



## **HONG KONG BAR ASSOCIATION**

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### **PRESS RELEASE**

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

The Hong Kong Bar Association has issued a follow up letter to the Secretary for Constitutional and Mainland Affairs on the subject matter dated 15 May 2020. The letter is attached.

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(Our ref: GC/al/050)

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15 May 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”)

I refer to my letter on this subject dated 27 April 2020.

That letter raised some knotty legal and constitutional issues. I know that it will take you some time to reply to it. However, apart from my members, many people are waiting on your answer so that they may be satisfied that the legal position you now assert about Article 22 Basic Law is correct. Two consular representatives I have met in the past fortnight have asked me whether I have had a reply from you. I also gather that the Law Society has written to you on the subject and is still waiting for an answer.

In my first letter to you, I pointed out that your current position is a *volte-face*. I referred you to older Government statements that unequivocally stated that Article 22 covered the LOCPG.

I must point out I have come across something more than just an explanatory statement about the application of Article 22. It is a series of amendments to four ordinances<sup>1</sup> made 11 years ago to ensure that they applied to “*Offices set up by the Central People’s Government in the Hong Kong Special Administrative Region*” (‘the Offices’) which, as you may know, is a legislative term of art defined in the Interpretation and General Clauses Ordinance, Cap. 1. (“IGCO”).

<sup>1</sup> The four ordinances were: The Legislative Council Commission Ordinance (Cap.443), the Plant Varieties Protection Ordinance (Cap.490), the Patents Ordinance (Cap.514) and the Registered Designs Ordinance (Cap. 522).

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The statement is in a Legco Paper prepared for the Adaptation of Laws Bill 2009 [LC Paper No. CB(2)1236/08-09(01)] explaining the object of the exercise behind the bill which was to make these four ordinances apply to the “Offices set up by the Central People’s Government in the Hong Kong Special Administrative Region” which, as is now defined in section 3 IGCO, are:

“(a) the Liaison Office of the Central People’s Government in the Hong Kong Special Administrative Region;

(b) the Office of the Commissioner of the Ministry of Foreign Affairs of the People’s Republic of China in the Hong Kong Special Administrative Region; and

(c) the Hong Kong Garrison of the Chinese People’s Liberation Army;” (emphasis added).

I draw your attention to paragraphs 4 and 5 of the Legco Paper where the case is made for Legco having the power to apply the four ordinances to offices set up by the Central People’s Government (“CPG”).

“ 4. According to Article 22(3) of the Basic Law, “[a]ll offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region.

“5. There are only three offices set up by the CPG, pursuant to the Basic Law, in Hong Kong. They are the three offices covered by the term ‘offices set up by the CPG in the HKSAR’, namely the Liaison Office of the Central People’s Government in the HKSAR; the Office of the Commissioner of the Ministry of Foreign Affairs of the People’s Republic of China in the HKSAR; and the Hong Kong Garrison of the Chinese People’s Liberation Army. These three offices fall within the definition of ‘State’ under the Interpretation and General Clauses Ordinance. Hence, the amendment proposal in the Bill, which seeks to extend the express scope of application of the four ordinances from the HKSAR Government to cover the CPG offices, is in line with Article 22(3) of the Basic Law.”

The Legislative Council accepted this explanation and enacted the Adaptation of Laws Ordinance, Cap. 2 of 2009 (“ALO 2009”) which made the changes to the four ordinances and introduced the current definition of “Offices set up by the Central People’s Government in the Hong Kong Special Administrative Region” at section 3 IGCO and which I have set out above.

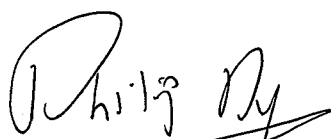
ALO 2009 would then have been transmitted to the Standing Committee of the National People’s Congress under Article 17(2) Basic Law and, because the ordinance was not returned under Article 17(3), must have been accepted by that body.

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However, it now seems that the amendments made under ALO 2009 cannot be squared with the Government's current view of the meaning of Article 22 and its scope and application. If LOCPG *is* the CPG incarnated in the HKSAR, and not just one of its "departments" and that makes all the difference, then Article 22 would have no application to it and thus making the ALO 2009 a statutory anomaly.

When you reply to my letter of 27 April, I would ask you also say whether you will seek to rewind the legislative clock and undo the amendments made by ALO 2009.

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).