



(Our ref: GC/a/076) **HONG KONG BAR ASSOCIATION**

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29 June 2020

Mr. Erick Tsang Kwok-wai
Secretary for Constitutional and Mainland Affairs
Constitutional and Mainland Affairs Bureau
12/F East Wing, Central Government Offices
2 Tim Mei Avenue, Tamar.
Hong Kong.

Dear *Secretary*

It appears that the promulgation of the National Security Law ('NSL') is imminent.

You will know that decanting of a Mainland law affecting individual rights and obligations into the Laws of Hong Kong without it passing through the Legislative Council is a constitutional novelty. That no one in the HKSAR has yet seen a draft of the NSL is genuinely extraordinary.

Notwithstanding this limited understanding of the content of the NSL, the Administration is confident that the new law will be entirely beneficial. It is said to go a long way to solving the social and other problems that have plagued the HKSAR for the last twelve months.

I say this because I have seen the glossy posters that have appeared around town in the previous few days extolling the virtues of the as-yet-unseen law.

When the NSL is unveiled, it seems logical to follow up the existing NSL public relations campaign with information clearly telling residents what the new law does and does not do.

This attempt at education, although late in the day, only seems fair. As you know, if the NSL had found its way into the body of laws of the HKSAR through Legco, people would have had a few months at least to see what was coming their way.

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Letter to Secretary for Constitutional and Mainland Affairs

29 June 2020

I am told that even Mainland law-making processes typically require publication of draft laws before their confirmation and coming into force. This has not happened with the NSL because, notwithstanding reported 'unanimous support' for the law in the HKSAR, there are fears that the new law would not be received well by some ingrates and they would take to the streets.

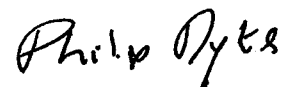
If the general public can be educated about the beneficial effects of the NSL, I would ask that you do not overlook the legal profession. Because the new law comes to us by this unusual route, we have not been given the chance to ask questions of the Secretary of Justice ("SJ") about legal policy and the NSL.

For instance, my members would want to know whether, and how, the NSL affects provisions in the SJ's *Prosecution Code* which guides prosecutorial decision-making in general and in some special classes of cases.

Other concerns would be how the minimum rights guaranteed under the Hong Kong Bill of Rights Ordinance (Cap. 383) will be ensured (there being an assurance that the ICCPR as applied to Hong Kong will be followed in the NSL) and whether there will be exceptions to trial by jury in the High Court when the sentence sought by the prosecution will exceed the jurisdiction of a magistrate and a District Judge and if so how the exception might operate; how new terms like 'secession', 'subversion of state power' and 'collusion with foreign or external forces to endanger state security' will be defined if the NSL does not condescend to spell out the meaning of these terms.

I wish sincerely that you will meet my request and that the SJ will do her best to outline to the profession the important features of the NSL that they need to know as a matter of urgency.

Yours sincerely,



Philip Dykes, SC
Chairman

Cc: Ms. Teresa Cheng SC
(Secretary for Justice, Department of Justice, Justice Place, Hong Kong).