

## **Reply to Public Enquiries on National Security Law**

### **Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“NSL”)**

Dear Sir/Madam,

We refer to your email which is but a replica of others sent to the Department of Justice in or around July 2021. Irrespective of the identity of the original author and the possible ulterior motive to smear the legal system and the National Security Law (NSL) of Hong Kong, it is incumbent upon us to refute and correct the author's deliberate or negligent misrepresentation.

2. With the greatest possible respect, your partial representation of facts is both misleading and unfair. Your “requests” are premised on a total misunderstanding of the situation in Hong Kong and our reply to each of which is as follows:

- (a) Our prosecutorial decisions are based on an objective assessment of all admissible evidence and the applicable laws. Prosecutions would only be commenced if there is sufficient admissible evidence to support a reasonable prospect of conviction. Cases are handled with the same benchmark irrespective of the political beliefs or background of defendants. There are no charges to be dropped as none were made “solely for peacefully exercising their rights”.
- (b) Hong Kong residents enjoy legitimate right to freedom of expression and other human rights as provided for under the Basic Law. There has never been any practice of bringing criminal charges for people who “simply exercised their right to freedom of expression or other human rights”.

(c) The laws in Hong Kong have always taken into account the human rights and freedoms that are expressly guaranteed under the Basic Law. There is a well-established system by which these constitutionally protected rights are enforced and observed. Our statutory laws are clear and concise. The legal provisions aiming at protecting national security are clearly and succinctly defined. As expressly provided under Articles 4 and 5 of the NSL, the provisions were enacted and are to be applied in conformity with human rights and rule of law principles.

3. Hence, in so far as your “calls” are concerned, none of them need to be addressed because the Hong Kong Government has never prosecuted people for “solely peacefully exercising their rights” or who “simply exercised their right to freedom of expression or other human rights”, or implemented and adopted any measure that “violated the exercise of human rights”.

4. In Hong Kong and indeed any jurisdiction that respects the rule of law, no one is above the law irrespective of one’s background or political views. Cases will never be handled any differently owing to the background or political beliefs of the persons involved. All prosecutorial decisions are based on admissible evidence and applicable laws. In criminal proceedings, due process is fully observed and the right to fair trial is guaranteed under the Basic Law.

5. Having corrected your misapprehension, we would like to take this opportunity to explain to you some salient features about the NSL.

6. Article 4 of the NSL clearly stipulates that the Hong Kong Special Administrative Region shall protect the rights and freedoms (including the freedoms of speech, of the press, of publication, etc.) enjoyed by residents under the Basic Law and the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong in accordance with the law. However, such rights and freedoms are not absolute. It must be borne in mind that the ICCPR expressly states that they may be subject to

restrictions as prescribed by law if it is necessary in the interests of national security, public safety, public order or the rights and freedoms of others, etc.

7. Article 5 of the NSL reflects important rule of law principles that are practised in both civil law and common law jurisdictions, such as the presumption of innocence, protection against double jeopardy and fair trial. The NSL does not have retrospective effect. In line with Article 14 of the ICCPR, Article 41 of the NSL provides that a trial must be conducted in an open court unless State secrets or public order is involved. According to Article 42 of the NSL, law enforcement and judicial authorities must ensure that the cases are handled in a fair and timely manner.

8. The NSL was drafted with a clear purpose to strike a fair balance between individual rights and freedoms, and the interest of safeguarding national security. As stated in the judgment of the Court of Final Appeal in *HKSAR v Lai Chee Ying* [2021] HKCFA 3, Articles 4 and 5 of the NSL which emphasize protection and respect for human rights and adherence to rule of law values while safeguarding national security are centrally important to the interpretation of the NSL generally.

9. Importantly, judicial independence in Hong Kong is highly regarded and internationally recognized. The only criterion upon which judges are appointed is their judicial and professional quality, and they are appointed by the Chief Executive upon the recommendation of an independent statutory commission. Judges are free to decide their cases in accordance with law and evidence and indeed they are bound to do so under the judicial oath. When adjudicating cases under the NSL, judges remain independent and impartial in performing their judicial duties, free from any interference.

10. After the enactment of the NSL, Hong Kong's law and order is restored, and residents can resume their normal daily lives. Hong Kong has reverted to a safe, rational, inclusive and vibrant society. Our financial market continues to prosper. A total of US\$51.3 billion was raised in 2020 through initial public offerings (IPO) in Hong Kong, while US\$40.1 billion was recorded in 2019. We have been ranked as the world's first IPO venue in seven of the last 12 years. In the securities market, the average daily

turnover for the first six months of 2021 was HK\$188.2 billion, representing an increase of 60% when compared with HK\$117.5 billion for the same period in 2020. Additionally, there is a steady rise in the total deposits in our banking system which had reached HK\$14.86 trillion at the end of May 2021. This evidences the benefits and importance of the NSL to the stability and prosperity of Hong Kong.

11. Countries around the world take threats to national security extremely seriously. China is no different. Safeguarding national security is a matter of national sovereignty. Sovereign equality is a basic norm of international relations and a fundamental principle of international law. Yet, some individuals, organizations and countries smear the NSL and our lawful enforcement actions with unfounded accusations and twisted facts. They even blatantly call for amending or repealing the NSL or aborting the prosecution of the arrested persons, defying logic and manifesting their double standards.

12. We trust that the above has cleared your misconceptions about the NSL. You can rest assured that with the positive effect of the NSL in restoring peace and safeguarding individual rights and freedoms, Hong Kong will maintain lasting stability and prosperity and embrace an even brighter future.

Department of Justice