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(By post)

29 May 2020

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HONG KONG BAR ASSOCIATION
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Dear Mr Dykes,

Thank you for your letters of 27 April 2020 and 15 May 2020. I set out below responses to the questions raised in your letters.

It is unfortunate that the paper issued by the then Constitutional Affairs Bureau to the Legislative Council (LC Paper No. CB(2)898/06-07(02)) (“2007 Paper”) has been misunderstood or quoted out of context.

Paragraph 4 of the 2007 Paper states –

“4. The [Office of the Commissioner of the Ministry of Foreign Affairs] was set up according to Article 13 of the Basic Law. The Hong Kong Garrison was stationed in the HKSAR by the CPG according to Article 14 of the Basic Law. The Liaison Office was formerly named as the “Xinhua News Agency (Hong Kong Branch)”. The change of office title took place in 2000 to reflect properly the responsibilities authorized by the CPG for the office to undertake in Hong Kong.”

4. 外交部駐香港特別行政區特派員公署是根據《基本法》第 13 條設立的。香港駐軍是中央政府根據《基本法》第 14 條派駐。中聯辦之前名為新華通訊社香港分社。機構的名稱在 2000 年作出更改，以充分反映其在香港根據中央政府授權而履行的職務。

The position of the 2007 Paper is consistent with the views stated in an earlier paper also issued by the then Constitutional Affairs Bureau to the Legislative Council (LC Paper No. CB(2)2254/98-99(02)), at paragraphs 5 to 7 –

“5. The Office of the Commissioner of the Ministry of Foreign Affairs of the People’s Republic of China in the HKSAR was set up according to the provisions of Articles 13 of the Basic Law; and the Hong Kong Garrison was stationed in the HKSAR by the Central People’s Government according to Article 14 of the Basic Law.

6. As for the Xinhua News Agency (Hong Kong Branch), it has been established in Hong Kong for over 50 years, and had been an organisation stationed by the Central People’s Government in Hong Kong to carry out its functions. After reunification, the Xinhua News Agency (Hong Kong Branch) continues to exist as an authorised working organ of the Central People’s Government.

7. As stated above, for the three “State” organs currently stationed in Hong Kong, namely the Office of the Commissioner of the Ministry of Foreign Affairs of the People’s Republic of China in the HKSAR, the Hong Kong Garrison and the Xinhua News Agency (Hong Kong Branch), the question of the HKSARG giving consent to their setup does not arise.”

5. 外交部駐香港特派員公署是根據《基本法》第 13 條的規定設立的，香港駐軍是中央人民政府根據《基本法》第 14 條的規定派駐的。

6. 至於新華社香港分社，在香港成立已超過五十多年，它一直作為中央人民政府的派出機構在港履行有關職責。香港回歸後，新華社香港分社作為中央人民政府授權的工作機構繼續存在。

7. 如上所述，目前中央人民政府在港的三個機構，即外交部駐港特派員公署、香港駐軍和新華社香港分社，均不存在需徵得特區政府同意設立的問題。

The change of office title from Xinhua News Agency (Hong Kong Branch) to the Liaison Office of the Central People's Government in the HKSAR (LOCPG) was published in the Notice of the State Council on the Change of Names of the Hong Kong Branch and Macao Branch of Xinhua News Agency dated 15 January 2000 (Reference: State Letter (2000) No. 5 (國函(2000) 5 號)). The relevant paragraphs are cited below –

“鑑於中央人民政府已經對香港、澳門恢復行使主權，為更好地貫徹“一國兩制”、“港人治港”、“澳人治澳”、高度自治的方針和《中華人民共和國香港特別行政區基本法》、《中華人民共和國澳門特別行政區基本法》(以下均簡稱基本法)，支持特別行政區政府依照基本法施政，保障中央人民政府駐香港、澳門的工作機構按照授權履行職責，1999年12月28日，國務院第24次常務會議決定：自2000年1月18日起，新華通訊社香港分社、新華通訊社澳門分社，分別更名為中央人民政府駐香港特別行政區聯絡辦公室和中央人民政府駐澳門特別行政區聯絡辦公室...

中央人民政府駐香港、澳門特別行政區聯絡辦公室及其人員，將嚴格遵守基本法和當地的法律，依法履行職責。...”

In light of the above, it is clear that the LOCPG was not established under Article 22(2) of the Basic Law. As advised by the Department of Justice, upon a proper construction of the Basic Law, Article 22 is not engaged in the context of the LOCPG.

Notwithstanding, the LOCPG is still required to comply with the laws of Hong Kong. First, Article 5(4) of the Constitution of the People's Republic of China (“PRC”) mandates that all state organizations, etc. must abide by the Constitution and the law (“一切國家機關 ... 必須遵守憲法及法律”). Secondly, as stated in the State Letter (2000) No. 5, the LOCPG and its personnel would strictly abide by the Basic Law and laws of Hong Kong and discharge their duties in accordance with the law [中央人民政府駐香港 ... 特別行政區聯絡辦公室及其人員，將嚴格遵守基本法和當地的法律，依法履行職責].

The Adaptation of Laws Bill 2009 referred to in the paper issued by the Constitutional and Mainland Affairs Bureau to the Legislative Council (LC Paper No. CB(2)1236/08-09(01)) is an example of legislative exercise applying or extending Hong Kong Ordinances to the Offices set up by the Central

People's Government (CPG) in the HKSAR including the LOCPG. As the LOCPG is required to comply with the laws of Hong Kong, Ordinances of Hong Kong may be applied or extended to the LOCPG.

Regarding the relationship between the Central Authorities and HKSAR, it is pertinent to note that the PRC is a unitary state, and all power emanates from the Central Authorities, which may authorize regions to exercise specified powers. The Basic Law is a national law promulgated by the National People's Congress in the exercise of its legislative powers in accordance with Articles 31 and 62(14) of the Constitution of the PRC. The Constitution of the PRC and the Basic Law together form the constitutional basis of the HKSAR.

Under Article 2 of the Basic Law, the HKSAR is authorized to "exercise a high degree of autonomy" in accordance with the provisions of the Basic Law. Article 12 of the Basic Law provides that HKSAR "shall enjoy a high degree of autonomy and come directly under the Central People's Government".

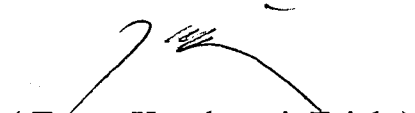
There are a number of provisions of the Basic Law relevant to the powers and responsibilities of the CPG. For instance, Article 43(2) of the Basic Law states that "*the Chief Executive of the [HKSAR] shall be accountable to the [CPG] and the [HKSAR] in accordance with the provisions of this Law*". Article 48(2) of the Basic Law provides that the Chief Executive ("CE") shall "*be responsible for the implementation of [the Basic Law] and other laws which, in accordance with [the Basic Law], apply in the [HKSAR]*".

It follows from the above provisions of the Basic Law that the CE is accountable to the CPG for the implementation of the Basic Law. CPG therefore has the power and responsibility to ensure and hence to supervise the proper implementation of the Basic Law and the "one country, two systems" principle in Hong Kong. As the Hong Kong and Macao Affairs Office (HKMAO) and the LOCPG represent the CPG in handling matters relating to Hong Kong to ensure the full implementation of the Basic Law, it is trite that they have the power of supervision over Hong Kong.

The CPG and thereafter HKMAO and LOCPG exercises its power of supervision over Hong Kong in accordance with the Constitution and the Basic Law. Moreover, where LOCPG carries out its functions in Hong Kong, it should also comply with the laws of Hong Kong apart from the Basic Law. As a result, where the Basic Law provides for guarantee of operational independence, that matters be "free from any interference" etc, such provisions have to be observed and complied with.

I trust the above points have clarified the questions raised in your letters. Please be assured that the HKSAR Government remains steadfast to uphold the rule of law and to ensure the full and proper implementation of the Basic Law.

Yours sincerely,



(Tsang Kwok-wai, Erick)

Secretary for Constitutional and Mainland Affairs