

Chapter 10

Constitutional and Mainland Affairs

In 2022, the Constitutional and Mainland Affairs Bureau held the Chief Executive Election and the Legislative Council Election Committee constituency by-election in May and December respectively. Both elections were conducted in a fair, open and honest manner in accordance with the improved electoral system and relevant electoral legislation, demonstrating the broad representativeness, political inclusiveness, balanced participation and fair competition under the new electoral system. This has greatly improved and enhanced the democratic system of the Hong Kong Special Administrative Region (HKSAR) and fully implemented the principle of ‘patriots administering Hong Kong’.

In December, the bureau helped establish the Steering Group on Integration into National Development chaired by the Chief Executive, which held its first meeting in the same month. The steering group provides steer on the policies and measures for promoting Hong Kong’s integration into national development, including to actively dovetail with national strategies such as the 14th Five-Year Plan, the Guangdong-Hong Kong-Macao Greater Bay Area development and the Belt and Road Initiative. The goal is to grasp the opportunities brought by the country’s development and create a strong impetus for Hong Kong’s growth.

The bureau organised two seminars in December to promote the spirit of the 20th National Congress of the Communist Party of China, featuring two high-level central authorities officials as keynote speakers. The seminars were attended by about 1,100 participants, including HKSAR Government officials and members of the Executive Council and Legislative Council as well as representatives of various sectors of the community. Through the seminars, participants and the public had a more profound understanding of the spirit of the 20th National Congress, which is vital to the development of the country and Hong Kong and the successful implementation of ‘one country, two systems’.

The bureau also held a seminar on Constitution Day in December to enhance public understanding of the constitutional basis and order of the country and Hong Kong. About 650 participants from various sectors of the community attended the seminar.

In July, the Secretary for Constitutional and Mainland Affairs, Mr Erick Tsang Kwok-wai, led a delegation of the HKSAR Government to attend the meetings of the United Nations Human Rights Committee on the International Covenant on Civil and Political Rights (ICCPR) by video-conferencing. He highlighted the HKSAR Government’s commitment to upholding the principle of ‘one country, two systems’ while safeguarding people’s rights and freedoms stipulated in the ICCPR. He also told the committee that with order and stability restored by the Law of the People’s Republic of China on Safeguarding National Security in the HKSAR, the electoral system improved and the implementation of the principle of ‘patriots administering Hong Kong’, Hong Kong is starting a new phase of development and advancing from stability to prosperity.

Hong Kong has been part of the territory of China since ancient times. To uphold national unity and territorial integrity and to maintain the prosperity and stability of Hong Kong, and taking account of its history and realities, the People's Republic of China (PRC) decided that upon China's resumption of the exercise of sovereignty over Hong Kong, a Hong Kong Special Administrative Region (HKSAR) would be established in accordance with the provisions of Article 31 of the Constitution of the PRC, and that under the principle of 'one country, two systems', the socialist system and policies would not be practised in Hong Kong. On 1 July 1997, Hong Kong became a Special Administrative Region of the PRC and the Basic Law came into effect.

The HKSAR's executive authorities and legislature are composed of permanent residents of Hong Kong. The HKSAR remains a free port, a separate customs territory and an international financial centre and may, on its own, using the name 'Hong Kong, China', maintain and develop relations, and conclude and implement agreements with foreign states and regions and relevant international organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields.

The Constitution and the Basic Law

The Constitution is the most fundamental law of the state, as well as the general guidelines of administering state affairs. It has supreme legal status and effect. To the HKSAR, the Constitution is a fundamental manifestation of 'one country'. The Constitution gives the legislative foundation and source of authority for the Basic Law.

The Basic Law is the constitutional document of the HKSAR. It enshrines within a legal document the important concepts of 'one country, two systems', 'Hong Kong people administering Hong Kong' and a high degree of autonomy. Under the Basic Law, the HKSAR exercises executive, legislative and independent judicial power, including that of final adjudication.

The Constitution and the Basic Law together form the constitutional basis of the HKSAR.

Improved Electoral System

To ensure that the electoral system of the HKSAR upholds the principle of 'one country, two systems' and accords with the actual situation of the HKSAR, and that the principle of 'patriots administering Hong Kong' can be fully implemented, the National People's Congress (NPC) made the Decision of the NPC on Improving the Electoral System of the HKSAR on 11 March 2021 and authorised the NPC Standing Committee (NPCSC) to amend Annex I to the Basic Law on Method for the Selection of the Chief Executive of the HKSAR and Annex II to the Basic Law on Method for the Formation of the Legislative Council of the HKSAR and Its Voting Procedures.

To implement the amended annexes adopted on 30 March 2021 by the NPCSC, the Legislative Council passed the Improving Electoral System (Consolidated Amendments) Ordinance 2021, which came into effect on 31 May 2021.

Election Committee

According to Annex I and Annex II to the Basic Law, the Election Committee is responsible for electing the Chief Executive and 40 members of the Legislative Council as well as nominating candidates for the Chief Executive and Legislative Council elections. It is composed of 1,500 members from five sectors comprising 40 subsectors.

Members of the Election Committee are returned by three methods: a maximum of 982 seats are returned by subsector ordinary elections; 156 seats are returned by nomination by designated bodies of specific subsectors; and a minimum of 362 seats are ex officio members. The term of the Election Committee is five years. The term of office of the Election Committee constituted on 22 October 2021 ends on 21 October 2026.

Method for Selection of the Chief Executive

The Chief Executive is elected by the Election Committee and appointed by the Central People's Government. The method for selecting the Chief Executive is prescribed in Annex I to the Basic Law. The Election Committee elects the Chief Executive by secret ballot on a one-person-one-vote basis.

According to the Basic Law, the term of office of the Chief Executive is five years, and he or she may serve for not more than two consecutive terms.

The 2022 Chief Executive Election was held on 8 May. Mr John Lee Ka-chiu, the candidate returned at the election, was appointed by the Central People's Government as the sixth-term Chief Executive of the HKSAR on 20 May and assumed office on 1 July.

Method for Formation of the Legislative Council

Composition of first to seventh terms of the Legislative Council

Membership	First term (1998-2000)	Second term (2000-04)	Third and fourth terms (2004-08 and 2008-12)	Fifth and sixth terms (2012-16 and 2016-21)	Seventh term (2022-25)
• Elected by geographical constituencies through direct elections	20	24	30	35	20
• Elected by functional constituencies	30	30	30	35	30
• Elected by an election committee	10	6	—	—	40
Total	60	60	60	70	90

Election Committee Constituency

The electorate of the Election Committee constituency is composed of all members of the Election Committee. The Election Committee elects members of the Legislative Council by secret ballot. The 40 candidates who obtain the highest numbers of votes shall be elected.

All registered geographical constituency electors aged 21 or above, who have ordinarily resided in Hong Kong for three years immediately preceding the nomination, can be nominated as candidates and do not need to be members of the Election Committee.

In June, four Legislative Council members of the Election Committee constituency resigned after they were appointed as Principal Officials of the sixth-term HKSAR Government. A by-election held on 18 December returned four members to fill these vacancies.

Functional Constituencies

For the seventh-term Legislative Council, the functional constituencies are: (1) Heung Yee Kuk; (2) agriculture and fisheries; (3) insurance; (4) transport; (5) education; (6) legal; (7) accountancy; (8) medical and health services; (9) engineering; (10) architectural, surveying, planning and landscape; (11) labour; (12) social welfare; (13) real estate and construction; (14) tourism; (15) commercial (first); (16) commercial (second); (17) commercial (third); (18) industrial (first); (19) industrial (second); (20) finance; (21) financial services; (22) sports, performing arts, culture and publication; (23) import and export; (24) textiles and garment; (25) wholesale and retail; (26) technology and innovation; (27) catering; and (28) HKSAR deputies to the NPC, HKSAR members of the National Committee of the Chinese People's Political Consultative Conference, and representatives of relevant national organisations. The labour functional constituency returns three Legislative Council members, while the other 27 return one member each.

The electorate of functional constituencies representing professional groups is generally based on membership of professions with recognised qualifications. The electorate of functional constituencies representing economic or social groups is generally made up of corporate members of major organisations representative of the relevant sectors.

All registered geographical constituency electors aged 21 or above who have ordinarily resided in Hong Kong for three years immediately preceding the nomination, and who have registered as electors of the relevant functional constituency or have a substantial connection with that functional constituency can be nominated as candidates.

Electors of each constituency elect the Legislative Council member of their respective constituency by secret ballot.

Geographical Constituencies

Hong Kong is divided into 10 geographical constituencies, with each returning two members to the seventh-term Legislative Council.

All eligible persons aged 18 or above can register as electors and vote in geographical constituency elections.

All registered geographical constituency electors aged 21 or above who have ordinarily resided in Hong Kong for three years immediately preceding the nomination can be nominated as candidates.

Electors each select one candidate by secret ballot. The two candidates who obtain the most votes in each constituency shall be elected.

Electoral System for District Councils

The District Council elections adopt a simple majority voting system. Each District Council constituency returns one elected member. The election for the sixth-term councils (2020-23) was held on 24 November 2019 with 452 constituencies.

The Chief Executive announced in the 2022 Policy Address that the government will review the district administration, including the electoral system of the district councils, and put forward suggestions to ensure that the future arrangement conforms with the Basic Law, adheres to the principle of ‘patriots administering Hong Kong’, and is conducive to enhancing governance efficacy at the district level.

Electoral Affairs Commission

The Electoral Affairs Commission is an independent statutory body that ensures elections in the HKSAR are conducted in an open, fair and honest manner and in accordance with the law.

Headed by a High Court judge, the commission comprises three politically neutral members, including the Chairman, all appointed by the Chief Executive. It makes recommendations to the Chief Executive on the delineation of Legislative Council geographical constituencies and District Council constituencies; makes regulations on practical arrangements for the Chief Executive election, Legislative Council election, District Council election and Rural Representative election; and handles complaints relating to these elections.

The Registration and Electoral Office, a government department headed by the Chief Electoral Officer, works under the commission’s direction and carries out its decisions.

Legal Protection for Rights of the Individual

Chapter III of the Basic Law prescribes the fundamental rights and duties of Hong Kong residents. Among others, Article 39 provides that the provisions of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

Protection against discrimination is provided for in the Sex Discrimination Ordinance, Disability Discrimination Ordinance, Family Status Discrimination Ordinance and Race Discrimination Ordinance, which are enforced by the Equal Opportunities Commission, while the Personal Data (Privacy) Ordinance, which is administered by the Privacy Commissioner for Personal Data, protects the privacy of individuals in relation to personal data.

Fifteen international human rights treaties are applicable to Hong Kong. Some of these are implemented in the HKSAR by specific legislation, such as the Hong Kong Bill of Rights Ordinance, which implements the provisions of the ICCPR as applied to Hong Kong, while others are implemented by various legislative measures. Seven of these (the ICCPR; ICESCR; International Convention on the Elimination of All Forms of Racial Discrimination; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; Convention on the Elimination of All Forms of Discrimination against Women; and United Nations (UN) Convention on the Rights of Persons with Disabilities) require states parties to submit periodic reports and other requested information to UN treaty monitoring bodies. With the exception of the ICCPR, which does not apply to the Mainland of China, the HKSAR submits these reports as part of corresponding reports submitted by China, and HKSAR teams attend meetings of the relevant treaty bodies as part of the Chinese delegation. The HKSAR delegation attends meetings in relation to the ICCPR under the leadership of the Chinese Permanent Representative and Ambassador to the UN. In addition, the UN Human Rights Council conducts a Universal Periodic Review of the human rights situation in all UN member states.

Equal Opportunities Commission

The Equal Opportunities Commission is an independent statutory body that implements anti-discrimination legislation.

There are four anti-discrimination ordinances: the Sex Discrimination Ordinance, Disability Discrimination Ordinance, Family Status Discrimination Ordinance and Race Discrimination Ordinance. The commission's functions include working towards the elimination of discrimination on the grounds of sex, marital status, pregnancy, breastfeeding, disability, family status and race, and towards the elimination of sexual harassment, harassment on the grounds of breastfeeding, and harassment and vilification on the grounds of disability and race.

In 2022, the commission received 2,018 enquiries and 906 complaints relating to the four ordinances. A total of 134 complaint cases were conciliated successfully.

Office of the Privacy Commissioner for Personal Data

The Office of the Privacy Commissioner for Personal Data is an independent body established under the Personal Data (Privacy) Ordinance to monitor, supervise and promote compliance with the ordinance.

In 2022, the office received 3,848 complaints, 14,929 enquiries and 51 matching procedure consent applications. It also carried out 397 compliance operations and published seven guidance notes.

The office organised 313 talks, seminars, workshops and meetings with stakeholders to enhance public understanding of personal data privacy. It also hosted the 57th Asia Pacific Privacy Authorities Forum in July.

Code on Access to Government Information

As an open and accountable government, all bureaus and departments make information available to the public according to the Code on Access to Information. The code stipulates that bureaus and departments should work on the basis that information requested will be released, and sets out the grounds on which disclosure may be refused. The public may complain to the Ombudsman if any bureau or department does not comply with the provisions of the code.

HKSAR's External Affairs

Active participation in international activities and close liaison with international partners have enabled the HKSAR to maintain its status as a global financial, trade, aviation and shipping centre. In 2022, HKSAR Government representatives took part as members of the PRC delegation in 68 international conferences limited to states¹. HKSAR Government representatives also attended 1,767 international conferences not limited to states² using the name 'Hong Kong, China'.

The HKSAR Government concluded 10 bilateral agreements with foreign states and regions and international organisations that covered free trade, finance, cultural cooperation and other matters.

Foreign representation in the HKSAR includes 64 consulates-general and 56 honorary consulates. Seven international bodies³ have representative offices in Hong Kong.

Working Relationship with Office of the Commissioner of the Ministry of Foreign Affairs in Hong Kong

The HKSAR Government works closely with the Office of the Commissioner of the Ministry of Foreign Affairs in Hong Kong in these areas:

- participation in international organisations and conferences, such as obtaining the Central People's Government's views for HKSAR Government officials to take part in international conferences limited to states as members of the PRC delegation;
- negotiation and conclusion of agreements, such as obtaining the Central People's Government's authorisation to negotiate and conclude agreements with foreign states as necessary;
- consular protection for Hong Kong residents in distress overseas; and
- matters relating to consular missions in the HKSAR.

¹ Including those organised by the International Civil Aviation Organisation, World Health Organisation and World Intellectual Property Organisation.

² Including those organised by the Asia-Pacific Economic Cooperation, World Customs Organisation and World Trade Organisation.

³ These are listed at Appendix 4.

Working Relationship with Mainland and Macao Authorities

The Constitutional and Mainland Affairs Bureau coordinates contact between the HKSAR Government and the Mainland and Macao authorities; promotes regional cooperation between Hong Kong and the Mainland, and between Hong Kong and Macao; and oversees the operation of the HKSAR Government's Mainland offices.

The Hong Kong and Macao Affairs Office of the State Council facilitates the HKSAR Government's development of contacts with the Mainland authorities, and liaises closely with the HKSAR Government on matters of mutual concern and on arrangements for official visits between Hong Kong and the Mainland.

Integration into National Development

The HKSAR Government established the Steering Group on Integration into National Development in December, chaired by the Chief Executive and with three Secretaries of Departments as deputies. The steering group provides steer on the policies and measures for promoting Hong Kong's active integration into national development, including to actively dovetail with national strategies such as the National 14th Five-Year Plan, the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) development and high-quality development of the Belt and Road Initiative, and strengthen regional cooperation with the Mainland.

Regional Cooperation with the Mainland

The HKSAR Government is committed to strengthening regional cooperation with the Mainland and acting as a facilitator and promoter, so as to identify more business and development opportunities for Hong Kong people and enterprises. Hong Kong participates in the development of the GBA; deepens regional cooperation with the Pan-Pearl River Delta region, Guangdong, Beijing, Shanghai, Fujian, Sichuan, Hubei and Shenzhen; and promotes regional cooperation with the other provinces and municipalities by adopting a pragmatic approach and launching initiatives once they are ready.

Development of the Greater Bay Area

The GBA comprises the two SARs of Hong Kong and Macao as well as nine municipalities in the Guangdong Province: Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen and Zhaoqing.

In order to take forward the high-quality development of the GBA, the HKSAR Government maintains close liaison with relevant central ministries and commissions, the Guangdong Provincial Government, and the Macao SAR Government.

Policy measures that have already been implemented include tax concessions for talent; the facilitation of property purchase; support for young entrepreneurs; cross-boundary remittance of science and technology funding; the use of Hong Kong-registered drugs and common medical devices in designated Hong Kong-owned healthcare institutions in the GBA; the Cross-Boundary Wealth Management Connect Scheme; and the liberalisation of legal, insurance and construction-related professional services. The government will seek further policy innovation and breakthroughs, with a view to developing the GBA into an international first-class bay area ideal for living, working and travelling.

In June, the Central People's Government promulgated the Overall Plan for Deepening Globally Oriented Comprehensive Cooperation amongst Guangdong, Hong Kong and Macao in Nansha of Guangzhou. The plan sets out the development directions for Nansha, which correspond to policy areas in which Hong Kong enjoys comparative advantages, and demonstrates strong support for the enhanced integration of Hong Kong and Macao into the overall national development.

On 1 September, the Chief Executive held a video conference with the leaders of Guangdong Province, Guangzhou and Shenzhen to exchange views and discuss issues on deepening collaboration and further promoting the development of the GBA. Consensus was reached on a number of subjects, including to set up working groups to cover major areas of cooperation between Guangdong and Hong Kong, as well as between Shenzhen and Hong Kong.

HKSAR's Offices in the Mainland

The HKSAR Government has five offices in the Mainland: the Beijing Office and the four Hong Kong Economic and Trade Offices (ETOs) in Chengdu, Guangdong, Shanghai and Wuhan⁴. It also has 11 liaison units, located in Liaoning, Tianjin, Shenzhen, Fujian, Guangxi, Shandong, Zhejiang, Chongqing, Shaanxi, Hunan and Henan. These offices and units enhance government-to-government liaison as well as trade and commercial relations, business and talent attraction, and investment promotion in the Mainland; provide support to Hong Kong residents and enterprises in the Mainland; promote Hong Kong; and enhance exchanges between Hong Kong and the Mainland in arts and culture, youth and other sectors. Immigration divisions operate in the five offices to provide practical help to Hong Kong residents in distress or seeking assistance in the Mainland, handle immigration matters, and provide an application and replacement service for HKSAR passports as well as a replacement service for HKSAR Document of Identity for Visa Purposes and HKSAR Re-entry Permits. A regional desk of Hong Kong Shipping Registry has been set up at the Shanghai ETO to provide the owners of Hong Kong registered ships with support services in the Mainland.

Websites

Code on Access to Information: www.access.gov.hk

Constitutional and Mainland Affairs Bureau: www.cmab.gov.hk

Electoral Affairs Commission: www.eac.hk

Equal Opportunities Commission: www.eoc.org.hk

Guangdong-Hong Kong-Macao Greater Bay Area: www.bayarea.gov.hk

Office of the Privacy Commissioner for Personal Data: www.pcpd.org.hk

⁴ The Beijing Office covers Beijing, Gansu, Hebei, Heilongjiang, Inner Mongolia, Jilin, Liaoning, Ningxia, Tianjin and Xinjiang. The Guangdong ETO covers Fujian, Guangdong, Guangxi, Hainan and Yunnan. The Shanghai ETO covers Anhui, Jiangsu, Shandong, Shanghai and Zhejiang. The Chengdu ETO covers Chongqing, Guizhou, Qinghai, Shaanxi, Sichuan and Tibet. The Wuhan ETO covers Henan, Hubei, Hunan, Jiangxi and Shanxi.