

# Security Brings Prosperity

## Introduction

1. National security is a matter of top priority for any State in the world. As the cornerstone for the safety of a country, national security is the basic prerequisite for the prosperity and stability of a society, as well as the well-being of its people. Security brings prosperity. Only when the country is secure and vibrant can the people lead a prosperous life. Country definitely comes before family.

2. Safeguarding national security is not only the primary duty of a central government, but also a basic obligation of any local government. As an inalienable part of the PRC, the HKSAR has a constitutional responsibility to safeguard national security. Like all the people of China, Hong Kong people also share the common responsibility to safeguard the sovereignty, unification and territorial integrity of the PRC.

3. Over two decades since its return to the Motherland, Hong Kong has yet to complete the local legislation of BL 23 on safeguarding national security. Since 2019, an undesirable anti-government trend advocating “Hong Kong independence”, “self-determination” and “mutual destruction” has swept through our society, with escalating street violence, and even foreign and external forces interfering with Hong Kong’s affairs, which are China’s internal affairs. These have posed unprecedented security threats to both the country and Hong Kong. Such violence and chaos, if not stopped in time, would definitely endanger national sovereignty, security and development interests.

4. In view of the above, the Central Authorities decisively adopted the “Decision plus Legislation” approach, and on 30 June 2020 enacted the “Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region” (“National Security Law”), which was listed in Annex III to the Basic Law in accordance with BL 18 for its implementation in Hong Kong, thereby improving the HKSAR’s legal system and enforcement mechanisms in safeguarding

national security. The National Security Law has yielded immediate and noticeable results. Hong Kong has quickly steered back on the right track and even scaled new heights on various fronts such as legal order, economy and people’s livelihood including the rule of law, employment, and business and investment environments.

5. Following the first anniversary of the promulgation and implementation of the National Security Law in Hong Kong, the Department of Justice (“DoJ”) organised the National Security Law Legal Forum entitled “Security Brings Prosperity” on 5 July this year to promote community awareness of the National Security Law through in-depth discussions and extensive exchanges among legal experts on the application and interpretation of the National Security Law.

6. To further enhance the understanding of national security among civil servants and the general public, this article will examine how the country’s assistance at the Central Authorities level in the enactment of the National Security Law and the improvement to the electoral system in the HKSAR has significantly facilitated the implementation of “one country, two systems” and safeguarding of national security. The responsibilities and obligations borne by the HKSAR and Hong Kong people as a whole to safeguard national security will also be analysed from various perspectives such as the Constitution, the Basic Law and the National Security Law.

## The Constitution

7. The PRC is a unitary state. The Constitution is the overall embodiment of the country’s politics, economy, history and culture. The Preamble to the Constitution states right from the start that the Constitution is the fundamental law of the state and has supreme legal force. As early as the eve of the founding of the PRC, the Common Program of the Chinese People’s Political Consultative Conference, bearing the function of a provisional constitution, was adopted. Thereafter, the country enacted and



promulgated four pieces of constitution in 1954, 1975, 1978 and 1982 respectively. The current Constitution was adopted at the Fifth Session of the Fifth NPC on 4 December 1982. The NPC then made five amendments to the Constitution in 1988, 1993, 1999, 2004 and 2018<sup>1</sup> according to the conditions and specific needs of the country to ensure that the Constitution keeps abreast of the times, and conforms more closely with the actual situation and latest developments of China.

8. National security is closely related to every citizen. Chapter II of the Constitution entitled “Fundamental Rights and Obligations of Citizens” clearly stipulates the obligations of Chinese citizens with regard to safeguarding national security. Article 51 of the Constitution provides that when exercising their freedoms and rights, citizens of the PRC shall not undermine the interests of the state, society or collectives, or infringe upon the lawful freedoms and rights of other citizens. Article 52 of the Constitution provides that citizens of the PRC shall have the obligation to safeguard national unity and the solidarity of all the country’s ethnic groups. Article 54 of the Constitution provides that citizens of the PRC shall have the obligation to safeguard the security, honour and interests of the motherland; they must not behave in any way that endangers the motherland’s security, honour and interests. Safeguarding national security is the due and inescapable responsibility of every Chinese citizen, including Chinese citizens among Hong Kong residents.

### National security is within the purview of the Central Authorities

9. National security concerns the overall interests of the country and the well-being of its 1.4 billion people, and hence it is totally and undoubtedly within the purview of the Central Authorities and is never a matter within the scope of the high degree of autonomy enjoyed by the HKSAR under “one country, two systems” and the Basic Law. This is the

basic principle of national sovereignty and reflects the common practice of all the states around the world. In both unitary states and federal states, it is the central government or the federal government that is directly responsible for safeguarding national security, whereas the local government or the state government can only play a supporting role. As such, in respect of safeguarding national security for all parts of China, the Central Authorities bears the greatest and ultimate responsibility. It is also a fundamental principle under “one country” that the Central Authorities have all the powers relating to safeguarding national security in Hong Kong.

10. The above principle was affirmed by the CFA of the Region in *HKSAR v Lai Chee Ying* [2021] HKCFA 3. The judgment stated clearly that the National Security Law was enacted on the footing that safeguarding national security is a matter outside the limits of the HKSAR’s autonomy and within the purview of the Central Authorities, with the Central Government having an overarching responsibility for national security affairs relating to the HKSAR.<sup>2</sup>

### Holistic view of national security

11. On 15 April 2014, President Xi Jinping first introduced the holistic view of national security at the 1<sup>st</sup> general meeting of the Central National Security Commission, stressing the need to construe, put into practice and promote overall national security from a macro perspective and in a holistic manner, providing an unprecedented and innovative guiding principle for safeguarding national security in the new era. Thereafter, 15 April each year is designated as the National Security Education Day.

12. The holistic view of national security enunciates the division of national security into traditional security and non-traditional security, covering a total of 16 major fields. Traditional security includes political security, homeland security and military security,

<sup>1</sup> On 11 March 2018, the Amendment to the Constitution of the PRC was adopted at the First Session of the Thirteenth NPC. The key contents of the Amendment includes creating commissions of supervision as the supervisory organs of the state; improving socialist rule of law; establishing the pledge of allegiance to the Constitution; affirming the guiding status of the Scientific Outlook on Development and Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era in respect of the country’s political and social life; abolishing the provision that the president and the vice president of the PRC shall serve no more than two consecutive terms; adding the content on championing core socialist values; inserting the line “Leadership by the Communist Party of China is the defining feature of socialism with Chinese characteristics” etc..

<sup>2</sup> See paragraph 32 of the judgment.



while non-traditional security includes economic security, cultural security, public security, science and technology security, cyber security, ecological security, resource security, nuclear security, overseas interests security, biosecurity, outer space security, deep sea security and polar security.

## Overall design for national security under the Basic Law

13. The Basic Law implements by law the principle of “one country, two systems”, turning this pioneering and ingenious concept into reality. Back to basics, the innovative constitutional concept of “one country, two systems” was formulated to realise the peaceful reunification of the country. One must bear in mind that the original intents of implementing “one country, two systems” in Hong Kong were two-fold: first, to uphold national unity and territorial integrity; and second, to maintain the prosperity and stability of Hong Kong. Not only were these two original intents written into the Preamble to the Basic Law, they were also manifested throughout the various provisions of the Basic Law. The original intent of upholding national unity and territorial integrity is particularly reflected in the overall design for national security under the Basic Law.

14. On 17 November 2020, addressing the Basic Law 30<sup>th</sup> Anniversary Legal Summit organised by the DoJ, Mr Zhang Yong, Vice-chairperson of the HKSAR Basic Law Committee of the NPCSC pointed out that the overall design for national security under the Basic Law could be apprehended at three levels, namely

constitutional, national and HKSAR levels.

### (1) Constitutional level

15. BL 1 makes it clear at the outset that Hong Kong is an inalienable part of the PRC. It defines the constitutional status of Hong Kong, *i.e.* the HKSAR is part of the PRC and it does not have the status of an independent entity. BL 12 confirms the local nature of the HKSAR by stating that Hong Kong shall be a local administrative region, which shall enjoy a high degree of autonomy and come directly under the CPG. It is only natural that the HKSAR, being a local administrative region coming directly under the CPG, bears a basic obligation to safeguard national security.

### (2) National level

16. At the national level, it is manifested in three major areas.

17. First, BL 13 provides that the CPG shall be responsible for the foreign affairs relating to the HKSAR. BL 14 provides that the CPG shall be responsible for the defence of the Region. These two articles stipulate that the most obvious areas of national security, namely foreign affairs and defence, are within the authority of the CPG.

18. Second, BL 18(3) provides that the NPCSC may, after consulting its Hong Kong Basic Law Committee and the HKSARG, add to the list of laws in Annex III to the Basic Law for application in Hong Kong three categories of national laws, namely those relating to defence, foreign affairs and other matters outside





the limits of the autonomy of the Region as specified by the Basic Law. The National Security Law is one such national law outside the limits of the HKSAR's autonomy that was promulgated and applied in Hong Kong upon being listed in Annex III to the Basic Law.

19. Third, BL 18(4) provides that the CPG may issue an order applying in Hong Kong any relevant national laws in two scenarios. One is when the NPCSC decides to declare a state of war; the other is when the NPCSC decides that Hong Kong is in a state of emergency by reason of turmoil within the HKSAR which endangers national unity or security and is beyond the control of the HKSARG. BL 18(4) could be said to be the strongest backing for the Central Authorities to safeguard national security in Hong Kong, demonstrating that the Central Authorities are ultimately responsible for the national security affairs relating to the HKSAR.

### (3) HKSAR level

20. At the HKSAR level, it is manifested in two main areas.

21. First, BL 160 retains the laws previously in force in Hong Kong prior to 1 July 1997 which are not in contravention of the Basic Law. According to BL 160, upon the establishment of the HKSAR, the laws previously in force in Hong Kong (including those safeguarding national security) shall be adopted as laws of the HKSAR except for those which the NPCSC declares to be in contravention of the Basic Law. In order to avoid any legal vacuum at the time of the establishment of the HKSAR in 1997, our country set up a specialised working group as early as the early 1990s to review each and every piece of the legislation previously in force in Hong Kong. On this basis, on 23 February 1997, the NPCSC made the "Decision on Treatment of the Laws Previously in Force in Hong Kong in Accordance with Article 160 of the Basic Law", under which laws previously in force in Hong Kong were classified and handled. Accordingly, those laws safeguarding national security among the laws previously in force in Hong Kong, after being adapted, have been adopted as the laws of the HKSAR in

accordance with BL 160 and the NPCSC's Decision of February 1997, and continue to be effective.

22. Besides, BL 23 provides that Hong Kong shall enact laws on its own to prohibit certain acts and activities that endanger national security.<sup>3</sup> It must be noted that BL 23 is an obligatory provision rather than a provision delegating powers. It demonstrates the confidence of the Central Authorities in the HKSAR, but this does not mean that the Central Authorities have given up their powers in national security matters which are under their purview. Once there is a loophole in Hong Kong laws on safeguarding national security, the Central Authorities have both the power and responsibility to tackle the relevant issues.

### "Decision plus Legislation"

#### (1) The 528 Decision is both constitutional and reasonable

23. The repeated riots in Hong Kong in 2019 highlighted the necessity and urgency of legislating on safeguarding national security. Therefore, at its Third Session on 28 May 2020, the Thirteenth NPC, pursuant to Articles 31, 62(2), 62(14) and 62(16) of the Constitution and the relevant provisions of the Basic Law, made the "Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security" ("528 Decision") and entrusted its Standing Committee to formulate the relevant laws on establishing and improving the legal system and enforcement mechanisms for the HKSAR to safeguard national security.

24. It must be emphasised that the 528 Decision made by the NPC is absolutely constitutional and reasonable. Articles 31 and 62(14) of the Constitution expressly empower the NPC to establish the HKSAR and prescribe the systems to be instituted therein. Articles 62(2) and 62(16) of the Constitution respectively empower the NPC to oversee the enforcement of the Constitution and exercise other functions and powers that the highest state organ of power should

<sup>3</sup> According to BL 23, "[t]he Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies."



exercise. Therefore, the NPC is clearly entitled to make the 528 Decision under the Constitution to assist the HKSAR in improving the legal system and enforcement mechanisms to safeguard national security.

25. Subsequently, having taken into account the specific circumstances of the HKSAR and considered the views of the HKSARG and different sectors of the community, the NPCSC, in accordance with its mandate under the Constitution, the Basic Law and the 528 Decision, passed the National Security Law on 30 June the same year. In accordance with the mechanism under BL 18, the National Security Law was listed in Annex III to the Basic Law following consultation with the Hong Kong Basic Law Committee and the HKSARG. On the same day, the National Security Law was applied in Hong Kong upon gazettal and promulgation.

## (2) National Security Law

26. Chapter I of the National Security Law sets out various general principles, which are crucial to the application and interpretation of the different provisions of the National Security Law. Article 1 of Chapter I states that the National Security Law is enacted for the purpose of, *inter alia*, ensuring the resolute, full and faithful implementation of the policy of “one country, two systems” under which the people of Hong Kong administer Hong Kong with a high degree of autonomy. Article 2 of Chapter I states that the provisions in BL 1 (*i.e.* the HKSAR is an inalienable part of the PRC) and BL 12 (*i.e.* the HKSAR shall be a local administrative region of the PRC, which shall enjoy a high degree of autonomy

and come directly under the CPG) on the legal status of the HKSAR are the fundamental provisions in the Basic Law; no institution, organisation or individual in the Region shall contravene these provisions in exercising their rights and freedoms.

27. On the other hand, the National Security Law attaches great importance to individual rights and freedoms. Article 4 of Chapter I explicitly provides that human rights shall be respected and protected in safeguarding national security in the HKSAR; the rights and freedoms, including the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, which the residents of Hong Kong enjoy under the Basic Law and the provisions of the ICCPR and the ICESCR as applied to Hong Kong, shall be protected in accordance with the law.

28. However, such rights and freedoms are not absolute, and can be regulated and restricted under the law to achieve such legitimate aims as protecting national security and public order. Both the ICCPR and the ICESCR contain provisions which allow restrictions to be made by law on individual rights and freedoms on the ground of safeguarding national security. The National Security Law has already struck a balance between protecting individual rights and freedoms and safeguarding national security.

29. In the judgment of *Kwok Cheuk Kin v Chief Executive of the HKSAR* [2020] HKCFI 1520, the CFI also confirmed that in enforcing the National Security Law,



the legitimate rights and freedoms enjoyed by Hong Kong residents would be respected and protected in accordance with the law. In that case, Chow J made it clear that “the Hong Kong Judiciary should, as far as possible and in line with legal principles and reasonableness, interpret the National Security Law in a way that is compatible with the fundamental rights enjoyed by Hong Kong residents under Chapter III of the Basic Law”.<sup>4</sup>

30. In addition to protecting rights and freedoms, the National Security Law also adheres to the principle of the rule of law. Article 5 of Chapter I expressly provides that the principle of the rule of law shall be adhered to in preventing, suppressing, and imposing punishment for offences endangering national security; a person who commits an act which constitutes an offence under the law shall be convicted and punished in accordance with the law; no one shall be convicted and punished for an act which does not constitute an offence under the law. Article 5 also includes the presumption of innocence, the protection against double jeopardy, and the right to defend oneself and other rights in judicial proceedings that a criminal suspect, defendant, and other parties in judicial proceedings are entitled to under the law.

31. Besides, Article 3 of Chapter I reiterates that the CPG has an overarching responsibility for national security affairs relating to the HKSAR; it is also the duty of the HKSAR under the Constitution to safeguard national security and the Region shall perform the duty accordingly. Regarding individuals, institutions and organisations, Articles 6(1) and 6(2) indicate clearly that it is the common responsibility of all the people of China, including the people of Hong Kong, to safeguard the sovereignty, unification and territorial integrity of the PRC; any institution, organisation or individual in the HKSAR shall abide by the National Security Law and the laws of the Region in relation to the safeguarding of national security, and shall not engage in any act or

activity which endangers national security. Echoing BL 104, Article 6(3) expressly provides that a Hong Kong resident who stands for election or assumes public office shall confirm in writing or take an oath to uphold the Basic Law of the HKSAR of the PRC and swear allegiance to the HKSAR of the PRC in accordance with the law.

32. Chapter II of the National Security Law stipulates the duties and the Government bodies of the HKSAR for safeguarding national security. Regarding duties, the HKSAR shall complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law (including BL 23) and shall refine relevant laws.<sup>5</sup> Meanwhile, the law enforcement and judicial authorities of the HKSAR shall fully enforce the National Security Law and the laws in force in the Region concerning the prevention of, suppression of, and imposition of punishment for acts and activities endangering national security.<sup>6</sup> In addition, the HKSARG shall take necessary measures to strengthen public communication, guidance, supervision and regulation over matters concerning national security, including those relating to schools, universities, social organisations, the media, and the internet.<sup>7</sup> The HKSAR shall also promote national security education in schools and universities and through social organisations, the media, the internet and other means to raise the awareness of Hong Kong residents of national security and of the obligation to abide by the law.<sup>8</sup>

33. As regards Government bodies, the HKSAR has established the Committee for Safeguarding National Security of the HKSAR (“HKSAR Committee on National Security”) under Chapter II of the National Security Law. The HKSAR Committee on National Security, under the supervision of and accountable to the CPG, is responsible for affairs relating to and assumes primary responsibility for safeguarding national security in the HKSAR.<sup>9</sup> It is chaired by the CE with members including

<sup>4</sup> See paragraph 7 of the judgment.

<sup>5</sup> See Article 7 of the National Security Law.

<sup>6</sup> See Article 8 of the National Security Law. Article 3(3) of Chapter I of the National Security Law also stipulates that the executive authorities, legislature and judiciary of the Region shall effectively prevent, suppress and impose punishment for any act or activity endangering national security in accordance with the National Security Law and other relevant laws.

<sup>7</sup> See Article 9 of the National Security Law.

<sup>8</sup> See Article 10 of the National Security Law.

<sup>9</sup> See Article 12 of the National Security Law.



principal officials of the HKSARG.<sup>10</sup> Pursuant to Chapter II of the National Security Law, the Police Force has established a dedicated department for safeguarding national security<sup>11</sup> and the DoJ has established the National Security Prosecutions Division to prosecute offences endangering national security,<sup>12</sup> both of which have officially come into operation.

34. Chapter III of the National Security Law clearly specifies the elements (including the required acts (*actus reus*) and intents (*mens rea*)) and penalties of the four types of offences endangering national security, and also the respective scopes of application. Take for example Part 4 “Collusion with a Foreign Country or with External Elements to Endanger National Security”. The word “collusion” is only the title of the offence; the specific acts (*actus reus*) and intents (*mens rea*) required are clearly laid down in the relevant provisions. It is important to stress that the offence does not seek to target or affect the normal interactions such as academic exchanges and commercial transactions between institutions or individuals in Hong Kong and their foreign counterparts.

35. Chapter IV of the National Security Law provides for jurisdiction, applicable law and procedure. While the National Security Law is a national law enacted by the NPCSC, it has taken into account the differences between the legal systems of the Mainland and the

HKSAR under “one country, two systems”, ensuring that the legal framework for safeguarding national security is compatible and complementary with the laws of the HKSAR, and could be fully and effectively enforced in the Region.

36. Accordingly, Article 40 of the National Security Law further states that except under the three specified exceptional circumstances set out in Article 55, the HKSAR shall have jurisdiction over other (*i.e.* most of the) cases. Meanwhile, Article 41 provides that the National Security Law and the laws of the HKSAR shall apply to matters related to criminal investigation, prosecution, trial, execution of penalty *etc.*, in respect of cases concerning offence endangering national security over which the HKSAR exercises jurisdiction.

37. In respect of bail, Article 42(2) of the National Security Law provides that no bail shall be granted to a criminal suspect or defendant unless the judge has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security. In *Lai Chee Ying*, the CFA found that when dealing with bail applications, the judge must first decide whether he or she has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security.<sup>13</sup> If the judge

<sup>10</sup> See Article 13(1) of the National Security Law.

<sup>11</sup> See Articles 16 and 17 of the National Security Law.

<sup>12</sup> See Article 18 of the National Security Law.

<sup>13</sup> See paragraph 70(d) of the judgment.





concludes that the answer is no, bail must be refused.<sup>14</sup> At the same time, the CFA ruled that as far as possible, Article 42(2) of the National Security Law on bail is to be given a meaning and effect compatible with those rights, freedoms and values guaranteed by Article 4 (protection of human rights) and Article 5 (adherence to the rule of law) of the National Security Law.<sup>15</sup>

38. Regarding jury, pursuant to Article 46(1) of the National Security Law, in criminal proceedings in the CFI concerning offences endangering national security, the Secretary for Justice may issue a certificate directing that the case shall be tried without a jury on the grounds of, among others, the protection of State secrets, involvement of foreign factors in the case, and the protection of personal safety of jurors and their family members. Where the Secretary for Justice has issued the certificate, the case shall be tried in the CFI without a jury by a panel of three judges.

39. In this regard, the CA held in *Tong Ying Kit v Secretary for Justice* [2021] HKCA 912 that the decision by the Secretary for Justice to issue a certificate under Article 46(1) of the National Security Law was a prosecutorial decision protected by BL 63, free from any interference.<sup>16</sup> Under the common law, a prosecutorial decision is only amenable to judicial review on the limited grounds of dishonesty, bad faith or other exceptional circumstances.<sup>17</sup>

40. Across the world, whether in unitary states or federal states, it is either the central government or the federal government that is directly responsible for safeguarding national security, while the local government or the state government can only play a supporting role. The arrangement of giving the HKSAR jurisdiction over most of the cases involving the National Security Law is a ground-breaking one.

It fully demonstrates the confidence and trust of the Central Authorities in the HKSAR in performing its duty to safeguard national security while respecting and upholding the spirit of “one country, two systems”.

41. Safeguarding national security ultimately involves national sovereignty and matters within the purview of the Central Authorities. As mentioned above, the CPG has an overarching responsibility for national security affairs relating to the HKSAR. Therefore, the CPG has, in accordance with Chapter V of the National Security Law, established in Hong Kong the Office for Safeguarding National Security of the CPG in the HKSAR (“OSNS”)<sup>18</sup> to, *inter alia*, oversee, guide, coordinate with, and provide support to the Region in the performance of its duties for safeguarding national security; and handle cases concerning offence endangering national security in accordance with the law.<sup>19</sup>

42. As regards handling cases concerning offence endangering national security in accordance with the law, while the HKSAR has jurisdiction over most of the cases involving the National Security Law, the OSNS may, in accordance with Article 55 of the National Security Law, exercise jurisdiction over relevant cases under three specified exceptional situations: first, where the case is complex due to the involvement of a foreign country or external elements, thus making it difficult for the Region to exercise jurisdiction over the case; second, where a serious situation occurs, rendering the HKSARG unable to effectively enforce the National Security Law; and third, where a major and imminent threat to national security has occurred.

43. In respect of the three specified situations, the OSNS may only exercise jurisdiction over such cases when the CPG approves the request made

<sup>14</sup> See paragraph 70(e) of the judgment.

<sup>15</sup> See paragraphs 42 and 70(c) of the judgment.

<sup>16</sup> See paragraphs 68 and 71 of the judgment.

<sup>17</sup> See paragraph 71 of the judgment.

<sup>18</sup> See Article 48 of the National Security Law.

<sup>19</sup> According to Article 49 of the National Security Law, the OSNS shall perform the following mandate:

- (1) analysing and assessing developments in relation to safeguarding national security in the HKSAR, and providing opinions and making proposals on major strategies and important policies for safeguarding national security;
- (2) overseeing, guiding, coordinating with, and providing support to the Region in the performance of its duties for safeguarding national security;
- (3) collecting and analysing intelligence and information concerning national security; and
- (4) handling cases concerning offence endangering national security in accordance with the law.





by the HKSARG or by the OSNS itself.<sup>20</sup> Under such circumstances, criminal investigation, examination and prosecution, trial, and execution of penalty shall be carried out by the Central Authorities in accordance with Chinese laws,<sup>21</sup> and the HKSAR shall have no jurisdiction over those cases.

### Improving electoral system and strengthening political security

44. In recent years, activists advocating “Hong Kong independence” have entered the political structure of Hong Kong through various public elections, trying all possible means to paralyse the operation of the LegCo, obstructing the HKSARG’s governance in accordance with the law and posing a grave challenge to national sovereignty. These chaos have exposed the loopholes of Hong Kong’s electoral system, which obviously go directly against the principle of “patriots administering Hong Kong”, bringing about an unprecedented challenge to our country’s political security.

#### (1) “Patriots administering Hong Kong”

45. Keeping the administrative power firmly in the hands of patriots is a universal principle. When Mr Deng Xiaoping designed the principle of “one country, two systems”, he had made it abundantly clear that “Hong Kong people administering Hong Kong” had its scope and criteria, and that is to say Hong Kong

should be managed by Hong Kong people, with patriots forming the mainstay. It is apparent that “patriots administering Hong Kong” is not a novel matter and has been a central plank to the principle of “one country, two systems” from the very beginning. According to Mr Deng Xiaoping, there were three criteria of being patriots: first, to respect one’s own nation; second, to sincerely support the resumption of the exercise of sovereignty over Hong Kong by the Motherland; and third, not to impair Hong Kong’s prosperity and stability.

46. The Basic Law upholds the principle of “Hong Kong people administering Hong Kong” with patriots forming the mainstay. In particular, BL 104 expressly requires that when assuming office, the CE, principal officials, members of the ExCo and of the LegCo, judges of the courts at all levels and other members of the judiciary in the HKSAR must, in accordance with law, swear to uphold the Basic Law of the HKSAR of the PRC and swear allegiance to the HKSAR of the PRC.

#### (2) Design of the Basic Law

47. Adopting a visionary approach, as early as when BL 45 and BL 68 and Annexes I and II to the Basic Law were being drafted, the Drafting Committee for the Basic Law of the HKSAR had already established relevant mechanisms to facilitate future amendments to be made when necessary, in the light of the actual

<sup>20</sup> See Article 55 of the National Security Law.

<sup>21</sup> See Article 57 of the National Security Law.



situation in the HKSAR and in accordance with the principle of gradual and orderly progress, to the methods for selecting the CE, and for forming the LegCo and its procedures for voting on bills and motions.

48. According to BL 45(2) and BL 45(3), “[t]he method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures. The specific method for selecting the Chief Executive is prescribed in Annex I: ‘Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region.’”

49. Pursuant to BL 68(2) and BL 68(3), “[t]he method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage. The specific method for forming the Legislative Council and its procedures for voting on bills and motions are prescribed in Annex II: ‘Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures.’”

50. The procedures for amending Annexes I and II to the Basic Law have been intrinsically set out in the two annexes to avoid the need of triggering the mechanism for amending the Basic Law as stipulated under BL 159. Mr Ji Pengfei, Chairman of the Drafting Committee for the Basic Law of the HKSAR, stated clearly when explaining the draft Basic Law on 28 March 1990 that the methods for selecting the CE and for forming the LegCo and its procedures for voting on bills and motions were provided in Annexes I and II to the Basic Law respectively so as to make them more amenable to revision when necessary in the light of the actual situation.

### (3) “Decision plus Amendment”

51. As the highest state organ of power of the PRC, the NPC oversees the enforcement of the Constitution and decides on the establishment of

special administrative regions and the systems to be instituted therein. When the loopholes in Hong Kong’s electoral system lead to a deviation from the principle of “patriots administering Hong Kong”, the NPC has both the power and duty under the Constitution to address the issue. Earlier this year, after taking into account the actual situation in the HKSAR, the NPC proposed a “Decision plus Amendment” approach to improve the HKSAR’s electoral system.

52. The first step was “Decision”. On 11 March 2021, the NPC, in accordance with the relevant provisions of the Constitution, the Basic Law and the National Security Law, made a decision on improving the electoral system of the HKSAR and authorized its standing committee to amend Annexes I and II to the Basic Law in accordance with the decision.

53. The second step was “Amendment”. On 30 March 2021, the NPCSC, under its mandate, amended Annexes I and II to the Basic Law, setting out specific provisions for the new electoral system to be implemented in the HKSAR. Subsequently, by virtue of the Improving Electoral System (Consolidated Amendments) Bill 2021 passed by the LegCo on 27 May 2021, the HKSAR amended the relevant local laws accordingly.

54. Based on the foregoing, the Central Authorities have, at the national level, constructed a democratic electoral system that caters for the actual situation in Hong Kong to ensure “patriots administering Hong Kong”, consolidate political security and effectively uphold the constitutional order established by the Constitution and the Basic Law. It must be stressed that the improvement to the electoral system would not in any way change the aim of universal suffrage in relation to the methods for selecting the CE and for forming the LegCo as specified in BL 45 and 68, to be achieved in the light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress.

55. Under the newly amended Annexes I and II to the Basic Law and local electoral legislation, the Election Committee has expanded from 1,200 members from four sectors to a total of 1,500 members from five sectors. Apart from continuing to nominate and elect the CE, the Election Committee has been entrusted with two new functions, namely electing 40



LegCo members and nominating all candidates for the LegCo. Meanwhile, the number of LegCo members has been increased from 70 to 90, of which 40 are returned by the Election Committee, 30 by functional constituencies, and the remaining 20 by geographical constituencies through direct elections. The adjustments to the composition, size and functions of the Election Committee as well as to the composition and size of the LegCo have successfully enhanced the balanced and orderly political participation by the community,<sup>22</sup> ensured a broader representation and brought in the voices of different sectors.<sup>23</sup> This is definitively a positive move for the electoral system of the HKSAR.

56. As to the newly established Candidate Eligibility Review Committee of the HKSAR ("CERC"), it has provided a strong systematic safeguard for the faithful implementation of "patriots administering Hong Kong", by effectively ensuring that all candidates will genuinely and truthfully uphold the Basic Law and swear allegiance to the HKSAR of the PRC. Under the new system, the CERC is responsible for reviewing and confirming the eligibility of candidates for Election Committee members, for the office of CE and for LegCo members, and it may seek advice from the HKSAR

Committee on National Security when necessary. The HKSAR Committee on National Security shall, on the basis of the review by the department for safeguarding national security of the Hong Kong Police Force, make findings as to whether a candidate meets the legal requirements and conditions of upholding the Basic Law of the HKSAR of the PRC and swearing allegiance to the HKSAR of the PRC, and issue an opinion to the CERC in respect of a candidate who fails to meet such legal requirements and conditions.

57. In September and December this year, the Election Committee Subsector Ordinary Elections and the LegCo General Election were held smoothly and orderly in accordance with the newly amended Annexes I and II to the Basic Law and related electoral legislation. The improvement to the electoral system has yielded unequivocal and noticeable results. Refocusing on policy discussion, members of the new term of the LegCo can put forward objective, rational and constructive advice to the Government, thereby greatly enhancing the governance capability of the HKSAR. The HKSARG shall continue to uphold its commitment to ensuring a smooth running of the CE Election in the coming year.

<sup>22</sup> The new sectors of the Election Committee and the new composition of the LegCo have enhanced the balanced and orderly political participation by the community.

<sup>23</sup> Under the new system, to become a candidate for LegCo members, one shall first be nominated by no less than 2 but no more than 4 members from each of the five sectors of the Election Committee. For example, to become a candidate for the Commercial (First), Commercial (Second) or Commercial (Third) Functional Constituency, one shall first be nominated by no less than 2 but no more than 4 members from each of the five sectors of the Election Committee (including the third sector: grassroots, labour, religious and other sectors). Compared with the former requirement of only having to obtain sufficient nominations from registered electors of their respective functional constituencies, the candidates for LegCo members nominated under the new system will have a broader representation of society.



### Concluding remarks

58. From the enactment of the National Security Law, to the improvement of the electoral system to ensure “patriots administering Hong Kong”, the Central Authorities have set out a clear direction to steer “one country, two systems” back on the right track, marking an important milestone for safeguarding national security in Hong Kong and laying a solid foundation for Hong Kong’s steady development and long-term security and stability. Evidently, Hong Kong has successfully progressed from chaos to order, and from order to prosperity.

59. The economic data of last year has proved that Hong Kong’s business environment is becoming more attractive, and that international investors’ confidence in Hong Kong has been enhanced rather than deterred. In the year following the implementation of the National Security Law (*i.e.* July 2020 to June 2021), funds raised through initial public offerings in Hong Kong exceeded HK\$500 billion, an increase of more than 50% compared to the 12 months before the implementation of the National Security Law. The average daily turnover of Hong Kong stocks was over HK\$160 billion, nearly 70% higher than the level before the implementation of the National Security Law.<sup>24</sup> As at end-June this year, total deposits in the Hong Kong banking system amounted to over HK\$15 trillion, up by almost 8% over end-June last year before the National Security Law took effect.<sup>25</sup>

60. Leveraging the support from the Motherland while engaging the world under “one country, two systems”, Hong Kong is not only able to practise legal, economic and social systems different from those in other Mainland cities, but also equipped with sophisticated infrastructure and a pool of talents from all over the world to keep our business environment secure and vibrant. Capitalising on these unique strengths, Hong Kong continues to play the role as a multilateral bridge connecting our country and the world. Looking forward, with the enormous business opportunities brought about by the 14<sup>th</sup> Five-Year Plan, Hong Kong shall continue to cooperate closely with other cities in the Greater Bay Area by complementing

and reinforcing each other to more proactively integrate into the national development.

61. Under the constitutional order established by the Constitution and the Basic Law, “one country” is the premise and basis of “two systems”. To ensure the steadfast and successful implementation of “one country, two systems” and the long-term prosperity and stability of Hong Kong, it is of utmost importance to uphold the “one country” principle and safeguard national security. While Hong Kong is protected by the National Security Law, our laws for safeguarding national security must keep abreast with the times to meet the fast-changing national security risks arising in the new era.

62. As stipulated in Article 7 of the National Security Law, the HKSAR shall complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law and shall refine relevant laws. Meanwhile, it is necessary for the HKSAR to uphold the holistic view of national security and to diligently consolidate traditional and non-traditional security on various fronts, including legislation, law enforcement, education, public communication, guidance and supervision, so as to promote overall national security in a holistic manner. As to Hong Kong residents, they should, apart from supporting the HKSAR in its work of safeguarding national security, jointly shoulder the responsibility of safeguarding national security by developing a strong law-abiding awareness and a proper understanding of national security.

63. The stronger the bottom line of “one country”, the greater the room for the development of “two systems”, and hence the more prosperity and stability for Hong Kong. Security undoubtedly brings prosperity.



<sup>24</sup> See p. 28 of *Report on Hong Kong’s Business Environment: A Place with Unique Advantages and Unlimited Opportunities* published by the HKSARG on 27 September 2021.

<sup>25</sup> Ditto.