

The Constitution, the Basic Law, “One Country, Two Systems” and the Hong Kong Legal Sector

Mr. Chan Chak Ming

President of The Law Society of Hong Kong



“One country, two systems” is unprecedented in constitutional studies. Through the Constitution and the Basic Law, it ensures that Hong Kong’s previous system and life style remain unchanged.

The Constitution, as the fundamental law of the country, has supreme legal status, effect and authority; and it is applicable to all domains of the country. The Basic Law, being the constitutional document of the Hong Kong Special Administrative Region (HKSAR), is an authorisation law. The Constitution gives the legislative backing and source of power for the Basic Law. Without it, the Basic Law would lose its root and origin and therefore would not have existed. Together forming the constitutional basis of the HKSAR, the Constitution and the Basic Law state clearly the authorities and responsibilities of the Central Authorities as well as the powers and duties of the HKSAR as authorised by the Central Authorities. While acquiring knowledge about the Basic Law, a deeper understanding of the Constitution will be conducive to a correct understanding of the implementation of “one country, two systems” and the relationship between the Central Authorities and the HKSAR.

There are four chapters in the Constitution of the People’s Republic of China, namely General Principles, Fundamental Rights and Obligations of Citizens, State Institutions, as well as the National Flag, National Anthem, National Emblem and the Capital. The Constitution stipulates the national system of our country in the General Principles. Article 1 stipulates that the socialist system is the fundamental system of the People’s Republic of China. Leadership by the Communist Party of China is the defining feature of socialism with Chinese characteristics. Article 2 stipulates that the organs through which the people exercise state power are the National People’s Congress and the local people’s congresses at all levels. Article 3 stipulates that all administrative, supervisory, adjudicatory and prosecutorial organs of the state shall be created by the people’s congresses.

It is worth noting that Article 31 of the Constitution stipulates that “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 National People’s Congress.” This is the constitutional basis of the establishment of the HKSAR.

China’s economy developed rapidly in recent years, and has now become the second largest economy in the world, bringing ample business opportunities to overseas and Hong Kong investors. The Constitution stipulates that the country practises a socialist market economy, and also clearly protects the lawful rights and interests of non-public economic sectors and foreign enterprises, etc., providing a solid foundation for the country’s economic development.

The Belt and Road Initiative, the Guangdong-Hong Kong-Macao Greater Bay Area and the dual circulation strategy as stated in the 14th Five-Year Plan are all important strategies for boosting the country’s development. Behind the business opportunities, we need a continuously improved framework to support relevant industrial and commercial activities. The ‘Implementing Outlines for Building a Government Under the Rule of Law (2021-2025)’ issued by the Central Committee of the Communist Party of China and the State Council in August 2021 clearly states that “(we) are to continuously optimise the law-based business environment. By closely following the new development concept, to establish new development patterns and create a stable, fair, transparent and predictable law-based business environment”. As a legal practitioner, I am glad to see that the country attaches great importance to the rule of law.

In fact, a saying in the business sector has it that “the law comes first”. In addition to its advantage of dealing with foreign-related matters, the city implements the common law system which is familiar to the international business community. This enables the Hong Kong legal profession to provide one-stop services for Mainland enterprises to “go global” and attracting foreign enterprises.

President Xi Jinping’s speech at the Celebration of the 25th Anniversary of Hong Kong’s Return to the Motherland on 1 July 2022 reassures the importance of maintaining Hong Kong’s unique advantages, including the common law system and the judiciary’s independent exercise of its power in accordance with law. I am pleased and confident that as the only common law jurisdiction in China, Hong Kong will continue to play its unique role as a connector between East and West and a gateway to Mainland China in accordance with the Basic Law.

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