



**THE GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION**  
Hong Kong Economic and Trade Office  
香港特別行政區政府  
香港駐倫敦經濟貿易辦事處  
18 Bedford Square, London WC1B 3JA, UK

Mr Bertel Haarder  
Chairman  
The Foreign Affairs Committee  
Folketinget

28 October 2020

Dear Chairman Haarder,

### **National Security Law for the HKSAR**

I hope you are doing well in this global pandemic. Noting the international interest in The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("the NSL"), I write, on behalf of the Hong Kong Special Administrative Region ("HKSAR") Government, to set out the background and key features of the NSL, which seeks to restore stability in Hong Kong after a year of riots and vandalism.

Safeguarding national security through legislation is in line with international practice. It is the fundamental duty of every responsible government to have such laws.

The HKSAR is an inalienable part of the People's Republic of China, and a local administrative region which enjoys a high degree of autonomy and comes directly under the Central People's Government ("CPG"). In view of the increasingly pronounced national security risks in Hong Kong, the enactment of a national security law at the state level is both necessary and urgent in order to plug the loophole in national security in Hong Kong.

The NSL targets only four types of acts and activities that endanger national security, namely secession, subversion of state power, organising and carrying out terrorist activities, and collusion with foreign or external forces to endanger national security. It therefore targets only an extremely small minority of offenders who have committed these four specific offences, while the life and property as well as the basic rights and freedoms of the overwhelming majority of Hong Kong residents will be protected.

In fact, Article 4 of the NSL clearly stipulates that various rights and freedoms, including the freedom of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, which Hong Kong residents enjoy under the Basic Law and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong, shall be protected in accordance with the NSL. Article 5 of the NSL also highlights that the HKSAR shall adhere to the rule of law principle when protecting national security, including presumption of ignorance, conviction and punishment according to law, and protection of the rights of the suspect in judicial proceedings, etc.

We notice that a few specific issues relating to the NSL receive much attention internationally. We sincerely hope that the elaboration below would help address some common misunderstanding and misinterpretation of the NSL.

### **Article 23 of the BL**

Article 23 of the Basic Law states that Hong Kong “shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.”

On the other hand, the NSL enacted by the Standing Committee of the National People's Congress (“NPCSC”) on 30 June 2020, and laws to be enacted by the HKSAR under Article 23 of the Basic Law, are at different levels and cannot replace each other. The HKSAR still has the obligation to implement Article 23 of the Basic Law.

### **Extraterritoriality**

Article 38 of the NSL stipulates that the NSL shall apply to offences under the NSL committed against the HKSAR from outside the HKSAR by a person who is not a permanent resident of the HKSAR. As Articles 29 and 30 of the NSL have created the offence of collusion with a foreign country or with external elements to endanger national security, Article 38 shall also apply to offences under Article 29 or 30 committed against the HKSAR from outside the HKSAR. For instance, a foreigner who targets at the HKSAR from outside the HKSAR and requests “a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China” to commit any of the acts specified in paragraph 1 of Article 29 shall be guilty of an offence.

It should be noted that under common law, it is generally accepted that the States may enact laws having an extraterritorial effect so as to secure “peace, order and good government” of the State. This would include a power to control overseas acts of the country’s own nationals, as well as overseas acts of foreigners where there is a link between the subject matter of the offence and the State.

Moreover, we note that the US Anti-terrorism and Effective Death Penalty Act of 1996 established extraterritorial jurisdiction over terrorist acts and related conspiracies that transcend national boundaries. The US Patriot Act of 2001 also extends the “material support or resources” offences so that they apply extraterritorially.

### **Judicial independence and designation of judges**

Under the Basic Law, judges of the courts of various levels of the HKSAR shall be appointed by the Chief Executive (“CE”) in accordance with legal procedures.

Judicial independence basically means that the judges are free from interference when actually hearing cases. Article 44 of the NSL clearly stipulates that the CE shall designate, in different levels of courts, a list of judges to hear cases that endanger national security, rather than choosing a judge to preside over a specific case, and the CE may consult the Committee for Safeguarding National Security of the HKSAR and the Chief Justice of the Court of Final Appeal before doing so.

In a recent habeas corpus application in relation to an NSL case (HCAL 1601/2020), the court confirmed (in para. 3(5) of the judgement) that: “(t)he effect of Article 44 is simply that a number of judges at different levels of the courts in Hong Kong are designated by the Chief Executive to handle cases concerning offences endangering national security. The actual assignment of a judge to hear any particular case remains the sole responsibility of the Judiciary. Judges are duty-bound by the Judicial Oath to discharge their functions strictly in accordance with the law, and to be completely free of any interference from, or influence by, the Government.”

### **Effect of the NSL on foreign nationals in Hong Kong and foreign investments**

As explained in the 4<sup>th</sup> paragraph above, the NSL targets four specific types of criminal offences that endanger national security, so the public should be well aware of the kinds of activities which would likely constitute an offence

endangering national security. Foreign nationals living in or visiting Hong Kong, same as Hong Kong residents, need not worry that their everyday activities will violate the law. They can continue to freely engage as usual in international exchanges, academic exchanges and businesses. For instance, introducing Hong Kong abroad, expressing views on Hong Kong, exchanging information, general criticisms against the Government's governance or policies, etc. are normal activities and are not restricted by the NSL.

Social unrest, the undermining of the rule of law, the lack of protection for corporate assets and personal safety are the genuine factors which would undermine investors' confidence. The NSL helps maintain the city's political and social stability. It creates a favourable environment in the long run for investments and conducting businesses. In fact, the United Kingdom, United States of America, France and Germany all have enacted national security legislation, but such legislation never affected the economic development and business environment of these countries.

I hope the above would help put the NSL in perspective. Should you have further questions on the NSL or the general development in Hong Kong, please feel free to contact myself or our Deputy Director-General, Ms Noel Ng ([noelng@hketolondon.gov.hk](mailto:noelng@hketolondon.gov.hk)).

Yours sincerely,



(Winky So)  
Director General

c.c Members of the Foreign Affairs Committee of Folketinget