



HONG KONG BAR ASSOCIATION

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3 July 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,

The Law of the People's Republic of China on Safeguarding National Security in Hong Kong Special Administrative Region

There is an urgent need for the HKSARG to produce an authentic English version of the new National Security Law ("NSL").

Part XI of the Interpretation and General Clauses Ordinance deals with National Laws applying in Hong Kong. After gazettal under section 80 of that ordinance, everyone must take judicial notice of a National Law under section 75 and read it in such a way that it conforms to the circumstances of Hong Kong.

For people who do not read Chinese, the NSL is not accessible. Judges, magistrates and lawyers in this category cannot discharge their respective duties of exercising judicial power and representing clients effectively.

As the Chief Justice said only yesterday, if judges and magistrates are to be put forward for designation under Article 44 of the NSL, the criteria he will use will assume that all existing judges are eligible. Political considerations will not determine his recommendation. It is therefore likely that some judges and magistrates that will handle NSL cases will not read Chinese.

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Letter to Secretary for Constitutional and Mainland Affairs
3 July 2020

The same will apply to barristers and solicitors. If there is no authentic English version of the new law, I foresee some cases not being able to proceed because of this problem.

In these circumstances, I urge you to produce the authentic English version of the NSL as soon as practicable so all may have access to it. In this way the duties under Article 35 Basic Law are secured, namely guaranteeing access to the courts and enabling choice of lawyers.

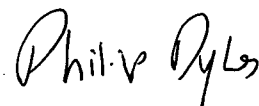
I will conclude by reminding you of s. 3 Official Languages Ordinance which deals with how the HKSARG is to communicate with the public.

3(1). The English and Chinese languages are declared to be the official languages of Hong Kong for the purposes of communication between the Government or any public officer and members of the public and for court proceedings.

(2) The official languages possess equal status and, subject to the provisions of this Ordinance, enjoy equality of use for the purposes set out in subsection (1).

I do not believe that this provision has to yield to the NSL under Article 62 of the new law.

Yours sincerely,



Philip Dykes, SC
Chairman

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