



National Security Legislation Further Observations

1. The Law Society of Hong Kong notes that an Outline and Explanation (“Explanation”) on the content of the draft law on safeguarding national security (the “Legislation”) was issued by the Legislative Affairs Commission of the National People’s Congress Standing Committee (“NPCSC”) on 21 June 2020. We wish to make the following observations.
2. According to the Explanation, among other things, the Chief Executive of the HKSAR (“CE”) will designate (指定) current or former judges or magistrates at any level to handle cases concerning national security. We express concern that such process of designation of judges would give the CE the power to oversee and interfere with the Judiciary. That (or the perception arising therefrom) prejudices judicial independence. Judicial independence is a cornerstone of our justice system within a common law jurisdiction, and cannot be compromised.
3. We strongly believe that such process of designation should only be made upon the recommendations of the Judicial Officers Recommendation Commission (“JORC”) and (in the case of former judges) in line with Articles 88 and 92 of the Basic Law. Where appropriate the Chief Justice should be consulted. There is already a long-held convention that the CE is to act upon the recommendations of the JORC on the appointment of judges and judicial officers. This convention should be followed in the Legislation.
4. The purported exercise of jurisdiction over national security cases by the Mainland authorities in “exceptional circumstances” raises another concern, as that suggests that individuals in Hong Kong may be subject to judicial process other than those administered by the HKSAR courts. Queries are raised as to whether fundamental human rights including the right to a fair trial can be effectively safeguarded. A clarification in this regard is urgently needed.
5. We respectfully request the NPCSC to take into consideration the proposals in our “Preliminary Observations” dated 11 June 2020. We understand that the NPCSC has to follow the requisite legislative procedures for the enactment of the Legislation. However,

consultation with all stakeholders of the draft Legislation would engender confidence in the transparency of the legislative process for this important piece of law, and would ensure that the Legislation is introduced and enacted in accordance with common law principles and the “One Country Two Systems” policy is complied with.

The Law Society of Hong Kong

24 June 2020