



## HONG KONG BAR ASSOCIATION

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27 April 2020

**Mr. TSANG Kwok Wai, Erick, IDSM**  
**Secretary for Constitutional and Mainland Affairs**  
12/F, East Wing, Central Government Offices  
2 Tim Mei Avenue, Tamar.  
Hong Kong.

Dear Secretary,

### The Status and Functions of the China Liaison Office (“LOCPG”)

The Hong Kong Government’s reversal of its position that the LOCPG is an office set up in the HKSAR pursuant to, and is therefore constrained by, Article 22 of the Basic Law, surprised many of my members and the public at large.

This was not least because the LOCPG made a statement at about the same time that not only was it not a body within the purview of Article 22 but that it, together with the Hong Kong and Macau Affairs Office (HKMAO), enjoyed the power of ‘supervision’ over the HKSAR.

If it is the considered view of the Hong Kong Government that the LOCPG functions here without it being concerned with the restrictions set out in Article 22, the obvious question to ask is under what legal authority does the office operate, what are its functions and what are the limits on its powers?

I believe that you owe it to the public to answer these questions and give a full exposition of the relevant legal principles and rules. I am sure that you will agree with me that an unsupported assertion will not do when an important constitutional issue is at stake.

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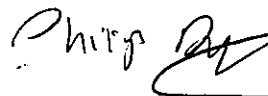
Letter to Secretary for Constitutional & Mainland Affairs  
27 April 2020

Because the LOCPG has previously asserted that the Central Government enjoys 'comprehensive jurisdiction' over the HKSAR, I would expect an explanation of the newly asserted constitutional position to deal with the following issues:

- (i) Do the laws of the HKSAR bind the LOCPG and its personnel? If yes, what is the source of this binding effect? If not, how is accountability established?
- (ii) Is the LOCPG statement that it has the power of 'supervision' correct? What is meant by 'supervision' and what is the source of this claimed power? Since when has this claimed power existed? What is the extent and how is this claimed power exercised?
- (iii) How is this power of supervision to be reconciled with the notion of accountability at Article 48(2) Basic Law which states that the Chief Executive is accountable to the Central People's Government?
- (iv) There are various provisions in the Basic Law which guarantee operational independence to entities such as the ICAC (Art.57), the Director of Audit (Art. 58), the Judicial Officers Recommendation Commission (Art. 88) and, of course, the Judiciary (Arts. 2, 19 and 85). Does the claimed power of supervision extend to these bodies? If it does, how can the power be reconciled with the notion of independence?
- (v) Does the claimed power of supervision extend to the Department of Justice? If it does, how can it be reconciled with Article 63 which states that department controls criminal prosecutions 'free from any interference'?

I look forward to your early reply so that my members may better understand what you maintain is the correct constitutional position.

Yours sincerely,



Philip Dykes, SC  
Chairman

Cc:

- The Honourable Carrie Lam, GBM, GBS, Chief Executive of the HKSAR  
(Office of the Chief Executive, HKSAR, People's Republic of China, Tamar,  
Hong Kong).
  
- Ms. Teresa Cheng, SC, Secretary for Justice  
(Department of Justice, 5/F Main Wing, Justice Place, 18 Lower Albert Road,  
Central, Hong Kong).