



HONG KONG BAR ASSOCIATION

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致中华人民共和国驻香港特别行政区联络办公室

骆惠宁主任

尊敬的骆主任：

您好！本会得悉第十三届全国人民代表大会于2020年5月28日通过《全国人民代表大会关于建立健全香港特别行政区维护国家安全的法律制度和执行机制的决定》。随函奉上本会致全国人民代表大会常务委员会的信函，有劳贵办代为转交。

The attached is my letter written on behalf of the Hong Kong Bar Association to the Standing Committee of the National People's Congress ("NPCSC") on the matter of national security legislation for the Hong Kong Special Administrative Region ("HKSAR") which will be made pursuant to the Decision of the National People's Congress on 28 May 2020.

I would be grateful if you could kindly send this letter to the NPCSC.

香港大律师公会主席

戴启思资深大律师(Philip Dykes SC)谨启

2020年6月2日

副本抄送：

香港特别行政区政制及内地事务局局长 曾国卫先生

香港特别行政区律政司司长 郑若骅女士

香港大律師公會

香港金鐘道三十八號高等法院低層二樓

Chairman 主席：

Mr. Philip J. Dykes, S.C. 戴啟思

Vice Chairman 副主席：

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中华人民共和国

第十三届全国人民代表大会常务委员会
秘书长杨振武

尊敬的杨秘书长：

您好! 本会得悉第十三届全国人民代表大会于2020年5月28日通过《全国人民代表大会关于建立健全香港特别行政区维护国家安全的法律制度和执行机制的决定》(以下简称「决定」), 授权全国人民代表大会常务委员会就建立健全香港特别行政区维护国家安全的法律制度和执行机制制定相关法律(以下简称「该法律」), 并决定将该法律列入《中华人民共和国香港特别行政区基本法》(以下简称《基本法》)附件三, 由香港特别行政区于本地公布实施。

本会作为香港特别行政区法律专业团体之一, 致力维护维护《基本法》及香港特别行政区法治, 本会希望能就该法律反映我们的一些意见, 为法治建设尽一分绵力。

根据《基本法》第18条第2款及第3款规定:

「全国性法律除列于本法附件三者外, 不在香港特别行政区实施。凡列于本法附件三之法律, 由香港特别行政区在当地公布或立法实施。」

全国人民代表大会常务委员会在征询其所属的香港特别行政区基本法委员会和香港特别行政区政府的意见后, 可对列于本法附件三的法律作出增减, 任何列入附件三的法律, 限于有关国防、外交和其他按本法规定不属于香港特别行政区自治范围的法律。」

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该法律现阶段纵仍有待全国人民代表大会常务委员会制定，其重要性已引起香港社会各界广泛关注，该法律一旦公布实施必然对香港特别行政区七百多万市民、企业、以及包括在本港生活、工作及营商的海外人士及企业影响深远。再者，鉴于两地法律制度、法律诠释、法治观念以至执行机制均存差异，全国人民代表大会常务委员会除按《基本法》第 18 条第 3 款所述向香港特别行政区基本法委员会和香港特别行政区政府征询意见外，在制定过程中展开广泛的公众咨询亦极为重要，使之更能符合《基本法》第 18 条第 3 款之规定和彰显立法精神。

现诚希全国人民代表大会常务委员会可提供该法律的草拟文本予本会参阅，希望就该法律之形式及内容等方面向全国人民代表大会常务委员会提供具建设性之意见。

耑此奉达

The Hong Kong Bar Association (“HKBA”) notes the Decision of the National People's Congress on 28 May 2020 that national security laws will be enacted in the Hong Kong Special Administrative Region (“HKSAR”) and that the Standing Committee of the National People's Congress (“NPCSC”) will proceed to draft the relevant legislation which will be added under Annex III of the Basic Law and take effect via promulgation by the Chief Executive of the HKSAR.

As one of the professional legal bodies in the HKSAR, we strive to uphold the Basic Law and the Rule of Law in the HKSAR, and we thus hope to express our views on the proposed legislation as an effort towards the upholding of the Rule of Law.

Article 18 of the Basic Law provides *inter alia* as follows:

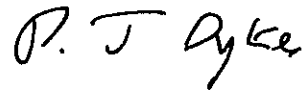
“(2) National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this Law. The laws listed therein shall be applied locally by way of promulgation or legislation by the Region.

“(3) The Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region and the government of the Region. Laws listed in Annex III to this Law shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by this Law.”

Whilst the proposed legislation is yet to be drafted by the NPCSC, having regard to the momentous significance of the proposed legislation, the said Decision has already generated widespread concern within the local community. The proposed legislation, once promulgated, will affect the entire 7-million strong population in the HKSAR including resident overseas nationals and businesses. Having further regard to the differences between the two systems, quite apart from the provision under Article 18(3) of the Basic Law whereby the NPCSC will consult its Committee for the Basic Law and the Government of the HKSAR, we firmly believe that meaningful public consultation on the proposed legislation with the public in the HKSAR is crucial and would reinforce the intent and spirit of the consultation under Article 18(3) of the Basic Law.

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We hope to be provided with a copy of the draft legislation when it is ready, to consider the same and give constructive comments on its form and content. We would therefore be grateful to be given sight of the first draft of the proposed legislation as soon as is practicable.

Handwritten signature of Philip Dykes in black ink.

香港大律师公会主席

戴启思资深大律师(Philip Dykes SC) 谨启

2020年6月2日