



## HONG KONG BAR ASSOCIATION

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(Our ref/GC/al/067)

19 June 2020

**The Honourable Carrie Lam, GBM, GBS**  
**Chief Executive of the HKSAR,**  
**Tamar,**  
**Hong Kong.**

Dear Chief Executive,

### Timely Publication of Proposed National Security Laws

I write in connection with the proposed national security law ("NSL"), which it has been reported is now being considered by the Standing Committee of the National People's Congress ("NPCSC").

There is currently no information available as to when a draft of the proposed NSL will be published. The purpose of my writing to you is to highlight the need for the contents of any new NSL to be published in good time before it is promulgated into law by you as Chief Executive.

Accessibility of the law is an essential component in the rule of law.<sup>1</sup> People need to know what conduct is forbidden in order to regulate their own conduct accordingly to conform with the law. In order to ensure that any new law is accessible, its contents must be made known sufficiently far ahead of its entry into force.

Solicitors and Barristers will also need sufficient time to understand these proposed new laws, and any attendant enforcement powers, in order to be able to provide proper legal advice and representation to those affected by it.

<sup>1</sup> *Sunday Times v United Kingdom* (1979) 2 EHRR 245, §49

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Letter to Chief Executive dated 19 June 2020

The Judges and Magistrates too will need to be well apprised of the contents of any new criminal laws, and attendant procedures, before they come into effect. In the event of any arrests under a new law, they will quickly be called upon to decide matters such as bail, habeas corpus applications, and other matters. It will be essential that they have had sufficient time to study any new laws and procedures.

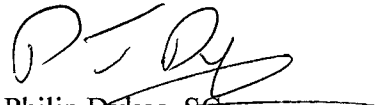
The Legal Aid Department and Duty Lawyer Service, who fulfil the constitutional obligation of the HKSAR to provide legal aid to those arrested for a criminal charge who cannot afford legal representation, will also likely require some time to make adjustments to their respective mandates and procedures.

The Secretary for Security has stated that the relevant law enforcement agencies in Hong Kong will be ready to enforce any new NSL on the very first day it comes into force.<sup>2</sup> This underscores the need for members of the public, and the legal profession, to be similarly ready for any changes. If the law had not previously been published, this could lead to misunderstandings and confusion between law enforcement, arrested persons, and legal representatives, as to their respective rights and duties.

According to the Decision of the National People's Congress on 28 May 2020 the proposed NSL will be added to Annex III of the Basic Law and promulgated by your office. The purpose of my writing to you is to address the contingency that any new law is provided to your office for promulgation before its contents have been made public. In that event, I would urge you to publish the NSL in good time before you exercise the power to promulgate it into law. This would ensure that the fundamental requirement of accessibility of the law is observed, and to avoid misunderstanding and confusion between all stakeholders.

I would very much welcome a commitment from your office to make the contents of the proposed NSL public, if that has not already been done, in good time before it is brought into force.

Yours sincerely,



Philip Dykes, SC  
Chairman

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<sup>2</sup> See report in South China Morning Post on 10 June 2020 at <https://www.scmp.com/news/hong-kong/law-and-crime/article/3088261/hong-kong-police-unit-dedicated-enforcing-new-national>