

**ARTICLES 45, 68 AND ANNEXES I, II OF THE BASIC LAW:**  
**CONSTITUTIONAL DEVELOPMENT**

**(Summary of the Views of the Hong Kong Bar Association)**

**Consultation/Listening**

- The HKSAR Government’s Task Force (the Task Force’) needs to say whether there is any difference of approach in its tasks of ‘consulting’ the Central Authorities and ‘listening’ to local views. Consultation means genuinely and actively seeking and considering advice. Listening is a passive and lesser activity. If there is a difference, it should be explained.
- The Task Force should make it clear whether the HKSAR Government’s internal guidelines on public consultation apply to the exercise.

**Article 45 and Annex I of the Basic Law (“BL 45 and BL Annex I”)**

**Whether the phrase “the Chief Executive for the terms subsequent to the year 2007” in BL Annex I para 7 should be understood to include 2007**

- The Bar Association takes the view that BL Annex I para 7 permits amendment to the method of selection of the third term CE even though the term of the third term CE commences on 1 July 2007.

**Consultation with the Central Authorities**

- There must be consultation with the Central Authorities on amendment of the method of selection of the CE but the initiative for change must come from the HKSAR.

**Questions of Implementation**

- An amendment to the method of selection of the CE pursuant to BL Annex I para 7 is not an amendment to the provisions of the BL under BL 159. It is at the most an amendment to BL Annex I itself.

- After the need to amend is established, the amendment can be effected by the series of steps set out under BL Annex I para 7. This procedure will not involve any special weighting of the votes of Legislative Council members depending upon the nature of a member's constituency.

### **Questions of Deadlock and Development**

- In the case of deadlock over amendment to the method of selection of the CE for the third term CE, the method of selection prescribed in BL Annex I paras 2-5 would remain constitutionally valid.

### **Article 68 and Annex II of the Basic Law (“BL 68 and BL Annex II”)**

#### **Consultation with the Central Authorities**

- There is no need to consult with the Central Authorities over this because the relevant provision only calls for reporting for the record.

#### **Questions of Implementation**

- An amendment to the provisions of BL Annex II to provide for the method of formation of the fourth term Legislative Council is not an amendment to the provisions of the Basic Law under BL 159 and can be dealt with by procedures within the HKSAR. This procedure will not involve any special weighting of the votes of Legislative Council members depending upon the nature of a member's constituency.

#### **Questions of Deadlock and Development**

- If political deadlock occurs over endorsing and consenting to an amendment to the provisions of BL Annex II over the method for the formation of the Legislative Council for the fourth term Legislative Council, then the legal doctrine of necessity may have to be invoked to enable the method of formation for the third term Legislative Council to continue in place.

## **Qualities of Candidates and Holders of Office under the Basic Law**

- Candidates for the offices of CE and members of the Legislative Council are eligible to stand if they satisfy the eligibility qualifications prescribed in the Basic Law. Whether any one candidate is suitable for the relevant office is a different matter and one to be decided by voters.

Hong Kong Bar Association

11<sup>th</sup> March 2004