern, maintaining that the power of the legislature should be further strengthened."⁶

2. The design of the HKSAR's political structure is set out in Chapter IV of the Basic Law and it lays down an executive-led system⁷ headed by the CE. Hong Kong's political structure and the relationship between the executive authorities, the legislature and the judiciary will be the focus of this article. Any discussion of the political structure of the HKSAR, however, will be incomplete without properly locating the same within the constitutional framework of the Region's relationship with the Central Authorities. An accurate understanding of the relationship between the Central Authorities and the HKSAR is pivotal to the successful implementation of the "one country, two systems" policy as there are interfaces where the two systems, *i.e.* the Mainland system and the Hong Kong system, "meet and interact within the constitutional framework set by

¹ The HKSAR was established in accordance with the Basic Law and the *Decision of the National People's Congress on the Establishment of the Hong Kong Special Administrative Region* adopted by the NPC at the same session as the adoption of the Basic Law on 4 April 1990.

² For a detailed discussion of the origin, evolution and purpose of the "one country, two systems" policy as well as the establishment of the HKSAR, please refer to the "Focus" article in Issue No. 22, *Basic Law Bulletin*, December, 2020.

³ Ji Pengfei, *Explanations on "The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Draft)" and Its Related Documents*, addressing the Third Session of the Seventh NPC on 28 March 1990 ("Ji Pengfei's Explanations").

⁴ See for example, Ghai, Y., *Hong Kong's New Constitutional Order*, 2nd edn., Hong Kong University Press, 1999, p. 262. In *Ng Siu Tung & Others v Director of Immigration* (2002) 5 HKCFAR 1, the CFA held at paragraph 141 that the doctrine of the separation of powers is an integral element in the common law system which prevails in Hong Kong.

⁵ Xiao Weiyun, *One Country, Two Systems: An Account of the Drafting of the Hong Kong Basic Law*, Peking University Press, 2001, p. 247.

⁶ Remarks made by Deng Xiaoping at the early stage of the drafting of the Basic Law may illustrate that the Chinese leaders had no intention to incorporate the doctrine of separation of powers into the Basic Law. At a meeting with the Basic Law Drafting Committee on 16 April 1987, Deng Xiaoping had the following comments on the system of government to be established in the HKSAR:

"Hong Kong's system of government should not be completely westernized; no Western system can be transplanted in total. At present Hong Kong is not operating the same system as those in Great Britain and the United States and it has been like this for a century and a half. I am afraid it would not be appropriate for Hong Kong's system to be a total copy of theirs with, for example, the implementation of separation of powers or a British or American parliamentary system. It may not be appropriate to judge whether Hong Kong's system is democratic on the basis whether it has those features." *Deng Xiaoping on the Question of Hong Kong*, 2nd edn., Joint Publishing (H.K.) Co., Ltd., 1993, p. 42.

⁷ The CA held in *Leung Kwok Hung v Secretary for Justice (No 2)* [2020] 2 HKLRD 771, at paragraph 92, that under the design of the Basic Law, the Government is very much an executive-led government.



the Constitution and the Basic Law.”⁸ The following will first provide a brief overview of the relationship between the Central Authorities and the HKSAR under the Basic Law, followed by a more detailed analysis of the relationship between the three branches of government under Chapter IV.

Relationship between the Central Authorities and the HKSAR

3. The relationship between the Central Authorities and the HKSAR is an important issue defined by the Basic Law and is touched upon not only in Chapter II but also in Chapter I and other chapters of the Basic Law as well as its Preamble. The Preamble highlights the objectives of the establishment of the HKSAR and the adoption of the “one country, two systems” policy; it summarizes the past and present of Hong Kong; and it stipulates the source of the Region’s powers.⁹ It reads as follows:

“Hong Kong has been part of the territory of China since ancient times; it was occupied by Britain after the Opium War in 1840. On 19 December 1984, the Chinese and British Governments signed the Joint Declaration on the Question of Hong Kong, affirming that the Government of the People’s Republic of China will resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997, thus fulfilling the long-cherished common aspiration of the Chinese people for the recovery of Hong Kong.

Upholding national unity and territorial integrity, maintaining the prosperity and stability of Hong Kong, and taking account of its history and realities, the People’s Republic of China has decided

that upon China’s resumption of the exercise of sovereignty over Hong Kong, a Hong Kong Special Administrative Region will be established in accordance with the provisions of Article 31 of the Constitution of the People’s Republic of China, and that under the principle of ‘one country, two systems’, the socialist system and policies will not be practised in Hong Kong. The basic policies of the People’s Republic of China regarding Hong Kong have been elaborated by the Chinese Government in the Sino-British Joint Declaration.

In accordance with the Constitution of the People’s Republic of China, the National People’s Congress hereby enacts the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, prescribing the systems to be practised in the Hong Kong Special Administrative Region, in order to ensure the implementation of the basic policies of the People’s Republic of China regarding Hong Kong.”¹⁰

Unitary State and SARs

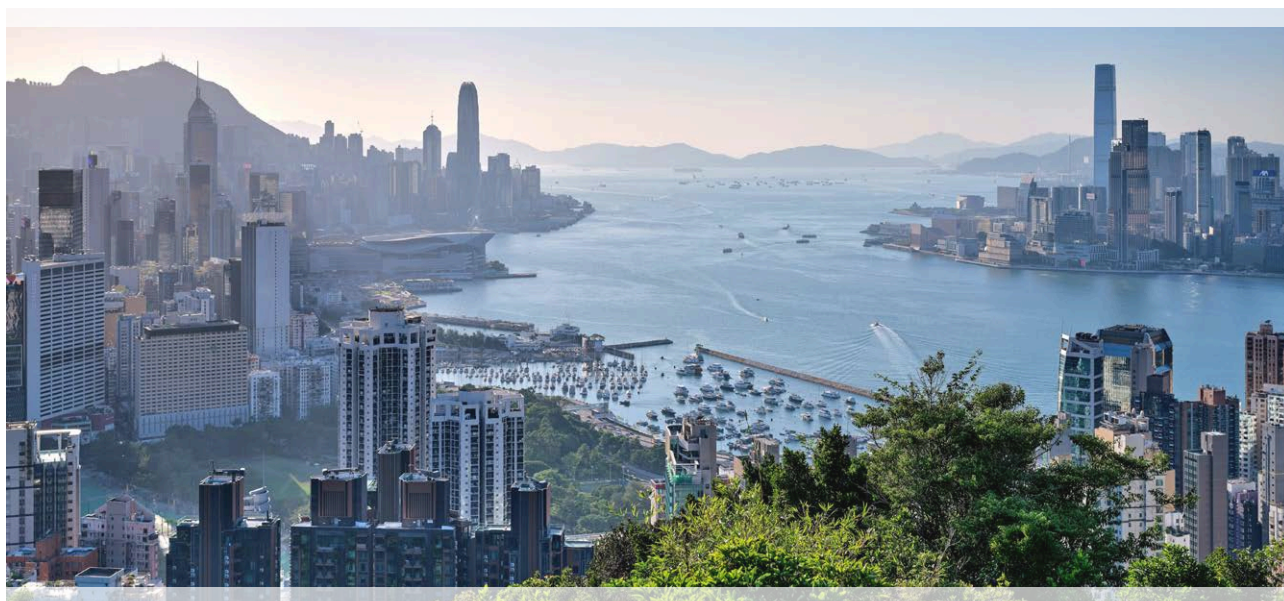
4. The PRC is a unitary state under which the Central Authorities exercise unified leadership over all local authorities. Article 3 of the Constitution provides: “The division of functions and powers between the central and local state institutions shall honor the principle of giving full play to the initiative and motivation of local authorities under the unified leadership of the central authorities.”¹¹ The administrative areas of the PRC are delineated into provinces, autonomous regions and cities directly under central government jurisdiction, *etc.* under Article 30 of the Constitution while Article 31 authorizes the establishment of a new

⁸ *Kwok Cheuk Kin v Secretary for Justice* [2021] 3 HKLRD 140 (“*Kwok Cheuk Kin*”) at paragraph 60. In *Kwok Cheuk Kin*, the applicants applied for judicial review of the constitutionality of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance (Cap. 632) which establishes a Mainland Port Area in the West Kowloon Station to facilitate the co-location arrangement of customs, immigration and quarantine procedures as required under the Mainland law and the HKSAR law in one place. The application was dismissed by the CFI which found Cap. 632 to be consistent with the Basic Law. The applicants’ appeals were dismissed by the CA.

⁹ *Collection of Views from Different Sectors of Hong Kong on the Structure of the Basic Law and Other Issues, April 1986* in Dr. Simon Lee Hoey, *Overview of the Drafting Process of the Basic Law of Hong Kong* (published by the Joint Publishing (H.K.) Co., Ltd., 2012) Vol. 3, p. 1281.

¹⁰ According to Article 62(3) of the Constitution, the NPC exercises the function and power to enact and amend criminal, civil, state institutional and other basic laws. Under the PRC’s hierarchy of laws, a basic law is at a level immediately below the Constitution.

¹¹ The English translation of the Constitution used in this article follows that adopted by Instrument A7 of the Hong Kong e-Legislation, which is reproduced from the NPC website.



kind of administrative area, *i.e.* the SARs. Article 31 provides: “The state may establish special administrative regions when necessary. The systems instituted in special administrative regions shall, in light of specific circumstances, be prescribed by laws enacted by the [NPC].”¹²

5. Apart from the Preamble of the Basic Law, BL 11 also identifies Article 31 of the Constitution as the constitutional basis of the Basic Law and the Region’s different systems:

“In accordance with Article 31 of the Constitution of the People’s Republic of China, the systems and policies practised in the Hong Kong Special Administrative Region, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, and the relevant policies, shall be based on the provisions of this Law.

No law enacted by the legislature of the Hong Kong

Special Administrative Region shall contravene this Law.”

6. The HKSAR is a special administrative region of the PRC under the unified leadership of the Central Authorities of the state. National unity and territorial integrity being the key to a unitary state, BL 1 stipulates that the HKSAR is an inalienable part of the PRC. The provision spells out unequivocally the PRC’s sovereignty over Hong Kong, at the same time reflects the history and reality described in the Preamble to the Basic Law.

High Degree of Autonomy and Powers of Central Authorities

7. Under BL 2, the NPC authorizes the HKSAR to exercise a high degree of autonomy.¹³ BL 2 highlights that the grant of autonomy is a decision of the NPC.¹⁴ Ghai pointed out that the high degree of autonomy enjoyed by the HKSAR “is a manifestation of Chinese sovereignty”.¹⁵ The NPC is the highest state organ of power, the NPCSC is its permanent organ, together they exercise the legislative power of the state.¹⁶ The

¹² See also Article 62(14) of the Constitution, giving the power and function to the NPC to decide on the establishment of special administrative regions and the systems to be instituted there.

¹³ BL 2 provides that:

“The [NPC] authorizes the [HKSAR] to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law.”

¹⁴ It is also the NPC’s decision to establish the HKSAR, see the *Decision of the National People’s Congress on the Establishment of the Hong Kong Special Administrative Region* in note 1 above.

¹⁵ Ghai, *ibid*, p. 146.

¹⁶ Articles 57 and 58 of the Constitution.



NPC enacted the Basic Law in accordance with the Constitution, which together form the constitutional basis of the HKSAR. The NPCSC exercises the powers and functions to interpret the Constitution and laws, and to oversee the work of the State Council, *i.e.* the CPG.¹⁷ The NPCSC also oversees the enforcement of the Constitution including the implementation of Article 31.¹⁸ The CPG is the executive organ of the NPC, the highest state administrative organ of the State.¹⁹

8. The NPC, NPCSC, CPG are the Central Authorities specifically referred to in the Basic Law. The relevant provisions in the Constitution providing for their functions and powers, and the provisions relating to national flag and national anthem *etc.*, are applicable to the HKSAR, whereas provisions relating to local people's congresses at all levels; local people's governments at all levels; autonomous organs of ethnic autonomous areas; commissions of supervision; people's courts and people's procuratorates, and other provisions pertaining to the systems practised in the Mainland, are not applicable in view of the different systems applied in the HKSAR and the Mainland under the policy of "one country, two systems".²⁰

9. Chapter II of the Basic Law on the "Relationship between the Central Authorities and the HKSAR" starts off with BL 12: "The [HKSAR] shall be a local administrative region of the [PRC], which shall enjoy a high degree of autonomy and come directly under the [CPG]." According to Ji Pengfei's Explanations, "Article 12 of the Basic Law stipulates, 'The [HKSAR] shall be a local administrative region of the [PRC], which shall enjoy a high degree of autonomy and come directly under the [CPG]'. This stipulation defines the legal status of the [HKSAR] and constitutes the basis for specifying the Region's limits of power and its relationship with the Central Authorities".

10. Chapter II and other provisions of the Basic Law make it plain that the HKSAR is an administrative area of the PRC. While it is a special administrative region enjoying a high degree of autonomy, it comes directly under the CPG. The HKSAR, as a local administrative region operating within the PRC, is subject to the oversight of the Central Authorities in the exercise of its executive, legislative powers as well as its power to interpret the provisions of the Basic Law. The Central Authorities exercise overall jurisdiction over the HKSAR.²¹

11. Chapter II provides guidance on how the high degree of autonomy of the HKSAR shall be exercised within the unitary state under the unified leadership of the Central Authorities. Pursuant to BL 43, the CE, who is both the head of the HKSAR and the HKSARG, is accountable to the CPG.²² Like the executive government, the local legislature is also subject to the oversight of the Central Authorities. Under BL 17, the HKSAR is vested with legislative power but laws enacted by the LegCo shall be submitted to the NPCSC for record and the latter retains the power to return the HKSAR legislation that are not in conformity with the provisions of the Basic Law regarding affairs that are within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the Region. The NPCSC also has power under BL 18 to apply to the HKSAR those national laws relating to defence, foreign affairs and other matters outside the limits of the autonomy of the HKSAR and to declare a state of emergency in the HKSAR. Under BL 19, the HKSAR courts have jurisdiction over all cases in the Region but the courts have no jurisdiction over acts of state such as defence and foreign affairs. Further, the power of the HKSAR courts to interpret the Basic Law under BL 158 in adjudication of cases is subject to the NPCSC's general and unqualified power to interpret the Basic Law. An

¹⁷ Article 67(1), (4), and (6) of the Constitution.

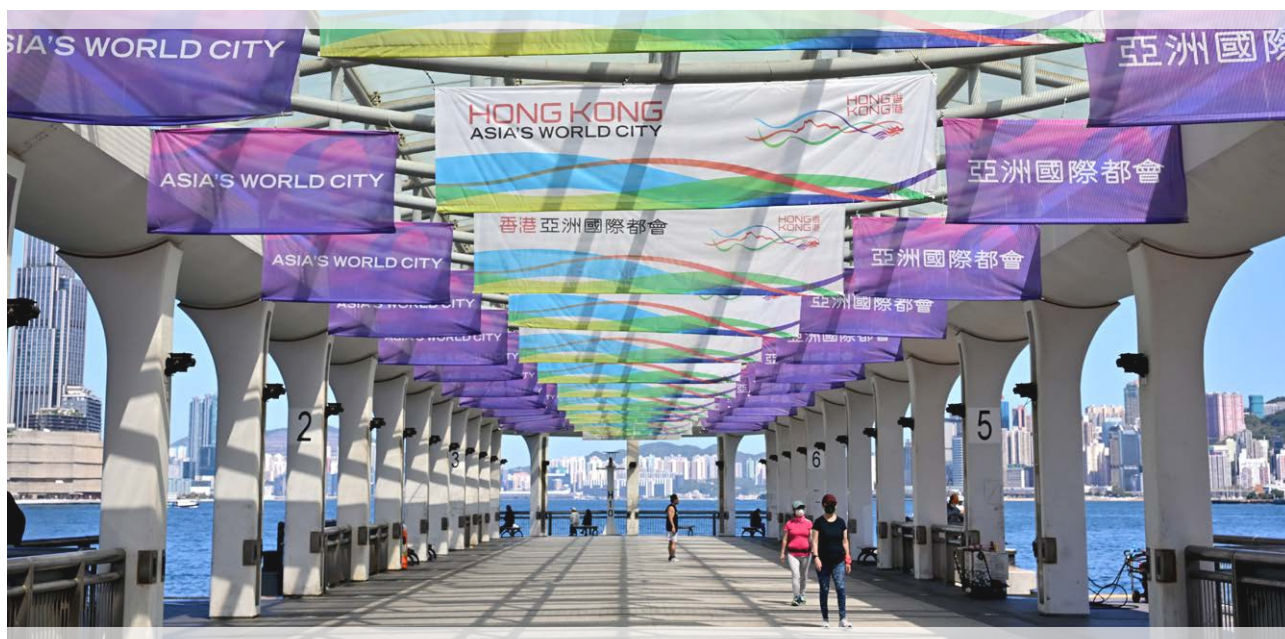
¹⁸ Article 67(1) of the Constitution.

¹⁹ Article 85 of the Constitution.

²⁰ In 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* adopted by the NPC at the same session as the adoption of the Basic Law on 4 April 1990, after referring to Article 31 of the Constitution, it is stated that the Basic Law is constitutional as it is enacted in accordance with the Constitution and in the light of the specific conditions of Hong Kong. It goes on to provide that the systems, policies and laws to be instituted after the establishment of the HKSAR shall be based on the Basic Law of the HKSAR.

²¹ In the State Council's White Paper on *"The Practice of the 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region"* published in June 2014, the State Council pointed out that "the central government exercises overall jurisdiction over the HKSAR".

²² Under BL 43, the CE is also accountable to the HKSAR in accordance with the provisions of the Basic Law.



NPCSC interpretation has effect from 1 July 1997 and the interpretation binds all institutions of the HKSAR including its courts though the NPCSC interpretation would not affect judgments previously rendered.²³ In addition, matters symbolizing state sovereignty such as foreign affairs²⁴ and defence²⁵ are the responsibilities of the Central Authorities and fall outside Hong Kong's high degree of autonomy.

Interfaces between the Two Systems

12. Interfaces between the Mainland system and the Hong Kong system were discussed by the CA in *Kwok Cheuk Kin* where the Court reminded us that “the Mainland system and the Hong Kong system, though kept separate and distinct under the Basic Law, are within one country and one national constitutional order.”²⁶ In that case, the CA considered, *inter alia*, the effect of a decision made by the NPCSC on 27 December 2017 (“NPCSC Decision”) which confirms that the Co-operation Arrangement made between the Mainland and the HKSAR²⁷ is consistent with the principle of “one country, two systems” and is consistent

with the Constitution and the Basic Law. The CA opined at paragraph 66 that “[u]nder both the Constitution and the Basic Law, the NPCSC has the ultimate authority and power to decide if a subject matter lying at the interface of the two systems conforms with the Constitution and the Basic Law. The authority of the [NPCSC] to make such decision must be fully acknowledged and respected in the HKSAR.”

13. On the basis that the Government did not submit that the NPCSC Decision is binding under Hong Kong law and the CA had to determine the case according to the parties’ submissions before the court, the CA agreed with the CFI that the NPCSC Decision is highly persuasive. The CA held:

“ 69. ... it is axiomatic that a subject matter lying at the interface must conform with the Basic Law under each of the Mainland and Hong Kong systems. And on the question of conformity, the two systems must operate coherently. The two systems being within one country and one national constitutional order requires it to be so. When the

²³ *Lau Kong Yung & Others v Director of Immigration* (1999) 2 HKCFAR 300.

²⁴ BL 13.

²⁵ BL 14.

²⁶ *Kwok Cheuk Kin*, above, at paragraph 60.

²⁷ Referring to the “Co-operation Arrangement between the Mainland and the Hong Kong Special Administrative Region on the Establishment of the Port at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link for Implementing Co-location Arrangement” signed on 18 November 2017.



[NPCSC] has by way of a decision confirmed that an arrangement conforms with the Basic Law, its decision as a matter of the Mainland law is final. This is a crucial fact that the courts in Hong Kong must fully acknowledge and accept when approaching a constitutional challenge that the subject matter contravenes the Basic Law under Hong Kong law. The Standing Committee's authoritative view expressed in the NPCSC Decision must therefore carry a highly persuasive weight in the courts' construction of the Basic Law."

14. The CA further considered at paragraph 70 that since the case involves a matter which concerns the relationship between the Central Authorities and the HKSAR, subject to the satisfaction of the "necessity condition",²⁸ an NPCSC interpretation would be sought under BL 158(3) should the case reach the CFA. In such case, "[c]ommon sense dictates that in all probability, the NPCSC, after consulting the Basic Law Committee, would give the same answer in its interpretation."

Interfaces in National Security Matters

15. Interfaces may arise where both the CPG and the HKSAR bear responsibility for the same subject-matter, e.g. national security. National security is a matter outside the limits of the HKSAR's autonomy and within the purview of the Central Authorities.²⁹ As stated clearly in the *Decision on Establishing and Improving the Legal System and Enforcement Mechanisms for the HKSAR to Safeguard National Security*³⁰ ("528 Decision") and the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("NSL"),³¹ the CPG has an overarching responsibility for national security affairs relating to the HKSAR, and it is the HKSAR's constitutional responsibilities to safeguard national sovereignty, unity and territorial integrity.³²

16. The overall framework of the NSL reflects a clear delineation of, as well as the interface between, the respective roles and duties of the CPG and the HKSAR in safeguarding national security in the HKSAR. The HKSAR is imposed with a duty to handle specified matters regarding national security under the NSL and is authorized by the Central Authorities to handle cases concerning offences under the NSL except those falling within the circumstances under NSL 55.

17. The NSL provides for the establishment of the various bodies in the HKSAR by the CPG and the HKSAR, and their duties in safeguarding national security. The Office for Safeguarding National Security of the CPG in the HKSAR ("OSNS") is set up to perform its mandate for safeguarding national security and exercise relevant powers in strict compliance with the law.³³ The Committee for Safeguarding National Security of the HKSAR ("Committee") chaired by the CE shall be responsible for affairs relating to and assume primary responsibility for safeguarding national security in the HKSAR.³⁴ The Committee has a National Security Adviser, who is appointed by the CPG and provides advice on matters relating to the duties and functions of the Committee in safeguarding national security. The National Security Adviser shall sit in on meetings of the Committee.³⁵ A department for safeguarding national security with law enforcement capacity is set up in the Police Force,³⁶ and a specialized division responsible for the prosecution of offences endangering national security and other related legal work is set up in the Department of Justice.³⁷

18. Chapter II of the NSL sets out various specific duties of the bodies of the HKSAR in safeguarding national security. Such duties include the requirements for (i) the HKSAR to complete, as early as possible, legislation for safeguarding national security as

²⁸ See *Ng Ka Ling & Others v Director of Immigration* (1999) 2 HKCFAR 4, paragraph 89.

²⁹ *HKSAR v Lai Chee Ying* (2021) 24 HKCFAR 33.

³⁰ Adopted by the NPC on 28 May 2020.

³¹ Pursuant to the 528 Decision, the NSL was enacted by the NPCSC on 30 June 2020. It was added to the list of national laws in Annex III to the Basic Law and applies in the HKSAR by way of promulgation on the same day.

³² See Article 3 of the 528 Decision and NSL 3.

³³ NSL 48.

³⁴ NSL 12.

³⁵ NSL 15.

³⁶ NSL 16.

³⁷ NSL 18.



stipulated in the Basic Law and refine relevant laws;³⁸ (ii) the law enforcement and judicial authorities to fully enforce the NSL and other relevant laws;³⁹ (iii) the HKSAR to strengthen its work on safeguarding national security and prevention of terrorist activities, and take necessary measures to strengthen public communication, guidance, supervision and regulation over matters concerning national security, such as those relating to schools, universities, social organizations, the media, and the internet;⁴⁰ and (iv) the HKSAR to promote national security education in schools and universities and through social organizations, the media, the internet and other means to raise the awareness of Hong Kong residents of national security and of the obligation to abide by the law.⁴¹ In addition, the CE shall be accountable to the CPG for affairs relating to safeguarding national security in the HKSAR, and shall submit an annual report on the performance of duties of the HKSAR in safeguarding national security.⁴²

19. The Committee set up under NSL 12 is responsible for analyzing and assessing developments, and formulating policies in relation to safeguarding

national security in the HKSAR; advancing the development of the legal system and enforcement mechanisms for safeguarding national security; and coordinating major work and significant operations for safeguarding national security in the HKSAR.⁴³ The Committee shall be under the supervision of and accountable to the CPG.

20. Chapter V of the NSL stipulates the mandates, jurisdiction, functions and duties of the OSNS established by the CPG in the HKSAR. The mandate of the OSNS, as set out clearly in NSL 49, includes analyzing and assessing developments in relation to safeguarding national security in the HKSAR; providing opinions and proposals on major strategies and important policies for safeguarding national security; overseeing, guiding, coordinating with and providing support to the HKSAR in the performance of its duties for safeguarding national security. It shall also establish a mechanism of coordination with the Committee to oversee and provide guidance on the work of the HKSAR for safeguarding national security.⁴⁴ The relevant departments of the HKSARG shall provide necessary

³⁸ NSL 7. Pursuant to BL 23, the HKSAR is authorized by the Central Authorities to enact local legislation to prohibit specified acts endangering national security.

³⁹ NSL 8.

⁴⁰ NSL 9.

⁴¹ NSL 10.

⁴² NSL 11.

⁴³ NSL 14.

⁴⁴ NSL 53.



facilitation and support to the OSNS in performing its mandate in accordance with the law.⁴⁵

21. A good example showing the interface between the CPG and the HKSARG in safeguarding national security is the jurisdiction over cases concerning offences under the NSL. NSL 40 provides that the HKSAR shall have jurisdiction over cases concerning offences under the NSL, except under the specific circumstances as set out in NSL 55.

22. NSL 55 provides for three specified circumstances where the OSNS may exercise jurisdiction over offences under the NSL, namely:

- (a) the case is complex due to the involvement of a foreign country or external elements, thus making it difficult for the HKSAR to exercise jurisdiction over the case;
- (b) a serious situation occurs where the HKSARG is unable to effectively enforce the NSL; or
- (c) a major and imminent threat to national security has occurred.

23. It is self-evident that the specified circumstances all concern complex and exceptional situations where there will be difficulties for the HKSAR to exercise jurisdiction and only the CPG will have sufficient capability to effectively handle such cases. Further, OSNS shall exercise jurisdiction over a case only when a request made by the HKSARG or OSNS has been approved by the CPG.

24. The provision of a dual-track mechanism on jurisdiction over cases concerning offences under the NSL is a significant manifestation of the Central Authorities' exercise of overall jurisdiction over the HKSAR and the adherence to the "one country, two systems" policy. It also fully demonstrates the confidence the Central Authorities have in the HKSAR in authorizing the HKSAR to exercise jurisdiction over the vast majority of cases concerning offences endangering national security both under the NSL and local laws of the HKSAR.

Jurisprudence on the system of government

25. As all powers of the HKSAR are delegated powers, the term "separation of powers" may be inapt to describe the Region's political structure and may lead to confusion that the HKSAR enjoys inherent powers of its own. While the term has been used by the HKSAR courts on various occasions, the courts did not attempt to define the term. For instance, the CFA held in *Lau Cheong & Another v HKSAR* (2002) 5 HKCFAR 415 ("*Lau Cheong*") at paragraph 101 that "[t]he Basic Law enshrines the principle that there must be a separation of powers as between the executive, the legislature and the judiciary." It should be noted that the use of the term in *Lau Cheong* is merely to reinforce the CFA's view that it is appropriate for the courts to give weight to the views and policies adopted by the legislature on the penalty of murder.⁴⁶ The CFA did not define the term; nor did the Court discuss what the term entails.

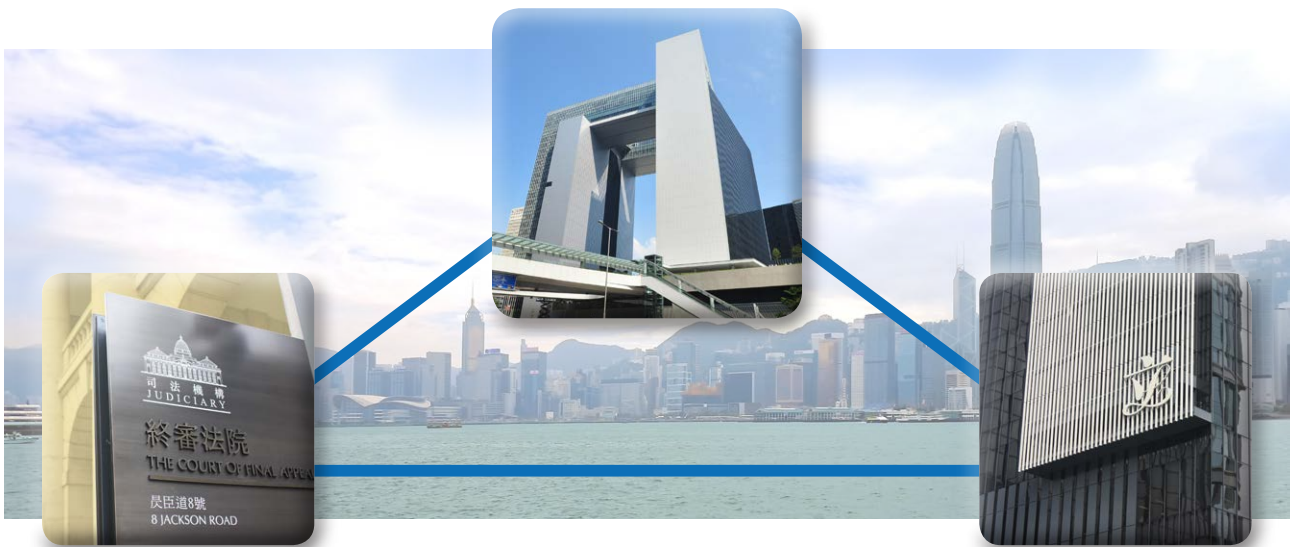
26. In *Luk Ka Cheung v Market Misconduct Tribunal* [2009] 1 HKLRD 114, A. Cheung J (as he then was), sitting together with Hartmann JA, referred to the CFA's decision in *Lau Cheong* and agreed that it is true that the principle of separation of powers is enshrined in the Basic Law. Relying on Sir Anthony Mason NPJ's extra-curial writing, A. Cheung J, however, warned that:

"32. In Hong Kong, we certainly do not have a federal system. Rather, under the principle of 'one country, two systems' the HKSAR is vested with independent judicial power, including that of final adjudication (art.19). A main theme of the Joint Declaration and the Basic Law, as [the Counsel] for the Financial Secretary has reminded the Court, is that of continuity, including continuity between the pre-existing and the present court and judicial systems: *Stock Exchange of Hong Kong Ltd v New World Development Co Ltd* at para.43. And art.8 of the Basic Law specifically provides that subject to exceptions, the laws previously in force in Hong Kong shall be maintained.

33. In this regard, the warning sounded by Sir Anthony Mason in his article, 'The Place of Comparative Law in Developing the Jurisprudence

⁴⁵ NSL 61.

⁴⁶ *Lau Cheong*, above, at paragraph 102.



on the Rule of Law and Human Rights in Hong Kong' (2007) 37 HKLJ 299, pp.305–306 is apposite:

'Quite apart from political differentiations, there are doctrinal differences, such as those mentioned above. These doctrinal differences, which are not always based on political differentiations, present obstacles to the importation of principles based on different doctrinal foundations. Take, for example, the separation of powers. The United States and Australian Constitutions incorporate a separation of powers, as does the Constitution of Canada (at least impliedly), while United Kingdom public law also asserts a separation of powers. But the content of that separation varies across the four jurisdictions. Although the United States and the Australian separation of powers is similar in some respects, the difference between the presidential system and the Westminster system, with its doctrine of responsible government, means that there is a substantial cleavage between the two systems. Neither in Canada nor in the United Kingdom has the doctrine been taken as far as it has in Australia, let alone the United States.

The consequence is that judicial decisions on the separation of powers need to be treated with great care before they can be imported from one jurisdiction to another. This proposition has significance for Hong Kong. The Basic Law incorporates a separation of powers. So far, however, the courts of the HKSAR have not had occasion to consider what the doctrine may entail in Hong Kong. It would not follow that the Basic Law, when construed in the light of its context and the preservation of the English common law by Article 8 of the Basic Law, necessarily mandates a separation of powers that conforms either to the United States or Australian model.'

See also Anthony Mason, "The Role of The Common Law in Hong Kong" in *The Common Law Lecture Series 2005* (HKU) 1, pp.22–24."

27. The use of the term "separation of powers" by the HKSAR courts does not mean that our courts are unaware of the design of an executive-led government under the Basic Law. The HKSAR courts affirmed that the Basic Law envisages an executive-led government in the administration of the HKSAR. In *Leung Kwok Hung v President of Legislative Council* [2007] 1 HKLRD 387, the CFI considered whether a rule of the Rules of Procedure of LegCo which precludes a member of LegCo from proposing a committee stage amendment with a charging effect on the revenue contravenes the LegCo's power to enact law under BL 73(1).⁴⁷ Hartmann J (as he then was) acknowledged at paragraph 67 that Hong Kong has an executive-led government. His Lordship said at paragraph 68 that "what the Basic Law defines is the method of inter-action; that is, the nexus, both introductory and consequential, which connects the executive and administration on the one part with the legislature on the other. To put it another way, who carries responsibility for this inter-action, the manner in which it is to be executed and how the consequences are to be managed are fundamental matters defined in the Basic Law." While the term "separation of powers" was used by his Lordship, Hartmann J highlighted that the Basic Law "makes it evident that the executive, the administration and the legislature are each to

⁴⁷ Under BL 73(1), the LegCo exercises the powers and functions "[t]o enact, amend or repeal laws in accordance with the provisions of [the Basic Law] and legal procedures."



perform their constitutionally designated roles in a co-ordinated and co-operative manner for the good governance of Hong Kong.”⁴⁸ In *Leung Kwok Hung v Secretary for Justice (No 2)* [2020] 2 HKLRD 771, the CA also affirmed that under the design of the Basic Law, “the Government is very much an executive-led government.”⁴⁹

28. More recently, the CFA has changed its terminology in describing the allocation of powers under the Basic Law. In *Chu Kong v Sun Min* (2022) 25 HKCFAR 318, in rejecting the appellants’ argument that the Secretary for Justice’s consent must be obtained before any party can initiate proceedings for criminal contempt of the court, Lord Neuberger of Abbotsbury NPJ, delivering the unanimous decision of the CFA, held at paragraph 41 that such argument “runs wholly counter to the important constitutional principle of separation of functions.” The same terminology, *i.e.* “separation of functions”, was followed by the CFI in *HKSAR v Lai Chee Ying (Application for Permanent Stay)* [2023] 3 HKLRD 534, at paragraph 86. The change of terminology may better reflect the design of the Region’s executive-led government under the Basic Law and its status as a local administrative region of the PRC.

Political structure of the HKSAR

29. Being a special administrative region of the PRC established by the NPC pursuant to Article 31 of the Constitution, in accordance with the policy of “one country, two systems”, the HKSAR does not practise the system of local people’s congresses and/or local people’s government in the Mainland. The political structure prescribed in Chapter IV of the Basic Law consists mainly of the office of the CE, the Executive Authorities, the Legislature and the Judiciary. These institutions are each allocated specific roles and

functions, with powers granted under the Basic Law all emanating from the Central Authorities.

The CE

30. The first section of Chapter IV of the Basic Law makes provisions for the office of the CE. Unlike the Governor who was an official appointed by the Monarch from outside Hong Kong during His or Her Majesty’s pleasure,⁵⁰ the CE is a Chinese citizen and a permanent resident of the HKSAR with no right of abode in any foreign country and must have ordinarily resided in Hong Kong for a continuous period of not less than 20 years.⁵¹ Under the Basic Law, the CE is appointed by the CPG after selection by local election or consultations in the HKSAR.⁵² The CE is the head of the HKSAR and shall represent the Region.⁵³ He or she is also the head of the HKSARG.⁵⁴ While the Governor was only responsible to His or Her Majesty, the CE is accountable to both the CPG and the HKSAR in accordance with the provisions of the Basic Law.⁵⁵ As the head of the HKSARG, the CE is also accountable to the LegCo in four specified respects under BL 64.⁵⁶

31. More importantly, the CE is entrusted with a wide range of powers and functions under BL 48, extending beyond mere administration, and performs a significant role in the legislative process and in the administration of justice in Hong Kong. Under BL 48, the CE has the powers and functions to lead the HKSARG; implement the Basic Law and other laws applicable in the HKSAR; sign bills passed by the LegCo and to promulgate laws; sign budgets passed by the LegCo and report to the CPG; decide on government policies; nominate and report to the CPG for appointment of the principal officials and recommend to the CPG the removal of them; appoint and remove judges in accordance with legal procedures; appoint and remove holders of public

⁴⁸ Hartmann J’s observations on the relationship between the HKSARG and the LegCo echo with Ji Pengfei’s Explanations. Ji said: “The executive authorities and the legislature should regulate each other as well as co-ordinate their activities.”

⁴⁹ See note 7 above.

⁵⁰ Wesley-Smith, P., *Constitutional and Administrative Law in Hong Kong, China & Hong Kong Law Studies*, 1994, p. 113.

⁵¹ BL 44.

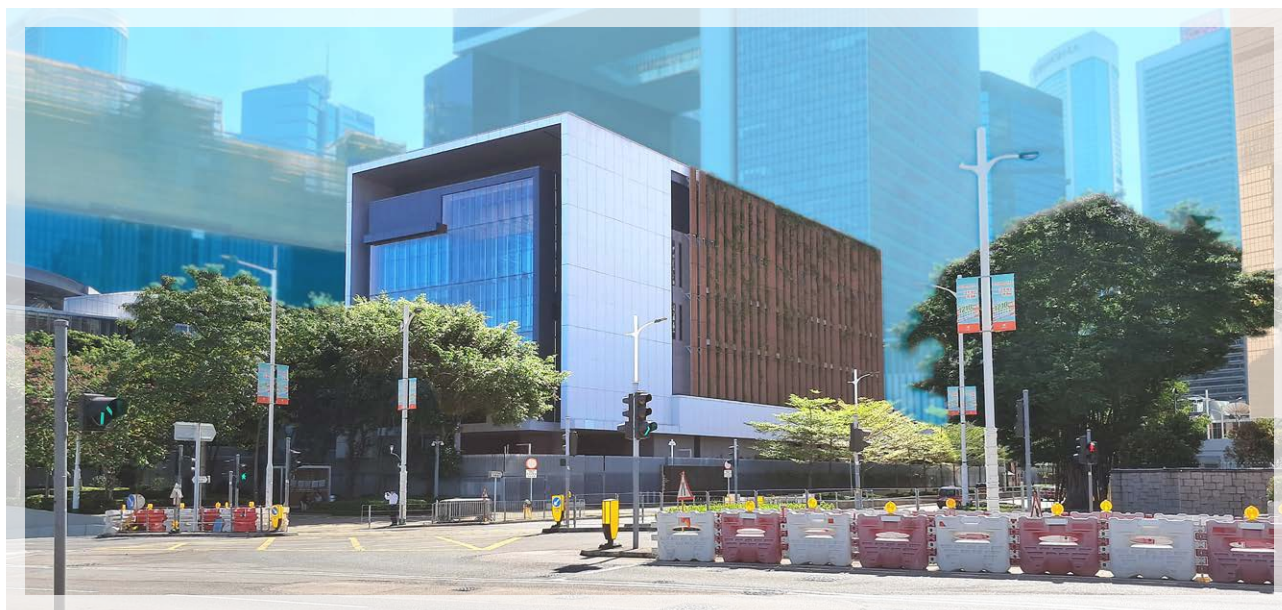
⁵² BL 15 and BL 45.

⁵³ BL 43(1).

⁵⁴ BL 60(1).

⁵⁵ BL 43(2).

⁵⁶ Under BL 64, the HKSARG is accountable to the LegCo in the following 4 areas: it shall implement laws passed by the LegCo; it shall present regular policy addresses to the LegCo; it shall answer questions raised by members of the LegCo; and it shall obtain approval from the LegCo for taxation and public expenditure.



office in accordance with legal procedures; implement the CPG's directives in respect of relevant matters provided for in the Basic Law; conduct external affairs as authorized by the Central Authorities on behalf of the HKSARG; approve the introduction of motions regarding revenues or expenditure to the LegCo; pardon convicted persons and commute penalties; handle petitions. Commenting on the role of the CE under the Basic Law, Wang Shuwen said:

"The [CE] plays a key role in the application of the policy of 'one country, two systems'. As a local administrative region that enjoys a high degree of autonomy, the HKSAR needs such an executive official to serve as the representative of the Region in the relationship between the Region and the Central Authorities and to represent the government of the Region in handling external affairs authorized by the Central Authorities. At the same time, the Region needs such an executive official to serve as the highest local official of the Region responsible for implementing in the Region the Basic Law, which is enacted by the [NPC] and embodies the policy of 'one country, two systems', and other

laws applicable to the Region as prescribed by the Basic Law, as well as implementing the instructions given by the [CPG] regarding the relevant affairs as provided for by the Basic Law."⁵⁷

32. In a similar vein, Ghai described the CE as the "lynchpin" of the HKSAR's political system.⁵⁸ He further pointed out that the Basic Law "provides a fuller picture of the political system of the HKSAR. It is to be executive-led, with a vast concentration of power in the chief executive."⁵⁹

33. As the highest local official of the HKSAR, the CE is both the representative of the HKSAR before the Central Authorities and the representative of the Region in handling external affairs as authorized by the CPG at the international arena. According to Xiao Weiyun,⁶⁰ the designation of the CE as the head of the HKSAR indicates the legal status of the CE, the head of the HKSAR as a whole. Being the head of the HKSAR as a whole, the CE has a constitutional status that is higher than the executive authorities (which the CE also heads), the legislature and the judiciary of the HKSAR.

⁵⁷ Wang Shuwen (ed), *Introduction to the Basic Law of the Hong Kong Special Administrative Region*, 2nd edn., Law Press China & Joint Publishing (H.K.) Co., Ltd., 2009, pp. 358-359.

⁵⁸ Ghai, *ibid*, p. 270.

⁵⁹ Ghai, Y., "The Constitutional Framework" in *Hong Kong's Transition: Problems & Prospects* edited by Peter Wesley-Smith, Faculty of Law, University of Hong Kong, 1993, p. 32.

⁶⁰ Xiao Weiyun, *A Discussion of the Basic Law of Hong Kong (論香港基本法)*, Peking University Press, 2003, p. 830.



Executive Authorities

34. The HKSAR's executive-led political system is reinforced by the leading role played by the HKSARG in the administration and management of the HKSAR. BL 62 entrusts the HKSARG with the powers and functions to formulate and implement policies, to conduct administrative affairs, to draw up and introduce budgets and final accounts, to draft and introduce bills, motions and subordinate legislation *etc.*

35. Under Chapter IV, policy initiatives of the HKSAR lie with the HKSARG (headed by the CE). This may be contrasted with the significant limitations imposed by BL 74 on LegCo members' power to introduce bills. Members are prevented from introducing bills that relate to public expenditure, political structure or the operation of the government. Bills relating to government policies may not be introduced by Members without the CE's prior written consent.

36. As discussed, the CE also plays an important role in the legislative process, including the signing of bills and the promulgation of laws.⁶¹ The rules and procedures for voting under Annex II to the Basic Law further guarantee favourable treatment of government proposals. Under Article 7 of Annex II, as amended by the NPCSC on 30 March 2021, the passage of bills introduced by the government shall require a simple majority of votes of members of the LegCo present. The passage of motions, bills or amendment to government bills introduced by individual members of the LegCo, on the other hand, shall require a simple majority of votes of each of the two groups of members present, *i.e.* members returned by the Election Committee, and those returned by functional constituencies and geographical constituencies through direct election.

37. The HKSARG also makes important decisions on

budgets and public expenditure. While the LegCo can examine, deliberate and approve budgets, the LegCo cannot draw up budgets. The LegCo also lacks the power to make proposals on how public money should be spent and/or invested even though the Council can veto the HKSARG's expenditure proposals. BL 62 clearly shows that the HKSARG performs a leading role in maintaining the daily operation of the HKSAR and in steering the future development of the Region.

38. In the *"Explanatory Note on the Draft Interpretation by the NPCSC of Article 7 of Annex I and Article III of Annex II to the Basic Law of the HKSAR of the PRC"* delivered to the NPCSC on 2 April 2004 by Li Fei, then Deputy Director of the Legislative Affairs Commission of the NPCSC, it was also highlighted that: "In the political structure established by the Hong Kong Basic Law, the HKSAR is executive-led. The CE is the head of the SAR. He represents the HKSAR and is accountable to the CPG and the HKSAR."

The Legislature

39. Being the legislature of the HKSAR,⁶² the LegCo is given not only legislative power but also powers to regulate the executive authorities. Under BL 73, the LegCo is entrusted with the powers to enact, amend or repeal laws⁶³ though members' power to introduce bills is severely limited by BL 74. The LegCo exercises the powers and functions to receive and debate the CE's policy addresses,⁶⁴ to raise questions on the work of the government,⁶⁵ to debate any issue concerning public interests⁶⁶ and to summon, as required when exercising the powers and functions in BL 73(1)–(9), persons concerned to testify or give evidence,⁶⁷ and to pass a motion of impeachment against the CE.⁶⁸

40. Apart from its legislative power, LegCo's other powers in BL 73 illustrate that the legislature is intended to act as an effective check on the

⁶¹ BL 48(3) and BL 76.

⁶² BL 66.

⁶³ BL 73(1).

⁶⁴ BL 73(4).

⁶⁵ BL 73(5).

⁶⁶ BL 73(6).

⁶⁷ BL 73(10).

⁶⁸ BL 73(9).



exercise of powers by the executive authorities.⁶⁹ By empowering the LegCo to examine and approve budgets, any misuse of public funds by the government would be minimized. Furthermore, by exercising its power to receive and debate CE's policy address, raise questions on the work of the government and debate any issue concerning public interests, the LegCo can ensure that the policies formulated by the executive authorities are "more comprehensive and practical".⁷⁰ Together with its power to summon persons concerned, including officials, to testify or give evidence, the LegCo can help prevent any abuse of powers by the executive authorities.

41. The check and balance arrangements are also reflected in provisions on the dissolution of the LegCo by the CE,⁷¹ the resignation of the CE,⁷² and the impeachment of the CE.⁷³ Under BL 50, the CE has the power to dissolve the LegCo if the LegCo refuses to pass a budget or any other important bill introduced by the HKSARG though such power is subject to a number of safeguards including:

- (a) BL 50 may be resorted to only once in each term of office of the CE;

- (b) BL 50 requires the CE to seek consensus after consultations before taking the decision to dissolve the LegCo;
- (c) BL 50 also requires the CE to consult the ExCo before taking the decision to dissolve the LegCo; and
- (d) BL 52(2) and 52(3) provides that if the newly elected LegCo decides the "impasse" question in the same way as its predecessor, the CE must resign.

42. Under BL 50 and BL 52, if the CE decides to dissolve the LegCo, the CE needs to consider the risk of himself or herself being forced to resign under BL 52(2) or (3). Hence, the CE would not invoke his or her power under BL 50 to dissolve the LegCo lightly.

43. The checks and balances between the executive authorities and the legislature can also be discerned in the mechanism for impeachment of the CE. BL 73(9) lays down a regime for the impeachment of the CE in respect of allegation of serious breach of law or dereliction of duty. Under BL 73(9), the LegCo may pass a motion of impeachment and report it to the CPG for

⁶⁹ According to Wang Shuwen, the relationship between the executive, the legislature and the judiciary under the political structure established by the Basic Law is "one of mutual check and balance and mutual coordination between the executive and the legislature, the judiciary being independent." Wang Shuwen, *ibid*, p. 345.

⁷⁰ Wang Shuwen, *ibid*, pp. 467-468.

⁷¹ BL 50.

⁷² BL 52(2) and (3).

⁷³ BL 73(9).



decision if the CE is charged with serious breach of law or dereliction of duty and the CE refuses to resign, and if the charge is substantiated by an independent investigation committee chaired by the CJ of the CFA. However, BL 73(9) does not confer a power of removal on the LegCo. It is evident that the scheme under BL 73(9) has built-in safeguards to ensure that the impeachment process would not be lightly initiated and to protect the independence and impartiality of the impeachment process so that a fair and accurate report of the CE's conduct will be provided to the CPG to enable the latter to make the very important decision on whether the CE should be removed.

44. Apart from checks and balances, the Basic Law also intends there to be coordination and cooperation between the executive and the legislature. For example, BL 55 anticipates that ExCo members may be drawn from, among others, members of the LegCo. In deciding on the agenda of the LegCo, the President of the LegCo is to give priority to government bills for inclusion in the agenda.⁷⁴ BL 72(5) also stipulates that the President will call emergency sessions on the request of the CE. BL 62(6) empowers the HKSARG to designate officials to sit in on LegCo meetings and to speak on behalf of the government such that there would be officials from the executive authorities to answer the LegCo's questions on their work.

45. The principle of coordination and regulation is explained in Ji Pengfei's Explanations:

"The executive authorities and the legislature should regulate each other as well as co-ordinate their activities. To maintain Hong Kong's stability and administrative efficiency, the CE must have real power which, at the same time, should be subject to some restrictions. The draft provides for the CE to be the head of the HKSAR and accountable to the CPG and the HKSAR. He ... is to lead the government of the Region ... If the CE is found to have committed a serious breach of law or dereliction of duty and if he or she still refuses to resign, the LegCo may pass a motion of impeachment through the specified procedures and refer it to the CPG for decision. The provisions

mentioned above embody the relationship of regulation and co-ordination between the executive authorities and the legislature."

The Judiciary

46. Judicial independence is a defining feature of the HKSAR's political structure. BL 2 and BL 19(1) expressly provide that the HKSAR shall enjoy independent judicial power, including that of final adjudication. Under Chapter IV of the Basic Law, judicial independence is underpinned by the method of judicial appointment and the guarantee of security of tenure as well as immunity from legal action in the performance of judicial functions.

47. BL 81(2) provides that the judicial system previously practised in Hong Kong shall be maintained except for those changes consequent upon the establishment of the CFA of the HKSAR. The power of final adjudication is vested in the CFA which may as required invite judges from other common law jurisdictions to sit on the CFA.⁷⁵

48. BL 85 guarantees that "[t]he courts shall exercise judicial power independently, free from any interference. Members of the judiciary shall be immune from legal action in the performance of their judicial functions." Wang Shuwen opined that the expression of "free from any interference" does not only mean that judicial work is free from interference by the executive authorities (including the CE) and the legislature, but it is also free from any interference by social forces.⁷⁶

49. In *Ma Kwai Chun v Leong Siu Chung* [2001 – 2003] HKCLRT 286, the CA held at paragraph 10 that "Article 85 of the Basic Law provides an absolute protection for acts done by judicial officers in the administration of justice, in order to ensure that these officers deal with cases without bias, favour or fear and to effectively prevent litigants from commencing proceedings against these officers personally, such as what Madam Ma [the Plaintiff] is seeking to do now."

50. Other main provisions concerning the judiciary in Chapter IV of the Basic Law relate to the appointment

⁷⁴ BL 72(2).

⁷⁵ BL 82.

⁷⁶ Wang Shuwen, *ibid*, p. 520.



of judges and their security of tenure. BL 88 provides that: “Judges of the courts of the [HKSAR] shall be appointed by the [CE] on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors.” BL 89 provides that a judge may only be removed for inability to discharge his or her duties, or for misbehaviour, by the CE on the recommendation of a tribunal appointed by the CJ of the CFA and consisting of not fewer than three local judges. The CJ of the CFA may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the CE and consisting of not fewer than five local judges and may be removed by the CE on the recommendation of the tribunal. Under BL 90(2), the appointment or removal of judges of the CFA and the Chief Judge of the High Court require the endorsement of the LegCo and has to be reported to the NPCSC for record. The CPG is not otherwise involved in the appointment and removal of judges.

51. Plainly Chapter IV of the Basic Law contains built-in safeguards to ensure that our judges can independently administer justice in accordance with law without fear or favour, bias or prejudice. Judicial independence is an essential pillar to the Region’s different systems. Ji Pengfei’s Explanations stated that:

“The draft vests the courts of the Special Administrative Region with independent judicial

power, including that of final adjudication. This is certainly a very special situation wherein courts in a local administrative region enjoy the power of final adjudication. Nevertheless, in view of the fact that Hong Kong will practise social and legal systems different from the Mainland’s, this provision is necessary.”

Relationship of the Judiciary with the Other Two Branches

52. The executive-led system under the Basic Law does not mean that the executive authorities are above the law. It is a cardinal principle of the Basic Law that the HKSARG must abide by the law.⁷⁷ In *Ng Ka Ling & Others v Director of Immigration* (1999) 2 HKCFAR 4, at paragraph 61, the CFA pointed out that the courts act as a constitutional check on the executive and legislative branches under the Basic Law:

“In exercising their judicial power conferred by the Basic Law, the courts of the Region have a duty to enforce and interpret that law. They undoubtedly have the jurisdiction to examine whether legislation enacted by the legislature of the Region or acts of the executive authorities of the Region are consistent with the Basic Law and, if found to be inconsistent, to hold them to be invalid. The exercise of this jurisdiction is a matter of obligation, not of discretion so that if inconsistency is established, the courts are bound to hold that a law or executive act is invalid at least

⁷⁷ BL 64.



to the extent of the inconsistency. Although this has not been questioned, it is right that we should take this opportunity of stating it unequivocally. In exercising this jurisdiction, the courts perform their constitutional role under the Basic Law of acting as a constitutional check on the executive and legislative branches of government to ensure that they act in accordance with the Basic Law.”⁷⁸

53. The above constitutional role of the courts, however, does not mean that the courts would interfere with the other two branches’ performance of their powers and functions. In *Chu Yee Wah v Director of Environmental Protection* [2011] 3 HKC 227, the court held that it was not for the court to impose a new environmental policy on air quality as to do so would be to trespass on the balancing process which is the exclusive domain of the executive. In *Q and Tse Henry Edward v Commissioner of Registration* (2023) 26 HKCFAR 25,⁷⁹ while the CFA held that the Commissioner’s policy for changing the gender markers on the appellants’ Hong Kong identity cards incompatible with their right to privacy, the CFA reiterated that “it is not for the Court to re-write the Commissioner’s Policy”. Policy-making remains a matter for the government.⁸⁰ In *Leung Kwok Hung v President of the Legislative Council (No 1)* (2014) 17 HKCFAR 689, a case concerning the President of the LegCo’s powers to regulate Council meetings, the CFA held that the courts will recognize the exclusive authority of the legislature in managing its own internal processes in the conduct of its business, in particular its legislative processes.⁸¹

54. Plainly the courts cannot control whether, and what, cases are brought before them. Nor can the courts have a choice in the subject matter of the cases.⁸² Cheung CJ further explained the courts’ role in a speech in 2021:

“Over and over again, the courts have emphasized

in public law cases that one must recognize the different constitutional roles played by the courts, the executive and the legislature. It is not the function of the courts under our constitutional setup to interfere with, still less to rewrite, government policies and decisions, or to disapply laws enacted by the legislature, save where that is the necessary result of upholding the provisions of the Basic Law or other overriding legal requirements. It should be remembered that court decisions are based on the relevant legal principles and the facts of individual cases. It is the courts’ role to administer the law and decide legal issues; it is never their function to resolve any underlying political or social controversies. The courtroom is not the forum for the promotion or ventilation of political or other non-legal views.”⁸³

Concluding remarks

55. The political structure of the HKSAR prescribed in the Basic Law was designed “in light of the specific circumstances” of Hong Kong.⁸⁴ It is a facet of the “one country, two systems” policy that the HKSAR is authorized to exercise executive, legislative and independent judicial power while coming directly under the CPG. The three branches of government, *i.e.* the executive authorities, the legislature and the judiciary, have separate and distinct functions as prescribed by the Basic Law. The power allocation under the Basic Law means that the three branches shall interact with each other to provide the right checks and balances on the operation of the government as a whole. The three branches of the HKSARG under the leadership of the CE are inter-related with delegated powers and functions to discharge their constitutional duties under the executive-led system. They complement each other in furthering the objectives of “upholding national unity and territorial integrity” and “maintaining the prosperity and stability of Hong Kong”.⁸⁵

⁷⁸ See also *Ubamaka v Secretary for Security* (2012) 15 HKCFAR 743, paragraph 126.

⁷⁹ A case summary of the CFA’s decision in *Q and Tse Henry Edward* is provided in the “Judgment Update” of this Issue.

⁸⁰ In *Fok Chun Wa v Hospital Authority* (2012) 15 HKCFAR 409, the CFA reiterated that it is not the court’s role to second guess the wisdom of the executive’s policies.

⁸¹ (2014) 17 HKCFAR 689, at paragraph 28.

⁸² Speech by Cheung CJ at Ceremonial Opening of Legal Year 2023, 16 January 2023.

⁸³ Speech by Cheung CJ at the Rule of Law Signature Engagement Event 2021, “SEE – A Journey of Transformation for a Sustainable Future” on 5 November 2021, Hong Kong.

⁸⁴ *Cf.* Article 31 of the Constitution.

⁸⁵ The Preamble to the Basic Law.