

# **The Executive Authorities and the Legislature in the Political Structure of the Hong Kong SAR**

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The relationship between the executive authorities and the legislature is one of the core issues in the study of constitution. Although the Hong Kong Special Administration Region (SAR) is not a country, it has a political structure with a high degree of autonomy consisting of the executive authorities, the legislature, and the judiciary within the theoretical framework of “One Country, Two Systems” and the design of the *Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China* (hereinafter as “the Hong Kong Basic Law”). Therefore, the relationship between the executive authorities and the legislature in Hong Kong is an important part of the study on the implementation of the Hong Kong Basic Law and the political structure of Hong Kong.

## **I. The Basic Principles and Contents of the Design of the Hong Kong SAR Political Structure**

### **1.1 The basic principles**

The Drafting Committee for the Hong Kong Basic Law adopted the following three guiding principles in the design of the political structure of the Hong Kong SAR. First, according to the “One Country, Two Systems” principle, the provisions related to the Hong Kong SAR’s political structure in the *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong* (the Sino-British Joint Declaration), and the actual situation in Hong Kong, the political structure of the Hong Kong SAR should be conducive to the upholding of the national sovereignty, unity and territorial integrity, as well as ensure a high degree of autonomy for the Hong Kong SAR. Second, the political structure should be conducive to economic prosperity and social stability of Hong Kong, facilitate the development of Hong Kong’s capitalist economy, and take into account the interests of all social strata. Third, the political structure should not only retain some of the advantages of the previous political structure in Hong Kong, but also evolve to facilitate the development of democratic participation suitable for the situation in Hong Kong.

Chapter IV of the Hong Kong Basic Law provided that the political structure of the SAR is different from that of Mainland China (i.e. the People’s Congress representing the people in exercising state power and multi-party cooperation and political consultation under the leadership

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of the Communist Party of China), that commonly adopted in Western countries, and that in the colonial era of Hong Kong. Some scholars believe that the political structure of the SAR basically inherits the “executive-led” structure of the colonial era.<sup>1</sup> However, other scholars point out that there are three main views about relationship between the executive authorities and the legislature in the process of the drafting of the Hong Kong Basic Law: (1) the legislature-led structure; (2) the executive-led structure; (3) the structure in which there are cooperation as well as checks and balances between the executive authorities and the legislature. “After a long discussion, the majority of the members of the Drafting Committee agreed to adopt the third view, and it is implemented in the Basic Law.”<sup>2</sup> In March 1990, when Ji Pengfei, director of the Drafting Committee for the Hong Kong Basic Law, reported to the National People’s Congress (NPC) on the *Draft Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China*, he said: “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 Chief Executive must have real power which, at the same time, should be subject to some restrictions.”

### **1.2 The Chief Executive and the Executive Council**

The Chief Executive plays a key role in the political structure of the Hong Kong SAR and even in the relationship between the SAR and the central authorities. In accordance with the Hong Kong Basic Law, first, the Chief Executive is the head of the Hong Kong SAR and represents the SAR in exchanges between the SAR and the central authorities or foreign countries. In this regard the position of the Chief Executive is above that of the executive authorities, the legislature, and the judiciary of the SAR. Second, the Chief Executive is the head of the executive authorities and is responsible for leading the government of the SAR, i.e. the executive authorities. The Chief Executive shall simultaneously be accountable to the Central Government and the Hong Kong SAR, including being personally accountable to the residents of the SAR and together with the executive authorities of the SAR being accountable to the legislature of the SAR<sup>3</sup>, because the Hong Kong Basic Law stipulates that the executive authorities should be accountable to the legislature.

According to the Hong Kong Basic Law, Chief Executive of the Hong Kong SAR shall be selected by election and be appointed by the Central Government. The first Chief Executive was elected by an election committee consisting of 400 members from various sectors of Hong Kong. The second and third Chief Executives were elected by an election committee consisting of 800 members from the four major sectors of Hong Kong society, and the majority of the members were elected by functional constituencies. In 2010, after Annex I of the Hong Kong Basic Law (“Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region”) was amended, the number of members of the election committee was increased to 1,200.

The Chief Executive in Council is the highest administrative decision-making body of the Hong Kong SAR Government. During the colonial era of Hong Kong, the Executive Council had the function of assisting the Governor in his policy-making. The Executive Council established by the Hong Kong Basic Law has similar functions of assisting the Chief Executive in policy-making, and its members are appointed by the Chief Executive from among the principal officials of the executive authorities, members of the Legislative Council and public figures. The Chief Executive shall consult the Executive Council before making important policy decisions, or introducing bills to the Legislative Council.

### **1.3 The executive authorities**

According to the Hong Kong Basic Law, the Hong Kong SAR Government shall be the executive authorities, and its principal officials shall be nominated by the Chief Executive, and appointed by the Central Government. A Department of Administration, a Department of Finance, a Department of Justice, and various bureaux, divisions and commissions shall be established in the Hong Kong SAR Government. Besides the Chief Executive, the most high-ranking officials include the Secretaries of the three departments and twelve Secretaries of the bureaux. Since the implementation of the Principal Officials Accountability System in July 2002, the three secretaries of Departments and various secretaries of Bureaux are no longer civil servants, and the Chief Executive can nominate social figures other than civil servants as principal officials. Each secretary of a bureau is responsible for leading a policy bureau for a particular aspect of affairs and all the bureaux form the government headquarters. Within the bureaux, there are dozens of divisions and commissions responsible for implementing the policies, and the heads of such agencies report to the secretary of relevant bureau. In addition, the Commission Against Corruption and the Commission of Audit function independently and be directly accountable to the Chief Executive. The Ombudsman also is directly accountable to the Chief Executive. Since 2008, the SAR Government newly created such positions as undersecretaries and political assistants, which do not fall within the civil service.

The Hong Kong Basic Law stipulates that the SAR Government shall be accountable to the Legislative Council. For this purpose, "accountable" means that (1) the SAR government shall implement laws passed by the Legislative Council and already in force; (2) it shall present regular policy addresses to the Council; (3) it shall answer questions raised by members of the Council; (4) and it shall obtain approval from the Council for taxation and public expenditure.

### **1.4 The legislature**

The Legislative Council of the Hong Kong SAR is the legislature of the Region. When the Hong Kong SAR was established in 1997, a Provisional Legislative Council had been set up. In 1998, the first Legislative Council of the Hong Kong SAR was created through elections. Among the 60 seats of the Council, 20 seats were returned by geographical constituencies through direct elections, 30 seats by the functional constituencies (such as the business, industrial, financial, labor, engineering, health services, legal, education constituencies, etc.) and 10 seats returned by election of the Election Committee that elects the Chief Executive. In 2000, the second Legislative Council was created through elections. Among the 60 seats of the Council, 24 seats were returned through direct election, six seats by election of the Election Committee, and the number of seats returned by functional constituencies remained at 30.

In 2004 and 2008, the third and fourth Legislative Councils were created through elections. Among the 60 seats of the Council, 30 seats were returned by direct election and the other 30 seats by functional constituencies. In 2010, Annex II of the Hong Kong Basic Law ("Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures") was amended, increasing the number of seats of the Legislative Council to 70 seats, with 35 seats returned by direct election and 35 seats by functional constituencies.

According to the Hong Kong Basic Law, the Legislative Council of Hong Kong has the functions of common legislatures, such as legislative, fiscal, oversight powers, as well as the power to initiate motion of impeachment against the Chief Executive if he or she is charged with serious

breach of law or dereliction of duty. Bills are usually drafted by the government and submitted to the Legislative Council. The Hong Kong Basic Law lays down a certain degree of constraint on the right of introducing bills of individual members of the Legislative Council. Annex II of the Hong Kong Basic Law sets up the “split voting” system, i.e. the passage of bills introduced by individual members of the Legislative Council shall require a simple majority vote of each of the two groups of members present: members returned by functional constituencies and those returned by other means.

As mentioned above, there are checks and balances between the executive authorities and the legislature of the SAR. In this regard, the following arrangements in the Hong Kong Basic Law are worth noting, though related cases are yet to emerge:

(1) If the Legislative Council refuses to pass a budget or any other important bill introduced by the government, the Chief Executive may dissolve the Legislative Council. That is to say, a new Legislative Council has to be elected.

(2) Under these circumstances, the Chief Executive must resign when, after the Legislative Council is dissolved, the new Legislative Council still refuses to pass the original bill in dispute.

(3) If the Chief Executive considers that a bill passed by the Legislative Council is not compatible with the overall interests of the Region, he or she may refuse to sign it and return it to the Legislative Council for reconsideration. If the Legislative Council passes the original bill again by not less than a two-thirds majority of all the members, the Chief Executive has two options. The first option is to sign the bill and the second option is to dissolve the Legislative Council.

(4) Under these circumstances, if the Legislative Council is dissolved, the new Legislative Council again passes by a two-thirds majority of all the members the original bill in dispute, the Chief Executive has two options. The first option is to sign the bill and the second option is to resign.

(5) The Chief Executive may dissolve the Legislative Council only once in each term of his or her office.

## **II. The Nature of the Hong Kong SAR Political Structure and the Relationship between the Executive Authorities and the Legislature**

Before 1997, the political structure of the colonial era had been described as “non-partisan administrative governance”<sup>4</sup>, “isolated bureaucratic polity”<sup>5</sup>, or “a government in which the Governor has dominant powers.”<sup>6</sup> In this political structure, the powers were highly centralized around the governor, who was a British citizen directly appointed by the British government. All official members and non-official members (persons who were not government officials) of the Executive Council (the highest level policy-making body) and the Legislative Council (the legislature) were appointed by the Governor. The design for the political structure of the Hong Kong SAR in the Hong Kong Basic Law is to a certain extent, modeled on the political structure in the colonial era. However, there is a very crucial difference between the political structure of the Hong Kong SAR and that of the colonial era (i.e., pre-1995 colonial rule. All the appointed seats of the Hong Kong Legislative Council were abolished in 1995.), that is all seats in the SAR Legislative Council were selected through election – part of them returned by direct election (regional universal suffrage), and the other part of them by functional constituencies (before 2004,

some seats were returned by the election committee).

In terms of the political structure of the Hong Kong SAR, the Legislative Council as the legislature has roughly the same basic powers as that enjoyed by the Legislative Council in the colonial era, such as legislation, fiscal and supervision, and oversight of the government etc. However, the executive authorities no longer have any constitutional powers that can ensure the compliance of the legislature with the policies of the executive authorities (mainly the power to appoint members of the legislature). Therefore, after the handover in 1997, there are significant changes in the nature and operation of Hong Kong's political structure. As some commentators have pointed out, after the handover of Hong Kong, the Legislative Council in practice is a "legislature with a high degree of integrity, resolution and independence."<sup>7</sup> During the process of administration, the executive authorities have to "continuously and closely lobby various political groups through persuasion, and deal with different political parties."<sup>8</sup> And "even if the Hong Kong SAR Government takes great pains to lobby the members in order to get enough votes in the Legislative Council, and takes frequent political moves, when the government is promoting controversial legislation and major infrastructure projects, it is still very difficult to obtain the support of the Legislative Council."<sup>9</sup>

These are the effects of changes in the means of selecting members of the Hong Kong legislature on the political structure of Hong Kong. As for the constitutional arrangements for the powers and operation of the Legislative Council, it is worth noting that in two important aspects the Legislative Council after the handover faces more constraints than the pre-handover Legislative Council. According to constitutional documents of Hong Kong in the colonial era, individual members of the Legislative Council might initiate a motion or introduce a bill without the prior consent of the Governor, as long as the motion or bill did not affect the government spending. However, according to Article 74 of the Hong Kong Basic Law, the consent of the Chief Executive shall be required before bills "relating to government policies" are introduced by members of the Legislative Council; as for bills which "relate to public expenditure or political structure or the operation of the government", the members of the Legislative Council have no power to introduce such bills and only the executive authorities have the power to introduce such bills to the Legislative Council for consideration and adoption.

Another provision adopted after the turnover is the "split voting system" in the Legislative Council. This system is expressly set up by Article II of Annex II of the Hong Kong Basic Law: The passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council shall require a simple majority vote of each of the two groups of members present: members returned by universal suffrage (including those members returned by the election committee before such seats are abolished) and those returned by functional constituencies. This mechanism makes it difficult for motions or bills introduced by members of the Legislative Council to be passed in the Legislative Council.

In addition, according to the design of the Hong Kong Basic Law, the center of power in the political structure of Hong Kong – namely the Chief Executive, principal officials, and the Executive Council – is not open to the public competition of electoral politics, which reduces the incentives of social elite to pursue their careers within political parties and the general public will not have a strong desire to join political parties. Political parties at best may exert their influence by monitoring the performance of the government, criticizing the administration of the government, and voting against the government's proposal in the Legislative Council. The implied inhibition of

the development of political parties and party politics within the political structure established by the Hong Kong Basic Law can be described as a major feature of the political structure of the Hong Kong SAR.

Lau Siu-kai has pointed out that because the political structure designed by the Hong Kong Basic Law failed to effectively integrate society interests and powers, certain “political arrangements outside of the constitutional system” are needed to perform this function.<sup>10</sup> In the late 1980s, when the Hong Kong Basic Law was being drafted, Lau Siu-kai had already put forward this view and described such arrangements as a “governing coalition”.<sup>11</sup> He expected that this coalition would be composed of some elite of Hong Kong society, especially the vested interests within the establishment and pro-China political forces, while the central government would play a key role in the formation of this coalition: it would serve as a sponsor promoting the alignment of elite who were otherwise unlikely to cooperate among themselves. After 1997, it turned out that this idea of the “governing coalition” and the coordination role of the Central Government can really describe and explain the mode of governance of the Hong Kong SAR.

Experience garnered after the handover of Hong Kong demonstrated that the governing coalition consisting of the “establishment” and “pro-China” forces is actually feasible, at least making sure that most of the bills, budget proposals and Government expenditure proposals (appropriations requests) proposed by the Government can be passed in the Legislative Council by a majority vote, but it also has serious deficiencies, resulting in many difficulties or problems in the governance of Hong Kong. First, whether the governing coalition can remain united, extensive in its composition of political powers, effective, and get the full support of the society depends on the political skills and acumen of the Chief Executive. Second, even if this governing coalition gets a majority of the seats in the Legislative Council (i.e. most of the seats returned by functional constituencies and some of the seats returned by universal suffrage), it still lacks sufficient legitimacy in the Hong Kong society because it does not include the “pan-democrats”, which for a long time have obtained a majority (about 60 percent) of the votes in the election for seats in the Legislative Council returned by universal suffrage. Third, this governing coalition is only loosely bounded by a “pro-China” and “pro-government” thinking and lacks internal cohesion, effective organization and a common political platform or philosophy. Fourth, the governing coalition includes some political parties (such as DAB, Liberal Party) or political groups (such as the Federation of Trade Unions, Business and Professionals Alliance for Hong Kong) that have a certain number of seats in the Legislative Council. These political parties or political groups are not participants that fulfill the administrative responsibilities, even if their leaders are members of the Executive Council, because the success of these leaders and their parties in the elections is not linked to the performance of the government. Fifth, it is difficult for this governing coalition to serve as the intermediary between the public and the government, because its members are mainly functional constituency members representative of relatively narrow social interest groups (especially business executives), and member from parties that get less than half of the votes in the election for seats in the Legislative Council returned by universal suffrage. Therefore, the development trend of the Hong Kong SAR politics is that the gap between the government and society is ever growing.<sup>12</sup> Meanwhile, the civil society of Hong Kong is increasingly active and aware of the civil rights, requiring more from the government and having higher expectations for government accountability and democratic reform.

Another perspective to understand the political order of the Hong Kong SAR is to view it as a

“semi-democracy”, something in-between soft authoritarianism and Western-style liberal democracy. The political structure consists of two main parts, which interact with each other in the operations of the political structure. The first part is the bureaucracy of civil servants, a legacy from the colonial era, which is led by the Chief Executive and the principal officials. This may be called the “bureaucratic part” in the political structure in Hong Kong, which is ultimately accountable to Beijing, because the Chief Executive and the principal officials are appointed by Beijing, and Beijing can ensure that these officials are trustworthy through the appointment process. Another part of the political structure consists of the elected members of the Legislative Council and political parties, which may be called “the democratic part” of the political structure in Hong Kong, which are accountable to voters of the geographical and functional constituencies in Hong Kong because they are elected by the voters. These two parts operate in accordance with different principles and logics, which constitutes the major internal contradiction of the political structure in Hong Kong. As Yash Ghai has pointed out, the political structure of the Hong Kong SAR is a “hybrid of democracy and authoritarianism, with the former reflected in the legislature (even if it is not representative of full democracy), and the latter reflected in the executive authorities and the intervention of the Central Authorities; such a system is full of contradictions, which limits democracy and autonomy.”<sup>13</sup>

The analyses of Ma Ngok are also thought-provoking: “A weak legislature does not necessarily create strong executive authorities, and vice versa. Likewise, a weak government does not necessarily mean there is a strong opposition force, and vice versa; a weak country does not necessarily lead to a strong society, vice versa. The actual situation after the handover is that a weak or constrained government co-exists with a weak or constrained civil society, and the political community between both of them is also weak.”<sup>14</sup> Most scholars studying this issue believe that the way out of this predicament of governance is to achieve full democratization in Hong Kong.

### **III. The Relationship between the Executive Authorities and the Legislature and the Problems of the “Executive-led” Structure**

#### **3.1 The origin of the concept of “executive-led”**

In the discussion on the development and democratization of the political structure in Hong Kong, the Central Government and mainland scholars often emphasize the implementation of “executive-led” political structure in Hong Kong. Wang Shuwen, a member of the Drafting Committee for the Hong Kong Basic Law pointed out that “according to the relevant provisions of the Basic Law, the political structure of the Hong Kong SAR, is a ‘executive-led’ structure.”<sup>15</sup> The relevant provisions are those in the Hong Kong Basic Law on the status and powers of the Chief Executive, such as Articles 43, 48-51, 60, 62, 74, 76, etc.

In 2004, the Hong Kong SAR Government introduced the concept of “executive-led” into the official discourse of the Hong Kong SAR Government on the constitutional development in Hong Kong for the first time. Both the report to the Standing Committee of the NPC on the development of the political structure in Hong Kong by Tung Chee-hwa, the first Chief Executive of the SAR and the “Second Report of the Task Force on Constitutional Development” have emphasized that the current political structure of Hong Kong is an “executive-led system headed by the Chief Executive” and any political reform package “must consolidate” this structure and “not deviate

from this principle of design.”

In the Hong Kong Basic Law, there is no mentioning of “executive-led” and Ji Pengfei, did not mention the words “executive-led” in his explanation of the *Draft Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China* to the NPC in 1990. He just pointed out that the political structure of the SAR should “aim to maintain stability and prosperity in Hong Kong”, and “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.”

Li Fei, then vice-chairman of the Law Committee of the NPC (currently chairman of the Hong Kong Basic Law Committee under the NPC Standing Committee) noted in his speech in Hong Kong on 8<sup>th</sup> April 2004 that “the political structure of the Hong Kong SAR retains the effective part of the original political structure, mainly reflected in the executive-led government.” This remark can be seen as a footnote to the above mentioned remarks by Ji Pengfei. In the political structure of British Hong Kong, the Governor wields immense powers, and an “executive-led” government is a very apt description. In particular, before some of the seats of the Legislative Council were open to election, all official and non-official members were appointed by the Governor. It is appropriate to say that the Legislature was entirely dependent on the head of the executive authorities and it is not possible for the legislature to play an active role of checks and balances.

Thus, the term “executive-led” was originally used to describe the political structure of Hong Kong in the colonial era. The Hong Kong Basic Law, to a certain extent maintains this political structure, giving the Chief Executive pretty high status and great power. So the political structure of the SAR can also be regarded as an executive-led one. However, the principle of “executive-led” is coherent with the principle of co-ordination as well as checks and balances between the executive and legislative and the principle of judicial independence, since all these three principles are behind the design of political structure of the SAR.

In addition, it should be noted that the emphasis on the “executive-led” structure is related to the assertion of the power of the Central Government over Hong Kong. Chen Zuo'er, then deputy director of the Hong Kong and Macao Affairs Office of the State Council, noted at a symposium on the Basic Law held in Beijing on 12<sup>th</sup> March 2004 that “The political structure of the SAR must be an executive-led one, because this structure is proven effective, and most importantly, because only the executive-led political structure can meet the requirement of the Basic Law that the Chief Executive should be accountable to the Central Authorities. Neither a legislative-led structure nor the system of separation of three powers can do so.”

### **3.2 The “executive-led” structure does not mean a strong government**

Although the current political structure of the Hong Kong SAR can be described as an “executive-led” structure, it does not mean that there will naturally emerge a strong government, i.e. the executive authorities enjoy a dominant position in the political structure of Hong Kong SAR. More specifically, the so-called “executive-led” government designed by the Hong Kong Basic Law, in practice, can lead to either a powerful government, or a weak one.

The drafters of the Hong Kong Basic Law, probably aimed to build strong, authoritative and efficient executive authorities (including the Chief Executive) with a high degree of executive governance capacity, but if we make further research and analysis, it is not difficult to find out that



the political structure design adopted by the Hong Kong Basic Law in fact failed to ensure the realization of this goal. On the contrary, since the establishment of the Hong Kong SAR, Hong Kong failed to establish a strong government, and since 1<sup>st</sup> July 2003, the Hong Kong SAR government has become increasingly weak.

As of whether the "executive-led" structure can live up to the wishes, Lau Siu-kai made a brilliant exposition. He pointed out that "in order to realize the executive-led political structure, the Chief Executive... and his government must get the reliable and stable support of a strong governing coalition,"<sup>16</sup> and this coalition must have "a broad social base"<sup>17</sup>. He also mentioned that in order to realize the executive-led structure, the Chief Executive "should have extraordinary political capacity",<sup>18</sup> and he "cannot go it alone, be self-righteous or opinionated. He must take the initiative to contact and negotiate with all sectors of society... in order to gather a cross-strata and cross-sector political force as a solid foundation for his government."<sup>19</sup> "It is when the Chief Executive can effectively control the Legislative Council and get wide-spread support and popularity among the public that the executive-led structure can be realized."<sup>20</sup>

In a monograph published in 2000, Lau Siu-kai wrote that "from the perspective of the Chief Executive, in the next few years the political environment will deteriorate further. Since the political capacity of the Chief Executive fails to be elevated rapidly, the gap between the constitutional vision of the executive-led structure and the political reality will surely expand further."<sup>21</sup> Unfortunately, the situation in Hong Kong over the past ten years has proven what he said.

Yash Ghai, a former professor in the Faculty of Law of the University of Hong Kong, noted in his book *Hong Kong's New Constitutional Order* that the political structure established by the Hong Kong Basic Law is inherently contradictory. On the one hand, the powers of the executive authorities and the Central Authorities embody authoritarian rule; on the other hand, the Legislative Council embodies the democratic politics and the popularity and legitimacy of directly elected Members of the Legislative Council exceed that of the leaders of the executive authorities. The Legislative Council can paralyze government operations by exercising its power to veto bills and budget proposals.<sup>22</sup>

It is believed that under the political structure designed by the Hong Kong Basic Law, there are several possibilities of in terms of the strength or weakness of the government (the executive authorities): First, the Chief Executive gets the strong and solid support of the political party or coalition that has a majority of the seats in the Legislative Council (the strongest government); Second, there emerges a political party or coalition that has a majority of the seats and opposes the Chief Executive (the weakest government); Third, the Chief Executive maintains cooperative relations with a majority of Members of the Legislative Council, and forms a loose governing coalition with them, while the political party or coalition that has a majority of the seats in the Legislative Council is willing to cooperate with the Chief Executive, and negotiates and bargains with the Chief Executive over some individual policies, sharing political power; or if there is not any political party or coalition that has a majority of the seats in the Legislative Council and there are only various small political parties and independent members, the government must lobby for individual policies to secure support of the majority of Members (relatively weak government).

The political structure of the Hong Kong SAR falls into the third category. As the Second Report of the Task Force on Constitutional Development in 2004 said, "the executive authorities and the legislature often are able to 'regulate' (i.e. to act as a mutual check) but are not able to

‘co-ordinate’ (i.e. to fully complement) each other. Furthermore, under the present system, the Chief Executive does not have established support in the Legislative Council. This has had an adverse effect on the executive-led system and administrative efficiency.”<sup>23</sup>

In the constitutional design of modern democracies, there are two modes most commonly seen in terms of the relationship between the executive authorities and the legislature, the first is the British-style parliamentary cabinet system (adopted in Asian countries such as Malaysia, Singapore, Japan, and India), the second is the US-style presidential system (adopted in South Korea, Taiwan, and the Philippines). In the parliamentary cabinet system, if the government and the parliament are dominated by the same political party (rather than the case that a “coalition government” has to be established because no party in the parliament obtains a majority of seats), the government can be a strong one; but the parliament usually can force the prime minister or premier to step down by vote of no confidence against him. For example, if the party leader who has become the prime minister loses the support of his party, such situation might happen. In the presidential system of government, the president and the majority in the parliamentary may belong to different political parties. In this case, it is not certain that the President’s policies and legislation may be passed in the parliament. But in the presidential system, the president has a fixed term and the parliament cannot easily dismiss him (unless through impeachment). In addition, because the president is directly elected by the people, he enjoyed great authority and legitimacy.

The political structure of the Hong Kong SAR clearly is not a parliamentary cabinet system, and it is closer to a presidential system. But in at least four areas, there are significant differences between it and the presidential system. First, so far the Chief Executive of Hong Kong is not elected by universal suffrage. Therefore, the Chief Executive lacks sufficient legitimacy and authority in comparison with the president elected by universal suffrage in a presidential system. Second, the Chief Executive is not the leader of a political party. In the current design of the Hong Kong SAR political structure, it is impossible that the Chief Executive and the majority in the Legislature belong to the same political party. Third, as mentioned above, it is not possible for Hong Kong’s political parties and politicians to control the government through participation in general elections (currently only some of the seats of the Legislative Council are returned by universal suffrage), and they can only join the Legislative Council. However, the powers and operations of the Legislative Council are subject to Article 74 (the restriction on the power of members to introduce bills) and “split voting” system in the Hong Kong Basic Law, which inherently decide that elected politicians and the Legislative Council in Hong Kong at most can play the role of watchdogs of government or the so-called “opposition”. Fourth, Hong Kong is not an independent political entity, and the Central Government (especially its Liaison Office of the Central People’s Government in the Hong Kong Special Administrative Region) plays a key role in the formation and the maintenance of the “governing coalition” in Hong Kong.<sup>24</sup>

In conclusion, although there are considerations about an “executive-led” government in the design for the Hong Kong SAR’s political structure in the Hong Kong Basic Law, the practice has proved that the Hong Kong SAR Government can only be a weak government. This situation is largely the result of the design in the Hong Kong Basic Law, because the powers of the SAR legislature given by the Hong Kong Basic Law are comparable to those of the Legislative Council in the colonial era; any legislative proposal or appropriation proposal of the government must be passed by a majority vote in the Legislative Council before it can be implemented. In this regard, the Hong Kong Basic Law ensures continuity and stability in the system and powers of the

legislature before and after the handover in 1997; however, because the SAR legislature is a representative organization produced by elections, its nature is way different from that of the Legislative Council in British Hong Kong. There is a world of difference between the same legislative, fiscal or oversight powers exercised by the appointed members in the past and currently exercised by the elected members.

The core of the powers of the Legislative Council of the Hong Kong SAR is its veto power over any legislative proposal or appropriation proposals made by the government; because of its possession of this critical power, it can bargain with and pressurize the government over many policy issues, forcing the government to adjust its policies according to the demands of the Legislative Council on behalf of public and social interest. Therefore, ultimately, the political structure of the Hong Kong SAR is a fairly democratic (though not fully democratic) one in which the government (the executive authorities) and the Legislative Council share and jointly exercise political powers, although its power-sharing mode is different from the traditional parliamentary cabinet system and the presidential system.

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- <sup>1</sup> Wang Shuwen (Ed.) (1997). *Introduction to the Basic Law of the Hong Kong Special Administration Region* (Revised Edition). Beijing: Central Party School of the CPC Press. 207.
- <sup>2</sup> Xu Chongde (Ed.) (1994). *Coursebook for the Basic Laws of Hong Kong and Macao*. Beijing: Renmin University of China Press. 169.
- <sup>3</sup> *Ibid.*, 189.
- <sup>4</sup> Harris, P. (1988). *Hong Kong: A Study in Bureaucracy and Politics*. Hong Kong: Macmillan. IX.
- <sup>5</sup> Lau, S. K. (1984). *Society and Politics in Hong Kong*. Hong Kong: Chinese University Press. 25.
- <sup>6</sup> Wesley-Smith, P. (1987). Constitutional and Administrative Law in Hong Kong. *China and Hong Kong Law Studies*. Volume I. 163-164.
- <sup>7</sup> Ip Lau Suk Yee Regina (2006). *Hong Kong: A Case Study in Democratic Development in Transitional Societies*. MA thesis, Stanford University; Hong Kong: Savantas Policy Institute. 37. Ip Lau Suk Yee Regina is the former Secretary for Security of the Hong Kong SAR Government, was elected as a member of the Legislative Council in 2008 and reelected in 2012.
- <sup>8</sup> Ip Lau Suk Yee Regina (2006). *Hong Kong: A Case Study in Democratic Development in Transitional Societies*. MA thesis, Stanford University; Hong Kong: Savantas Policy Institute. 37.
- <sup>9</sup> *Ibid.*, 39.
- <sup>10</sup> Lau, S. K. (1988). *Basic Law and the New Political Order of Hong Kong*. Hong Kong: Institute of Social Studies, Chinese University of Hong Kong. 2.
- <sup>11</sup> *Ibid.*, 33.
- <sup>12</sup> Lau S. K. and H. C. Kuan (2002). Hong Kong's Stunted Political Party System. *China Quarterly*. Volume 172. 1026. Ma Ngok (2007). *Political Development in Hong Kong: State, Political Society, and Civil Society*. Hong Kong: Hong Kong University Press. 2, 222. Cheung, A. B. L. (2005). Hong Kong's Post-1997 Institutional Crisis: Problems of Governance and Institutional Incompatibility. *Journal of East Asian Studies*. Volume 5. 135, 136.
- <sup>13</sup> Yash Ghai (1999). *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law* (2<sup>nd</sup> Edition). Hong Kong: Hong Kong University Press. 301.

- <sup>14</sup> Ma Ngok (2007). *Political Development in Hong Kong: State, Political Society, and Civil Society*. Hong Kong: Hong Kong University Press. 229.
- <sup>15</sup> Wang Shuwen (Ed.) (1997). *Introduction to the Basic Law of the Hong Kong Special Administration Region* (Revised Edition). Beijing: Central Party School of the CPC Press. 207.
- <sup>16</sup> Lau Siu Kai. *Blueprint for Hong Kong in the 21st Century*, Hong Kong: Chinese University Press. 13.
- <sup>17</sup> *Ibid.*, 32.
- <sup>18</sup> *Ibid.*, 27.
- <sup>19</sup> *Ibid.*, 15.
- <sup>20</sup> *Ibid.*, 9.
- <sup>21</sup> *Ibid.*, pp.4.
- <sup>22</sup> Yash Ghai (1999). *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law (2<sup>nd</sup> Edition)*. Hong Kong: Hong Kong University Press. 292-302.
- <sup>23</sup> See paragraph 3.27 of the report.
- <sup>24</sup> In this regard, one of the most recent examples is the “dispute over free television licensing” in Hong Kong from October to November 2013, during which the Liaison Office contacted some of the individual members of the Legislative Council over whether the Legislative Council should exercise its investigative powers.